

New Jersey Becomes First State In The Nation To Mandate That Physicians And Other Prescribers Must Discuss Addiction Risks With Minor Patients

Legal Alert

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Governor Chris Christie signed legislation requiring physicians and other health care prescribers to discuss with an emancipated minor, or the patient's parent or guardian if the patient is under the age of eighteen (18), the risks of developing a "physical or psychological dependence" before prescribing a Schedule II opioid drug. Controlled Dangerous Substances (CDS) are prescribed based upon one of five (5) classifications contained in the State's regulations with Schedule I drugs having the highest potential for abuse. A Schedule II drug would include medications such as OxyContin or Vicodin.

If the prescriber determines in his judgement that alternative treatment is appropriate, he or she may discuss the alternatives with the minor or parent. The prescriber is also required to include a note in the patient's medical record documenting that a discussion about the risks has occurred.

This law is just one part of Governor Christie's high priority initiatives to "stem the tide of drug addiction that has largely been caused by the misuse of prescription drugs." Governor Christie's Administration is working on many fronts to "curb this epidemic."

Obtaining the adoption of the new law was a multi-year initiative due to the opposition of medical professionals who argued that they already appropriately assessed and treated minor patients in acute pain. When legislation similar to the above law was first introduced in the 2014-2015 legislative session, it contained many more stringent requirements for how a physician or other prescriber would have to prescribe opioids. For example, that legislation applied to all patients, not just minors. It also required that the prescribers use a form created by the Division of Consumer Affairs (Division) to document that the discussion took place. The Division was also empowered to create "guidelines" for the discussions with patients.

Due to the opposition of Assemblyman Herbert Conaway, (D Burlington), a physician and attorney, who is the Chairman of the Assembly Health and Senior Services Committee, the 2014-2015 Legislature did not pass the bill in the Assembly. Dr. Conaway stated that the legislation would "unnecessarily interfere with the doctor-patient relationship."

At the same time, the New Jersey Board of Medical Examiners (BME) supported the "concept" contained in the 2014-2015 legislation, but it stated that physicians were already required to meet the discussion and documentation requirements under the standard of care. The BME also noted that the patient's physician is in the best position to assess what information should be discussed and pain medications ordered. The BME is generally not in favor of legislation mandating how a physician may care for patients.

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After extensive debates between families, those concerned about drug abuse and legislators, a compromise was forged on the issue of mandating what a physician would be required to tell a minor patient. Thus, new legislation was introduced in the 2016-2017 legislative session. Significantly, this legislation did not contain language mandating that a prescription should only be prescribed in “good faith” and codifying the BME’s CDS regulations among other prior provisions. The Legislature passed legislation simply requiring discussions between minors and prescribers and documentation of that communication in the medical record.

In view of the adoption of this “bare bones” legislation it is not surprising that in January Governor Christie directed Attorney General Christopher Porrino to implement emergency regulations limiting medical providers to issuing only an initial five (5) day prescription of CDS for acute pain. Governor Christie has signaled his unwillingness to wait for the Legislature to pass bills adopting the types of limitations on prescribing CDS to patients that he thinks are necessary. Attorney General Porrino sent a January 18, 2017 letter to the BME informing them that they had thirty (30) days to determine whether they will “stand” with him in pursuing “administrative reforms.” The clear implication is that if the BME does not go along with the five (5) day prescription limitation on opioids that emergency regulations will be adopted without the BME’s input.

We should anticipate that there will continue to be stringent efforts by Governor Christie’s Administration to take action against physicians and other prescribers who violate the evolving standards for prescribing CDS. Meanwhile, physicians are arguing that the current regulations governing how they treat patients with acute pain are appropriate and that they should not be limited to only prescribing a five (5) supply of pain medications. Prescribers are expressing concern about the impact on patients in pain if this emergency regulation is adopted. Prescribers are also concerned about sufficiently documenting that their communication with a minor patient occurred if that a complaint is made or an investigation launched. Alma L. Saravia is a shareholder of Flaster Greenberg PC in Cherry Hill. She practices in the area of healthcare law and was a member of the NJ State Board of Medical Examiners. She can be reached at 856.661.2290 or alma.saravia@flastergreenberg.com

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