

2:30 p.m. - 3:15 p.m.

## Legal issues from a physician's viewpoint

Carol A. Warfield, MD  
Lowenstein Distinguished Professor of Anesthesia  
Harvard Medical School



Michael Barnes, Esq.  
Managing Partner  
DCBA Law & Policy



# Legal Issues with Opioids:

A Physician's View

CAROL WARFIELD, MD  
LOWENSTEIN DISTINGUISHED PROFESSOR OF ANESTHESIA  
HARVARD MEDICAL SCHOOL  
ARNOLD/WARFIELD PAIN MANAGEMENT CENTER  
BETH ISRAEL DEACONESS MEDICAL CENTER

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BEST POSSIBLE PRACTICE  
AVERAGE PRACTICE  
NOT SO GREAT PRACTICE  
MALPRACTICE  
CRIMINAL PRACTICE

} Standard of Care



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## Malpractice

Controlled substances prescribed:

- ▶ in a way that is not in keeping with the standard of care, ie what a similarly trained physician would do in a similar circumstance

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## Criminal Practice

Controlled substances prescribed:

- ▶ Not for a legitimate medical purpose, or
- ▶ Outside the of usual course of medical practice

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## Criminals or Just Bad Doctors?

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[deadiversion.usdoj.gov/crim\\_admin\\_actions/doctors\\_criminal\\_cases.pdf](http://deadiversion.usdoj.gov/crim_admin_actions/doctors_criminal_cases.pdf)



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## Convictions of Doctors

- ▶ A listing of investigations of physician registrants in which DEA was involved that resulted in the arrest and prosecution of the registrant.
- ▶ Last Updated: June 25, 2014 although about 5 years behind
- ▶ Hundreds of doctors

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## The Good, the Bad and the Ugly

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## Guy Owens, MD, age 79, of New Britain, CT

- ▶ Pled guilty in the State of Connecticut Superior Court to two counts of illegal prescription / distribution of a narcotic and one count of sexual assault.
- ▶ A female patient had been receiving prescriptions for controlled substances from Owens for several years and had become addicted to them. In recent visits, Owens had demanded sexual contact or he would not continue to write her prescriptions. Over a three-month period, the patient had not paid Owens but instead had unwillingly participated in sexual acts with him in return for the prescriptions.
- ▶ Owens received a three year suspended prison sentence and three years probation.

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### Lawrence L. Parris, MD, age 58, of Bothell, WA

- ▶ Pled guilty in U.S. District Court, Western District of Washington, to one count of unlawful possession of a controlled substance.
- ▶ Parris unlawfully removed from a clinic where he worked and possessed for his own personal use, quantities of injectable Demerol, which he then consumed. The drugs were not possessed by Parris pursuant to a lawful prescription. Parris hid his actions by making false entries in patient records indicating that the drugs had been administered to patients, whereas, in fact, they had been diverted to his own personal use.
- ▶ Parris was sentenced to probation for a term of two years and ordered to pay a special assessment of \$25 and a fine of \$10,000.

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### Donald Auzine, MD, age 38, of Prairieville, LA,

- ▶ Auzine prescribed and dispensed controlled substances without a legitimate medical purpose and not in the usual course of medical practice.
- ▶ Auzine was sentenced to 37 months incarceration, followed by three years probation. He was also ordered to pay a fine of \$10,000.00.

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### Noel Chua, MD, age 46, of Kingsland, GA

- ▶ Found guilty by a jury in the Superior Court of Camden County, State of Georgia, of violating the Georgia Controlled Substances Act, the result of which was the death of an individual.
- ▶ Chua prescribed or ordered multiple controlled substances for the victim, said prescriptions not being for legitimate medical purpose and said act not being in the usual course of Chua's professional practice.
- ▶ Chua was sentenced to life in prison.

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▶ "In the usual course of medical practice and for a legitimate use"

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**Worst Sanctions for Poor Care**

Below the Standard of Care

Malpractice Suit	loss of \$\$\$
Insurance Company Review	loss of provider privileges
Peer/Hospital Review	loss of hospital privileges
Board of Registration of Medicine Review	loss of medical license

Outside the usual course of practice

Criminal Procedure	loss of freedom
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## "Outside the Usual Course of Medical Practice and Not for a Legitimate Purpose"

- ▶ My examples:
  - ▶ No doctor/patient relationship
  - ▶ Never did a physical exam
  - ▶ Never saw the patient
  - ▶ No pain diagnosis
  - ▶ Prescription in return for sex
  - ▶ Payment by the pill
  - ▶ No medical records
  - ▶ Prescribing for yourself
  - ▶ Prescribing so the patient can get high

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- ▶ Examples from Government witnesses:
  - ▶ Not having the patient disrobe for a physical exam on each visit
  - ▶ Being fooled by a drug addict who lies
  - ▶ Being paid in cash
  - ▶ Deciding to continue opioids despite an inconsistent UDS, dose escalation or early visit
  - ▶ Not doing an "adequate" history and physical exam
  - ▶ Templates in the medical record which are left blank
  - ▶ Poor documentation
  - ▶ Not stopping opioids for a red flag
  - ▶ Not doing enough (pill counts, UDS's, referrals, exams, labs, documentation, history, dose adjustment, visits)
  - ▶ Not using today's criteria for prescribing opioids 10-15 years ago.

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## Anatomy of a Criminal Case

- ▶ Step One: Doctor X prescribes to drug addicts who fake pain
- ▶ Step Two: One of the drug addicts overdoses
- ▶ Step Three: DEA sends undercover agents in to fake pain and pays other addicts to testify against doctor
- ▶ Step Four: Doctor X charged with multiple counts of drug dealing, conspiracy, racketeering, accessory to murder and/or first degree murder
- ▶ Step Five: Doctor X is arrested and assets are frozen
- ▶ Step Six: At trial, government expert testifies that Doctor X was not a good doctor and family of deceased addict testifies that he was a good boy
- ▶ Step Seven: Jury convicts Doctor X for being a bad doctor because a good doctor wouldn't have been fooled by a drug addict

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## Government's Contention:

- ▶ Doctor knows that patient is just using the opioids to get high and is faking pain but doctor sets up fake visits, fake exams, fake UDS's, fake history, fake documentation, fake imaging, fake blood tests, fake informed consent, fake contracts, fake pain scales and drawings and fake referrals just to get the \$100 visit fee from the patient.
- ▶ Addicts would stop using opioids if docs stopped prescribing
- ▶ Overdose crisis would not exist if docs would just stop prescribing opioids

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## Well-meaning juries and experts confuse bad medicine with criminal activity

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## Insurance companies

- ▶ Now more aggressive in evaluating docs
- ▶ Higher utilization and increased costs
- ▶ Peer review
- ▶ Many criminal cases started with an insurance review

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## What Should Be Done

- ▶ Physician Education (legal and medical)
- ▶ Remediation
- ▶ Probation
- ▶ Revocation of DEA license
- ▶ Revocation of medical license

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## What this is not about:

- ▶ Efficacy of opioids for chronic pain
- ▶ What kind of history and PE should be done
- ▶ Documentation
- ▶ Best practices
- ▶ Standards of Care
- ▶ Following guidelines
- ▶ Malpractice
- ▶ The overdose crisis

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## What this is about:

- ▶ A doctor's right to make a judgement to prescribe opioids if deemed appropriate
- ▶ Addicts can fool docs and there's no foolproof way to stop it
- ▶ Bad practice vs Criminal Practice

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I am not a big advocate of using  
opioids for chronic pain.

I am a big advocate of a doctor's  
right to do so.

Carol Warfield

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