

How and When to Talk With Patient's Family: HIPAA Rules

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A patient whom I'd been treating with opioids for chronic back pain died of a drug overdose, the result of various street drugs added to the opioid I had prescribed. (The last urine drug test I obtained 2 months earlier had been "consistent," as was the report of the online Prescription Monitoring Program of my state.) The family is suing me, claiming they tried to call me to tell me about my patient's drug addiction but that I'd refused to talk with them.

The fact is, I did decline to take the phone call, and it was because the patient hadn't given me written permission to do so. I didn't want to violate HIPAA rules. What could I have done differently?

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The U.S. Department of Health and Human Services issued the Privacy Rule to implement the related requirement of the Health Insurance Portability and Accountability Act of 1996 (HIPAA).¹ There is a wide misconception about this aspect of HIPAA. The law

states that without a patient's express permission, health care providers cannot provide information to his or her family members; but the law does not prevent you from listening. You can say to the caller, "I can't tell you anything, but I am very willing to hear what you want to tell me."

Family members can be a very useful source of information, and sometimes they will provide important information that will significantly impact your prescribing decisions. Once you have this information, you need to document it in the chart and attempt to assess its validity. You might suggest that the family member come in with the patient on the next visit to discuss the situation.

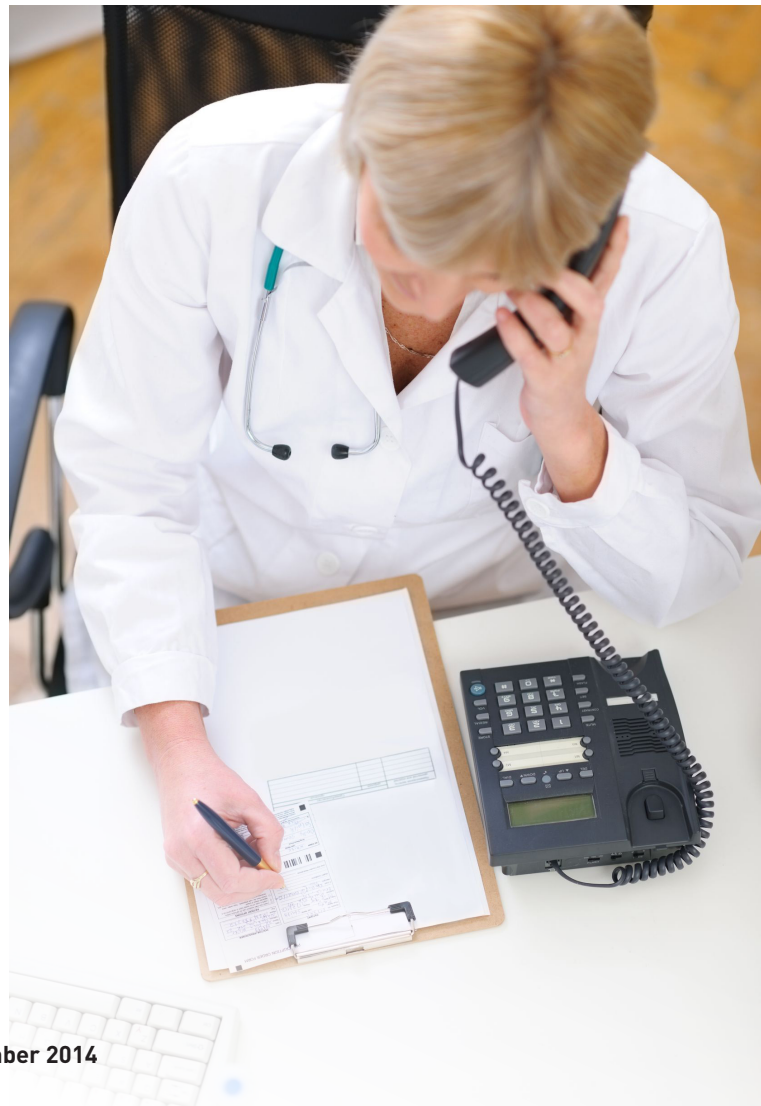
If the family member insists that you not reveal the source of this information, you will have to question the patient in detail and try to assess the reliability of the information and your patient's credibility. Unless you conclude that the caller was just a disgruntled friend or relative, you may decide to stop prescribing opioids to this patient, refer him for addiction treatment, and/or discharge him from your practice.

The bottom line is, you need to be willing to accept such phone calls and listen.

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A I agree with Dr. Schneider, prescribers should ALWAYS be willing to listen to family members and other callers who offer information about any patient. I also would like to offer a suggestion for a proactive measure to mitigate potential legal liability. Prescribers should incorporate education of



patients and family members/caregivers about opioid overdose prevention into their daily medical practice routines.

The Substance Abuse Mental Health Services Administration (SAMHSA) published an excellent Opioid Overdose Prevention toolkit that every practitioner should have, read, and use in their medical practice.² Educating patients about the potential for overdose, and prescribing a naloxone kit to patients who are “at risk” for an overdose, can make a big difference in litigation, assuming the prescriber has otherwise acted within the standard of care when prescribing controlled

medications. According to literature in the toolkit, “naloxone is an opioid antagonist that displaces opiates from receptor sites in the brain and reverses respiratory depression that usually is the cause of overdose deaths.”

Drug abusers and addicts are not the only ones “at-risk.” The SAMHSA toolkit provides a list of patients “at-risk” for overdose, and thus would be good candidates for the naloxone kit. This list includes patients receiving extended release/long-acting opioids, patients on high-dose chronic opioid therapy, patients receiving combination drug therapy with opioids and other

central nervous system depressants, and patients taking methadone.

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