Pharmaceutical Diversion and Doctor Shopping

Detective Benjamin Shirley
Lexington Police Department
DEA Task Force Officer

OBJECTIVES

• Identify when communication with a practitioner is not deemed privileged

• Circumstances when a HIPAA covered entity can disclose PHI to law enforcement

• Overview of KASPER as it relates to protecting the practice and criminal investigation

• Proper procedures and requirements for reporting cases of diversion
Drug Diversion

“The diversion of licit (lawful) drugs for illicit (illegal) purposes. It involves the diversion of drugs from legal and medically necessary uses towards uses that are illegal and not medically authorized or necessary”

What is a registrant?

• Registrant – any person or entity that is issued a DEA certificate of registration, which authorizes the person or entity to handle controlled substances for a particular activity (i.e. manufacturer, distributor, dispensing, prescribing, administering, etc...)
Controlled Substance Registrants as of (As of 09-2018)

**RETAIL LEVEL**
- Retail Pharmacy 71,797
- Hospital Clinic 18,042
- Practitioner 1,305,997
- Teaching Institute 261
- Mid-Level Practitioner 376,472

**WHOLESALE LEVEL**
- Manufacturer 582
- Distributor 922
- Researcher 11,854
- Analytical Labs 1,543
- Importer 272
- Exporter 268
- Reverse Distributor 69
- Narcotic Treatment Program (NTP) 1,669

**TOTAL REGISTRANT POPULATION = 1,789,748**

Most Common Types of Drug Diversion
- Selling Prescription Drugs
- Doctor Shopping
- Illegal Internet Pharmacies
- Drug Theft
- Drug theft by healthcare professionals/workers
  - taking waste for personal use
  - stealing controlled substances ("CS") from the patients
  - removing CS from automated dispensing machine (PRN)
  - tampering with patients’ CS medications
- Forgery
- Illicit Prescribing
Doctor Shopping

The term “doctor shopping” has traditionally referred to a patient obtaining controlled substances from multiple healthcare practitioners without the prescribers’ knowledge of the other prescriptions already given.
Doctor Shopping

Acts related to attempting to obtain a controlled substance, a prescription for a controlled substance or administration of a controlled substance, prohibited under KRS 218A.140 include:

- Knowingly misrepresenting or withholding information from a practitioner.
- Providing a false name or address.
- Knowingly making a false statement.
- Falsely representing to be authorized to obtain controlled substances.
- Presenting a prescription that was obtained in violation of the above
How has doctor shopping evolved?

Suspects will now use practitioner information to call in their own prescriptions.

Rite Aid Call In Example
Suspects will steal other patients information while waiting at pharmacies.

Written Forged Rx
Dark Web

Surface Web

Deep Web

- Academic databases
- Medical records
- Financial records
- Legal documents
- Some scientific reports
- Some government reports
- Subscription-only information
- Some organization-specific repositories

TOR

- Political protest
- Drug trafficking and other illegal activities

96% of content on the Web (estimated)
PDMP’S

Prescription Drug Monitoring Programs
K.A.S.P.E.R.

• K-ENTUCKY
• A-LL
• S-CCHEDULE
• P-RESRIPTION
• E-LECTRONIC
• R-EPORING
Privileged Communication

KRS 218A.280

-Information communicated to a practitioner in an effort to unlawfully procure a controlled substance or to procure the administration of same, shall **NOT** be deemed a privileged communication.

Health Insurance Portability Accountability Act
Under what circumstances may a HIPAA covered entity disclose Patient Information to Law Enforcement?

Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A Guide for Law Enforcement

What is the HIPAA Privacy Rule?

The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information, called protected health information or PHI, held by most health care providers and health plans and their business associates. The HIPAA Privacy Rule sets out how and with whom PHI may be shared. The Privacy Rule also gives individuals certain rights regarding their health information, such as the rights to access or request corrections to their information.

Who must comply with the HIPAA Privacy Rule?

HIPAA applies to health plans, health care clearinghouses, and those health care providers that conduct certain health care transactions electronically (e.g., billing a health plan). These are known as covered entities. Hospitals, and most clinics, physicians and other health care practitioners are HIPAA covered entities. In addition, HIPAA protects PHI held by business associates, such as billing services and others, hired by covered entities to perform services or functions that involve access to PHI.

Who is not required to comply with the HIPAA Privacy Rule?

Many entities that may have health information are not subject to the HIPAA Privacy Rule, including:

- employers,
- most state and local police or other law enforcement agencies,
- many state agencies like child protective services, and
- most schools and school districts.

While schools and school districts maintain student health records, these records are in most cases protected by the Family Educational Rights and Privacy Act (FERPA) and not HIPAA. HIPAA may apply however to patient records at a university hospital or to the health records of non-students at a university health clinic.
Under what circumstances may a HIPAA covered entity disclose PHI to law enforcement?

A HIPAA covered entity may disclose PHI to law enforcement with the individual’s signed HIPAA authorization.

A HIPAA covered entity also may disclose PHI to law enforcement without the individual’s signed HIPAA authorization in certain incidents, including:

- To report PHI to a law enforcement official reasonably able to prevent or lessen a serious and imminent threat to the health or safety of an individual or the public.
- To report PHI that the covered entity in good faith believes to be evidence of a crime that occurred on the premises of the covered entity.
- To alert law enforcement to the death of the individual, when there is a suspicion that death resulted from criminal conduct.
- When responding to an off-site medical emergency, as necessary to alert law enforcement to criminal activity.
- To report PHI to law enforcement when required by law to do so (such as reporting gunshots or stab wounds).

- To comply with a court order or court-ordered warrant, a subpoena or summons issued by a judicial officer, or an administrative request from a law enforcement official (the administrative request must include a written statement that the information requested is relevant and material, specific and limited in scope, and de-identified information cannot be used).
- To respond to a request for PHI for purposes of identifying or locating a suspect, fugitive, material witness or missing person, but the information must be limited to basic demographic and health information about the person.
- To respond to a request for PHI about an adult victim of a crime when the victim agrees (or in limited circumstances if the individual is unable to agree). Child abuse or neglect may be reported, without a parent’s agreement, to any law enforcement official authorized by law to receive such reports.

For More Information
This is a summary of the relevant provisions and does not include all requirements that are found in the HIPAA Privacy Rule. For complete information, please visit the U.S. Department of Health and Human Service’s Office for Civil Rights HIPAA web site at http://www.hhs.gov/ocr/privacy.

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eKASPER Report Request

KENTUCKY
CABINET FOR HEALTH AND FAMILY SERVICES
OFFICE OF THE ATTORNEY GENERAL
Health Care Fraud and Abuse Control Enforcement

Request Report
Summary Report
Status of Requests
Administration

For technical support please contact eKASPER Helpdesk at 502-564-2763

Request Report: For Single Patient

**Required Field**

**Patient / Subject Details**

<table>
<thead>
<tr>
<th>First Name *</th>
<th>Last Name *</th>
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<tr>
<td><strong>ID Type</strong></td>
<td>**DOB(mm/dd/yyyy) ***</td>
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**Patient / Subject Address Info**

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**Report Details (Date in mm/dd/yyyy format)**

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**Facility**

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Submit | Reset

Comments & Questions on DHS Programs & Services | Disclaimer
Web Site Comments & Questions | Accessibility Statement | Privacy | FAQ

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Request other states
### KASPER MD general requirements

<table>
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<tr>
<th>Drug Schedule</th>
<th>KASPER Query</th>
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<tr>
<td>II</td>
<td>Required before initial prescribing and at least every three months during treatment</td>
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<tr>
<td>III</td>
<td>For Pain and Assoc. Symptoms: Prior to initial Rx and at least every three months during treatment. Other conditions: Prior to initial Rx and then as necessary to conform to standards of acceptable &amp; prevailing practice (exception: MAT Rxcs - must KASPER at least q3months).</td>
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<tr>
<td>IV</td>
<td>For Pain and Assoc. Symptoms: Prior to initial Rx and at least every three months during treatment. Other conditions: Prior to initial Rx and then as necessary to conform to standards of acceptable &amp; prevailing practice (exception: anorectic Rxcs - must KASPER at least q3months).</td>
</tr>
<tr>
<td>V</td>
<td>Not required</td>
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See regulation for exceptions (cancer, end of life, etc.)

### APRN KASPER Guidelines

<table>
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eKASPER Prescriber Reports – KRS 218A.202

• CS prescribers can obtain an eKASPER report on all prescriptions they have written “Reverse KASPER”:
  – To review and assess the individual prescribing patterns
  – To determine the accuracy and completeness of information contained in eKASPER
  – To identify fraudulent prescriptions

DEPPB recommends prescribers to do review KASPER quarterly
Tips from KASPER

KASPER Tips for Providers

- Prescribing Buprenorphine for Office Based Opioid Treatment [PDF - 131K]
- When Physicians Must Report to KASPER [PDF - 73K]
- Morphine Equivalent Dose and Naloxone Information [PDF - 87K]
- Controlled Substance Prescribing Part 1 [PDF - 110K]
- Controlled Substance Prescribing Part 2 [PDF - 121K]
- Interpreting KASPER Reports [PDF - 72K]
- Reducing Manual Process Reports [PDF - 72K]
- Reverse KASPER [PDF - 139K]
- When to Request a KASPER Report [PDF - 10K]
- Managing Your Delegates [PDF - 130K]

Last Updated 2/3/2017

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eKASPER Prescriber Report Request

Account Maintenance

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Prescribing Report Request

NOTE: Please call the business office at (502) 564-7985 for a report on any other DEA numbers

Report Details (Date in mm/dd/yyyy format)

- From Date: 12/02/2015
- To Date: 01/01/2016

The From and To Date range defaults to a 30 day span; this can be expanded to 90 days. Please note for a larger date range, your report may take longer to complete.

Peer Review Report Request

- Area of work: Pain Management

View Peer Review Report
Theft & Significant Loss

- Federal regulations require that registrants notify the DEA Field Division Office in their area, in writing, of the theft or significant loss of any controlled substance within 1 business day of discovery of such loss or theft.

- The registrant shall also complete and submit to the Field Division Office in their area, DEA Form 106, "Report of Theft or Loss of Controlled Substances" regarding the theft or loss. (21 C.F.R. § 1301.76(b))
Suboxone

$8 per strip
(Average Pharmacy Cost)
$25 - $30 per strip
(Street Value)
Task Force Officer Benjamin Shirley

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benjamin.s.shirley@usdoj.gov

Office (859) 977-6105
Cell (859) 490-0643