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This quarter's focus is: **Loss Prevention Strategies: The Chronic Non-Adherent Patientⁱ**

During uncertain times, medical non-compliance is occurring at an alarming pace. The threat of the COVID pandemic is ever present and patients may have new dilemmas such as unemployment, reduced finances, and even new onset isolation/depression.

Regardless of the current climate, at what point could a healthcare provider still be held liable for failing to adequately inform a patient about the importance of following a prescribed treatment plan for his/her medical condition?ⁱ

Case Facts:ⁱⁱ

Case Summary provided by John West, ASHRM, 2020

Mr. C., a 54 y.o. male, presented to the Clinic for a follow up visit regarding his hypertension. He had been seen over the course of a couple of years and often missed his appointments. He acknowledged that he did not take his medicine at times when he did not feel sick. He had a history of failing two pre-employment physicals because of his uncontrolled hypertension. Three years later, laboratory findings showed early stage of kidney disease. Two years later, he suffered end-stage kidney disease, requiring first dialysis and then a kidney transplant.

When Mr. C. brought forth a lawsuit against his healthcare providers, he alleged the following against the APRN/MD: Failure to explicitly say why it was important to take medication to treat hypertension even when not feeling sick; Failure to educate on the importance of attending all of his appointments even if he was feeling fine; and, failure to provide education about hypertension and its associated risks specific to him individually, e.g. the possibility of end-stage kidney disease.

The trial court awarded Mr. C. \$30 million dollars because the healthcare provider failed to warn him of the risks related to

not following prescribed treatment. The case was appealed on the basis of comparative negligence e.g. the patient had a role in his injury. The appellate court opined that the trial court focused on the wrong test. Instead of the focusing on whether or not the patient understood the need for medication to control his hypertension, the appellate court ruled that the evidence should be looked at through the *"reasonable person standard"* asking what a reasonable person in a similar situation would have done. The court questioned whether or not a reasonable person would understand the importance of taking hypertensive medication and following up with his/her healthcare provider on a consistent basis if he failed two employment physicals due to uncontrolled hypertension. The appellate court reversed the trial court's decision and remanded the case to reevaluate the evidence based on the *reasonable person standard*.ⁱⁱⁱ

Discussion:

"Drugs don't work in patients who don't take them"^{iv}

The change in healthcare from 'physician-centric' to 'patient-centered' acknowledges that patients clearly have a right to follow or not follow medical advice regarding lifestyle choices, medication management etc. The term "non-compliant" patient has now changed to "non-adherent." Regardless of the label, the failure of a patient to follow specific healthcare recommendations creates not only obstacles, but also exposes the healthcare provider to a potential legal claim should the patient suffer from a serious complication of their underlying health issue. All healthcare providers are familiar with documenting that "the risks and benefits of the treatment plan were discussed with the patient," but in light of the above case, documentation of the details of the specific risks reviewed on a regular basis would be important if a claim were to be brought forth.



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Loss Prevention Strategies when educating the non-adherent patient are as follows:

1. **For the individual patient:** assess reasons/obstacles that lead to non-adherence of prescribed treatment.^v
 - a. Is there a lack of understanding of the treatment regimen or associated risks of non-adherence to the regimen?
 - b. Is it financial (Is there a generic form of medication, or outside resources for free medication)?
 - c. Are there any social issues that are preventing from follow-up?
 - d. Is there a lack of motivation or a side effect from the medication?
2. **For the practice:** Develop a strategy for the type of high-risk patients your practice sees.
 - a. e.g. Hypertension, diabetes, obesity
 - b. Prioritize the risk of injury and be very clear of noting clinical changes at each visit and addressing these changes with the patient.
3. **Education options:** Provide education and include educational materials — documenting what was provided and when.
 - a. Handouts in person, email attachments, videos in the waiting room.^{vi}
 - b. Have a procedure that details all the steps in the education process and what the patient received.
 - c. Keep an office education log of copies based on dates and years or scan the specific document in the patients' medical record.
4. **Documentation:** Document the discussion with the patients specifically related to concerns with non-adherence. e.g. missed appointments, failure to take medication as prescribed.
5. **Patients' Right to Refuse:** If the patient does refuse, clearly note that the patient was informed and that it was his/her decision to refuse.

6. **The legal standard of care:** What would a reasonable person do in a similarly situated position? If you were a patient, what would you want to know would happen if you did not follow the recommended treatment plan, including worst case scenario.

REFERENCES

- i. West, John, American Society of Risk Management; vol 39, 4, p.47-48. Mr. West described this case in ASHRM and risk management considerations.
- ii. West et al.
- iii. West et al., See *Clanton v. U.S.*, No. 18-3060 (7th Cir. November 7, 2019)
- iv. Attributed to C. Everett Koop, MD, Medical non-Compliance: The Most Ignored National Epidemic, In Your Words, August 2016.
- v. Malpractice cases Involving Non-Adherent Patients, <https://rmf.harvard.edu/Clinician-Resources/Newsletter-and-Publication/2018>.
- vi. AMA, Building patient trust to support medication adherence, January 29, 2020, <https://www.ama-assn.org/delivering-care/patient-support-advocacy/>



“Do you solemnly swear to listen to my advice?”

Newsflash by: Beth W. Munz, Esq., CPHRM
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