

McGUIREWOODS

# Liability, Informed Consent, and Risk Management – 15 Thoughts for Pain Management Physicians

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1. Common Attacks on Pain Management Physicians –  
See also [www.aapsonline.org](http://www.aapsonline.org) (Actions Against Pain Physicians)
  - A. Alleged drug dealing
  - B. Turned patients into addicts
  - C. Medically unnecessary
  - D. Drug and addiction led to suicide or overdose (*See e.g., “Physician Liability When an Overdose Brings a Lawsuit” American Medical News by Alicia Gallegos, March 4, 2013*)
  - E. Didn't check medical history
  - F. Didn't document need

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## 1. Common Attacks on Pain Management Physicians – (Continued)

G. Treating a drug addict

H. Abuse of urine drug testing - *See “Doctors Cash in On Drug Testing for Seniors and Medicare Pays the Bill, Wall Street Journal, Christopher Weaver and Anna Wilde Mathews – May 10, 2014)*

I. Overprescribing

J. Under treatment of pain

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2. Practical Advice – See also *“The Challenges of Pain Doctors Frustrated by Fragment”* by Kathleen M. Roman, MS, Protector Fall 2012”
  - A. Review your own practice - are you meeting guidelines
  - B. Improve skills and knowledge
  - C. Consult with experts
  - D. Improve your knowledge regarding drug abuse issues and disorders
  - E. Everybody should be screened?
  - F. Ask about recent and lifetime drug use
  - G. Review past medical records
  - H. Screening when unusual behavior, a new prescription, increasing dosages, and when referring out

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## 2. Practical Advice (continued)

- I. Signed informed consent
- J. Right to terminate treatment
- K. Regular monitoring
- L. Consult with pharmacist and other doctors
- M. Thorough documentation
- N. Check for doctor shopping
- O. Be cautious re patients who refuse to grant permission to see old records, won't undergo drug screening, profess lots of medical allergies. Push for specific medication, threaten the doctor, lose prescriptions, demonstrate non compliance
- P. Obtain full medical history, do complete clinical workup, educate the patient, become familiar with DEA and state regulations, make referrals as needed

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3. 22 million plus prescriptions annually
4. 60 million people diagnosed with chronic pain
5. \$9 billion spent annually
6. Payors and regulators concerned regarding costs and increased deaths
7. CDC says death caused by prescription pain killers exceeds all other cases of accidental death
8. Doctors sometimes refuse to treat – check state pain database to avoid/watch for pain pill shopping
9. State laws on over prescribing opioids

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10. Need to check for drug abuse but also great concerns regarding too much drug testing

## 11. Liability Risks

- A. Failure to identify the at risk patient
- B. Failure to address pain management
- C. Failure to watch for addiction

## 12. Documentation of discussions

- A. Patient who may have drug problem
- B. Patient who are asking for treatments that doctor can't or won't provide
- C. Assessment of patient

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## 13. Other Risk Management Tips – Medical Liability Mutual Insurance Company – MLMIC.com

1. Maintaining Patient Confidentiality
2. Tracking Test Results
3. Prescription medications and patient safety
4. Failure or malfunction of office equipment can lead to patient, staff or provider injury
5. Following up missed or cancelled appointments
6. Managing medication samples
7. Safely caring for obese patients in the office practice setting
8. Management and documentation of after-hours telephone calls from patients
9. Reliably Communicating and Acting on Critical Test Results
10. Managing Chronic Pain Patients
11. Using chaperones during physical examinations
12. Promoting communication between the referring and the consulting physicians
13. The Proper Handling of Patient Complaints
14. Managing Drug Seeking Patients
15. Communication With Patients
16. Medication Regimen Adherence
17. Communicating with Low Health Literacy Patients



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## 14. Managing Chronic Pain Patients – MLMIC

The Risk: The management of chronic pain, through the prescription of medication, poses challenges and risks to both the patient and the healthcare provider (physician, physician assistant, or nurse practitioner). These risks include the potential for patient addiction, diversion, the possibility of overdose, and death, whether accidental or the result of suicide. The provider's fear of the following risks may lead to inadequate treatment of the patient:

- A. Liability for failure to adequately treat pain;
- B. Liability for allegedly inappropriately prescribing controlled substances;
- C. Potential for civil charges being brought against a physician or other provider for the patient's diversion of narcotics and/or drug abuse or overdose; and
- D. Liability for failing to recognize a patient's addiction and/or diversion and to refer the patient for treatment

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## 15. Ten Things that Get Physicians Sued – Texas Medical Liability Trust (2009)

1. Failing to listen to patients, spend adequate time with them, and communicate empathetically with them
2. Maintaining illegible or incomplete documentation
3. Failure to establish standards of conduct for office staff
4. Being inaccessible to patients
5. Failure to order and follow up on indicated tests or ordering such tests
6. Failure to refer when appropriate, failure to track referrals
7. Inappropriately prescribing medications
8. Improper care of patients during emergency situations
9. Failure to obtain informed consent
10. Allowing noncompliant patients to take charge

**Questions or Comments?**