ABUSE AND DIVERSION OF NARCOTICS: THE HIDDEN MOTIVATION FOR FRAUD

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Why are we here?

- Explain nexus between the inappropriate prescribing of narcotics and workers' compensation fraud
- Discuss shifting motivations for fraud and who is committing it
- Describe real world criminal prosecutions resulting from inappropriate prescribing and lack of monitoring

NEXUS BETWEEN INAPPROPRIATE PRESCRIBING AND WC FRAUD

- Old days: majority of cases exaggerated injuries
  - Caught on video
- Now: Seeing more and more manufactured claims because of drug angle
  - Proof is in the medical records

JUST THE FACTS ....

- 74% of the opioids prescribed in CA are for work-related injuries
- Workers who received high doses of opioids stayed out of work 3X longer than those who took lower doses
- In 2010, workplace insurers in Cal. spent $252,000,000 on opioids, which was 30% of all prescription costs
- Nearly half the Schedule II opioid prescriptions in Cal WC are for minor back injury claims

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JUST THE FACTS ...

- 3% of prescribing physicians in WC account for
  - 55% of all Sch II prescriptions
  - 62% of all morphine equivalents
- Between 2005 – 2009 reimbursements for Sch. II drugs increased 3.8% to 23.6% of total prescription payments in Cal WC system
- According to meeting on Jan 24, 2013, the FDA has recommended up-classing hydrocodone to Sch. II

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JUST THE FACTS ....

- Narcotic use is highly concentrated among claimants: Narcotics consumed by top 1% of claimants accounts for nearly 40% of all WC narcotic costs
- Top 10% of claimants accounts for 80% of all WC narcotic costs
- Top 10% of claimants receiving Sch II morphine equivalents get prescriptions from 3.3 different physicians
- Recent studies have shown excessive opioid utilization has become a national public health issue as well as a known cost driver for WC

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Just the Facts

- From 1998 and 2008 While the use of all prescription medications rose 61% during that time, the use of Schedule II opioids, which include Oxycodone, Fentanyl Citrate, Morphine, Methadone, Hydromorphone and Oxymorphone, increased by 380%.

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Just the Facts

- 2011 report by the CDC noted that in 2007, drug-induced deaths had become more common than alcohol-induced or firearm-related deaths in the United States, that the increase in drug abuse and related deaths was associated with "prescription opioid painkillers and psychotherapeutic drugs being prescribed more widely by physicians," and that these drugs had "supplanted illicit drugs as the leading cause of drug-related overdose deaths."

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FRAUD VS. ABUSE

- Fraud is abuse
- Not all abuse is fraud

LIE +
KNOWLEDGE +
MATERIALITY = FRAUD

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INSURANCE CODE 1871.4(A)(1)

- Make or Cause to Be Made
- Knowingly False or Fraudulent Material Statement
- For the Purpose of Obtaining *or* Denying Compensation

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PUNISHMENT

Wobbler: Felony or misd

- Felony: 2, 3, 5 SP
- Misd: 1 year CJ and/or $50,000
- 2 year enhancement for each prior

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APPLICANT FRAUD: Claimant lies about...

1. Whether injury even occurred
2. Where injury occurred
3. Extent of injury
4. Whether or not had other similar injuries
5. Whether or not have other relevant medical issues, i.e.,
   - Already being prescribed drugs
   - Addicted and/or going to rehab
6. Whether working a similar job while on disability

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MOTIVES OF CLAIMANTS

- Claimant get drugs to feed his own addiction
  - Poly-substance abuse
  - Those habituated because of injury
- Claimant diverts drugs
  - Sell or exchange for drug of choice
  - Sell or exchange for $, without even having to pay for inventory (Oxycodone = $50 per pill)
  - Pay off co-conspirators; lure children

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MOTIVES OF CLAIMANTS

- Addicted applicants who have burned through sick time manufacturing claims so that they
  - don't have to go to work
  - paid to not go to work
  - get drugs
  - have the time to go to rehab
  - get paid while going to rehab
- Increased treatment, including prescription of drugs, results in increased payments (TTD & PD)

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WHY DIDN'T DOCTORS TREATING THESE CLAIMANTS DETECT FRAUD?

- Unknowing facilitators
  - Failure to ask thorough questions about past and present medical history, including
    - Chemical dependency/psych history
    - Rehab
    - Prescribed opioids
  - Failure to thoroughly document what questions are asked and to document complete patient responses

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WHY DIDN'T DOCTORS TREATING THESE CLAIMANTS DETECT FRAUD?

- Unknowing facilitators
  - Medical providers not ordering CURES reports, which reveal when claimants obtain multiple prescriptions from different providers
  - Medical providers (including ER doctors) giving more pills than necessary generally
  - Medical providers prescribing a large amount of drugs at once

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MEDICAL PROVIDERS AS UNKNOWING FACILITATORS

- Med. Providers failing to review prior medical records
- Med. providers failing to drug test and/or ignoring illegal drugs on board
- Med. Providers not taking action when patient doesn't test for drugs they should be taking
- Medical providers not recognizing and/or following up on red flags

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CLAIMANT RED FLAGS

- Subjective complaints of pain with no objective medical evidence to explain stated levels of pain
- Missing appts
- Failure to follow through with treatment, other than obtaining controlled substances, including
  - Physical therapy
  - chiropractic

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CLAIMANT RED FLAGS

- Changing doctors at critical junctures in the claim
- ER visits to obtain prescription drugs
- Any info claimant is selling drugs, forging prescriptions, stealing drugs
- Lying about history of substance abuse, addiction or treatment

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CLAIMANT RED FLAGS

- Trying to obtain controlled substances before renewal date
  - Ran out because of pain
  - Lost meds
  - Meds stolen
  - Going away on vacation
  - Family member took
- Criminal history of arrest and/or conviction for alcohol or drug related charges

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RED FLAGS IN CURES REPORTS

- Patient obtaining & filling prescriptions from multiple providers for the same controlled substance
- Filling controlled substances at different pharmacies
- Filling prescriptions for other controlled substances, especially opioids, and failing to disclose to treating medical provider

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RED FLAGS IN CURES REPORTS

- Patient obtaining prescriptions, but not filling prescriptions
- Dispensing physician or pharmacy not reporting filled prescriptions to PDMP/CURES

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MEDICAL PROVIDERS WHO COMMIT FRAUD

- Providing medical services & prescribing drugs when not medically necessary
- billing for services not provided
- Medical providers abetting fraud by falsifying reports and/or knowingly failing to disclose information that impacts the claim

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MEDICAL PROVIDERS WHO COMMIT FRAUD OR OTHER CRIMES

- Not advising auto carrier about WC claim and vice versus
- Attributing injury to WC when knows it was result of non-industrial cause
- Failing to obtain records from prior/outside records and act on material info in them
- Med provider continues to treat at same levels after being advised of red flags, without further investigation

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MEDICAL PROVIDERS WHO COMMIT FRAUD OR OTHER CRIMES

- Either refusing to obtain relevant records and/or to investigate red flags in them
- Med provider explains away red flags with explanations that are unreasonable
- Knowingly prescribes or dispenses to someone when prescriber or dispenser knows or reasonably believes the drugs or substances will be used for a nonmedical purpose

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RED FLAGS: MED PROVIDERS

- Boilerplate reports
- Continuous, high-cost exams
- Paid in cash
- Failure to order blood/urine
- Failure to take additional steps to restore patient to functionality

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BILLING FRAUD

Involves any verbal or written lie that forms the basis of any billing for services or benefits by any provider, including

- doctors
- rehab counselors
- pharmacists
- interpreters
- chiropractors

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BILLING FRAUD

- Billing for patients never examined
- Billing for more time than was spent
- having lay people conduct tests, then billing for those services and representing that those people were licensed
- making a specialty referral that is unrelated to the injury

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THE ROLE OF PHARMACISTS

- Pursuant to Health & Safety Code Section 11190, and Business & Professions Code Section 1170, all licensees who dispense Schedule II through IV controlled substances must provide the dispensing information to the Department of Justice on a weekly basis in a format approved and accepted by the Atlantic Associates Inc.(AAI),and the DOJ.

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HOW DO WC CARRIERS TRY TO MITIGATE FRAUD?

- MPN notifies med provider must have
  - An opiate policy
  - Sign up for CURES & order reports
  - Contracts with patients
  - Treatment plan to include how to get patient functional
  - Effective drug testing
  - Not allowed to order services or dispense substances in which have a financial interest

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WHAT CAN YOU DO TO HELP PREVENT WC FRAUD?

- Report to Med/Pharmacy Board
- Report to local DA
- Report to California Department of Insurance

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