

## Federal Prosecutions on the Rise for Physicians Prescribing Opioids

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A recent headline revealed that over 30 doctors, and multiple pharmacists and nurse practitioners in six different states were charged with federal crimes based on allegations of unlawful distribution of controlled substances and conspiracy to obtain controlled substance by fraud. More locally, in 2018, thirteen doctors were federally charged in the Western District of Pennsylvania based on their distribution practices of Suboxone and/or Subutex. Suboxone is the common name for buprenorphine + naloxone whereas Subutex is buprenorphine alone. Both substances are used to treat opioid dependency. Naloxone acts to block opioid receptors in the brain and central nervous system, making buprenorphine + naloxone more difficult to obtain a high when compared with other opioids. Accordingly, buprenorphine products are utilized in office based opioid dependency treatment to wean patients off of more potent and dangerous opioids and generally involves a patient taking a strip under the tongue.

The DEA tightly regulates prescribing buprenorphine products, with doctors only being permitted a limited number of buprenorphine patients after obtaining a special number to prescribe the product. The number of patients could increase to 100 after one year prior to 2018 and was increased to 275 in 2018. Doctors must also keep records and inventory of buprenorphine products that are dispensed.

In addition to an increase in the number of federal prosecutions, the Pennsylvania Office of Attorney General has ramped up prosecutions of those in medical fields for violations surrounding improper prescribing and insurance fraud. In Pennsylvania, it is illegal to prescribe or dispense controlled substances, such as Suboxone and Subutex, if not “done (i) in good faith and in the course of his professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession.” 35 P.S. § 780-113(a)(14).

To avoid prosecution and/or investigation, doctors and other medical professionals are advised to keep strictly professional relationships with patients. In addition, doctors engaged in the practice of office based opioid dependency treatment should have in place protocols for drug urine testing that includes staff monitoring of patients when providing urine samples. “Pill holders” also are another step that doctors can take to avoid patient abuse. That is, a person without opioid dependency should be charged with holding the medication rather than the patient themselves. While qualified nurse practitioners and physicians’ assistants now can prescribe buprenorphine, doctors should closely monitor their own staff to ensure that staff members are not illegally prescribing or dispensing such medications. Of course, doctors must have written agreements with their nurse practitioners and physician assistants, which must outline their prescriptive authority.

For additional information contact Andrew Salemme or Jerry Russo.