



Liability risks at every port along the opiate stream

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Legal liability associated with the ever-evolving opiate epidemic is continually changing and expanding. Initially, the focus was on internet pharmacies for their dispensing activities. With the introduction of “pill mills,” the focus of liability expanded to holding these brick and mortar pharmacies liable. Around 2012, the focus again expanded to include traditional pharmacies and prescribing physicians. Finally, distributors and manufacturers were pulled into the liability focus in recent years. Now, all the entities involved with opiates — from creation to ingestion — are facing liability exposure in an attempt to control the crisis and recover the costs imposed on the health care delivery system and society.

Past actions against **manufacturers** allege that they engaged in fraudulent marketing regarding the risks and benefits of prescription opioids. Through this marketing, they allegedly convinced the medical community and the consuming public that opioids were not addictive and thereby fueled the prescribing of opiates in order to inflate their bottom lines. Manufacturers are being “asked” to cover some of the systemic costs their actions imposed and to correct the misinformation disseminated about opioids.

Actions against **distributors** generally allege that they have failed to detect suspicious orders and report them to the U.S. Drug Enforcement Administration (DEA). Distributors are being “asked” to help cover the systemic costs of the opiate epidemic and impose more effective systems for flagging suspicious orders.

Prescribers are facing claims of medical negligence for negligent prescribing practices that arise out of sloppy documentation, poor patient history-taking and ineffective patient monitoring. Prescribers are also facing criminal charges that come with lengthy prison terms. The expectation is that the threat of litigation will motivate physicians to be more cautious when it comes to

prescribing opioids resulting in better screening and monitoring practices.

Pharmacies and **pharmacists** are facing liability for failing to ensure that prescriptions have a legitimate medical purpose and that the prescribing physician was acting in the usual course of his or her professional practice when issuing it. Pharmacists are also expected to independently review and verify the legitimacy of every prescription while looking for a number of red flags. Failing to meet these expectations can cost a pharmacy or pharmacist their license, as well as subject them to civil and criminal penalties.

Because of the uncertainty surrounding each category of liability, each link in the opiate chain needs to evaluate its current and prior practices with regulatory and litigation counsel to address and minimize its risk exposure.

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