Pharmaceutical Diversion and Doctor Shopping

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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)

<table>
<thead>
<tr>
<th>RETAIL LEVEL</th>
<th>WHOLESALE LEVEL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Retail Pharmacy 71,797</td>
<td>Manufacturer 582</td>
</tr>
<tr>
<td>Hospital Clinic 18,042</td>
<td>Distributor 922</td>
</tr>
<tr>
<td>Practitioner 5,300,987</td>
<td>Researcher 11,854</td>
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<tr>
<td>Teaching Institute 261</td>
<td>Analytical Labs 1,543</td>
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<tr>
<td>Mid-Level Practitioner 576,472</td>
<td>Importer 272</td>
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<tr>
<td></td>
<td>Exporter 268</td>
</tr>
<tr>
<td></td>
<td>Reverse Distributor 69</td>
</tr>
<tr>
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<td>Narcotic Treatment Program (NTP) 1,669</td>
</tr>
</tbody>
</table>

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.

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
PDMP’S

Prescription Drug Monitoring Programs

K.A.S.P.E.R.

- K-ENTUCKY
- A-LL
- S-CCHEDULE
- P-RESRIPTION
- E-LECTRONIC
- R-EPORTING
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?**

<table>
<thead>
<tr>
<th>Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule: A Guide for Law Enforcement</th>
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<tbody>
<tr>
<td><strong>What is the HIPAA Privacy Rule?</strong></td>
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<tr>
<td>The Health Insurance Portability and Accountability Act of 1996 (HIPAA) Privacy Rule provides Federal privacy protections for individually identifiable health information contained in a group health plan or health insurance plan's claims and enrollment records, and individually identifiable health information maintained in a health plan's health care clearinghouse (covered entities). The Privacy Rule applies to the following persons: (1) covered entities; (2) persons acting on behalf of covered entities in connection with activities subject to the Privacy Rule; and (3) persons authorized to access individually identifiable health information for treatment, payment, and other purposes, such as the right to access or request correction of their information.</td>
</tr>
<tr>
<td><strong>Who must comply with the HIPAA Privacy Rule?</strong></td>
</tr>
</tbody>
</table>
| HIPAA applies to health plans, health care clearinghouses, and health care providers that conduct certain health care transactions electronically. The term “covered entity” includes health plans, health care clearinghouses, and health care providers. There are two types of covered entities: 

- **Health Plans**: Health plans are plans that provide health insurance benefits to individuals. They include group health plans and individual health plans. 
- **Health Care Clearinghouses**: Health care clearinghouses are entities that provide services to other covered entities, including the electronic transmission of HIPAA business transactions. |
| **What is Patient Information?** |
| Patient Information means protected health information in the possession of the covered entity, or in the possession of its medical provider or other business associate, that relates to an individual known to have a relationship with the covered entity. This includes but is not limited to the following information: 

- Personal identifiers, such as name, social security number, or account number. 
- Medical history or condition of an individual. 
- Treatment or service provided to an individual. 
- Payment information concerning an individual. |
| **When is it required to disclose Patient Information?** |
| There are certain situations in which the Privacy Rule requires a covered entity to disclose Patient Information to Law Enforcement without the individual's authorization. These situations include: 

- To comply with a court order or other lawful process. 
- To respond to a request for PHI by a law enforcement official, who is an officer of the law, and who is acting under color of law, for a criminal investigation or prosecution. (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 by a law enforcement official, who is an officer of the law, and who is acting under color of law, for the purpose of investigating a suspect, fugitive, material witness, or similar person, and the information is necessary to the investigation. (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 report PHI by a law enforcement official for the protection of the health or safety of an individual or the public. |

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 Department of Health and Human Services Office for Civil Rights HIPAA website at [http://oocr.hhs.gov/](http://oocr.hhs.gov/).
eKASPER Report Request

Request other states

*Clipped out states are not currently available.
*The more states selected, the longer it may take to process your report request.*
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
LJ (OF5  Lee, Jill (CHFS OIG Fraud), 7/18/2017
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.

C.F.R. § 1301.76(b)
Suboxone

$8 per strip
(Average Pharmacy Cost)
$25 - $30 per strip
(Street Value)

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