Doctors Brace for Lawsuits Over Undertreatment of Pain

BY JOYCE FREIDEN
Associate Editor, Practice Trends

Physicians who used to worry about prescribing too much pain medication now have a new liability problem to worry about: not prescribing enough.

“The pendulum has swung the other way,” said Jay Westbrook, clinical director for palliative care and bereavement service at Valley Presbyterian Hospital in West Van Nuys, Calif. “Doctors are much more likely these days to get into trouble for failing to prescribe enough than for prescribing too much pain medication.”

Cases such as Bergman v. Eden Medical Center have raised awareness of the issue, according to Mr. Westbrook. In that case, tried in 2001, jurors awarded $1.3 million to the family of William Bergman, a California hospital patient with multiple compression fractures and possible lung cancer.

Mr. Bergman’s children alleged that during their late father’s hospital stay, his physician, Wing Chin, prescribed only Demerol as needed, despite the fact that Mr. Bergman registered pain levels of 7-10 on a 1-10 scale. The prescription remained unchanged during the 5-day hospital stay.

On the day of discharge to at-home hospice care, Dr. Chin prescribed hydrocodone (Vicodin) capsules for pain even though Mr. Bergman had known swallowing difficulties, the suit alleged. After Mr. Bergman’s daughter insisted that her father needed more medication, he was given a shot of meperidine (Demerol) and a fen-tanyl transdermal (Duragesic) patch.

Two days later, the hospice nurse decided that Mr. Bergman’s pain was “out of control” and called Dr. Chin, and, after several phone calls, was referred to another doctor 1½ hours later. The second doctor prescribed liquid morphine and additional pain patches, which alleviated the pain. Mr. Bergman died the next day. The Bergman case was unusual because it was prosecuted under the state’s elder abuse and dependent adult law, not malpractice law. Cases like this “would come under malpractice in other states,” said Barbara Coombs Lee, president of the Compassion in Dying Federation, a Portland, Ore. group that advocates for the right to die.

Mr. Bergman’s case is not unusual, said Ms. Coombs. “It is the intent of the legislature to alleviate [physicians’ fear of criminal prosecution] by providing for proper review of cases involving the prescription of pain medication before criminal charges are filed,” the legislation reads, which was awaiting Gov. Arnold Schwarzenegger’s (R) signature at press time.

Mr. Westbrook, who also lectures on pain management, predicted that physicians would see more lawsuits related to undertreatment of pain—in both the civil and criminal realm. “It’s tough, but the bottom line is that pain isn’t okay, and it’s not okay to leave a patient’s pain unaddressed.”

Mr. Cole agreed, and offered advice to physicians struggling with this issue. “You’ll have to understand that practicing medicine will always incur some risk, so find a happy medium. If you’re less-geoisy with your prescription pad, you’ll have all kinds of problems. If you’re tight with your prescription pad, you’ll have problems too.”

Consumer Reports Rates Drug Cost Effectiveness

BY ALICIA AULT
Contributing Writer

WASHINGTON — The nonprofit Consumers Union has issued the first several of what is slated to be a series of evidence-based, patient-friendly reports listing what it calls the most cost-effective drugs, organization officials announced at a press conference.

The initial guides cover nonsteroidal anti-inflammatory drugs (NSAIDs), statins, and proton pump inhibitors (PPIs).

The publisher of Consumer Reports said it hopes that patients—especially those with little or no drug benefit coverage—will use these reports to make informed choices in conjunction with their physicians.

The reports are designed to cut through the clutter of drug company advertising and scattered Internet searches but drug makers won’t be allowed to use the “Best Buy Drugs” designation in marketing or ads: Consumers Union prohibits manufacturers from commercializing any of its recommendations.

The guides should be familiar to anyone who has used Consumer Reports’ ratings to buy a car, appliance, or bicycle. But unlike the group’s analyses on other consumer goods, the Best Buy Drugs reports are free of charge.

“In each category, based on all the evidence, we’ve identified Best Buy Drugs—the drugs that are likely to be the best, most affordable choices for most people,” said Joel Gurin, executive vice president of Consumers Union.

The Best Buy Drugs are not selected based on Consumers Union’s own tests, however, but rather on systematic reviews conducted by the Drug Effectiveness Review Project (DERP), and on further peer review from medical experts like Mark Helfand, M.D., director of the Oregon evidence-based practice center at Oregon Health and Science University, Portland, which initiated DERP in 2003.

DERP follows the literature review and analysis methods pioneered by the Cochrane Collaboration. That lends the Consumers Union’s reports credibility, said Dr. Helfand.

“My job is to worry about: not prescribing enough. The pendulum has swung the other way,” said Dr. Helfand.

“Most people with GERD (gastroesophageal reflux disease),” the report said. The Best Buy Drug for reducing low-density lipoprotein (LDL) by less than 40%, Lovastatin costs an average $28 per month for 10 mg and $40 for 20 mg, according to Consumers Union.

Lipitor (atorvastatin), at an average $117 per month, is the Best Buy Drug for LDL reduction of more than 40%. Although Zocor (rosuvastatin) offers better LDL reduction for the price, it is not recommended because it has not been proved to reduce heart attacks or death, and safety studies are still being conducted, the report said.

Consumers Union rates the over-the-counter version of Prilosec (omeprazole) as the Best Buy Drug among the proton pump inhibitors. The 20 mg/day dosage costs $3 per month—one fifth the cost of the next least-expensive drug in the class. And, it “is just as likely to relieve symptoms for most people with GERD [gastroesophageal reflux disease],” the report said. But the report also counsels people with drug coverage to talk with their physician about which medication has the lowest out-of-pocket cost under the patient’s plan.

Dr. Toth said that if patients use an over-the-counter drug to treat GERD, they may skip seeing a physician—a potentially troubling issue.

“In the case of PPIS, there is concern because among a significant percentage of patients who suffer from chronic GERD, you do have to make sure that they’re not developing Barrett’s esophagus and that they don’t have something more significant than simple reflux,” he said.

Consumers Union reviewers were initially worried about self-medication, but added a caveat to increase the dose or see a physician if symptoms did not improve, said Steve Findlay, a health care analyst with Consumers Union.

Reviewers were not concerned about highlighting over-the-counter medications in the NSAID category because of those drugs’ potential to cause ulcers with chronic use, he said. The Best Buy Drugs in that category were generic ibuprofen at an average cost of $24-$30 per month, depending on dosage, and generic aspirin at a cost of $24-$32 a month. By taking these older, generic medicines, patients could save up to $2,160 a year, an Consumers Union said.

Patients without drug coverage could consider over-the-counter NSAIDs, but only for periodic—not chronic—use, the report said. The evidence shows that the COX 2 inhibitors Celebrex (celecoxib) and Bextra (valdecoxib) may cause fewer stomach ulcers, but it’s not clear yet whether they lower the risk of dangerous ulcers or serious gastrointestinal bleeding, and physicians may be more cautious about prescribing these therapies in the wake of Vioxx’s recall, the report said.

The Drug Effectiveness Review Project plans 25 reports in all, and will update its reports every 6 months. The Best Buy Drugs project is funded partly by grants from the Engelberg Foundation, and from the National Library of Medicine.