

# A War on Doctors?

By Marcos E. Hasbun | January 7, 2011

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With prescription drug abuse fast becoming one of the foremost fronts in America's war on drugs, physicians now find themselves in the crosshairs.

The government is targeting doctors whom it believes are prescribing narcotics inappropriately, using the same methods once reserved for street corner drug dealers and their suppliers. One common tactic is to send undercover law enforcement agents, who normally pose as drug dealers looking to consummate a street transaction, into a medical practice to pose as a patient seeking relief from pain or anxiety.<sup>1</sup> The penalties for a physician charged and convicted of dispensing a controlled substance without a legitimate basis for doing so are just as severe as those imposed on corner dealers.<sup>2</sup>

In the Tampa area, for example, the state subjected pain-management specialist John Mubang to such a sting operation earlier this year, but his prosecution resulted in a mistrial when the government could persuade only one juror out of six to convict him. Did the state overreach?

Perhaps. But the government is responding to genuinely alarming statistics on prescription drug abuse. From 1999 through 2006, the number of fatal poisonings involving opioid analgesics more than tripled to 13,800.<sup>3</sup> And, according to the Centers for Disease Control and Prevention, approximately one in five U.S. high school students has taken a prescription drug without a doctor's prescription.<sup>4</sup> In fact, prescription drugs are now the second-most commonly abused category of drugs — following only marijuana, and well ahead of the other usual suspects like cocaine, heroin, and methamphetamines.<sup>5</sup> Physicians are in a tough spot, ethically obligated to do what they can to relieve patients' suffering but legally required to try to weed out drug-seekers, and open to criminal prosecution if they fail.

So, what to do? It's important to be ever-more vigilant in separating the truly suffering from the merely addicted:

**Don't just take patients at their word.** Gone are the days when you could simply take a patient's word that he is experiencing pain or anxiety. Drug-addicted and profit-seeking patients lie.

**Document a Thorough Physical Examination.** It's basic medicine to perform a thorough history and physical exam prior to prescribing a controlled substance, but nearly every doctor who has been charged with trafficking prescription drugs was accused of failing to do so. That's why it is so important to document the nature, and results of your examination in the patient's medical file. Physicians should likewise document and record the nature and intensity of any pain, any underlying or coexisting diseases

or conditions, and any effect the pain has on physical or psychological functions. Additionally, as the circumstances may dictate, an MRI, X-ray or other diagnostic procedure may be required to document, and treat, legitimate complaints of pain.

Bottom line: When it comes to the prescription of powerful controlled substances for the legitimate treatment of pain, adequate documentation is critical.

**For New Patients, Request a Copy of Prior Medical Records.** Criminal prosecutions of physicians have highlighted physicians' failure to obtain medical records from a patient's prior health care providers documenting the patient's history of prior injuries, medications, and diagnostic procedures. You should always get a copy of any new patient's medical records, but in no case is it more important than it is with those patients to whom narcotics may be prescribed.

**Beware the "doctor shopper."** Every physician has encountered a drug-seeking "professional patient." The patient's prior medical records should help flag doctor-shoppers. If a patient resists helping you access his records, that is a warning sign. Here are some of the [other warning signs](#) of such drug-seeking patients and advice on what to do about them. In addition, many states in recent years have adopted [prescription drug monitoring programs](#), establishing electronic databases through which information about prescriptions is collected and then disbursed to authorized individuals such as doctors. You should be aware of any such program in your state, and participate voluntarily, even if you aren't required to by law. Through such a program, you may be able to learn the frequency with which a particular patient has had prescriptions written by other physicians over a given period of time.

**Do not ignore suspicious comments by patients.** In the prosecution of one physician, an undercover agent posing as a patient told the physician he had sold Percocet pills to a relative in exchange for a suit to wear to his father's funeral, and yet the physician apparently ignored the comment when prescribing medication to that patient. Do not just shrug off such comments. The best course of action is to simply avoid prescribing medications to a patient who has indicated he is providing the medications to others.

**Screen patients for potential prescription drug abuse.** Discuss and document in a patient's medical file any prior substance abuse history, current prescription and over-the-counter medication use, and the reasons for that use. If, for example, a patient appears to be abusing prescription painkillers, but also reasonably appears to experience significant pain based on a documented injury, consider consulting with a second physician as to the necessity of a continued pain management regimen and alternatives to the current regimen, including a decrease in the dosage and amount of the medication. Taking this step helps law enforcement confirm that a physician is exercising legitimate (and prudent) medical judgment in balancing both the need for painkillers coupled with their potential for abuse.

**Perform drug monitoring tests.** Require new patients who claim to have been on pain or anxiety medications for a long period of time, or even current patients who may not be taking medications as prescribed, to undergo drug monitoring tests. If the test reflects that the patient is not taking the prescription drugs he or she claims to have been taking, then this should serve as a warning that the patient could possibly be selling the medication on the street.

**Prepare an individualized treatment plan.** Physicians should prepare a written treatment plan identifying objectives for treatment, including, for example, pain relief and/or improved physical or psychosocial functions. Once treatment begins, any drug therapy should be monitored and adjusted based on the success or failure of the treatment plan.

Although these basic recommendations may seem trivial, they are vital and yet, often disregarded by well-meaning, seasoned physicians. Taking these steps will help you treat bona fide complaints of pain while at the same time doing your part to combat prescription drug abuse.

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*On **Friday, Jan. 14, at 12 p.m. EST** we will host a live question and answer session with Marcos E. Hasbun on the topic of prescription drug abuse. If you would like to attend this live event, please RSVP by Thurs., Jan. 13 to [keith.martin@ubm.com](mailto:keith.martin@ubm.com).*

*1. In United States v. Johnston, Case. No. 2:07-mj-01112 a Florida physician was prosecuted, convicted and sentenced to 30 months imprisonment on federal drug trafficking charges. Part of the investigation relied on undercover recordings taken by federal drug agents posing as patients seeking prescription painkillers.*

*2. Physicians have, for example, been charged under the federal Controlled Substances Act ("CSA"), 18 U.S.C. § 841 – the same statute used to prosecute cocaine, crack and other drug dealers. If a physician is convicted for having unlawfully dispensed a Schedule I or II controlled substance, a term of imprisonment of up to 20 years is authorized under the CSA. The maximum 20 year penalty, however, increases to life imprisonment if the unlawfully dispensed controlled substance results in death. In addition to imprisonment, the CSA also authorizes fines of up to \$1,000,000 for individual physicians, and up to \$5,000,000 for a physician's medical practice.*

*3. Increase in Fatal Poisonings Involving Opioid Analgesics in the United States, 1999-2006, U.S. Dep't of Health and Human Services, Centers for Disease Control and Prevention, NCHS Data Brief No. 22, Sept. 2009 at 1.*

*4. Centers for Disease Control and Prevention Press Release, June 3, 2010.*

*5. Prescription Drugs Facts & Figures, Office of National Drug Control Policy, 2010, [www.http.whitehousedrugpolicy.gov/drugfact/prescrptn\\_drugs/rx\\_ff.html](http://www.whitehousedrugpolicy.gov/drugfact/prescrptn_drugs/rx_ff.html).*

*6. Seffner Doctor Takes the Stand in Trial on Drug Trafficking Charges, St. Petersburg Times, Jessica Vander Velde, September 15, 2010.*