

James L. Holly, M.D.

Prescription Drug Abuse Part III Texas Medical Board Rule 170

By James L. Holly, MD

Your Life Your Health

The Examiner

March 22, 2007

The seriousness of the abuse of prescription pain medications and other potentially habituating drugs is evidenced by the regulations of the Texas Medical Board. Rule 170 is the statement by the Board of the standards to which physicians will be held in prescribing of the medications. Several overarching principles give definition to these standards; they are:

1. Prescribing any medication for a patient and particularly for a friend, or a family member, without the keeping of a record for that patient, and without having taken a history and having completed a physical examination on that person, is a violation of the Board's rules. The most common reason physicians are sanctioned by the Board for prescribing of pain medications and potentially habituating medications is for doing so without evidence that a physical examination has been done and without a record having been created. Physicians like most people want to help their family and their friends, but they potentially jeopardize their medical licenses when they treat family and friends who are not patients and particularly when they treat them without creating a record of that care.
2. Paragraph (3)(a) of the Board's Rule 170, which we will review below, requires that the physician have a written plan of care with stated goals for the patient who is being treated with chronic pain medications. That paragraph states, "Pursuant to a written treatment plan tailored for the individual needs of the patient by which treatment progress and success can be evaluated with stated objectives such as pain relief and/or improved physical and psychosocial function. Such a written treatment plan shall consider pertinent medical history and physical examination as well as the need for further testing, consultations, referrals, or use of other treatment modalities."
3. The physician who helps you the most may not be the one who always gives you what you want.

With these three principles in mind, let's look at the Texas State Board of Medical Examiners Rule 170 which regulates the prescribing of pain medications. Paragraph 1 of the Rule states the purpose of the rule:

“The purpose of this chapter is to recognize that some dangerous drugs and controlled substances listed in Chapter 481 and 483 of the Texas Health and Safety Code are indispensable for the treatment of pain, and are useful for relieving and controlling many other related symptoms that patients may suffer. It is the position of the board that these drugs may be prescribed for the treatment of pain and other related symptoms after a reasonably based medical diagnosis has been made, in adequate doses, and for appropriate lengths of time, which in some cases may be as long as the pain or related symptoms persist. The board recognizes that pain, including intractable pain, and many other related symptoms are subjective complaints and that the appropriateness and the adequacy of drug and dose will vary from individual to individual. The practitioner is expected to exercise sound medical judgment in treating pain and related symptoms with dangerous drugs and controlled substances.”

Paragraph 2 gives several definitions which are helpful in understanding the parameters of Rule 170:

“The following words and terms, as used in the Medical Practice Act, Article 4495b, Section 3.08, shall have the following meanings in the context of providing medications for pain and related symptoms.

“(1) Abuser of narcotic drugs, controlled substances and dangerous drugs - A person who takes a drug or drugs for other than legitimate medical purposes.

“(2) Intractable pain - A pain state in which the cause of the pain cannot be removed or otherwise treated and which in the generally accepted course of medical practice no relief or cure of the cause of the pain is possible or none has been found after reasonable efforts.

“(3) Non-therapeutic in nature or manner - A medical use or purpose that is not legitimate.

“(4) Prescribing pharmaceuticals or practicing consistent with the public health and welfare - Prescribing pharmaceuticals and practicing medicine for a legitimate medical purpose in the usual course of professional practice.”

Paragraph 3 establishes guidelines for the enforcement of Rule 170:

“The Texas State Board of Medical Examiners will use the following guidelines to determine whether a physician's conduct violates the Medical Practice Act, Sections 3.08(4)(E), 3.08(4)(F), and 3.08(18) in regard to the prescribing, administering, ordering, or dispensing of pain medications and other drugs necessary to address their side effects.

“(1) The treatment of pain, including intractable pain, with dangerous drugs and controlled substances is a legitimate medical purpose when done in the usual course of professional practice.

“(2) A physician or surgeon duly authorized to practice medicine in Texas and to prescribe controlled substances and dangerous drugs in this state shall not be subject to disciplinary action by the board for prescribing, ordering, administering, or dispensing dangerous drugs or controlled substances for the treatment and relief of pain, including intractable pain, in the usual course of professional practice for a legitimate medical purpose in compliance with applicable state and federal law.

“(3) Prescribing, ordering, administering, or dispensing dangerous drugs or controlled substances for pain will be considered to be for a legitimate medical purpose if based upon accepted scientific knowledge of the treatment of pain, including intractable pain, not in contravention of applicable state or federal law, and if prescribed, ordered, administered, or dispensed in compliance with the following guidelines where appropriate and as is necessary to meet the individual needs of the patient:”

This section goes on to detail the steps required for the legitimate prescribing of chronic pain medication; it states:

“(A) After a documented medical history, which may be provided orally or in writing by the patient, and physical examination by the physician providing the medication including an assessment and consideration of the pain, physical and psychological function, any history and potential for substance abuse, coexisting diseases and conditions, and the presence of a recognized medical indication for the use of a dangerous drug or controlled substance;

“(B) Pursuant to a written treatment plan tailored for the individual needs of the patient by which treatment progress and success can be evaluated with stated objectives such as pain relief and/or improved physical and psychosocial function. Such a written treatment plan shall consider pertinent medical history and physical examination as well as the need for further testing, consultations, referrals, or use of other treatment modalities;

“(C) The physician should discuss the risks and benefits of the use of controlled substances with the patient or guardian;

“(D) Subject to documented periodic review of the care by the physician at reasonable intervals in view of the individual circumstances of the patient in regard to progress toward reaching treatment objectives which takes into consideration the course of medications prescribed, ordered, administered, or dispensed as well as any new information about the etiology of the pain;”

Compliance with the Board’s Rule requires diligent record keeping as is detailed in the following paragraph. Note words such as “complete,” “accurate,” and the requirement for “names,” “quantities,” “dosages” and number of refills”:

“(E) Complete and accurate records of the care provided as set forth in subparagraphs (A)-(D) of this paragraph should be kept. When controlled substances are prescribed, names, quantities prescribed, dosages, and number of authorized refills of the drugs should be recorded, keeping in mind that pain patients with a history of substance abuse or who live in an environment posing a risk for medication misuse or diversion require special consideration. Management of these patients may require closer monitoring by the physician managing the pain and consultation with appropriate health care professionals.”

The key to the appropriate prescribing of pain medications and of other potentially habituating medications is the tying of a prescription to a diagnosis supported by a treatment plan with a periodic evaluation of the continuing need for the medication. The following paragraphs indicate the same:

“(4) A decision by a physician not to strictly adhere to the provisions of paragraph (3) of this section will, for good cause shown, be grounds for the board to take no disciplinary action in regard to the physician. Each case of prescribing for pain will be evaluated on an individual basis. The physician's conduct will be evaluated to a great extent by the treatment outcome, taking into account whether the drug used is medically and/or pharmacologically recognized to be appropriate for the diagnosis, the patient's individual needs including any improvement in functioning, and recognizing that some types of pain cannot be completely relieved.

“(5) If the provisions as set out in paragraphs (1)-(4) of this section are met, and if all drug treatment is properly documented, the board will consider such practices as prescribing in a therapeutic manner, and prescribing and practicing medicine in a manner consistent with public health and welfare.

“(6) Quantity of pharmaceutical and chronicity of prescribing will be evaluated on the basis of the documented appropriate diagnosis and treatment of the recognized medical indication, documented persistence of the recognized medical indication, and properly documented follow-up evaluation with appropriate continuing care as set out in this chapter.

“(7) A physician may use any number of treatment modalities for the treatment of pain, including intractable pain, which are consistent with legitimate medical purposes.”

The Board specifically excludes the short-term use of pain medications from the above rules and guidelines:

“(8) These rules shall not be construed so as to apply to the treatment of acute pain with dangerous drugs or controlled substances for purposes of short-term care.”

Hopefully, the reading of the Texas Medical Board's Rule 170, while at first may seem tedious, it helps healthcare providers and patients understand the seriousness of the use of these medications.

SETMA believes that this issue is so important that we publish Rule 170 in our electronic medical records on function entitled, "SETMA Plan of care for Pain Management and Management of medications with a high potential for habituation."

Remember, the physician who helps you the most may not be the one who always gives you what you want. It is your life and it is your health.