



## Risk Management and Patient Safety News



You Took What Pill?! When?! Why?!

### The Importance of Maintaining a Good Medication Management Policy

by Dona Constantine, RN, BS

Do you find it difficult to keep a current medication list? Is your patient seeing various specialists, cognitively impaired, or taking numerous medications and only know the patient "takes one white pill in the morning and two red ones at night"?

Medication errors and adverse reactions occur in all healthcare settings, including the physician's office practice. Errors can arise from specific contributing factors such as wrong dosage, wrong medication, drug interactions, or use of multiple opioids. Practices that have implemented an electronic health record (EHR) system have mitigated some of the inherent risks such as illegible handwriting, but EHRs have also created unique risks related to e-prescribing, including use of drop-down menus, keystroke errors, and copy and paste. To mitigate these risks, rigorous medication management policies should be adopted in the office setting.

When developing an office medication reconciliation policy, a good place to start is when patients call the office for their first visit. Instruct staff to tell the patient to bring to the appointment all the medicines they take, oral or injectable, ordered by a physician, and

all over-the-counter medications such as vitamins or herbal supplements. With established patients, some practices provide a written reminder or insulated tote as a reminder for patients to bring their medications to each visit.

Medication reconciliation is a three-step process and is the responsibility of everyone from physician/staff, patient, family members, and caregivers.

**Verification** – What is the patient taking and why? This is the most challenging step.

**Clarification** – Ensure the medication and dose are correct and taken appropriately.

**Reconciliation** – Document any change.

It is important to document from whom the information came so that any discrepancy may be tracked and revisited if clarification is necessary.

Reconciliation is done at each step of the patient's interaction with healthcare providers, or when treatment has changed. This facilitates an understanding by the patient about his or her treatment plan, what each medication is for, and minimizes contraindicated

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medications. Patients should also understand when and why it is important to follow up with the physician about their medications.

The best way to maintain accurate medication reconciliation is to utilize a form that includes: medication name, dosage, frequency, route, and any special instructions. This form should be given to the patient and should be brought to every visit. The form should be simple and accommodate room for medication changes.

Remind patients that two important benefits of an accurate and timely medication reconciliation process are patient safety and minimizing risk by avoiding adverse drug events (ADE). ADEs often lead to hospitalization and possibly death.

Finally, a word about e-prescribing. Remember to use caution with the e-prescribe drop-down menu. Double-check each entry to be sure the correct medication is selected with the initial prescription and each subsequent refill. ⚡

#### Resources:

- [Sample Medication Management Process](#)
- [Implementation Quick-Start Guide: Medication Management](#)
- [Medication Reconciliation Form](#)

*Dona Constantine is a senior risk management and patient safety specialist for CAP. Questions or comments related to this article should be directed to [dconstantine@CAPphysicians.com](mailto:dconstantine@CAPphysicians.com).*

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# Workers' Compensation Insurance and the New California Law About Employees

California law requires employers to have workers' compensation insurance for their employees. CAP Physicians Insurance Agency, Inc., frequently runs into two main questions about whether our members need to carry workers' compensation insurance coverage to comply with state law.

One area where there seems to be confusion is when the practice employs family members. The other area that comes up frequently is when your practice has contractors working in the practice.

## Insurance FAQs

### *Do I need to have workers' compensation insurance?*

California law requires employers to have workers' compensation insurance even if they only have one employee. Every California employer using employee labor, including family members, must purchase workers' compensation insurance. If you fail to provide workers' compensation insurance, the fines and penalties are significant, costing you up to \$10,000 per employee, with a maximum of \$100,000.

### *My niece helps in my practice for a few hours a day, but I do not consider her an employee. Is that correct?*

No. Under the new California law, she is likely considered an employee. California Labor Code Section 2750.3(a) now defines an employee as "a person providing labor or services for remuneration shall be considered an employee rather than an independent contractor unless the hiring entity demonstrates that all of the following conditions are satisfied:

- (A)** The person is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- (B)** The person performs work that is outside the usual course of the hiring entity's business; and
- (C)** The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed."

So, unless your niece performs work that does not involve clerical or healthcare services for your practice (such as painting your office walls), she is still considered an employee even though your niece is part of your family, and you must provide workers' compensation insurance.

### *My practice employs persons classified as independent contractors. What obligations do I have to purchase workers' compensation insurance?*

It depends. If the person classified as an independent contractor in your practice is a physician, dentist, podiatrist, or psychologist, then the new California law does not change prior law. All other contractors in your practice are employees under the new California law unless you can demonstrate that all of the following conditions are satisfied:

- (A)** The person is free from your control and direction in connection with the performance of the work, both under the contract for the performance of the work and in fact;
- (B)** The person performs work that is outside the usual course of your practice; and
- (C)** The person is customarily engaged in an independently established trade, occupation, or business of the same nature as that involved in the work performed.

CAP Physicians Insurance Agency, Inc. understands medical practice challenges – and how to insure against those challenges most cost effectively. We are a full-service agency with knowledgeable professionals who can answer your questions and help you find the best solutions for your insurance needs.

We are always looking for ways to save our members money, so if you need to purchase coverage or would like us to get you a competitive quote for insurance you already have, call us at 800-819-0061 and press 1, or send an email at [CAPAgency@CAPphysicians.com](mailto:CAPAgency@CAPphysicians.com). ➦



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# Become a CAP Insider and Be in the Know!

by Gabriela Villanueva



Welcome to 2020! While it is a presidential election year and there will be headline after headline written about it, we are still months away from November. In the meantime, the California Legislature is back in session in Sacramento with plenty of issues and challenges waiting to be taken up, debated, amended, defeated, or passed.

Also, in 2020 CAP is looking at a potential challenge to MICRA at the ballot box once again. Some may remember there was a challenge in 2014 that CAP, as part of a large coalition, contributed to its defeat. Should there be a need to defend MICRA in 2020, having our members well-informed of the developments is the ultimate defense.

With all this in mind, CAP's Public Affairs team sees an opportunity to give our members even more detailed information on legislative, regulatory, ballot, and political activities in California and on the federal level than can be handled in the monthly *CAPSules* public policy column.

By becoming a CAP *Public Affairs Insider*, CAP members can remain more informed on legislative and regulatory activities affecting the practice of medicine and access to care as we move through a very busy year.

To receive your *Insider* update by email, simply contact us at [PACinfo@capphysicians.com](mailto:PACinfo@capphysicians.com) with your name and preferred email address with the message: "I want to be a CAP Public Affairs Insider!" You will then receive the first edition of the *Insider* upon its publication arriving soon.

CAP believes that our members are among the most sophisticated physicians in California when it comes to protecting access to care through public affairs activities. Through such programs as the *Public Affairs Insiders* and the Public Affairs Symposium to be held later in the year, CAP hopes to not only provide new and detailed information to our members, but to also **learn more from our members** how CAP can help physicians succeed in a complicated regulatory and legislative environment.

Via an electronic newsletter delivered to your inbox, we look forward to providing you the most current and relevant information and hopefully have it serve as a tool to help cut through some of the noise.

To become a Public Affairs Insider just contact us at [PACinfo@CAPphysicians.com](mailto:PACinfo@CAPphysicians.com) today! ➡

*Gabriela Villanueva is CAP's Public Affairs Analyst. Questions or comments related to this article should be directed to [gvillanueva@CAPphysicians.com](mailto:gvillanueva@CAPphysicians.com).*



# Case of the Month

by Gordon Ownby



## State Must Show Benefits of Disclosing Patients' Illegal Online Viewing

In reinstating a lawsuit brought by a group of therapists and counselors, the California Supreme Court cleared the way for a show of evidence over which approach best serves the goal of curtailing the demand for online child pornography: The opportunity to effectively treat patients who possess and view such material, or mandatory disclosure to law enforcement authorities when a patient tells a therapist of such behavior.

In their suit against the state Attorney General and the Los Angeles County District Attorney to bar enforcement of a 2014 amendment to the California Penal Code, the therapists claim that patients, including those in treatment for sexual addiction and sexual attraction to children and who admit downloading and viewing Internet child pornography, do not “present a serious danger” to others. Mandatory reporting of these patients under the 2014 law discourages them from disclosing intimate details needed for effective therapy and deters potential patients from seeking treatment at all, according to the legal challenge.

In backing the change in the law to require therapists to tell authorities when a patient discusses downloading or viewing the illegal digital material, the criminal justice authorities argue that patients have no expectation of privacy in making such admissions and that the purpose of the law is to protect children by drying up the market for images of their sexual abuse.

A trial court and intermediate appellate panel rejected the therapists’ claim at the pleading stage.

By dismissing the case at such an early juncture, the Supreme Court said that it was required to accept the facts pleaded as true and to give the lawsuit’s allegations a reasonable interpretation. Under this standard, the high court held in *Mathews v. Becerra* that the plaintiff’s therapists asserted a cognizable privacy interest under the California Constitution and that their complaint may proceed. The court noted, however, that “in the absence of an evidentiary record, we express no view on the ultimate validity of the 2014 amendment to Section 11165.1(c)(3) or plaintiffs’ likelihood of success.”

“To be clear, the privacy interest we recognize here attaches to a patient’s disclosures during voluntary psychotherapy, not to the patient’s underlying conduct,” the court emphasized. “There is no right to privacy that protects knowing possession or viewing of child pornography online or through any other medium.”

The Supreme Court explained that a plaintiff alleging an invasion of privacy in violation of the state Constitution must establish three things: (1) a legally protected privacy interest; (2) a reasonable expectation of privacy in the circumstances; and (3) conduct by the defendant constituting a serious invasion of privacy.

The court’s majority opinion concluded that the first test is met via the psychotherapist-patient privilege found in California Evidence Code Section 1014. The Court quoted early commentary on the scope and purpose of the privilege: “Psychoanalysis and psychotherapy are dependent on the fullest revelation

of the most intimate and embarrassing details of the patient's life . . . Unless a patient . . . is assured that such information can and will be held in utmost confidence, he will be reluctant to make the full disclosure upon which diagnosis and treatment . . . depend[.]”

The court pointed out that the facts pleaded do not trigger an exception to the privilege for those seeking a psychotherapist's service to aid in the commission of a crime or to escape detection and rejected the defendants' contention that another exception, for a “dangerous patient,” applies. “The (dangerous patient exception) does not authorize courts to determine what kind of patients are dangerous. By the statute's plain terms, it is up to ‘the psychotherapist’ to make that determination for each patient.”

The majority opinion then turned to whether the plaintiffs' patients have a reasonable expectation of privacy in the circumstances alleged. The high court agreed with the lower court that “possession of Internet child pornography does not involve any vital privacy interest.” But in finding a reasonable expectation of privacy, the court noted, “plaintiffs do not contend that possessing or viewing child pornography itself implicates a privacy interest. They contend that privacy interests arise when their patients admit to possessing or viewing child pornography in the context of voluntary psychotherapy to treat sexual disorders.”

Finally, the court addressed the third prong of the test and concluded that the invasion of privacy caused by the reporting requirement is “undoubtedly serious.” “[T]here is no question that revelations made by patients who seek psychotherapy to treat sexual disorders, including sexual attraction to children, concern the most intimate aspects of human thought, however noxious or depraved.”

Looking ahead to the parties' presentation of evidence on their respective positions, the majority opinion explained: “No one disputes that the principal purpose of the reporting requirement – preventing the sexual exploitation and abuse of children – is a weighty one. The main issue on which the parties

disagree is whether the reporting requirement actually serves its intended purpose.”

The Supreme Court said that upon return of the suit to the trial court, the parties may develop evidence on a variety of issues, “including but not limited to the number of reports that psychotherapists have made regarding the possession and viewing of child pornography since the 2014 amendment; whether the reports have facilitated criminal prosecutions, reduced the market for child pornography, aided in the identification or rescue of exploited children, or otherwise prevented harm to children; and whether there are less intrusive means to accomplish the statute's objectives.”

The high court also anticipated that the parties may introduce evidence “on the extent to which the reporting requirement deters psychotherapy patients from seeking treatment for sexual disorders, inhibits candid communication by such patients during treatment, or otherwise compromises the practical accessibility or efficacy of treatment.” ➦

*Gordon Ownby is CAP's General Counsel. Questions or comments related to “Case of the Month” should be directed to [gownby@CAPphysicians.com](mailto:gownby@CAPphysicians.com).*



## Los Angeles County Bar Association Healthcare Law Events

The Cooperative of American Physicians, Inc. (CAP), and the Los Angeles County Bar Association (LACBA) Healthcare Law Section have partnered to host two programs designed to help physicians navigate the legal landscape of some of today's contentious practice-related issues.

The first program, "Independent Physician Reimbursement Issues and Legal Solutions," will be held on Wednesday, March 4, and will feature a panel of top legal experts who will discuss aspects of obtaining proper reimbursement for non-contracted care. Moderating the panel will be CAP member Robert Bitonte, MD, JD.

The second program, offered jointly by the Los Angeles County Bar Association Healthcare Law Section and the Los Angeles County Medical Association, will be held on Wednesday, April 1. CAP General Counsel Gordon Ownby, along with several well-known attorneys from Los Angeles, will offer important presentations on civil, criminal, and administrative liability of physicians who have been accused of improper opiate prescribing, as well as insights on class-action litigation in the furtherance of public health.

**CAP is pleased to invite all physicians to both events at no charge.**

### Event Details **Independent Physician Reimbursement Issues**

**Wednesday, March 4, 2020**

**Registration and Dinner:** 6:00 p.m. to 6:30 p.m.  
**Program:** 6:30 p.m. to 8:30 p.m.  
**Location:** Los Angeles County Bar Association  
1055 W. 7th Street  
Suite 2700  
Los Angeles, CA 90017  
**RSVP:** 800-361-5569 or  
RSVP@CAPphysicians.com

### Event Details **Healthcare Law and Medicine Education Symposium**

**Wednesday, April 1, 2020**

**Registration and Dinner:** 6:00 p.m. to 6:30 p.m.  
**Program:** 6:30 p.m. to 8:30 p.m.  
**Location:** Los Angeles County Bar Association  
1055 W. 7th Street  
Suite 2700  
Los Angeles, CA 90017  
**RSVP:** 800-361-5569 or  
RSVP@CAPphysicians.com



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