

Manage Liability Risk When Referring for CAM

BY DOUG BRUNK
San Diego Bureau

LA JOLLA, CALIF. — When you refer a patient to a provider of complementary and alternative medicine, keep in mind five liability management strategies, David M. Eisenberg, M.D., advised at a meeting on natural supplements in evidence-based practice sponsored by the Scripps Clinic.

The strategies, which he developed in collaboration with Michael H. Cohen, J.D. (*Ann. Intern. Med.* 2002;136:596-603), include the following:

1 Determine the clinical risk level.

Decide whether to:

- ▶ Recommend yet continue to monitor the therapy.
- ▶ Tolerate, provide caution, and closely monitor safety.
- ▶ Avoid and discourage the therapy.

Staff Come to Embrace E-Mail From Patients

SAN FRANCISCO — Nonphysician staff in 10 primary care clinics initially were leery of giving patients the ability to e-mail their clinics, but they became more enthusiastic 6 months after using an electronic communication system, a study of 76 staff members found.

Physicians might be more willing to offer electronic communications to patients if e-mails could be triaged by their staff, Anne F. Kittler and her associates said in a poster presentation at the triennial congress of the International Medical Informatics Association. The study suggests that staff can overcome their initial reservations to embrace the benefits of electronic communications, said Ms. Kittler of Partners HealthCare System, Wellesley, Mass.

Paper-based surveys of 76 staff before adoption of Patient Gateway, a secure Web portal for electronic communication with patients, found that 44 feared that patient e-mails would increase their workload. Only 13 (17%) were enthusiastic about adopting the system, 28 (37%) were hesitant, and the rest were indifferent or unsure about it. A majority already used e-mail in their daily work routine, usually to communicate with physicians or other staff in the practice.

After full implementation of Patient Gateway in three of clinics, half of 21 staff members who had used the system for at least 6 months were enthusiastic about the system, repeat surveys found. The proportion of staff members hesitant to use the system dropped to 20% (four people). A majority said that Patient Gateway either reduced or did not change their overall workload.

They particularly found the system helpful for dealing with requests for medication refills, the investigators reported.

All the clinics used electronic health records before adding Patient Gateway.

—Sherry Boschert

2 Document the literature supporting the therapeutic choice.

"It's very important to put this in the chart," said Dr. Eisenberg, an internist who directs the division for research and education in complementary and integrative medical therapies at the Osher Institute, Harvard Medical School, Boston. "By the way, that is also true when we're using a novel or experimental drug with an inpatient. This is the same approach."

If treatment with a certain herb is rec-

ommended, "document the choice of herb, any recommendation regarding product or brand, and any discussion regarding therapeutic dose, and associated uncertainties regarding use of the herb," he said.

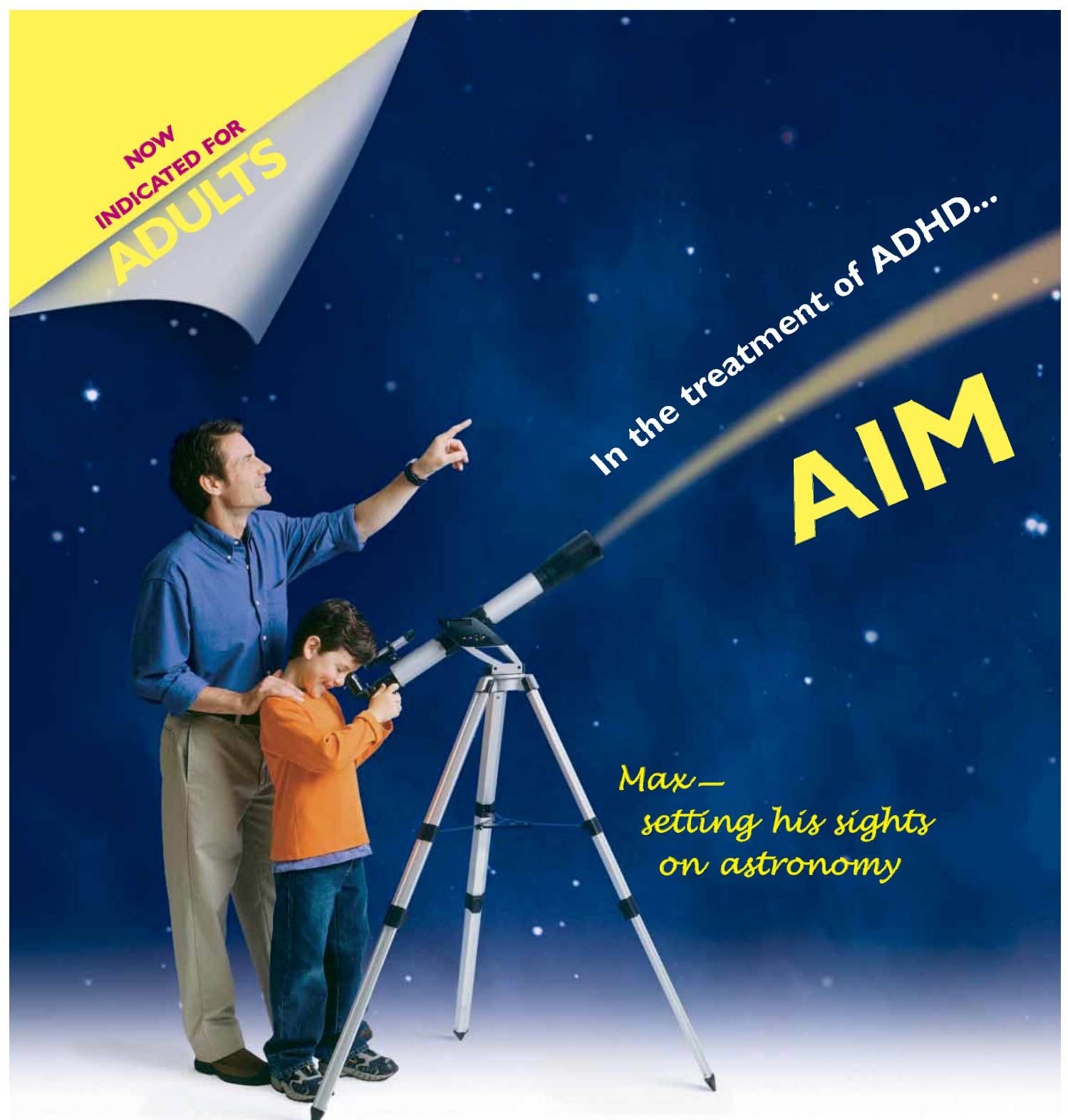
He also makes it a practice to keep a backup file of articles supporting the discussion or recommendation. "You could say this is a bit too conservative, like have suspenders and a belt," he said at the meeting, cosponsored by the University of

California, San Diego. "But I think this is the best advice."

3 Continue conventional monitoring.

"A lot of times we recommend something or accept that a patient is going to do something, and then we don't monitor or follow up," Dr. Eisenberg said. "Undue reliance on CAM may lead to a charge that the patient was dissuaded from necessary conventional medical care."

He added that maintaining conventional treatment "helps demonstrate that the



The most common adverse events in pediatric trials included loss of appetite, insomnia, abdominal pain, and emotional lability. The most common adverse events in the adult trial included dry mouth, loss of appetite, insomnia, headache, and weight loss. The effectiveness of ADDERALL XR for long-term use has not been systematically evaluated in controlled trials. As with other psychostimulants indicated for ADHD, there is a potential for exacerbating motor and phonic tics and Tourette's syndrome. A side effect seen with the amphetamine class is psychosis. Caution also should be exercised in patients with a history of psychosis.

physician has followed the standard of care, even if CAM is included.”

4 Provide adequate informed consent. Describe the risks and benefits of using the CAM therapy and of delaying or deferring the conventional therapy, and spell out potential adverse interactions. That is a lot to consider, but such information would be helpful “in the eyes of the law if something went wrong,” he said. “You have to ask yourself, could I really defend this action or recommendation?”

Also, clear communication with the patient has been shown to reduce the risk of being sued for malpractice. “Inadequate informed consent is also a theory for mal-

practice liability in and of itself,” Dr. Eisenberg said.

5 Familiarize yourself with providers to whom you refer. Ask yourself, would I refer a friend to this person? “If the answer is ‘I’m not sure,’ then get some help in making the correct referral,” he advised.

Understand any regulations regarding the use of CAM therapies by your relevant state regulatory board. “You have to check the regulations and scope of practice,” he said. “From a conservative legal standpoint, referring to somebody who does not own a license to treat a patient is risky business. Don’t do it.”

He pointed out that, in general, a physician is not liable merely for making a referral to a specialist. But he cited three exceptions to the general rule:

- ▶ The referral led to delay or deferral of necessary medical treatment. “Do your day job first,” he said.
- ▶ The referring provider knew or should have known that the referred-to provider was incompetent.
- ▶ The referred-to provider is considered to be the physician’s agent, either because state law requires supervision or an extended form of consultation, or there is a “joint treatment” agreement between the physician and the CAM provider.

Dr. Eisenberg also discussed the notion of a “legal catch-22” when referring a patient for CAM.

For example, if a physician seeks a distant, independent contractor type of relationship with a CAM provider, “there is probably less shared liability risk, but there is probably more risk of harm to the patient because you’re referring to a stranger,” he noted.

“Conversely, there is higher risk of shared liability if you refer to CAM providers you know or have an ongoing professional relationship with, but there’s probably less chance of harm [to the patient] because you’re involved.” ■

HIGHER

With efficacy that goes beyond adequate symptom control—to help them reach new heights

- Reduces symptoms to a level comparable to that of non-ADHD children¹
- Effectively addresses the core impairments of ADHD—inattention, hyperactivity, and impulsivity²
- Once-daily dosing provides day-long improvement in academic productivity and social functioning^{3,4}

Please see references and brief summary of prescribing information on adjacent page.

www.ADDERALLXR.com
www.ADHDSupportCompany.com

Shire US Inc.
 ...your ADHD support company
 1-800-828-2088

Shire

©2004 Shire US Inc., Newport, Kentucky 41071 October 2004 AXJA351



ADDERALL XR® II
 5 mg, 10 mg, 15 mg, 20 mg, 25 mg, 30 mg CAPSULES
 (Mixed Salts of a Single-Entity Amphetamine Product)
 Dextroamphetamine Sulfate Dextroamphetamine Saccharate
 Amphetamine Aspartate Monohydrate Amphetamine Sulfate

Reach new heights

Abuse of amphetamines may lead to dependence. Misuse of amphetamines may cause sudden death and serious cardiovascular adverse events. ADDERALL XR generally should not be used in children or adults with structural cardiac abnormalities. ADDERALL XR is contraindicated in patients with symptomatic cardiovascular disease, moderate to severe hypertension, hyperthyroidism and glaucoma, known hypersensitivity to this class of compounds, agitated states, history of drug abuse, or current or recent use of MAO inhibitors. ADDERALL XR should be prescribed with close physician supervision.