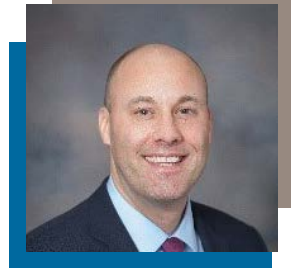


Prescription Medication Fraud

A New Federal Civil Suit and a Case Study to Highlight Real Dangers



America is in the grips of a lethal opioid epidemic, and law enforcement and insurance claims departments are on the front lines of the fight. The challenge is to ensure physicians have the freedom to prescribe necessary and responsibly priced medications while simultaneously ensuring that bad actors do not take advantage of the system to endanger the public with unnecessary and over-priced medications that pose real risks to public health while driving increases in insurance premiums. This column highlights a recent civil lawsuit by the United States of America and a case study, with a prescription record from an actual injury claim, to shine a spotlight on what modern prescription medicine fraud looks like in practice.

THE ALLEGATIONS: U.S.A. V. SPIVACK, INC. ET. AL. 2:22 CV 00343 (U.S. DIST. CT. E.DIST. PA)

The U.S. Attorney's Office for the Eastern District of Pennsylvania has filed a civil lawsuit against Philadelphia-based pharmacy Spivack, Inc., which previously operated under the name Verree Pharmacy, and its former owner, pharmacist Mitchell Spivack, alleging that they engaged in a years-long practice of illegally dispensing opioids and other controlled substances, and systematic health care fraud. The lawsuit alleges that Verree and Spivack illegally dispensed unparalleled quantities of opioids and other controlled substances into the Philadelphia community. The complaint seeks civil penalties and civil damages, which could total in the millions of dollars, as well as injunctive relief.

The Government alleges that Verree Pharmacy, its pharmacist and then-owner Mitchell Spivack and other employees of Verree dispensed opioids and other controlled substances even when faced with numerous red flags suggestive of diversion, such as opioids in extreme doses, dangerous combinations of opioids and other "cocktail" drugs preferred by those struggling with addiction, excessive cash payments for the drugs, blatantly forged prescriptions, and other signs that the pills were being diverted for illegal purposes. The complaint alleges that Verree, the top retail pharmacy purchasing oxycodone in Pennsylvania, has been a nationwide and regional outlier in its deviant purchasing, dispensing, and billing of controlled substances. To avoid scrutiny from the drug distributors that sold them the pills,

the Defendants allegedly made false statements to maintain a veneer of legitimacy and keep the pharmacy well-stocked. The complaint alleges that Spivack drew millions of dollars from the pharmacy while the public suffered the consequences, including one patient who overdosed and died next to Verree Pharmacy bottles from Spivack.

The lawsuit seeks to impose civil penalties and damages on Verree and Spivack under the Controlled Substances and False Claims Acts. If Verree and Spivack are found liable, they could face civil penalties up to \$68,426 for each unlawful prescription dispensed, civil penalties up to \$23,607 for each false claim they submitted to federal health care programs, and treble damages for the alleged health care fraud against federal programs.

This is a case worth tracking. Future editions of this column will update developments in the case.

PRESCRIPTION MEDICATION FRAUD: A GROWING TREND

SIU investigators and defense counsel by now are well acquainted with the rising prevalence of prescription medication fraud in the personal injury claim context. Of the many components of the modern organized medical fraud claim, unnecessary prescription medication, often from prescription/mail order pharmacies, can be as lucrative for perpetrators as it is dangerous for patients. To be clear, prescription pharmacies can be true conveniences for people who cannot easily leave their homes, or who face language barriers to conversing with in-store pharmacists. Unfortunately, this segment of the healthcare system is also home to fraud.

The danger of overdose and death, of course, only arises when patients actually receive the medications for which they are billed. SIU investigations have revealed that, quite often, patients receive fewer medications than what appears on the pharmacy invoices. This is its own wrong: billing for medical services not rendered. Indeed, in this case, the Government alleges that a cornerstone of the Defendants' scheme was a policy of "BBDF", internal code for "Bill But Don't Fill." When pharmacy employees saw that code in the computer system, they knew to bill for the medications without providing them to customers.

PRESCRIPTION MEDICATION FRAUD IN PRACTICE: A CASE STUDY

Prescription medication fraud of the sort at issue in this case is probably pretty easy to envision in theory, but what does it look like in the course of an injury claim? Actually, it can be easy to miss, and that is by design. Perpetrators go to great lengths to make it look mundane in hopes that a claim representative will miss it.

Consider this invoice, from an actual injury case I defended. I have redacted all patient and provider information from the invoice, but the remaining prescription and pricing information is real. This case involved a low-speed vehicle collision after which the plaintiff alleged sprains and strains of her low back.

Discovery in the case included the deposition of the treating doctor who purportedly prescribed these medications. His testimony was eye-opening in ways that nobody could possibly glean merely by looking at this invoice with no broader context.

He first revealed that he was only an independent contractor with the medical practice that ordered these medications for the patient, and that he ended his affiliation with the practice several months before the date of this prescription. This means that the medical practice was using this doctor's personal DEA number to order controlled substances without his authorization or knowledge. This alone is a serious offense and fertile grounds for a civil recovery action. No claims representative would possibly know this merely by reviewing the invoice as part of a larger medical specials package from plaintiff's counsel.

The specific combination of medications was of immediate concern even before the doctor's deposition, and his testimony confirmed our suspicions. Note the combination of tramadol, hydrocodone and Ambien. This cocktail of narcotics is known on the street as the "Holy Trinity" and it is an especially dangerous combination, as the three drugs interact in a way that magnifies the effects of each individual drug. Moreover, the trio combine to suppress the central nervous system and a patient's ability to breathe. This Holy Trinity can be lethal. Doctors prescribe it with extreme caution only when absolutely necessary.

Apart from the potential lethality of this combination, the doctor's testimony revealed an even more troubling detail: although he did prescribe a number of dubious medications to this patient before he ended his affiliation with the medical practice, he never prescribed this trio for this patient, and he never would have. He was aghast at the realization that someone may have provided such a dangerous cocktail of drugs to someone with garden variety low back strains. He made clear that doing so was very dangerous and without medical basis. Apparently, after he left the practice, the practice continued ordering medications under his DEA number, and expanded the regimen far beyond what this doctor ever considered necessary or safe.

The good news in this case, if we may call it that, is that it was never clear this patient actually received these medications. She did not recognize the medications by name and did not describe any effects from any of her oral medications that resembled the mood-altering impact of this trio of drugs. Such is the grim nature of this sort of fraud: it is welcome news that a patient was merely charged for medical treatment she never received.

The prices for these drugs are astronomical; considerably in excess of what is usual and customary for the geographical region in which this patient lived. Healthcare pricing, and drug pricing in particular, can seem standardless in the U.S. healthcare system, but providers do have an obligation to charge usual and customary prices. For instance, charging over \$1,000 for Terocin, a topical medicine arguably no more effective than over-the-counter lidocaine rubs that cost under \$5 per tube at retail pharmacies, is indefensible. Anyone who testified that \$1,000 or more for Terocin is a usual and customary charge would be inviting allegations of fraud. In fact, all of these medications are grossly over-priced.

This case settled for a fraction of medical specials after the doctor's deposition. An organized activity investigation into the medical practice and the prescription service commenced soon thereafter.

CONCLUSION

The shrewdness of this type of medical fraud lies in the mundaneness of the invoicing. Perpetrators know very well that busy claims representatives may gloss right over routine-seeming medication invoices while evaluating a multi-faceted injury claim, and they create them accordingly. Success in combatting prescription medication fraud will always lie in good and continuous training of claims personnel and vigilant discovery in litigation. Pairing with experienced SIU defense counsel in cases like this won't simply save money; it could very well save lives too.

Eric W. Moch, a partner in the Chicago office of HeplerBroom, LLC, focuses his practice on organized medical fraud and insurance fraud, including organized activity and staged losses, as well as first- and third-party coverage and bad faith defense. Mr. Moch counsels and represents national insurers, businesses, not-for-profit organizations and individuals in a variety of matters and litigated disputes. His insurance fraud practice entails the defense of insurers and their insureds against fraudulent claims at trial and the pursuit of civil recoveries for insurance carriers resulting in recoveries against medical fraud perpetrators. He has extensive civil litigation experience in Illinois state and federal courts, including in excess of fifty jury verdicts, victorious oral arguments before the Illinois Supreme Court and Seventh Circuit U.S. Court of Appeals and several published appeals. He is a former national board member of the National Society of Professional Insurance Investigators and is the former President of the Illinois chapter. Mr. Moch has also held several positions in the insurance industry, including as a founding member of a Special Investigations Unit for an international insurer, a role in which he investigated alleged fraudulent claims across a wide range of insurance lines. Mr. Moch can be reached at (312) 205-7712 and at eric.moch@heplerbroom.com

Patient Statement

**PAYMENT
DUE**

Statement Date:

Amount Due: \$5,935.53

Patient:
Patient ID:
Name:
Address:

Facility:
Name:
Address:
Phone:
Fax:

Transaction Log:

POS	Rx #	NDC	Description	Qty	Charges	Payments	Adjustments	Balance
2/28/2014	100531	29300-0124-10	MOBIC 7.5MG TAB	60	232.32			232.32
2/28/2014	100532	53746-0102-05	NEURONTIN 300MG CAP	90	149.09			381.41
2/28/2014	100533	59746-0283-90	PROTONIX 20MG TAB	60	298.76			680.17
2/28/2014	100534	76218-1219-01	FIDOND 7.5MG TAB	90	433.64			1,113.81
2/28/2014	100535	76218-0706-05	TRAMADOL HCL ER 150MG CPMP	60	777.60			1,891.41
2/28/2014	100536	76218-1828-05	HYDROCODONE-ACETAMINOPHEN 2.5-325MG TAB	120	470.39			2,361.80
2/28/2014	100537	13668-0008-05	AMBIEN 10MG TAB	30	170.69			2,532.49
2/28/2014	100538	50488-1129-01	TEROCIN (NEW TERO CIN LOTION) CRM ML	240	1,030.76			3,563.25
2/28/2014	100539	50488-1001-01	TEROCIN (TEROCIN PATCH) MG PTCH	30	1,186.14			4,749.39
4/25/2014	101295	50488-1001-01	TEROCIN (TEROCIN PATCH) MG PTCH	30	1,186.14			5,935.53
				Total:	5,935.53			

Amounts Past Due:

Date Range:	0 - 29	30 - 59	60 - 89	90 - 119	120 - 149	150 - 179	>= 180 days	Balance Due:
Payment Due:				1,186.14	4,749.39			5,935.53