The DEA issues new clarification regarding prescribing Schedule II controlled substances

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Physicians who write multiple prescriptions for Schedule II controlled substances (such as Ritalin) with instructions to pharmacists to fill the prescriptions on different dates should discontinue that practice, as it might be deemed to violate federal law. The Drug Enforcement Agency (DEA), which previously appeared to endorse the practice, has recently published clarification that instead suggests that the practice violates federal law prohibiting refills of Schedule II controlled substances.

For many years, the Pharmacy Examining Board rules, in the Wisconsin Administrative Code, prohibited physicians from prescribing a controlled substance in a quantity exceeding a 34-day supply (Wis. Admin. Code § Phar 8.05(5)). On August 1, 2002, the Pharmacy Examining Board repealed Wis. Admin. Code § Phar 8.05(5), thereby removing the 34-day supply quantity restriction. After the repeal of the rule, many insurance companies refused to authorize payment for controlled substances in quantities exceeding a 34-day supply. In an effort to provide patients with a 90-day supply of medication in cases where monthly office visits were deemed unnecessary, physicians began writing three prescriptions for a Schedule II substance with instructions to the pharmacist to fill the prescriptions on different dates.

In the past, it appeared that the DEA endorsed the practice of writing multiple prescriptions on the same date. One of the frequently asked questions on the DEA’s Web site contained the following information: “Schedule II prescriptions may not be refilled; however, a physician may prepare multiple prescriptions on the same day with instructions to fill on different dates.” The DEA has withdrawn the above language from its Web site and the clarification published in the Federal Register reprints the information that previously appeared on that Web site, but states, “...the second part of the sentence (italicized above) is incorrect. For a physician to prepare multiple prescriptions on the same day with instructions to fill on different dates is tantamount to writing a prescription authorizing refills of a Schedule II controlled substance. To do so conflicts with one of the fundamental purposes of section 829(a).”

In light of the DEA’s current interpretation of federal law as precluding the common practice of writing multiple prescriptions for Schedule II substances on the same date, physicians who continue to engage in that practice are at risk of violating federal law and possibly losing their DEA registration. The issue of the Federal Register that contains the DEA’s clarification is on the Internet at: http://a257.g.akamaitech.net/7/257/2422/06jun20041800/edocket.access.gpo.gov/2004/pdf/04-25469.pdf. (Accessed on April 4, 2005.)

In addition to noting the change in its stance regarding writing multiple prescriptions for Schedule II controlled substances, the DEA’s published clarification indicates that it intends to address the subject of dispensing controlled substances for the treatment of pain in a future Federal Register document. According to the DEA, it will take into consideration the views of the medical community.
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