

Overview of Pharmaceutical Abuse & Diversion: A Growing Threat to the Houston HIDTA



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Executive Summary

Overview

The threat of pharmaceutical drug abuse and diversion in the Houston HIDTA has been dangerously high and increasing for the past several years. Drug investigators report that it is becoming more widespread, addicting abusers from middle school to middle age.

Perhaps the most concerning threat related to pharmaceutical abuse is the alarmingly high potential for overdose or accidental death from controlled prescription drugs. In Harris County alone, from 2006 through 2008 pharmaceuticals were present in over 66% of the 1533* cases of toxicity-related deaths.[†] In 2009, over 78% involved pharmaceuticals.

Not only is diversion a deadly problem, it is incredibly profitable. Pain management clinic owners gross an average of \$4,000-\$5,000 per day at each location. A successful owner running multiple clinics can easily make \$75,000 a week from only three operations, getting paid entirely in cash.

Key Findings

Diversion of pharmaceutical drugs continues to be a present and growing threat in the Houston HIDTA.

- ❖ **The practice of “doctor shopping” to obtain mass quantities of pharmaceutical pills for illicit use continues unabatedly and legally.**

“Doctor shopping” is defined by drug investigators as the practice of going to multiple health care professionals in an effort to obtain numerous prescriptions for the same drugs. There are currently no state laws in Texas prohibiting this practice. Consequently, criminals have used the lack of legislation to their advantage, amassing enormous amounts of controlled prescription drugs, such as hydrocodone, alprazolam and carisoprodol to sell for illicit use.

- ❖ **Use of pain management clinics is the predominant method of pharmaceutical diversion within the Houston area and exploitation is extensive.**

Use of pain management clinics for diversion schemes is widespread in the Houston area. Drug investigators have identified at least 150 pain management clinics connected to diversion activities in Harris County. Drug dealers have organized prescription drug rings to go to these clinics in order to obtain large amounts of medication quickly. Due to high demand for these drugs, criminals have found that engaging in diversion is quite lucrative, and this is an impetus for their continued involvement in this illicit activity.

- ❖ **The problem is widespread throughout the Houston HIDTA. However, diversion using pain management clinics and prescription rings presents the greatest threat in the northern counties.**

Pharmaceutical drugs are prevalent and lethal.

* This figure represents the number of toxicity-related deaths, ignoring those with alcohol as the sole toxin, containing either pharmaceuticals or illicit substances, i.e., not carbon monoxide poisoning from running a car in a closed garage or other similar methods of suicide and accidental deaths.

- ❖ **Most law enforcement agencies within the Houston HIDTA reported a high level of availability of controlled prescription drugs in their communities.**

Not only do the majority of surveyed law enforcement personnel throughout the region indicate that availability of prescription drugs is high, agencies in 15 out of the 17 Houston HIDTA counties reported an increase in availability of diverted pharmaceuticals in 2009.

- ❖ **The “Pharmaceutical Cocktail,” a common trio of medications prescribed at pain management clinics, is the single leading cause of toxicity-related deaths in Harris County. This cocktail consists of hydrocodone, alprazolam and carisprodol.**

Law enforcement is hindered by a lack of laws criminalizing diversion.

- ❖ **The general consensus among drug investigators is that the diversion problem must be addressed through changes in legislation.**

Unlike drugs such as cocaine or marijuana, possession of prescription drugs is not inherently illegal. It may be obvious that a person found with multiple bottles of hydrocodone is involved in diversion and/or drug abuse. However, technically, no crime has been committed if each of the bottles is labeled with that individual’s name. Laws must be changed so that law enforcement can better respond to the growing threat of pharmaceutical diversion in Texas. Most importantly, passing a law outlawing “doctor shopping” is imperative.

The level of pharmaceutical abuse in the Houston HIDTA is unknown.

- ❖ While seizures, deaths, and arrests can all be measured, these are only the visible results of prescription drug abuse and not inclusive of the amount that goes undetected. Little is known regarding the level of diversion from online pharmacies. They are usually operated from other countries and offer a high level of anonymity to clients. Although this does not constitute as imminent of a threat as drug rings and pain management clinics, there is potential for this to become a more exploited method of procurement, especially if “doctor shopping” is outlawed in the future.

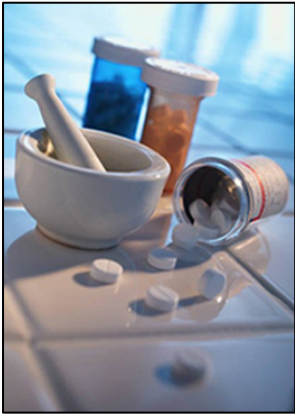
If legislation passes in the State of Texas, new methods of enforcement against diversion and abuse of pharmaceuticals will become available. How law enforcement *and* criminals will adapt to these changes remains unknown.

Outlook

Prescription drug abuse will continue to increase within the Houston HIDTA because of the addictive potential of these controlled substances. As abuse increases, public safety issues such as “drugged” driving will become more prevalent. Diversion is unlikely to decrease without laws in place to criminalize “doctor shopping.” Thus, it is essential that legislation be passed to assist law enforcement to combat diversion. Strong support will be necessary to bring forth the necessary changes in Texas law to protect the Houston HIDTA from this substantial threat.

Overview of Prescription Drug Abuse

While the abuse of prescription drugs is not new to the Houston HIDTA, both research and interviews with law enforcement personnel indicate that the threat of abuse for the past three years collectively has been significantly greater than the threat prior to those years.



Throughout the region, drug investigators indicated that the age range of those abusing prescription drugs has widened from the teen to young adult population to include those as young as middle school students and more adults in their thirties and forties.

Prescription Drug-Related Deaths

From 2006 through 2008 in Harris County, pharmaceuticals were present in more deaths than cocaine, heroin, and methamphetamine combined.¹ The total number of deaths involving pharmaceuticals (whether pharmaceuticals alone or in conjunction with illicit substances) for this time period was 1020; deaths involving illicit substances totaled 762—a difference of 33.86%.¹

Cocaine was overwhelmingly the greatest cause of death for single drug overdoses. However, of the 467 toxicity related deaths in Harris County in 2009, 78.37% of the cases contained traces of pharmaceutical drugs. More statistical information on overdoses and deaths related to drug use can be found in Appendix A.

Harris County Toxicity Related Deaths 2006 through 2008

Type of Toxicity	Number of Cases	Percent of Total Cases
Illicit Substances Only	513	33.46
Pharmaceutical Only – Single Drug	119	7.76
Pharmaceutical/Narcotic Combination	249	16.24
Pharmaceutical Only – Multiple Drug	652	42.53

Harris County Toxicity Related Deaths 2009

Type of Toxicity	Number of Cases	Percent of Total Cases
Illicit Substances Only	101	21.63
Pharmaceutical Only – Single Drug	43	9.21
Pharmaceutical/Narcotic Combination	105	22.48
Pharmaceutical Only – Multiple Drug	218	46.68



Driving Forces

According to anecdotal evidence, the perception that prescription drugs are safer than traditional illicit drugs is a major driving force behind the rampant abuse. The FDA's regulations and oversight of the production of pharmaceuticals ensures uniformity of product, as well as purity. Prescription drug abuse is also perceived as being more socially acceptable than illicit narcotics—partly due to the fact that prescription drugs are not inherently illegal to purchase, possess, or consume. This makes diversion and abuse very difficult to combat.

Predominant Drugs of Abuse: The “Pharmaceutical Cocktail”

The most prevalent prescription drugs diverted in the Houston HIDTA are hydrocodone, alprazolam, and carisoprodol. These pharmaceuticals are often taken in conjunction with each other in a “pharmaceutical cocktail.”



These drugs fall under the category of controlled substances. Based on a set of criteria that includes potential for abuse, medical application, public risk associated with abuse, and several other factors, controlled prescription drugs are classified as Schedule II, III, IV or V drugs under the federal Controlled Substance Act. See Appendix B for further information on Schedule I-V drugs.

Hydrocodone

- Hydrocodone is a powerful analgesic, "nearly equipotent to morphine for pain relief."² Hydrocodone was originally classified as a Schedule II controlled substance; however, products containing hydrocodone are classified as Schedule III-V depending on dosage and other active ingredients. Schedule III hydrocodone products (Vicodin®, Lorcet®, Lortab®, Xodol®, etc.) present the greatest threat of diversion and abuse in the Houston HIDTA.

Alprazolam

- Alprazolam (Xanax®) is a depressant in the family of drugs known as benzodiazepines. This pharmaceutical acts on the central nervous system to reduce anxiety and alleviate panic disorders.³ Alprazolam remains a Schedule IV drug.

Carisoprodol

- Carisoprodol (Soma®) is licitly used as a muscle relaxant. There has been an increase in diversion and abuse of carisoprodol over the past several years. However, most recently, diversion of Soma® has been on the decline due to being less profitable than hydrocodone and alprazolam. Texas state law has recently been passed to include carisoprodol as a Schedule IV controlled substance at the state level. However, this substance is not federally controlled under the Controlled Substance Act.⁴

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Diversion Techniques

Within the Houston HIDTA, prescription drugs are diverted by criminals in a variety of ways including “doctor shopping,” using pain management clinics and prescription rings, the use of fraudulent prescription schemes such as forged or altered prescriptions, and schemes in which non-licensed individuals call in fraudulent prescriptions to multiple pharmacies. In addition, controlled prescription drugs are being stolen from medical facilities such as hospitals and pharmacies, and they are purchased through Internet websites and from Mexican pharmacies. Abusers can also obtain user level quantities of these pills through illegal street sales, from household medicine cabinets, or by attending “pill parties,” a practice which is popular among teens. These methods are discussed in further depth below.

Doctor Shopping Schemes

“Doctor shopping” is defined as the practice of going to multiple doctors in an effort to obtain numerous prescriptions for the same drugs. Obtaining controlled prescription drugs through “doctor shopping” for illicit use is the primary method of pharmaceutical diversion within the Houston HIDTA.

There are currently no state laws in Texas prohibiting “doctor shopping.” An individual may legally visit any number of doctors at any time, receiving prescriptions for the same medications from each health care professional. Consequently, this method of obtaining large quantities of pharmaceuticals is occurring unabatedly in the Houston area. It remains the predominant method of diversion within the metropolitan region of the Houston HIDTA.

Pain management clinics often prescribe the drugs coveted by prescription drug abusers and distributors. Practitioners at these clinics commonly prescribe the “pharmaceutical cocktail” of hydrocodone, alprazolam, and carisoprodol to their patients. As a result, pain management clinics have been used for the purpose of obtaining these drugs for diversion.

Exploitation of Pain Management Clinics



Use of pain management clinics (also referred to as “pill mills” or “doc in a box”) for diversion activities is widespread, particularly in the larger cities within the Houston HIDTA. In Harris County, there have been over 150 illicit pain management clinics identified by drug investigators.

Advertisements to entice “patients” to come to these pain management clinics are often printed on flyers containing an address, map, and cost of examination. Examples of these flyers can be found in Appendix C.

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Pain management clinics generally consist of a medical director and several employees—either nurse practitioners, physician assistants, or foreign medical graduates who see the patients during their visits. These clinics have minimal operating costs. They require little to no overhead and no expenses related to legitimate medical practices such as malpractice insurance.



Diversion schemes using pain management clinics generally involve the following scenario. The clinic’s medical director will sign thousands of blank prescriptions. With a pre-signed prescription, practitioners will administer cursory examinations before completing the prescription for the patient. The patient will then go to a pharmacy to obtain the prescription drugs. Either they will use these drugs illicitly for personal use, or they will give the pills to a prescription drug dealer who will pay them for their participation in the scheme.

Use of Prescription Rings to Obtain Mass Quantities of Pharmaceuticals from Pain Management Clinics

In general, procurement methods are not limited to single rogue individuals. More often, a drug dealer will collect mass quantities of these pills from multiple sources, whether from recruiters for prescription drug rings or pain clinic customers, to sell them for illicit use. Recognizing the potential profitability, drug dealers have organized prescription drug rings to cheaply gather a large amount of medication.

Process for Obtaining Pills using Prescription Drug Rings⁵

- Recruiter goes to a homeless shelter in the morning and gathers 4-10 people
- Transients receive money for office (pain management clinic) visits
- Recruiter takes transients to three or more offices for separate examinations
- Transients receive money to get prescriptions filled, giving the pills to the recruiter
- Transients are paid \$20-35/day for their time
- Recruiters are paid \$5-10/person

The use of prescription drug rings by criminals in the Houston metropolitan area is widespread. In fact, in this area, drug rings were reported as the most pervasive method of diversion.

Testimony from a convicted drug dealer:

“The records were fake, they wasn’t mine, they wasn’t nothing to do with me – they just had my name on them on top of the piece of paper and had somebody else’s problems written on it... Out of the 30 to 40 doctors that I went to over the last 4 to 5 years I’ve only been verified one time on records and thrown out of the doctor’s office.”
(Confessions of a prescription drug dealer)⁶ See Appendix D for full transcript.



Involvement of Pharmacies in Diversion Schemes

The average U.S. pharmacy fills prescriptions for about 88,000 hydrocodone tablets per year while the average pain management clinic prescribes more than one million tablets in the same time period. In order to avoid detection, health care practitioners at pain management clinics often fax prescriptions to known and trusted pharmacists in an attempt to avoid detection.⁵ In many cases, pharmacies associated with the pain management clinics are involved in the diversion scheme. In fact, in Harris County, there are over 100 “mom and pop” pharmacies that cater to corrupt pain management clinics.⁷

Variations in “Doctor Shopping” Schemes Involving Pain Management Clinics

Use of “rogue” clinics is a new trend being seen by the Houston HIDTA Diversion Squad. The scheme is similar to the traditional exploitation of pain management clinics for diversion activities, but with a variation. A physician, hired to take part in the illicit activity, is shown a building that will be set up as a clinic. However, medical professionals may never actually work there. Instead, the building will house an assistant who will answer the phone and fax prescriptions. In return for the physician’s DEA and DPS numbers, the doctor will be paid from \$5000 to \$8000 per month. As with the traditional scheme, recruiters (i.e., “crew bosses”) round up individuals to participate and then take the individuals to various pharmacies to collect the pills. Prescriptions are faxed to up to three or four pharmacies per day per person. If the physician is questioned about the number of prescriptions for pain pills being written, the doctor just says that his or her identification must have been stolen.⁷

Profitability of Using Pain Management Clinics for Diversion



There is an enormous amount of money to be made by criminals using pain management clinics for illicit activities. This lucrative potential, coupled with a high demand for diverted pharmaceuticals within the Houston HIDTA has contributed significantly to a proliferation of new pain management clinics opening their doors in the Houston HIDTA in the past several years.

Owners of these clinics see the greatest profit with the least amount of risk, earning between \$4,000-\$5,000 per day (all cash based).⁸ Successful owners will open multiple pain management clinics due to the enormous potential for profitability with virtually no time commitment.

Potential Earnings for a Pain Clinic Owner *

Number of Clinics	Per Day	Per Week	Per Month	Per Year
1	\$5,000	\$25,000	\$100,000	\$1,200,000
3	\$15,000	\$75,000	\$300,000	\$3,600,000
5	\$25,000	\$125,000	\$500,000	\$6,000,000

*Gross Earnings

There was recently a case in which one medical director oversaw as many as 20 clinics in the Houston area. For their services, they are generally paid \$2,000-\$4,000 per week at each pain clinic that they oversee. A medical director employed at ten pain management clinics could make between \$90,000 and \$120,000 per month with a \$5,000 fee to open a clinic.⁸ Physician's assistants and nurse practitioners are able to make up to \$50 per hour.⁸ One certified physician's assistant in late 2008 reported that she made more than \$127,000 annually, all claimed on her 1099. This is above the going rate, but because of her certification and seeing 20-30 patients each day, she was able to earn this amount.⁸ Foreign medical graduates are often used instead of nurse practitioners and physician assistants because they are less expensive to hire, thus allowing for a higher profit margin for the pain management clinic.

Fraudulent Prescription Schemes



Use of Fraudulent or Altered Prescriptions

Prescription forgery using stolen prescription pads is also a common diversion tactic. Another forgery technique consists of altering the dosage, quantity, or drug listed on a non-forged prescription. In Corpus Christi, the number of prescription fraud cases went up 54% from 2007 to 2009, the number of misdemeanor cases of illegal possession of prescription drugs increased by 88%, and in 2009, there were seven felony cases.⁹

Phoning Illegal Prescriptions to Pharmacies

In another organized effort to secure prescription medication, small groups will coordinate and call in prescriptions to as many as five to seven pharmacies (in a shotgun approach) claiming to be, or representing, a doctor.⁹ This is done toward the end of the work day so that the pharmacists do not have time to call the doctor's office to verify the prescription. Of the several pharmacies that a group calls, the hope is that there will be a few that will accept and fill the prescription. It should be noted that these calls are to legitimate pharmacies, not the rogue operations in cooperation with crooked doctors and/or patients.



Another trend identified in Corpus Christi is that a person will phone in prescriptions to pharmacies in Houston (or vice-versa), providing the name of someone in Houston to pick up the medicine.⁹ This requires reciprocity between the people in each city.



Theft from Hospitals & Pharmacies

Controlled prescription drugs have been stolen from pharmacies and hospitals within the Houston HIDTA. Hospitals have measures in place to ensure against theft of medication by doctors and nurses; however, methods exist that are very difficult to control. One such process includes stealing the remainder of medicine contained in a vial administered to a patient. These diverted drugs are then consumed by the health care professional during the same shift, creating a danger for their patients. In order to avoid detection of abuse, self-injections are most often given between toes hiding the marks left by the needle.

Pharmacies are targets of theft, though not as commonly by employees. For example, drug investigators from the Victoria Police Department reported that there had been a theft in late 2009 from the Port Lavaca Pharmacy in which 18,000 hydrocodone tablets were stolen.¹⁰

Another avenue for diversion can occur when a pharmacist falsely reports a burglary (or overstates how many dosage units were stolen during a legitimate burglary). This practice allows the pharmacist to claim certain drugs as being stolen. These drugs are then sold on the street.

Online Purchases of Pharmaceuticals

The online sale of pharmaceuticals is a diversion tactic that is particularly difficult to combat. Online purchasers of medication are shielded by a level of anonymity that is not found when visiting brick-and-mortar pharmacies. Many of these pharmacies operate in other countries where the laws surrounding prescription drugs are less strict (or non-existent). In an effort to better cover themselves from law enforcement and lawsuits, online pharmacies often include disclaimers instructing purchasers that they must adhere to, and be compliant with, all applicable state, local, and federal laws. However, this is obviously not enforced.



The threat presented by rogue internet pharmacies is very difficult to assess, as there is a cloud of anonymity surrounding customers and transactions. Although the most common methods of procurement include “doctor shopping” and prescription fraud, online pharmacies create an avenue for abusers who are willing to pay a little bit more for their drugs in exchange for anonymity and the ability to avoid pain management clinics and street-level dealers.

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Excerpts from “International Internet Drug Ring Shattered”¹¹

--News from the DEA, April 2005

“For too long the Internet has been an open medicine cabinet with cyber drug dealers illegally doling out a vast array of narcotics, amphetamines, and steroids. In this first major international enforcement action against online rogue pharmacies and their sources of supply, we’ve logged these traffickers off the Internet.” – DEA Administrator Karen P. Tandy

The FBI remains committed to investigating the illegal sale of pharmaceuticals over the Internet. The FBI’s Internet Pharmaceutical Fraud Initiative is working with the Drug Enforcement Administration, and other federal, state, local and international law enforcement partners to combat this crime and dismantle the responsible criminal enterprises. Illegal pharmaceuticals pose a great risk to the health and welfare of the American public. These drugs are being manufactured overseas in unregulated facilities, smuggled into the United States in an uncontrolled environment, and distributed without oversight of a licensed physician or pharmacist.” – FBI Director Robert S. Mueller III

"Prescription drugs help millions of Americans every day. But their misuse is becoming a serious problem, abetted by drug traffickers who are using the Internet to attempt to subvert our medical prescription system. E-traffickers that target young people and those suffering from the disease of addiction are now the target of law enforcement action, while we continue to ensure proper access to needed medications." – Director of National Drug Control Policy John Walters

Use of Mexican Pharmacies

Though illegal to bring controlled substances across an international border, purchasing medicine that requires a prescription in the U.S. is legal and cheaper in Mexico than in Texas. These drugs are then smuggled into the country and sold on the street.

Prescription drugs from Mexico are typically found in the southern region of the Houston HIDTA. Kleberg County Sheriff’s Office reported that these drugs are seen more frequently toward the end of March when winter tourists leave Mexico and head north back into the United States.¹²



Other Methods of Obtaining User Level Quantities of Pills



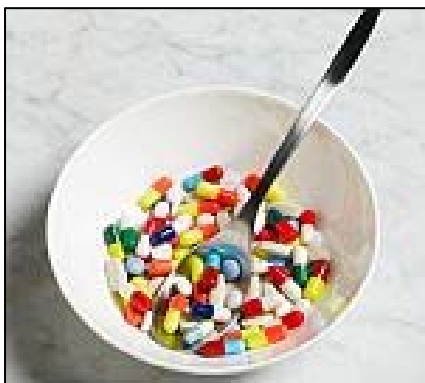
Illegal Sales

Diverted pharmaceuticals are commonly purchased on the street from individuals and gang members. Many prescription drug dealers are former crack dealers who have converted to pharmaceuticals because it is just as profitable with less risk of prosecution.⁸ For instance, drug investigators from the Baytown Police Department reported that in Baytown, they are now seeing “pill houses” instead of crack houses.¹³

Profitability of diverted pharmaceuticals varies significantly within the United States depending on geography. In Houston, the same hydrocodone tablet that costs \$0.50-\$1.00 in a pharmacy, \$1.00 in a pill mill, and \$3.00-\$5.00 on the street will sell for \$5.00-\$7.00 in Louisiana and \$8.00 on the Tennessee/Arkansas border.^{5,8} The price continues to increase the farther east and northeast they are sold.

Medicine Cabinets

The easiest and most common method for the youngest prescription drug abusers is to steal from their parents’ or grandparents’ medicine cabinets. This is prevalent among 6-12th graders, trading and selling pills with other students at school. Because of this, prescription drugs have purportedly replaced marijuana as the most pervasive gateway drug.



Pill Parties

Teens also obtain controlled prescription drugs at parties called “pill parties” or “pharm parties.” They bring pills from their family’s medicine cabinet to a party. The pills are then tossed into a communal bowl or candy dish. At the party, teens take random pills from the bowl and ingest them.

Geographical Variance in Pharmaceutical Diversion within the Houston HIDTA

Geographically, the threat of pharmaceutical abuse exists throughout the entire Houston HIDTA. However, there are some area-specific trends and patterns.



The 17 counties within the Houston HIDTA include eight northern counties and nine southern counties. Counties within the northern region of the Houston HIDTA include Hardin, Orange, Jefferson, Montgomery, Liberty, Harris, Galveston and Fort Bend. Counties within the southern region include Victoria, Refugio, Aransas, San Patricio, Jim Wells, Nueces, Kleberg, Brooks and Kenedy.

- ❖ “Doctor shopping” presents the greatest threat in the northern Houston HIDTA counties. In these counties, abuse of pharmaceutical drugs is very high and diversion using “doctor shopping” schemes and pain management clinics is rampant. Because of the close proximity to Louisiana, where “doctor shopping” is illegal, cities such as Orange, Beaumont and Houston suffer a greater frequency of this method of diversion as Louisiana residents cross state lines into Texas to obtain controlled prescription drugs.



Orange Police Department Seizure, January 2009

- ❖ In other Houston HIDTA counties such as Nueces County, diversion techniques involving fraudulent prescription schemes are more popular, and use of pain management clinics for diversion is minimal.
- ❖ Most Houston HIDTA counties reported high availability of controlled prescription drugs in their communities. In fact, agencies in 15 out of the 17 counties reported an increase in the availability of these drugs in 2009.
- ❖ Only drug investigators in the southernmost Houston HIDTA counties, such as in Brooks and Kenedy counties, reported that they see minimal use of diverted pharmaceuticals. They indicated that, in general, if these drugs are encountered, users are just passing through on the highways or at the Border Patrol checkpoints.

Efforts to Combat Pharmaceutical Diversion

Law Enforcement Efforts to Curtail Diversion

In the past year, drug investigators have put forth great effort to combat diversion within the Houston HIDTA. A primary focus has been the attempt to reduce the number of illicit pain management clinics.

- ❖ **One tactic diversion squads have used in Harris County is to weaken pain management clinic operations by targeting foreign medical graduates working at these establishments.**

As mentioned, foreign medical graduates (FMGs) are often used instead of nurse practitioners and physician assistants because they are cheaper and more easily replaced. However, although their licenses may be valid in their country of origin, they are most often practicing medicine illegally in the United States. The DEA and Houston HIDTA Diversion Squad have used this to their advantage, and have focused their efforts on the removal of FMGs from practice.

Practicing medicine without a license is a class three felony in the state of Texas. This charge prevents an FMG from being able to ever practice medicine or receive a medical license. Diversion officers have found that FMGs can easily be flipped and used as informants to assist investigators in going after criminals higher in the organization, such as medical directors and pain clinic owners.⁵ In addition, this enforcement technique also disrupts the trend of FMGs working at pain clinics while they are pursuing their medical license, then becoming medical directors, and opening their own clinics.

- ❖ **Diversion officers work closely with pharmacies to identify and curtail illicit prescribing.**

An enormous and incalculable amount of prescriptions are filled by legitimate pharmacists who are unknowing participants in diversion schemes. Criminals employ a number of methods to pass prescriptions (both legally and illegally obtained) through a legitimate pharmacy such as use of fraudulent prescriptions, prescriptions acquired through “doctor shopping,” stolen prescriptions, and prescriptions received from crooked doctors at pain management clinics.

Because pharmaceutical diversion often directly includes owners and managers of pharmacies who are strongly opposed to diversion, law enforcement and pharmacies



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work closely together to combat illicit prescribing. Many pharmacies, particularly Walgreens, will flag suspicious activity and report that information to law enforcement. In Orange County, law enforcement worked closely with their local pharmacies, the Texas State Pharmacy Board and the Texas State Medical Licensing Board. Some pharmacies quit accepting prescriptions from pain management clinics. These groups were able to assist administratively in getting some of these clinics in the area shut down in 2008.

❖ **Undercover operations have been used successfully to combat diversion taking place at pain management clinics.**

Undercover sting operations at pain management clinics in Beaumont have proven successful at bringing down crooked doctors, and clinics in Jefferson County have been shut down using this approach.¹⁴ In June 2007, two major pain management clinics were shut down using evidence gathered from federal search warrants. Afterwards, many of the other pain management clinics in Jefferson County closed down from fear of the same happening to them.¹⁵

Although there has been a slight resurgence of pain management clinics recently in the Beaumont area, shutting down those two major clinics had a substantial impact on overdose deaths, drug seizures, and drug arrests in Jefferson County. In fact, not only was there a substantial increase in seizures and arrests, but shutting down pain management clinics in June 2007 also resulted in 27% fewer deaths than in the previous year. As can be seen in the table below, deaths from prescription drug overdoses decreased from 56 in 2006 to 41 in 2007.

Jefferson County Pharmaceutical Deaths, Seizures, Arrests¹⁵ (See also Appendix E)

Year	Prescription Overdose Deaths	Prescription Drug Seizures	Prescription Drug Arrests
2005	9*	1,410 dose units	30
2006	56	2,726 dose units	49
2007	41	4,680 dose units	74
2008	61	2,674 dose units	51

*Data provided for 2005 Prescription Overdose Deaths was incomplete.

❖ **Law enforcement efforts to decrease abuse of diverted pharmaceuticals include identifying and targeting “drugged” drivers.**

“Drugged” driving is becoming an increasing public safety concern nationwide.¹⁶ Prescription drug abuse has led the Lumberton Police Department in Hardin County to change their approach to DUI arrests. Since more than half of all DUIs in Lumberton are the result of intoxication without the presence of alcohol, a breathalyzer is not an effective test, and officers must transport DUI suspects to the hospital for blood testing. In Lumberton’s department of only 15 officers, there are often as few as two of them on duty at a given time.¹⁷ Although important to protect citizens from danger by identifying this type of drug abuse and making arrests, these continual transports for testing tax the law enforcement resources in smaller communities in the Houston HIDTA.

Efforts to Curtail Diversion by Texas Government Agencies

Prescription Drug Monitoring Program

The Texas Department of Public Safety (TxDPS) maintains a prescription drug monitoring program (PDMP) that tracks and archives information regarding every Schedule II-V drug prescribed in the state of Texas. Data kept includes the prescribing doctor's name, DEA registration number, patient name, patient DOB, dosage, quantity, and drugs prescribed. Enacted in 1982, the original PDMP monitored Schedule II drugs alone; however, "effective September 1, 2008, the Texas Legislature expanded the program to include the monitoring of Schedule III through Schedule V controlled substance prescriptions."¹⁸ See Appendix F for more information on these changes and controlled substance prescription data received by the Texas DPMP.

Program Successes and Limitations

The PDMP has had an impact on pharmaceutical diversion in Texas. After requiring a triplicate prescription for Schedule II controlled substances in Texas in 1982, there was a 64% decline in the amount of Schedule II drugs prescribed.¹⁹ Unexpectedly, however, this created an increase in the use of Schedule III prescriptions. In 1992, it was proposed by the Texas Board of Pharmacists to change "all dosage forms of hydrocodone from Schedule III to Schedule II of the state controlled substances act." Their claim was that this would "virtually eliminate the problem of forged prescriptions and significantly reduce the availability of this drug for illegal purposes."¹⁹ Although this was brought to the attention of law enforcement and legislators, very little was done with the proposal.

The PDMP is frequently used as an investigative tool by law enforcement to verify information when receiving a complaint regarding a doctor. This information makes it much easier to narrow down a search, particularly for Schedule III-V drugs.¹⁴ However, knowledge of this program's existence and/or benefit in drug investigations, and its use by some law enforcement agencies is limited. Of law enforcement agencies interviewed for the purpose of this threat assessment, in general, federal agencies demonstrated a greater use of the PDMP than local law enforcement. In fact, some of the local departments were not aware of the existence of a drug monitoring program.

The number of ways law enforcement can access PDMP data is also limited. The PDMP in Texas is one of the few that does not offer an electronic database online through a secured website; requests must go through the PDMP. However, TxDPS has stated a desire to make a secure website that will allow law enforcement officials to be able to run their own reports.²⁰

Legislation: Past and Present

Strict federal laws prohibit the carrying, distributing, and consuming of illicit substances such as cocaine and methamphetamine. Anyone caught with these drugs is guilty of a crime. However, prescription drugs are not inherently illegal, often making it very difficult to establish whether any crime is being committed. Furthermore, “doctor shopping,” the most commonly reported diversion tactic in the Houston HIDTA, is completely legal in the state of Texas. An individual pulled over for a traffic violation found with multiple bottles of hydrocodone is obviously abusing the pain medication, but as long as their name is on each bottle, technically, no crime has been committed and law enforcement can take no action. As can be imagined, this has been enormously frustrating for law enforcement attempting to control the diversion of controlled prescription drugs in their communities.

The consensus among drug investigators within the Houston HIDTA is that the problem of diversion must be addressed through changes in legislation. There are several laws pertaining to controlled substances and recently, attempts to curtail diversion through legislation have been made. A summary of historical and recent legislation is provided below.



Historical Legislation Controlled Substances Act

The Controlled Substances Act (CSA) of 1970 enables the regulation of controlled substances by dividing them into five different drug schedules based on eight criteria.²¹ Controlled substances are treated differently in punishment, enforcement, regulation, control, and policy based on their schedule. For instance, in Texas Schedule II drugs have traditionally required triplicate prescriptions whereas Schedule III-V have not. See Appendix B for more information on the Controlled Substance Act and drug schedules.

Intractable Pain Treatment Act (Texas Civil Statute Title 71, Article 2295c)

Enacted in 1989, the Texas Intractable Pain Treatment Act allows for doctors to prescribe controlled substances to patients whom suffer from intractable pain—“a pain state in which the cause of the pain cannot be removed or otherwise treated...”¹⁹ The practical application of this statute is that an individual is able to walk into any number of medical offices, complain of chronic pain, and without a thorough examination receive a prescription for pain medication. This facilitates “doctor shopping” and increases the amount of diverted pharmaceuticals.

Recently Proposed Legislation

Carisoprodol (Soma®) Now Schedule IV Drug In Texas

Carisoprodol is a commonly abused prescription drug. However, it is not controlled at the federal level. At this time, it remains up to individual states to regulate and make laws concerning the scheduling of carisoprodol. An amendment was proposed in May 2009, to add carisoprodol to the list of Schedule IV controlled substances under Texas State Law even though it is not a scheduled drug under the federal Controlled Substances Act (CSA). The amendment passed and this obligates that the distribution of this drug be monitored by the Texas PDMP. This is a major step forward in combating diversion of carisoprodol. Additionally, on November 17, 2009, the DEA issued a proposal at the federal level “to place the substance carisoprodol... into Schedule IV of the Controlled Substances Act (CSA).”²²



Bills Proposed in the 81st Texas Legislative Session

Three senate bills (SB) regarding pharmaceutical abuse/diversion were proposed in the 81st (2009) Legislative Session of Texas. Of the three bills, which included Senate Bill 911, Senate Bill 912, and Senate Bill 1281, only one (Senate Bill 911) was passed and enacted.

Senate Bill 911

This bill, effective September 1, 2009, was modeled in part after a statute imposed in Louisiana that shut down all but a “small handful” of pain clinics. Prior to the new measures, more than 100 pain clinics were operating in the state.⁶ SB 911 requires that all pain management clinics be owned and operated by a licensed physician, as well as be certified by the Texas Medical Board. This will grant authorities greater oversight and investigative tools to better combat this method of diversion.²³ A copy of this bill can be found in Appendix G.

Senate Bill 912

A large portion of prescription drugs sold on the street are stolen by employees of doctors’ offices and pharmacies.²⁴ SB 912 was proposed to establish punishment for persons abusing or diverting controlled substances “by virtue of the person’s profession or employment.”²⁴ This bill was not passed. If it had been enacted, it would not have been likely to increase detection of diversion. However, SB 912 should have at least acted as a deterrent. A copy of this bill can be found in Appendix H.

Senate Bill 1281

The introduction of SB 1281, a bill that would outlaw the practice of “doctor shopping,” was proposed in the 2009 Texas Legislative Session. This bill would criminalize seeking to obtain a controlled substance from a medical practitioner while in possession of an “existing prescription for a controlled substance issued for the same period by another practitioner.”²⁵ Unfortunately, the session ended before the final version of the bill could be debated. However, the bill is likely to pass in 2011. If passed in the next legislative session, SB 1281 will hopefully not only largely eliminate “doctor shopping” by Texans, but also eliminate Louisiana residents coming across state lines for prescriptions.²⁵ A copy of this bill can be found in Appendix I.

Necessary Changes

Strong backing from law enforcement is necessary to pass these bills in the next Texas legislative session. It is essential that the law enforcement community actively support SB 912 (medical profession or employment) and SB 1281 (doctor shopping) in the 2011 session to better equip law enforcement with the necessary means to effectively combat pharmaceutical diversion.

Intelligence Gaps

- To what extent are online pharmacies contributing to pharmaceutical diversion and abuse? What, if anything, can be done to better combat this problem on the state and local levels?
- What enforcement methods have been, and will be, opened up by recent and upcoming legislation? How will criminals adapt to these changes?
- What laws may be practically enforced to target specific offenders, such as doctors, patients, pharmacists, etc.

Outlook

Prescription drug abuse presents an enormous public safety risk and remains a burden on the state. Diversion and abuse of pharmaceuticals presents challenges and obstacles different than other forms of drug abuse. In order to be more effective in the fight against diversion, innovative and successful enforcement techniques must be openly shared within the law enforcement community. It is imperative that legislation be passed in the next state session, and as such, these state bills need to be persuasively and actively backed by law enforcement. The profits generated by diversion are substantial enough that the threat will continue to grow if laws are not created to assist law enforcement in their efforts to stop diversion activities.

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Appendices

Appendix A

Harris County Medical Examiner's Statistics 2006-Feb 2009

Drug	Frequency	Percent of data set cases involving specific drug	Percent of 1574 cases involving specific drug
Single Drug COD			
Cocaine	433	71.45	27.51
Heroin	30	4.95	1.91
Hydrocodone	17	2.81	1.08
Methadone	16	2.64	1.02
Methamphetamine	15	2.48	.95
Pharmaceutical/Narcotic Combination			
Cocaine	210	82.67	13.34
Alprazolam	134	52.76	8.51
Hydrocodone	117	46.06	7.43
Carisoprodol	55	21.65	3.49
Diazepam	48	18.90	3.05
Narcotic Combinations			
Cocaine	34	89.47	2.16
Heroin	24	63.16	1.52
Methamphetamine	10	26.32	.64
MDMA	7	18.42	.44
Phencyclidine	3	7.89	.19
MDA	1	2.63	.06
Amphetamine	1	2.63	.06
Opiates	1	2.63	.06
Pharmaceutical Cocktails			
Hydrocodone	402	59.47	25.54
Alprazolam	311	46.00	19.76
Carisoprodol	248	36.69	15.76
Diazepam	155	22.93	9.85
Methadone	112	16.57	7.12

Category	Total in each category	Percent of total cases
Single drug	606	38.50
Pharmaceutical/Narcotic Combination	254	16.14
Narcotic Cocktail	38	2.41
Pharmaceutical Cocktail	676	42.95

Appendix A (continued)

Drug Abuse Warning Network: 2004-2006 National Estimates of Drug-Related Emergency Department Visits Non-Medical Use of Pharmaceuticals and Drug Combinations

	Estimates			Rates			Relative Standard Error (%)			statistical tests	
	2004	2005	2006	2004	2005	2006	2004	2005	2006	% change first year	p-values
Total ED visits	536,247	669,214	741,425	182.6	225.8	245.3	8.3	7.0	4.6	38	0.0051
Total drug reports	1,096,895	1,310,759	1,469,210	373.5	442.2	486.1	9.0	8.0	4.6	34	0.0118
Illicit drugs only	...	...	...	...	...	...	...	...	...
Alcohol only (age < 21)	...	...	...	...	...	...	...	...	...
Pharmaceuticals only	336,987	444,309	486,276	114.8	149.9	160.9	9.7	7.2	5.8	44	0.0050
Combinations											
Illicit drugs with alcohol	...	...	...	...	...	...	...	...	...
Illicit drugs with pharmaceuticals	79,380	100,918	111,083	27.0	34.0	36.8	10.9	15.9	9.7	40	0.0327
Alcohol with pharmaceuticals	88,068	85,316	101,071	30.0	28.8	33.4	8.1	8.0	6.3		0.3358
Illicit drugs with alcohol and pharmaceuticals	31,812	38,671	42,994	10.8	13.0	14.2	14.1	14.4	10.0		0.1302

	% change, last year/2 years ago	p-values	% change, last year/1 year ago	p-values	Lower 95% Confidence Limit			Upper 95% Confidence Limit		
					2004	2005	2006	2004	2005	2006
Total ED visits	38	0.0051	0.2754	0.1949	448,688	577,800	674,198	623,806	760,628	808,652
Total drug reports	34	0.0118	0.1949	0.1949	902,824	1,106,422	1,335,602	1,290,966	1,515,097	1,602,818
Illicit drugs only					...	...	...	...	...	...
Alcohol only (age < 21)					...	...	...	...	...	...
Pharmaceuticals only	44	0.0050	0.3962	0.1949	273,168	381,282	430,721	400,806	507,337	541,832
Combinations										
Illicit drugs with alcohol					...	...	...	...	...	...
Illicit drugs with pharmaceuticals	40	0.0327	0.5159	0.1949	62,422	69,469	89,886	96,339	132,367	132,280
Alcohol with pharmaceuticals		0.3358	0.1183	0.1949	74,088	71,968	88,650	102,048	98,663	113,492
Illicit drugs with alcohol and pharmaceuticals		0.1302	0.4122	0.1949	23,051	27,781	34,542	40,573	49,561	51,447

Appendix B

The Controlled Substance Act of 1970 divided controlled substances into five schedules based on a set of criteria that includes potential for abuse, medical application, public risk associated with abuse, and several other factors.

Controlled Substance Act: Drug Scheduling

CSA Drug Scheduling²⁶

Schedule I

- The drug or other substance has a high potential for abuse.
- The drug or other substance has no currently accepted medical use in treatment in the United States.
- There is a lack of accepted safety for use of the drug or other substance under medical supervision.
- Examples of Schedule I substances include heroin, lysergic acid diethylamide (LSD), marijuana, and methaqualone.

Schedule II

- The drug or other substance has a high potential for abuse.
- The drug or other substance has a currently accepted medical use in treatment in the United States or a currently accepted medical use with severe restrictions.
- Abuse of the drug or other substance may lead to severe psychological or physical dependence.
- Examples of Schedule II substances include morphine, phencyclidine (PCP), cocaine, methadone, and methamphetamine.

Schedule III

- The drug or other substance has less potential for abuse than the drugs or other substances in Schedules I and II.
- The drug or other substance has a currently accepted medical use in treatment in the United States.
- Abuse of the drug or other substance may lead to moderate or low physical dependence or high psychological dependence.
- Anabolic steroids, codeine and hydrocodone with aspirin or Tylenol®, and some barbiturates are examples of Schedule III substances.

Schedule IV

- The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule III.
- The drug or other substance has a currently accepted medical use in treatment in the United States.
- Abuse of the drug or other substance may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule III.
- Examples of drugs included in Schedule IV are Darvon®, Talwin®, Equanil®, Valium®, and Xanax®.

Schedule V

- The drug or other substance has a low potential for abuse relative to the drugs or other substances in Schedule IV.
- The drug or other substance has a currently accepted medical use in treatment in the United States.
 - Abuse of the drug or other substances may lead to limited physical dependence or psychological dependence relative to the drugs or other substances in Schedule IV.
 - Cough medicines with codeine are examples of Schedule V drugs.

Appendix B (continued)

Controlled Substance Act Scheduling Criteria (21 USC Sec. 811 C)

(c) Factors determinative of control or removal from schedules In making any finding under subsection (a) of this section or under subsection (b) of section 812 of this title, the Attorney General shall consider the following factors with respect to each drug or other substance proposed to be controlled or removed from the schedules:

- (1) Its actual or relative potential for abuse.
- (2) Scientific evidence of its pharmacological effect, if known.
- (3) The state of current scientific knowledge regarding the drug or other substance.
- (4) Its history and current pattern of abuse.
- (5) The scope, duration, and significance of abuse.
- (6) What, if any, risk there is to the public health.
- (7) Its psychic or physiological dependence liability.
- (8) Whether the substance is an immediate precursor of a substance already controlled under this subchapter.

<http://www.justice.gov/dea/pubs/csa/811.htm#c>

Appendix C

Pain Management Clinic Fliers

**OPEN EARLY
8 AM MON-SAT
BACK OR NECK
PAIN??
ONLY
\$70 PER
(REG. \$80)
WE CAN HELP!!!
OPEN 8 TO 3 MON-FRI
OPEN SAT 8 TO 1
**HARWIN WELLNESS
AND PAIN CENTER**
CORPORATE PINES COMPLEX
6630 HARWIN DR. SUITE 108
281-914-4917
FAX 832-494-2790
SE HABLA ESPANOL**



Isis Medical
10600 Fondren Suite 103- A
Houston, Texas 77096
713-541-4442 or 832-358-6183/832-896-2729
Chronic Pain/Anxiety/Personal Injury
(Been in a car wreck we can help!)
(Located on Fondren and Creekbend 1/2 block from the YMCA)
Marketing Rep: Darren

SOUTHWEST DOCTOR PA
PAIN MANAGEMENT
Walk Ins AND NEW PATIENTS
WELCOME

Design by: S. Bourne 713-429-4182

\$ 5.00 off
initial visit
with coupon

We treat:
Chronic pain
Anxiety

~~\$ 5.00 off~~ **\$ 75**
Initial visit
with coupon

We treat:
• Chronic pain
• Anxiety

SOUTHWEST DOCTOR PA
PAIN MANAGEMENT
8314 SOUTHWEST FREEWAY HOUSTON, TX 77036
PHONE: 713-772-6210
(59 South, Exit GESSNER, NEXT TO Spec's)

Monday - Friday
8:30 AM - 4:30 PM

Saturday
8:30 AM - 12:30 PM

Appendix D

Confessions of a prescription drug dealer: Part 2

Posted: Feb 02, 2009 10:32 PM CST Updated: Feb 16, 2009 11:52 AM CST



By Lee Peck - [bio](#) | [email](#)

LAKE CHARLES, LA (KPLC) - "When they caught me I had 300 lorcets on me and that was an average of what I would keep on me: 300 lorcets, 400 somas and 100 or so xanax." -- Until he was busted by the Calcasieu Combined Anti-Drug Team last July, this inmate who we'll call "Rob" -- operated on the streets of Calcasieu parish for five years as a prescription drug dealer. Filling his endless supply through Texas pain management clinics -- he says it was too easy.

"The records were fake, they wasn't mine, they wasn't nothing to do with me -- they just had my name on them on top of the piece of paper and had somebody else's problems written on it," said Rob. "Out of the 30 to 40 doctors that I went to over the last 4 to 5 years I've only been verified one time on records and thrown out of the doctor's office."

It's a wide spread problem local officials have been trying to combat for more than two years. You'll remember when we followed them to the Texas Legislature as they testified before lawmakers about the need for regulating Texas pain management clinics. Now two laws sponsored by Texas Senator Tony Williams are set to go before lawmakers. The first would tighten who can own and operate a pain management clinic.

"That will require that all pain management clinics operating in Texas be licensed and that all pain management clinics in Texas hereafter will have to be owned and operated by a medical director who is a physician licensed to practice medicine in Texas," explained Calcasieu Parish District Attorney John DeRosier.

DeRosier says the proposed measure was patterned after the Louisiana statute that drastically shut down the number of pain management clinics in Louisiana. "It decreased from over 100 pain management clinics to just a small handful," said DeRosier.

The accompanying statute would target doctor shoppers -- those who get pain pills from more than one doctor or more than one pharmacy. DeRosier says the prescription drug monitoring program that went into effect in Louisiana January 1st of this year has already led to some prosecutions.

"We now have the ability to monitor people who are getting prescriptions for controlled dangerous substances, particularly multiple prescriptions. So now there is no escape because pharmacies have to log that into a central registry with the state," said DeRosier.

But local officials aren't stopping here. They visited with Center for Disease Control back in November to launch a nationwide campaign of awareness. "The CDC is now very much on board with that they have labeled the project an epidemic in the abuse of pain management pharmaceuticals in the United States of America and there are a number of programs we are going to try to get into to stop that from spreading all over the country," said DeRosier.

Unlike Louisiana, Texas legislators only meet for a full session once every other year. District Attorney John DeRosier -- says they'll likely head back to Austin in the very near future to testify again once this proposed legislation hits the floor.

<http://www.kplctv.com/Global/story.asp?s=9776435>

Appendix E

DEA Houston Arrests and Seizures 2007-2009

Year	Arrests	Seizures
2007	32	\$57,180
2008	60	\$2,004,750
2009	80	\$2,810,411*

*Additional \$44+ Million frozen, likely to be forfeited in 2010

Corpus Christi Pharmaceutical Cases

Year	Misdemeanor	Felony	Prescription Fraud*
2007	297		13
2008	430	7	17
2009	559	7	20

*Some of the Prescription Fraud cases involved multiple persons working as groups

Jefferson County Pharmaceutical Statistics

Year	Overdoses	Seizures*	Arrests
2005	9**	1,410	30
2006	56	2,726	49
2007	41***	4,680	74
2008	61	2,674	51

*Seizure statistics in dosage units (pills)

**Incomplete information supplied by Jefferson County Morgue for this year, all records were not available

***June 2007, two major Pain Clinics were closed due to Federal Search Warrants resulting in less availability of prescription drugs locally

Appendix F

Controlled Substance Prescription Data Received by the Texas PDMP

Year	Schedule	# of Rx	# of DU
2007	II	3,763,845	233,603,292
*2008	II	3,697,866	229,988,979
	III	13,644,768	934,572,786
	IV	15,652,251	749,477,025
	V	2,245,299	272,998,077
**2009	II	4,849,951	301,257,288
	III	14,098,244	954,743,047
	IV	15,071,871	724,819,219
	V	2,224,037	275,831,521

*Schedule III-V data was not collected prior to 9/1/08; figures were extrapolated from the four months of data.

**Data for 2009 was current to 9/30/09; data was extrapolated from the nine months of data.

Recent Changes in the Texas Prescription Drug Monitoring Program

Effective September 1, 2008, all prescriptions for Schedule II-V controlled substances must contain the below information to be considered valid and, subsequently, filled:

- Quantity of the substance prescribed (written as both a number and as a word)
- Date of issue (can not be postdated)
- Name, address, and date of birth or age of the patient (if the patient is an animal, the species and the name and address of the owner)
- Name and strength of the controlled substance prescribed
- Directions for use of the controlled substance
- Intended use of the substance prescribed unless the practitioner determines the furnishing of this information is not in the best interest of the patient
- Printed or stamped name, address, Federal Drug Enforcement Administration (DEA) registration number, and telephone number of the practitioner's usual place of business
- The signature of the prescribing practitioner, unless the prescription is called in to the pharmacy
- The practitioner's current and valid DPS registration number for practitioners licensed in Texas. The DPS registration number must belong to the practitioner issuing the prescription; the prescribing practitioner

http://www.tsbp.state.tx.us/files_pdf/dps%20letter.pdf

Controlled Substance Prescription Data received by the Texas Prescription Program

2007 (no CII-Vs collected)			2008 (CII-Vs collected 9-1-08 to 12-31-08)			2009 (CII-Vs collected 1-1-09 to 9-30-09)					
Category	Schedule	# of Rx	# of DU	Category	Schedule	# of Rx	# of DU	Category	Schedule	# of Rx	# of DU
Stimulant	2	2,346,302	113,655,447	Stimulant	2	2,344,497	109,784,863	Stimulant	2	2,389,718	111,896,110
Sedative	2	160	6,528	Sedative	2	115	4,828	Sedative	2	59	3,500
Tranquilizers	2	n/a	n/a	Tranquilizers	2	n/a	n/a	Tranquilizers	2	n/a	n/a
Narcotics	2	1,417,383	119,941,317	Narcotics	2	1,353,254	120,199,288	Narcotics	2	1,247,686	114,043,356
Steroids	2	n/a	n/a	Steroids	2	n/a	n/a	Steroids	2	n/a	n/a
				Stimulant	3	61,343	1,858,409	Stimulant	3	139,939	4,150,587
				Sedative	3	5,310	796,495	Sedative	3	11,430	1,338,282
				Tranquilizers	3	165	13,063	Tranquilizers	3	365	29,981
				Narcotics	3	4,389,461	295,060,014	Narcotics	3	10,193,111	677,403,559
				Steroids	3	91,977	13,796,281	Steroids	3	228,838	33,134,866
				Stimulant	4	311,192	10,569,196	Stimulant	4	868,086	28,086,932
				Sedative	4	8,138	250,102	Sedative	4	16,870	512,911
				Tranquilizers	4	4,090,322	199,154,295	Tranquilizers	4	8,698,472	430,452,856
				Narcotics	4	807,765	39,852,082	Narcotics	4	1,720,475	84,561,715
				Steroids	4	n/a	n/a	Steroids	4	n/a	n/a
				Stimulant	5	n/a	n/a	Stimulant	5	n/a	n/a
				Tranquilizers	5	386,340	27,450,577	Sedative	5	819,568	58,408,403
				Narcotics	5	n/a	n/a	Tranquilizers	5	1,131	85,428
				Steroids	5	362,093	63,548,782	Narcotics	5	847,329	148,379,810
								Steroids	5	n/a	n/a

Pharmaceuticals Seized by Texas Department of Public Safety

2007			2008			2009 (seizures through 9-30-09)			
Category	Form	Amount	\$ Value	# of Seizures	Category	Form	Amount	\$ Value	# of Seizures
Depressants	DU	56,451	\$ 354,100.00	50	Depressants	DU	21,486	\$ 126,848.00	35
	Gram	186,910	\$ 975,923.00	137		Gram	53,273	\$ 164,571.00	28
	Milliliter	820	\$ 960.00	2		Milliliter	129	N/A	1
	Ounce	3,990	\$ 23,040.00	2		Pint	3	\$ 76.00	1
	Pint	2	\$ 5,000.00	1		DU	74,544	\$ 1,225,435.00	12
Hallucinogens	DU	15,928	\$ 266,745.00	5	Hallucinogens	Gram	1,494	\$ 69,420.00	14
	Gram	2,573	\$ 107,065.00	15		Bottle	41	\$ 5,000.00	1
Narcotics	Bottle	63	N/A	5	Narcotics	DU	2,980	\$ 5,341.00	8
	DU	1,583	\$ 2,786.00	9		Gram	7,780	\$ 18,270.00	10
	Gram	27,379	\$ 112,556.00	21		Ounce	6	N/A	1
Steroids	DU	1,942	\$ 600.00	2	Stimulants	DU	728	N/A	1
	Gram	34	\$ 32,000.00	1		Gram	88	\$ 8,760.00	2
	Vial				Steroids	DU	217	\$ 3,980.00	3
						Milliliter	60	\$ 553.00	2

Appendix G

S.B. No. 911

Enacted

AN ACT

relating to the certification and regulation of pain management clinics.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle B, Title 3, Occupations Code, is amended by adding Chapter 167 to read as follows:

CHAPTER 167. REGULATION OF PAIN MANAGEMENT CLINICS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 167.001. DEFINITION. In this chapter, "pain management clinic" means a publicly or privately owned facility for which a majority of patients are issued on a monthly basis a prescription for opioids, benzodiazepines, barbiturates, or carisoprodol, but not including suboxone.

Sec. 167.002. EXEMPTIONS. This chapter does not apply to:

- (1) a medical or dental school or an outpatient clinic associated with a medical or dental school;
- (2) a hospital, including any outpatient facility or clinic of a hospital;
- (3) a hospice established under 40 T.A.C. Section 97.403 or defined by 42 C.F.R.

Section 418.3:

- (4) a facility maintained or operated by this state;
- (5) a clinic maintained or operated by the United States;
- (6) a health organization certified by the board under Section 162.001;
- (7) a clinic owned or operated by a physician who treats patients within the physician's area of specialty and who uses other forms of treatment, including surgery, with the issuance of a prescription for a majority of the patients; or
- (8) a clinic owned or operated by an advanced practice nurse licensed in this state who treats patients in the nurse's area of specialty and uses other forms of treatment with the issuance of a prescription for a majority of the patients.

[Sections 167.003-167.050 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

Sec. 167.051. ADOPTION OF RULES. The board shall adopt rules necessary to implement this chapter, including rules to address, for a pain management clinic:

- (1) the operation of the clinic;

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(2) personnel requirements for the clinic, including requirements for a physician who practices at a clinic;

(3) standards to ensure quality of patient care;

(4) certificate application and renewal procedures and requirements;

(5) inspections and complaint investigations; and

(6) patient billing procedures.

Sec. 167.052. INSPECTIONS. The board may inspect a pain management clinic, including the documents of a physician practicing at the clinic, as necessary to ensure compliance with this chapter.

Sec. 167.053. COMPLAINTS. The board shall investigate a complaint alleging a violation of this chapter or a rule adopted under this chapter by a pain management clinic certified under this chapter or a physician who owns or operates a clinic in the same manner as other complaints under this subtitle.

[Sections 167.054-167.100 reserved for expansion]

SUBCHAPTER C. CERTIFICATION OF CLINIC

Sec. 167.101. CERTIFICATE REQUIRED. (a) A pain management clinic may not operate in this state unless the clinic is certified under this chapter.

(b) A certificate issued under this chapter is not transferable or assignable.

Sec. 167.102. CERTIFICATE APPLICATION AND ISSUANCE. (a) A physician who owns or operates a pain management clinic shall apply for a certificate for the clinic under this chapter. A pain management clinic must be owned and operated by a medical director who is a physician who practices in this state under an unrestricted license.

(b) An applicant for a certificate under this chapter must submit an application to the board on a form prescribed by the board.

(c) The board shall issue a certificate if the board finds that the pain management clinic meets the requirements of this chapter and the standards adopted by the board under this chapter.

[Sections 167.103-167.150 reserved for expansion]

SUBCHAPTER D. CERTIFICATE RENEWAL

Sec. 167.151. EXPIRATION OF CERTIFICATE. (a) A certificate issued under this chapter expires on the second anniversary of the date it is issued.

(b) The board shall grant a 180-day grace period from the expiration date of a certificate to renew the certificate.

(c) The owner or operator of a pain management clinic for which a certificate has expired may not continue to operate the clinic until the clinic's certificate is renewed.

Sec. 167.152. REQUIREMENTS FOR RENEWAL. (a) The owner or operator of a pain management clinic may apply to renew a certificate issued to the clinic under this chapter by:

(1) submitting a renewal application to the board on the form prescribed by the board before the expiration of the grace period under Section 167.151; and

(2) complying with any other requirements adopted by board rule.

(b) If a certificate is not renewed before the expiration of the grace period under Section 167.151, the pain management clinic must reapply for an original certificate to operate the clinic.

[Sections 167.153-167.200 reserved for expansion]

SUBCHAPTER E. REGULATION OF CLINICS; ENFORCEMENT

Sec. 167.201. REGULATION OF PERSON AFFILIATED WITH CLINIC. (a) The owner or operator of a pain management clinic, an employee of the clinic, or a person with whom a clinic contracts for services may not:

(1) have been denied, by any jurisdiction, a license under which the person may prescribe, dispense, administer, supply, or sell a controlled substance;

(2) have held a license issued by any jurisdiction, under which the person may prescribe, dispense, administer, supply, or sell a controlled substance, that has been restricted; or

(3) have been subject to disciplinary action by any licensing entity for conduct that was a result of inappropriately prescribing, dispensing, administering, supplying, or selling a controlled substance.

(b) A pain management clinic may not be owned wholly or partly by a person who has been convicted of, pled nolo contendere to, or received deferred adjudication for:

(1) an offense that constitutes a felony; or

(2) an offense that constitutes a misdemeanor, the facts of which relate to the distribution of illegal prescription drugs or a controlled substance as defined by Section 551.003(11).

(c) The owner or operator of a pain management clinic shall:

(1) be on-site at the clinic at least 33 percent of the clinic's total number of operating hours; and

(2) review at least 33 percent of the total number of patient files of the clinic, including the patient files of a clinic employee or contractor to whom authority for patient care has been delegated by the clinic.

Sec. 167.202. DISCIPLINARY ACTION. (a) A violation of this chapter or a rule adopted under this chapter is grounds for disciplinary action against a pain management clinic certified under this chapter or an owner or operator of a clinic certified under this chapter.

(b) A violation of this chapter may be enforced in the same manner as any other violation of this subtitle.

SECTION 2. (a) Not later than March 1, 2010, the Texas Medical Board shall adopt the rules required by Chapter 167, Occupations Code, as added by this Act.

(b) Notwithstanding Section 167.101, Occupations Code, as added by this Act, a pain management clinic must obtain a certificate required by that section not later than September 1, 2010.

SECTION 3. (a) Except as provided by Subsection (b) of this section, this Act takes effect September 1, 2009.

(b) Section 167.101, Occupations Code, as added by this Act, takes effect September 1, 2010.

Appendix H

81R8174 JSC-F

By: Williams

S.B. No. 912

Proposed—Not Passed

A BILL TO BE ENTITLED

AN ACT

relating to the diversion of a controlled substance by certain persons who have access to the substance by virtue of the person's profession or employment; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 481, Health and Safety Code, is amended by adding Section 481.1285 to read as follows:

Sec. 481.1285. OFFENSE: DIVERSION OF CONTROLLED SUBSTANCE BY REGISTRANTS, DISPENSERS, AND CERTAIN OTHER PERSONS. (a) This section applies only to a registrant, a dispenser, or a person who, pursuant to Section 481.062(a)(1) or (2), is not required to register under this subchapter.

(b) A person commits an offense if the person knowingly:

(1) converts to the person's own use or benefit a controlled substance to which the person has access by virtue of the person's profession or employment; or

(2) diverts to the unlawful use or benefit of another person a controlled substance to which the person has access by virtue of the person's profession or employment.

(c) An offense under Subsection (b)(1) is a state jail felony. An offense under Subsection (b)(2) is a felony of the third degree.

SECTION 2. This Act takes effect September 1, 2009.

Law Enforcement Sensitive

Appendix I

81R6900 JSC-D

By: Williams

S.B. No. 1281

Proposed—Not Passed

A BILL TO BE ENTITLED

AN ACT

relating to the fraudulent obtaining of a controlled substance from a practitioner; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 481.129, Health and Safety Code, is amended by adding Subsections (a-1) and (d-1) to read as follows:

(a-1) A person commits an offense if the person, with the intent to obtain a controlled substance or combination of controlled substances that is not medically necessary for the person or an amount of a controlled substance or substances that is not medically necessary for the person, obtains or attempts to obtain from a practitioner a controlled substance or a prescription for a controlled substance by misrepresentation, fraud, forgery, deception, subterfuge, or concealment of a material fact. For purposes of this subsection, a material fact includes whether the person has an existing prescription for a controlled substance issued for the same period of time by another practitioner.

(d-1) An offense under Subsection (a-1) is:

(1) a felony of the second degree if any controlled substance that is the subject of the offense is listed in Schedule I or II;

(2) a felony of the third degree if any controlled substance that is the subject of the offense is listed in Schedule III or IV; and

(3) a Class A misdemeanor if any controlled substance that is the subject of the offense is listed in Schedule V.

SECTION 2. The change in law made by this Act applies only to an offense committed on or after the effective date of this Act. An offense committed before the effective date of this Act is covered by the law in effect when the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense was committed before that date.

SECTION 3. This Act takes effect September 1, 2009.

Law Enforcement Sensitive

PROPOSED DOCTOR SHOPPING LEGISLATION
Houston Police Department

During the 81st Session of the Texas legislature the Houston Police Department supported a bill to make the practice of “Doctor Shopping” in the state of Texas a criminal offense under Senate Bill 1281. Doctor shopping is referred to as the practice where a person could go to multiple doctors and receive multiple prescriptions for the same Schedule III through V controlled substances. This effort was made in conjunction with Senate Bill 911 which was in regard to the regulation of “Pain Clinics.” Both bills were supported by State Senator Tommy Williams of The Woodlands, Texas. Due to legislative time constraints only the pain clinic regulation bill was passed and is able to be enforced beginning March, 2010. The HPD Narcotics division has made contact with the Texas State Board of Medical Examiners and future meetings are planned to coordinate any enforcement action in regard to SB 911. We anticipate that this new legislation will help in our efforts to combat prescription drug abuse but we still have a long way to go.

The Houston Police Narcotics Division put in place a group of five investigative officers, one Special Agent with The Drug Enforcement Administration, and a supervisory Sergeant with the HPD to combat prescription drug abuse. The efforts of this group in 2009 have been very successful and are well documented in arrest and seizure statistics that are available on demand. The three most commonly abused prescription drugs in the Houston area are Hydrocodone (Lorcet, Lortab, Vicodin), Alprazolam (Xanax), and Carisoprodol (Soma). The following seizures for the year 2009 by department wide and HPD Narcotics Division squad 19 respectively are as follows:

Hydrocodone 84,075grams-36,490grams
Alprazolam 14,204grams-6,177grams
Carisoprodol 18,567grams-14,280grams

One continuous problem encountered by HPD Narcotics Division Squad 19 is the influx of out of state patients, mostly from Louisiana and the exploitation of the homeless/unemployed population of Houston to acquire prescription drugs from Houston area pain clinics. Most of the acquired drugs are then diverted to the illicit drug market of Houston.

A recent study by HPD Narcotics Division Criminal Analysis Team led by Sergeant William Stephens shows that deaths due to prescription drug overdose continue to climb in Harris County. The summary of the report was as follows;

“The abuse of pharmaceutical drugs represents a critical threat to the Harris County area. Pharmaceuticals were present in 1045 (66.39%) of the 1574 cases of toxicity-related deaths, compared with cocaine being present in only 678 (43.07%). Hydrocodone was a contributor in of half (51.29%) of the deaths involving pharmaceuticals.

The number of deaths involving pharmaceuticals was consistent in 2006 and 2008. However, there was a dramatic increase in deaths involving pharmaceuticals in 2007. The data is incomplete for 2009. Deaths resulting from a single-pharmaceutical overdose appear to be declining while those resulting from pharmaceutical cocktails are increasing.

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Based on this study, the severity of the pharmaceutical drug abuse problem as it relates to toxicity-related overdoses is greater than cocaine.

Further study is necessary in order to establish a more complete picture of the total threat presented by pharmaceutical drugs, including data from rehabilitation clinics, emergency rooms, and police arrest records. Because this study does not factor in abuse that does not result in death, the problem is likely to be much bigger than what is represented here.”

Officer Kowal of the HPD Narcotics Division has previously spoken with John DeRosier, the District Attorney of Calcasieu Parish, Louisiana. District Attorney DeRosier stated that the implementation of a doctor shopping law in the state of Louisiana has been instrumental in helping to prevent pharmaceutical drug abuse. Since the implementation of the doctor shopping law in Louisiana, eastern portions of Texas, mainly the Houston area have seen an influx of vehicles with Louisiana license plates at pain clinics in Houston.

The current law in regard to “doctor shopping” in Louisiana is found under Louisiana R.S. 40:1238.1(B)-LOUISIANA ACT 287- and reads as follows:

It shall be unlawful for any person knowingly or intentionally: To obtain or seek to obtain any controlled dangerous substance or a prescription for a controlled dangerous substance from a health care practitioner, while being supplied with any controlled dangerous substance or a prescription for any controlled dangerous substance by another health care practitioner, without disclosing the fact of the existing prescription to the practitioner from who the subsequent prescription for a controlled dangerous substance is sought. Failure of a practitioner to request the disclosure is not a violation of this Subsection by the practitioner. The disclosure shall include the name of the controlled dangerous substance, the date of the prescription, the amount of the controlled substance prescribed, and the number of refills if any. The disclosure shall be made in writing by the person obtaining or seeking to obtain the controlled dangerous substance and shall be made a part of the person’s medical record by the health care practitioner. As used in this section, the term “existing” shall mean the period of time within which the prescription was prescribed to be taken.

Officers of the HPD Narcotics Division would support a similar bill as the one proposed in the 81st legislative session in regard to “doctor shopping.” This new legislation was to be attached to the Texas Health and Safety Code, Section 481.129 which deals with prescription drug abuse in regard to fraudulent prescriptions.

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