

**SEMINOLE COUNTY MEDICAL SOCIETY**

**February 16, 2010**

**HOT LEGAL TOPICS**

**BY**

**THE HEALTH LAW FIRM**

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**1. Proposed Limit on Dispensing Scheduled Substances**

Florida State Representatives John Legg and Joseph Abruzzo have sponsored Florida House Bill 225 that would prohibit dispensing physicians from dispensing more than a 72-hour supply of controlled substances listed in Schedules II, III, and IV. The proposed legislation amends Section 465.0276, Florida Statutes. The Florida Medical Association is seeking feedback from dispensing practitioners on this proposed bill and how the proposed legislation would impact dispensing practitioners. A copy of this proposed bill is attached as Enclosure (1).

**2. Physicians May Be Required To Report Patients' Disorders To State**

Florida State Senator Stephen Wise of Jacksonville has introduced legislation that would require physicians to report patients with mental or physical disorders that could affect a patient's ability to drive safely. Under the proposed law, physicians would be required to report unsafe drivers to the Florida Department of Highway Safety and Motor Vehicles. The report would need to include the full name, date of birth, address and a description of the alleged disability of any

person over fifteen (15) years of age having mental or physical disorders that could affect his or her driving ability. The proposed law provides physicians immunity from civil or criminal suits based upon filing a report.

### **3. Medicaid Overpayments**

The Agency for Health Care Administration (AHCA) announced that it will begin withholding payments to Medicaid Providers beginning thirty (30) days following notice being sent to a provider of an alleged overpayment unless the provider has established a satisfactory repayment plan with the Agency. Medicaid will begin withholding payments to the providers even when the provider has filed a petition for a formal administrative hearing. The Agency is also required to terminate a provider's participation in Medicaid if the provider has not refunded an entire overpayment to the Agency within thirty-five (35) days of the Final Audit Report, or entered into a repayment agreement. Providers cannot appeal a termination based on failure to repay an overpayment. Medicaid providers should consult their health care attorneys as soon as they receive notice of a Medicaid audit so that they do not risk losing their Medicaid provider status. A notice sent out by AHCA to all Medicaid providers is attached as Enclosure (2).

### **4. Seroquel No Longer Approved For Adult Medicaid Patients**

Florida Medicaid has removed Seroquel immediate release tablets from the Medicaid Preferred Drug List for patients eighteen (18) years of age and older. Florida Medicaid is asking physicians and pharmacists to work together to switch adult patients from Seroquel to Seroquel XR. Seroquel immediate release tablets will remain on the Medicaid Preferred Drug List for patients under eighteen (18), but over six (6) years of age. The Provider Alert is Enclosure (3).

### **5. 21% Decrease In Physician Reimbursement Delayed**

The 21% reduction in Medicare physician reimbursement has been delayed until March 1, 2010, by the Department of Defense Appropriations Act, 2010. House Bill 3961 has been introduced in Congress that would restructure the Sustainable Growth Rate (SGR) formula to increase the fees paid to physicians under Medicare Physician Fee Schedule by about \$195 billion over the next ten (10) years.

### **6. Pain Clinic Regulation**

The Joint Rule Committee of the Florida Board of Medicine and the Florida Board of Osteopathic Medicine is still working on the proposed standards for physicians practicing in registered pain management clinics. The Committee has been struggling with, among other issues, the training requirements necessary for physicians to safely practice pain management. Several physicians advocated for requiring all physicians practicing pain management in Florida to be fellowship trained, while others stated fellowship training was not necessary to provide quality pain medicine services or medication management. The Committee will have at least one more

meeting before submitting a draft rule to the Boards for consideration.

## **7. The Joint Commission Continues Efforts to Adopt MS.01.01.01**

The Joint Commission (TJC) posted MS.01.01.01 for field review beginning December 17, 2009, and running through January 28, 2010. The posted Standard is identical to the prior March 2009, draft. You can obtain the Standard, some useful FAQs and the definitions by going to [www.jointcommission.org/Standards/FieldReviews](http://www.jointcommission.org/Standards/FieldReviews). You can even take the Field Review survey if so inclined.

The six week field review for adopting this new standard is shorter than usual. This reduced time frame, coupled with the fact that there has been no organized effort to modify the proposed standard suggests that it will probably be adopted as stated originally. TJC believes that making the changes required in order to bring medical staff bylaws into compliance should not be difficult for most hospitals and medical staffs. Note that any hospital medical staffs that have developed separate fair hearing plans, credentialing manuals, etc., will now have to make sure that these are re-incorporated back into the medical staff bylaws. There are also key changes with respect to the manner or methodology by which the organized medical staff can bypass the MEC as well as the required development of a dispute resolution process.

## **8. HIPAA Privacy Rule Violations Being Prosecuted**

We continue to receive reports on a regular basis of criminal prosecutions of HIPAA Privacy Rule violations. It is important to treat any complaints of violations of patient confidentiality seriously and to retain experienced counsel if you receive a complaint from the Office of Civil Rights (OCR).

## **9. Increased Scrutiny of Physicians Involved in Pain Management Practices**

Over the past quarter, we have experienced a rise in consultations by physicians who are involved in treating pain medicine patients and are being prosecuted criminally or by investigation by the Florida Department of Health. We are seeing more DOH investigations being opened in cases where the physicians are writing or renewing prescriptions for large quantities of hydrocodone, Percocet, hydromorphone, Darvocet, Vicodin, Xanax, methadone, Soma and other controlled substances, especially in combination.









