Liability for Prior Authorizations & Non-Medication Switching

Cardiometabolic Health Congress
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Mission of the Physician-Patient Alliance for Health & Safety

A national advocacy force for addressing patient health and safety priorities that are shared by patients, physicians, regulators and industry.

- Seeks to ensure that the best medications, medical invention and technology can improve care and reduce cost.
- Works to advance patient health and safety by developing and highlighting best practices and recommendations through better use and application of clinical practices and experiences, information technologies and checklists, and healthcare information.
- As a voice in support of ideas and innovation that can improve care, encourages a health ecosystem culture of patient safety.
Sanctity of Physician-Patient Relationship

*The Doctor* is an 1891 painting by Luke Fildes that depicts a Victorian doctor observing the critical stage in a child's illness while the parents gaze on helplessly from the periphery.
Sanctity of Physician-Patient Relationship

A Two-Way “Sacred” Street

Confidential Communication

Treatment & Care

must be licensed, permitted, accredited and/or certified by various governmental or private organizations (a corporation or entity cannot practice medicine)
Practice Medicine Without a License Is Illegal

Laws against practicing medicine without a license are fairly unforgiving - lack of a license raises a presumption that the care was negligent:

- **Criminal Penalties** - 1 to 8 years in prison, depending on whether it's a misdemeanor or felony offense
- **Civil Liability** - Anyone harmed by a person practicing medicine without a license may sue for damages in civil court. As a general proposition, a person practicing medicine without a license will be liable for just about any foreseeable injury that results from the misconduct.
Prior Authorizations & Step Therapy

Is this practicing medicine?

- Overruling physician-prescribed treatment plan, prescription drug or durable medical equipment as medically necessary (prior authorization).

- Making a patient first experience unsuccessful results from a medication or service before patient is able to receive the physician-prescribed treatment (step therapy).
A former Aetna medical director admitted in sworn deposition that he never looked at patients’ medical records before deciding to approve or deny a prior authorization request.

- No interaction with patient.
- No physical exam.

Non-Medication Switching

- Non-Medication Switching occurs when patients are switched out of their doctor-prescribed medication for another.
- Switching can occur to:
  - Bioequivalent
  - Generic
- Requires two levels of consent:
  - Doctor approval
  - Patient ok