

UTAH MISDEMEANOR PROSECUTORS ASSOCIATION

Presentation On:

PRESCRIPTION FRAUD: WHAT PROSECUTORS NEED TO KNOW AFTER HB348

LECTURE BY:

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"Victorious warriors win first and then go to war, while defeated warriors go to war first and then seek to win." Sun-Tzu, The Art of War

Disclaimer: I am a true believer in not reinventing the wheel. As such, much of this outline has been pilfered, plundered, and plagiarized from some of the best prosecutors in the business. I would take the time to give credit to all those that have made this possible, but I won't. I will give credit where credit is due. Be ye warned!

Prescription drug offenses have been on the rise for many years. Up until this past legislative session, schedule I&II prescription offenses were third degree felonies. HB348 changed this. Now first and second offense prescription cases are class A misdemeanors. What does this mean for city prosecutors? You can now look forward to prosecuting many more misdemeanor prescription fraud cases. This is both good and bad.

THE GOOD

As a general rule, prescription possession cases are no different than regular drug cases. That's nothing new. Schedule I & II prescriptions will now simply be class A misdemeanors until a third conviction. Schedules III, IV, and V remain class B misdemeanors.

THE BAD

Possession of prescription medication is the easy part. The issue comes with "doctor shopping." *Doctor shopping* is defined as "to acquire or obtain possession of, to procure or attempt to procure the administration of, to obtain a prescription for, to prescribe or dispense to any person known to be attempting to acquire or obtain possession of, or to

procure the administration of any controlled substance by misrepresentation or failure by the person to disclose receiving any controlled substance from another source, fraud, forgery, deception, subterfuge, alteration of a prescription or written order for a controlled substance, or the use of a false name or address.” Utah Code Ann. § 58-37-8(3)(a)(ii).

It takes two prior convictions before the matter can become a felony. § 58-37-8(6)(a) provides,

For purposes of penalty enhancement under Subsections (1) and (2), a plea of guilty or no contest to a violation or attempted violation of this section or a plea which is held in abeyance under [Title 77, Chapter 2a, Pleas in Abeyance](#), is the equivalent of a conviction, even if the charge has been subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

It will be important for you to pay close attention to the criminal histories of defendants when you’re screening these cases. Any attempts, pleas in abeyance, etc. will be useful as prior convictions for purpose of enhancement.

You may also find yourself doing more preliminary hearings than you are accustomed to. The reason for this is that some defense attorneys believe that we can’t go forward without having the doctors testify at prelim. However, if you get 1102 statements from the various providers, you will be able to go forward with the prelim without inconveniencing the doctors. I have attached examples of the 1102 statements we use. We have found them to be very helpful for investigators and doctors because of their simplicity.

TIPS & TRICKS

The real issue that we are all going to run into now is the requirement the Legislature put on law enforcement to get a warrant before they are able to look at someone’s DOPL report. Prior to the enactment of §58-37f-301(k), law enforcement had access to look at the Controlled Substances Database. Now, a search warrant is required. This is going to deter a lot of officers from investigating doctor shopping. As such, we need to help them as much as we can.

In the appendix you will find an example of a template put together by my prescription fraud agent. This is clearly not perfect, but at least it will give you something you can give to your officers to get them started.

I have also attached a copy of the language I use for my informations as well as my PC statements in doctor shopping cases. I hope they are helpful as well.

GOOD LUCK!!!

Appendix

Davis Metro Narcotics Strike Force
MEDICAL PROVIDERS WITNESS STATEMENT
Detective Scott Byington Office 801-336-3420, fax 801-336-3560

OFFENSE: Prescription Fraud CASE: N

I _____ give this statement to the Davis Metro Narcotics Strike Force of my own free will. I understand that this statement may be presented to a magistrate or a judge in lieu of my sworn testimony at a preliminary examination. I understand that any false statement I make, and that I do not believe to be true, makes me liable to criminal punishment as a Class A misdemeanor.

Patient name: _____

DOB: _____

Patient address/phone

number(s): _____

Have you treated the above patient in the last year? list dates of last four office visits:

Yes _____

No _____

Did the patient disclose that other medical providers were treating them? If yes, explain below.

Yes _____

No _____

Did the patient disclose they were receiving controlled substance prescriptions from other medical providers? If yes, explain below.

Yes _____

No _____

Did the patient obtain, or attempt to obtain, a prescription for a controlled substance?

Yes _____

No _____

Please list the controlled substance requested or prescribed with the date: _____

Comments:

Please print and attach the patient demographics to this statement.

Dr. Signature: _____

Date: _____



DAVIS METRO NARCOTIC STRIKE FORCE

801-336-3555 Office

801-336-3560 Fax

Date: _____

Provider: _____

Phone: _____

Re Patient: _____

Attention Medical Provider,

This office has an active police investigation involving the above referenced patient. This individual may have been engaged in criminal conduct on the premises of your facility. A complaint has been received which indicates the patient may have uttered a false or forged prescription or obtained a c/s prescription under false pretenses including failing to disclose a c/s prescription from other providers in violation of Utah criminal code 58-37-8(3)(a).

The Health Information Portability and Accountability Act (HIPPA) allows you to disclose protected health information regarding this patient to law enforcement if you also believe a crime has occurred.

The language in HIPPA states: Permitted disclosure: Crime on premises. A covered entity may disclose to a law enforcement official protected health information that the covered entity believes in good faith constitutes evidence of criminal conduct that occurred on the premises of the covered entity. 45 C.F.R. 164.512(f)(5).

Please review the controlled substance database and if you also believe that a crime has occurred complete the attached statement(s). The completed statement(s) can be faxed to 801-336-3560, e-mailed to sbyington@laytoncity.org, or picked up from your office.

If you don't believe a crime has occurred on premises you may not disclose the information, but it is important that you call me so that I can complete the investigation. If you have any questions or concerns I can be contacted at my desk, 801-336-3420 or cell phone, 801-940-6288.

Thank you,

Detective Scott Byington
DMNSF

DAVIS METRO NARCOTIC STRIKE FORCE

DETECTIVE SCOTT BYINGTON

OFFICE 801-336-3420

FAX 801-336-3560

MEDICAL PROVIDERS PRESCRIPTION FRAUD STATEMENT

Case number: _____ Date: _____

Patient name: _____ DOB: _____

Patient address/phone: _____

I _____ give this statement to the Davis Metro Narcotic Strike Force of my own free will. I understand that this statement may be presented to a magistrate or a judge in lieu of my sworn testimony at a preliminary examination. I understand that any false statement I make, and that I do not believe to be true, makes me liable to criminal punishment as a class A misdemeanor.

Describe why you are reporting this patient to law enforcement:

When did you begin treating the above patient? _____

List most recent visits: _____

Please list the controlled substance requested or prescribed with the date:

Date	Drug	

List the c/s filled by the patient from other providers and if it was disclosed:

Drug	Date	Provider	Disclosed?	Pharmacy

Was the patient confronted about their c/s history? YES NO

If so, what was their response?

Is the patient under a medication contract with your clinic? _____ If so, attach a copy

Additional Comments: _____

Providers Signature: _____ Date: _____

Sample Information & PC Statement Language

Between May 13 and November 30, 2013 in Davis County, Utah, the defendant received at least two prescriptions for controlled substances from different medical providers without informing the other that she was getting controlled substances from another medical provider.

knowingly and intentionally acquire or obtain possession of, procure or attempt to procure the administration of, obtain a prescription for, or procure the administration of any controlled substance by misrepresentation or failure to disclose receiving any controlled substance from another source.

Sample DOPL Search Warrant

IN THE SECOND DISTRICT COURT

IN AND FOR DAVIS COUNTY, STATE OF UTAH

AFFIDAVIT FOR SEARCH WARRANT

STATE OF UTAH)

:SS

COUNTY OF DAVIS)

The undersigned affiant, Detective SCOTT BYINGTON of Davis Metro Narcotic Strike Force, upon an oath or written affidavit subscribed under criminal penalty, declares:

That your affiant has reason to believe:

THAT

There is a database of controlled substance prescriptions filled in the State of Utah, and reason to believe it contains records for **suspect name**.

In the custody of Utah Department of Commerce, Division of Occupational & Professional Licensing and the Controlled Substance Database, there is now certain information or evidence described as:

List of controlled substance(s) filled in the State of Utah, for the past 12 months, including; First Name, Last Name, Birth Date, Address(s), RX#,

Drug Dispensed, Quantity Dispensed, Date Filled, # Days prescribed, Prescriber Name, Dispensing Pharmacy and phone number.

And a list of controlled substances that database administrators believe to have been filled or associated to the same individual using alias Name(s), Address(s), and Birth Date(s).

And that said CSDB information or evidence:

Consists of an item of, or constitutes evidence of, illegal conduct, possessed by a party to the illegal conduct.

Your Affiant believes the CSDB information or evidence described above is evidence of the crime or crimes of Obtaining a Prescription Under False Pretenses, Making or Uttering a False Prescription, and Distribution or Possession of a Controlled Substance.

The facts to establish the grounds for issuance of a Search Warrant are:

Affiant is an Agent with the Davis Metro Narcotics Strike Force (DMNSF) and is familiar with the facts of this case. Affiant has been a police officer at Layton City for over 16 years and assigned to DMNSF for the past 5 years. Your affiant has had significant training and experience with the investigation of controlled substance cases. Affiant has attended narcotic specific training with the Rocky Mountain High Intensity Drug Trafficking Area, Utah Narcotic Officer's Association (UNOA) and California Narcotic Officer's Association (CNOA) conferences. Affiant has also received specialized training and has extensive experience investigating pharmaceutical drug crimes including prescription fraud and forgery. Affiant attended Pharmaceutical Drug Crime related training with The National Association of Drug Diversion Investigators (NADDI) conference, Midwest Counterdrug Training Center, and Police Technical.

Your Affiant is President of the National Association of Drug Diversion Investigators Utah Chapter and a regional representative for Utah Narcotic Officer's Association. Affiant has a bachelor's degree from Weber State University and graduated from the Utah Peace Officer's Standards and Training Academy.

Your Affiant is recognized as a subject expert on Pharmaceutical Drug Crimes and routinely instructs other officers, investigators and attorneys on the subject. Affiant is also the lead Emergency Vehicle Operations instructor for Layton City Police. Affiant has provided training for UNOA, NADDI, Utah Pharmaceutical Drug Community Project (UPDCP), National District Attorney's Association (NDAA), Association of Public Safety Communications Officials, Utah Courts System, and United States Air Force and Army.

(PC)

WHEREFORE, your affiant prays that a search warrant be issued for the seizure of said items in the daytime.

I declare under criminal penalty of the State of Utah that the foregoing is true and correct.

Detective **ENTER OFFICER'S**

NAME

Affiant

SUBSCRIBED AND SWORN TO BEFORE ME this _____ day of

_____ 2003.

Judge of the Second District Court