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Prescribing Controlled Substances: Failure to Comply with State Requirements Could Lead to OPMC Issues

Beginning on August 27, 2013, all practitioners in New York (including physicians, dentists, podiatrists and nurse practitioners) were required to consult a newly created online state registry the purpose of which was to track the prescription and dispensing of controlled substances. The Internet System for Tracking Over-Prescribing Act (I-STOP), a state law enacted in August of 2012, established a new Prescription Monitoring Program for all Schedule II, III and IV controlled substances. Under this law, all New York practitioners must consult the new online registry **prior** to prescribing or dispensing any controlled substance listed in Schedule II, III or IV and must also document their actions.

DUTY TO CONSULT

- The Prescription Monitoring Program (PMP) permits practitioners to review their patients' controlled substance history to determine if a new or renewed prescription for a controlled substance would be appropriate and to prevent fraudulent activity in connection with the use of controlled substances.
- Prescribing information is reported to the PMP by pharmacies and is available on a real time basis, i.e., no more than 48 hours old, and goes back six months.
- Practitioners are required to consult the PMP no more than 24 hours prior to issuing a prescription for a controlled substance or dispensing a controlled substance.
- The duty to consult applies only to controlled drugs included in New York State Schedules II, III and IV, including opiates and other pain medications, stimulants, barbiturates and sleep aids, among others.
- Practitioners may designate a non-licensed individual who works for them to search the registry on their behalf.
- The duty to consult does not apply to veterinarians, methadone programs, institutional dispensers (provided the medication is to be consumed entirely on premises), hospice care, hospital emergency rooms (limited to a five day supply) or to practitioners who administer controlled substances. Other exceptions to the duty to consult include: (i) in the event a practitioner or other designee cannot access the registry in a timely manner, limited to a five day supply; (ii) where consultation of the registry would adversely impact a patient's medical condition, limited to a five day supply and (iii) if the registry is not operational or if the practitioner experiences temporary technological or electrical failure.
- Failure to consult the PMP will be considered willful misconduct and may result in fines, criminal penalties and filing of OPMC professional misconduct charges. However, the statute provides that no practitioner or designee acting with reasonable care and in good faith will be subject to any civil liability arising from any false, incomplete or inaccurate information submitted to or reported by the registry or for any resulting failure of the system to accurately or timely report such information.

HOW TO SIGN UP TO CHECK THE PMP

To access the PMP registry, all practitioners must first establish an individual Health Commerce System (HCS) Account and obtain a user ID and password. HCS accounts are established by the NYS Department of Health and may be obtained by applying online at <https://hcsteamwork1.health.state.ny.us/pub/top.html> . The application process includes both an online form and a paper form, which must be notarized. The Department of Health has indicated that it takes approximately two weeks to establish an account. For assistance in obtaining an HCS account, practitioners may contact the Commerce Accounts Management Unit at: 1-866-529-1890.

HOW TO CHECK THE REGISTRY

1. Access the Health Commerce System at: <https://commerce.health.state.ny.us>
2. Log onto the system with your user ID and password, click on Applications and select Prescription Monitoring Program Registry

In order to search the registry, practitioners must enter in the patient's first name, last name, date of birth and gender. The PMP will include two categories of search results, one entitled "My Prescriptions" and one entitled "Other's Prescriptions." The search results will include the name of the drug, the date of the prescription, the name of any other prescribers, payment method and the pharmacy name and location.

We have seen instances of investigations for "medical misconduct" commenced by OPMC for a physician's failure to comply with these requirements and as such we wanted to make our insureds aware of this important practice issue.

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