



## **Safe Prescribing Frequently Asked Questions**

### **What does EMTALA require for the treatment of pain?**

Many misconceptions exist regarding EMTALA and the evaluation and treatment of patients with pain as a complaint. EMTALA regulations state that any patient who presents to a Medicare receiving hospital with a complaint of pain, including severe pain, must be provided an appropriate medical screening examination (MSE) to determine if an emergency medical condition (EMC) exists. The MSE must include any resources available in your hospital to determine if an Emergency Medical Condition exists, including laboratory testing and imaging. If an EMC is found, treatment to stabilize an emergency medical condition, within the capability of the hospital, must be provided.

The requirement for an MSE includes patients with chronic pain conditions who present to the Emergency Department with a complaint of pain. The MSE will determine if the complaint of pain is a result of an emergency medical condition. An emergency medical condition is defined as a medical condition such that the absence of immediate medical treatment could result in (1) placing the individual's (or unborn child's) health in serious jeopardy, (2) serious impairment of bodily function, or (3) serious dysfunction of any organ or part. Pain alone is not considered by the EMTALA regulations to be an emergency medical condition. (A, E) In a recent review on the topic, Dr. Robert Bitterman uses the example of a patient with chronic low back pain complaining of severe pain. He explains that the patient does not have an emergency medical condition unless that pain is related to, for example, an aortic aneurysm rupture or a herniated disc causing neurological dysfunction where immediate treatment is necessary to avoid the imminent danger of death or serious disability. (A) Once an emergency medical condition is determined to not exist, the Medical Screening Examination is complete.

EMTALA also does not regulate nor mandate the actual treatment of pain. EMTALA only mandates the evaluation of pain as a possible symptom of an emergency medical condition. (A)

### **What does the Joint Commission say about the treatment of pain?**

The Joint Commission does have its own regulations regarding the evaluation and treatment of pain. The Joint Commission mandates a pain assessment and then either treatment of the patient's pain or referral of the patient for treatment. The Joint Commission does not mandate that a patient's pain be treated with opiate medications. (B) In Dr. Bitterman's back pain example, the ED physician may, after the MSE, decide the best treatment options include bed rest, heat packs, and referral back to the patient's primary care provider. The Joint Commission has no regulations requiring that ED physicians to provide pain medications in the ED or write pain prescriptions upon discharge. (A)



The Joint Commission's pain standards include: comprehensive pain assessment, reassessment and intervention, referral if cannot treat, and The Patient's Bill of Rights states that a patient's pain must be managed (it does not state eliminated).

### **Is signage referring to safe prescribing guidelines/handouts a violation of EMTALA?**

Hospitals and State Departments of Health all across the country are developing guidelines for prescribing opioid medications in the Emergency Department for chronic pain patients. These guidelines have included patient brochures to be handed out and posters explaining the guidelines that have been hung in the waiting rooms or treatment rooms of the Emergency Departments. The intention of the posters, by well-meaning Emergency Departments, was to inform patients regarding the ED's controlled prescription practices.

Recently the CMS Atlanta Regional Office (Region 4) stated an opinion regarding the use of "pain posters" in EDs. Although the CMS National Office in Baltimore has not specifically addressed this issue, the Region 4 opinion was based on consultation with the CMS National Office. The opinion has been shared with other CMS Regional Offices who are following its guidance. During an interview, Dr. Richard Wild, the CMO of Region 4, who authored the opinion stated "The Region 4 response represents current national CMS policy."

The following are a summary of the CMS Atlanta Office's rulings (D):

- Signage indicating a patient's right to a Medical Screening Examination must be prominently displayed.
- Signage that refers to "Prescribing Pain Medication in the Emergency Department" or any similar language, which the hospital might choose to post in patient waiting rooms or treatment rooms, might be considered to be coercive or intimidating to patients who present to the ED with painful medical conditions, thereby violating both the language and the intent of the EMTALA statute and regulations." (D)
- CMS is concerned that "pain posters" in the ED may discourage a patient from staying for a medical screening exam or discourage a patient from seeking care in the future.
- CMS also concerned that a "pain poster" would also raise the question of whether or not a hospital would provide stabilizing treatment for an emergency medical condition when opioids may be appropriate.
- Hospitals that use such signage, or any signage that may have the real or perceived effect of discouraging an individual from seeking care, are at risk for being found EMTALA non-compliant.
- "It is within the bounds of reasonable professional judgment and discretion for a physician or other licensed healthcare practitioner to provide or withhold opioids and/or other methods of



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pain control, depending on the specific clinical circumstances of an individual's presentation".

(D)

- "It is left to the judgment of the provider as to how best to give specific patient-centered education, including handouts, policies, and institutional protocols. But again, it is emphasized that patient education should take place after a patient focused medical screening exam is completed and not by posting general policies and procedures or displaying such materials in the waiting area." (D)

All patients who present to the ED should have a medical screening examination to determine if an emergency medical condition exists, if one is found stabilizing treatment must be provided. Any information regarding an ED's policy about controlled substances, such as brochures should only be given to the patient after the medical screening examination has been completed. Since posters, even if located in patient treatment rooms, may be seen prior to the MSE being completed, posters may risk EMTALA noncompliance. CMS does not appear to have an issue with the actual development of opiate prescription guidelines nor the education of patients as long as any education is done after the Medical Screening Exam has been completed.

### **Will there be a deterioration of patient satisfaction scores due to the safe prescribing guidelines?**

By setting new common community expectations of safe prescribing for pain in all California EDs, then any potential impact on patient satisfaction will be shared equally, allowing us to deliver safer, high quality care. There is no evidence that patient satisfaction will be negatively affected by the implementation of guidelines across a community.

Safe Prescribing Guidelines have been in effect in San Diego and Imperial Counties since March, 2013. There was initial concern that the Safe Prescribing Guidelines would cause a dip in patient satisfaction survey scores. That is why it was important that all Emergency Departments (EDs) in San Diego and Imperial Counties implemented the guidelines at the same time so that a new community standard was established and all providers and hospitals were united in a similar message. Since that time, no hospital has reported a change in patient satisfaction scores based on the Safe Prescribing Guidelines.

Similarly, the California ACEP guidelines were implemented in all 12 Kaiser Permanente Southern California EDs and all Kaiser Permanente Southern California Urgent Care Departments starting January 1, 2014. There have been very few patient complaints and no changes in patient satisfaction of ED physician care as of April 2014.



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**How should the handouts be printed (if printing a large quantity professionally)?**

How to Print Handouts:

- Handouts Are 5½" x 8½", Double-sided
- Print Two on One 8½" x 11" Page and Cut for Two Copies
- 80# Gloss Coated Book
- Offset Printed 4 Over 4 With UV Coating on Both Sides

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**References:**

- A. ACEP April 1, 2013 Robert Bitterman M.D., member ACEP Medical Legal Committee, Is "Severe Pain" considered an Emergency Medical Condition under EMTALA?
- B. Joint Commission Standard PC.01.02.07: The hospital assesses and manages the patient's pain.
- C. Ohio Hospital Association Statement Emergency Department Opiate Prescribing Guidelines January 15, 2014
- D. ACEP eNow January 22, 2014 Kevin Klauer DO, EJD, FACEP, Medical Editor in Chief and Richard Wild MD, JD, MBA, FACEP, CMS Chief Medical Officer for the Atlanta Regional Office (Region 4) ED Waiting Room Posters on Prescribing Pain Medications May Violate EMTALA
- E. AAEM Clinical Practice Statement Emergency Department Opioid Prescribing Guidelines for the Treatment of Non-Cancer Related Pain 11/12/2013