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I know I can, but should I?

Virtually every licensee has had to answer that question. It may arise in the context of a diagnostic test. More commonly, and perhaps more difficultly, it arises in the context of prescribing. Legitimate prescribing, in the usual course of patient care is acceptable and generally subject only to the expectations of any applicable standards of care.

The question becomes more problematic when the “patient” is a family member, friend or colleagues. The problematic character lies in the underlying interaction. The relationship itself has been the subject of much scrutiny. At mixed personal-professional relationship obligately includes conflicts of interest, compromised judgement, and concerns for consent. The American College of Physicians has this to say about the complexities of this relationship:

Given the complexity of the dual relationship of physician-family member or physician-friend, physicians ought to weigh such concerns and all possible alternatives and seek counsel from colleagues before taking on the care of such patients. If they do assume the care, they should do so with the same comprehensive diligence and careful documentation as exercised with other patients. Whenever physicians provide medical care, they should do so only within their realm of expertise. Medical records should be kept just as for any other patient.¹

The American Medical Association offers similar guidance.² When treating self or family members, physicians have a further responsibility to:

- A. Document treatment or care provided and convey relevant information to the patient’s primary care physician
- B. Recognize that if tensions develop in the professional relationship with a family member, perhaps as a result of a negative medical outcome, such difficulties may be carried over into the family member’s personal relationship with the physician.
- C. Avoid providing sensitive or intimate care especially for a minor patient who is uncomfortable being treated by a family member.
- D. Recognize that family members may be reluctant to state their preference for another physician or decline a recommendation for fear of offending the physician.

The problematic character lies in the underlying interaction. If the care and subsequent prescribing is within a genuine physician patient relationship then, again, it is generally governed only by applicable standards of care. Well over a decade ago the Board defined the physician patient relationship. It can be found in *Part 2635 Chapter 5: Practice of Telemedicine- Rule 5.4 Physician Patient Relationship* which reads in relevant part:

¹ <https://www.acponline.org/clinical-information/ethics-and-professionalism/acp-ethics-manual-sixth-edition-a-comprehensive-medical-ethics-resource/acp-ethics-manual-sixth-edition#self-vips>

² <https://www.ama-assn.org/sites/default/files/media-browser/code-2016-ch1.pdf>

The elements of this valid [doctor patient] relationship are:

- A. verify that the person requesting the medical treatment is in fact who they claim to be;
- B. conducting an appropriate examination of the patient that meets the applicable standard of care;
- C. establishing a diagnosis through the use of accepted medical practices, i.e., a patient history, mental status exam, physical exam and appropriate diagnostic and laboratory testing;
- D. discussing with the patient the diagnosis, risks and benefits of various treatment options to obtain informed consent;
- E. insuring the availability of appropriate follow-up care; and
- F. maintaining a complete medical record available to patient and other treating health care providers.

Although the definition appears in the telemedicine rules, there is nothing in the rule, or the definition, limiting these requirements to a telemedicine relationship. These elements are familiar to all licensees as the elements of good care. After all how could anyone argue with the idea of making an effective diagnosis using traditional skills? How could anyone argue with the idea that a medical record delineating the analytical process is bad? How could anyone follow process absent a complete record?

Licensees are occasionally lulled into believing that “it’s only an antibiotic” or it’s only a “little eye drop” for some conjunctivitis, or it’s only an antibiotic for little “chronic diverticulosis,” or it’s only “a little hypertension.”³ Similarly, licensees may be tempted to compromise either form or content of medical records for the sole purpose of expediting a prescription. But if the family member, friend, or colleague does not improve how will you know? How will subsequent providers determine the actual course of therapy prescribed and the degree of improvement or worsening?

In such cases licensee should ask “what will happen if my family member, friend, colleague gets sicker?” “What will happen if he/she has a complication?” “What if he/she dies and I’m sued?” Some of those questions have easy answers: you won’t know if they get sicker because you have no record. If there’s a complication subsequent providers will be unable to tell how the complication occurred. If you’re sued there’s a possibility that your liability carrier will say “no record, not a patient, you’re on your own.” If you prescribed an expensive legend drug and an insurance carrier questions the prescription what will you say? What will happen if your family member, friend, or colleague is asked to reimburse the insurer because there’s no record of a doctor visit to support the prescription?

If we examine just the issue of an absent medical record the decisions come into sharper focus still. If a licensee has done an adequate history, physical exam, and lab studies to justify the proposed therapy then why shouldn’t it be documented? What could justify anything other than a record in the institutionally approved format available to all other providers? The short answer is, *nothing*. Even the legislators who are seen by the “doctor of the day” at the capital have the benefit of a durable record of each encounter.

In contrast, if a prescription is written just because a family member, friend, or colleague requests a licensee to do so then there is an entirely different analysis. If there is no record because there was no history, physical exam, or decision making then licensee has abdicated all his/her professional responsibility and loses protections associated with the practice of medicine in Mississippi. Now the licensee is simply using his/her pen to facilitate some form of self-diagnosis and self-medication. There can be few legitimate excuses.

³ Each of these is an actual “it’s only” example related by licensees when asked to produce records for care.

The real question is why should a licensee care? The Board simply does not have resources to investigate the appropriateness of every single-issue prescription for a legend drug. But prescriptions and the supporting medical record will be scrutinized under the following circumstances:

- 1) When there is a complaint- a law suit falls into this category as well. More commonly this will arise when a disgruntled employee witnesses liberal prescribing *between* licensees but a licensee denies an employee a “prescription of convenience.”
- 2) When there is a bad outcome- when that single prescription for conjunctivitis turns out to be something other than an infection and leads to a corneal ulcer.
- 3) When there is a complaint or investigation involving the “patient.” This is the most common situation the Board reviews. A licensee is getting multiple prescriptions from multiple licensees for a wide range of legend drugs. In these cases there is generally an underlying problem for the licensee “patient” and the colleague has simply been drawn in. In virtually every case the licensee is simply requesting a particular medication and a colleague supplies a prescription- no history, no physical, and no record. It’s not clear what the relationship might be but it’s not medical.

All of this relates exclusively to the prescribing of legend drugs. Prescribing controlled substances without an adequate record is clearly a violation of Board rules and may be a crime.

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