



The Pain of Irresponsible Pain Management

by Susan W. Berson, J.D.

In the past few years, much attention has been given to pain—"the fifth vital sign." Both the importance of adequate pain management and the potential for liability if a patient's pain is not handled adequately have been brought to the forefront for clinicians and health care managers.

In the past, providers worried more about possible liability for the overprescription of habit-forming narcotic medication than whether or not they were providing adequate pain management. Some of these concerns were valid and based on situations where significant liability and/or sanctions were handed down for the overprescription of narcotics, including sanctions under applicable licensing laws.

In a turnaround of events, hospitals and physicians are now facing increased legal accountability for inadequate pain management. In 2001 a California court held that the lack of proper pain management violates the state's elder abuse law. This state court decision is important in that punitive damages were awarded to the family under the elder abuse statute but would *not* have been available in a common law finding of medical negligence.

In the California case, the family of an elderly man who suffered from lung cancer and severe back pain was awarded a judgment of more than \$1 million against their father's doctor who they claimed had ignored his patient's pleas of excruciating pain. Although the award was later reduced and the case settled, it established precedence for imposing liability solely based on inadequate pain management.

Cases in other jurisdictions have also found liability when patients claimed to have not received adequate pain management—even under circumstances where patients have refused treatment from pain. Further,

physicians and nurses have been sanctioned by state licensing boards for improper pain management.

While legal decisions have helped raise awareness of the issue, legislative initiatives and the development of specific clinical guidelines have also contributed to improvements in pain management. In fact, several states, including California, Florida, Pennsylvania, and Texas have passed laws protecting doctors from claims of over-prescribing medication in cases where such medication is necessary for proper pain management.

The federal government and many other health care organizations have reached consensus and developed quality standards of pain management. The federal government's National Guidelines Clearinghouse web site (<http://www.guideline.gov>) contains a comprehensive database of evidence-based clinical practice guidelines produced in collaboration with various health care associations.

In addition, the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) recognized pain as a major public health problem and adopted pain management standards in 2001. The JCAHO standards have given accredited hospitals and other health care settings new guidance for assessing and managing pain. Adherence to the JCAHO standards can be an important defense for providers faced with claims of inadequate pain management or improper use of pain medication.

The availability of information on the Internet has also increased awareness of effective pain management methods and raised expectations for providers, patients, and families alike. However, many in the health care field still believe that progress is slow, too many patients continue to suffer needlessly from inadequate pain relief, and that

professional training in this area needs improvement.

So, not only must institutions and providers be cognizant of new guidelines and standards in pain management, but they must also stay current with applicable law cases and understand how these legal decisions could impact their organization. Hospitals and physician practices must develop their own policies, procedures, and guidelines on managing pain in patients, as well as provide appropriate training and education to all members of the health care team.

Resources are available to assist hospitals and practices. The Joint Commission Resources (a subsidiary of JCAHO) recently published a manual entitled *Approaches to Pain Management: An Essential Guide for Clinical Leaders*. This manual helps health care providers develop and implement pain management programs in compliance with JCAHO standards. The guide includes case studies of how different organizations developed their policies and procedures and contains many examples of forms, protocols, and guidelines.

One final concern is that the focus on adequate pain management can have the unintended consequence of reigniting the issue of overmedication. In 2000 a doctor in Utah was convicted of manslaughter and negligent homicide in the death of certain terminally-ill patients. The doctor's defense was that he was simply providing palliative care and prescribing appropriate pain medication. A new trial was ordered last year, and the legal and public relations battles continue. ■

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