



October 1991

FBI Law Enforcement Bulletin

U.S. Department of Justice
National Institute of Justice

132711-

132714

This document has been reproduced exactly as received from the person or organization originating it. Points of view or opinions stated in this document are those of the authors and do not necessarily represent the official position or policies of the National Institute of Justice.

Permission to reproduce this copyrighted material has been granted by

FBI Law Enforcement Bulletin

to the National Criminal Justice Reference Service (NCJRS).

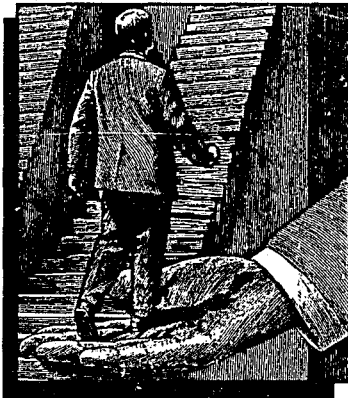
Further reproduction outside of the NCJRS system requires permission of the copyright owner.

132711-
132714

Urban
Trans,
Se ur



Features



Page 4



Page 20

- 1 Urban Transportation Security**
By Robert W. Dart
- 4 Developing Police Leadership** 132711
By Paul Hansen
- 10 The Respectable Pusher** 132712
By Jeffrey D. Lane
- 15 Taking the Bounce Out of Bad Checks** 132713
By Vinse J. Gilliam
- 22 Effective Crowd Control**
By Steven J. Schmidt
- 26 Civil Forfeiture** 132714
By Thomas V. Kukura

Departments

- 8 Police Practices**
By David I. Rechenmacher
- 20 Research Forum**
- 32 Legal Brief**



The Cover: Since mass transit systems are an integral part of metropolitan cities, public officials must look for ways to reduce crime and change citizen perception of this mode of transportation. See article p. 1. Cover photo courtesy of Regina Kosicki.

United States Department of Justice
Federal Bureau of Investigation
Washington, DC 20535

William S. Sessions, Director

Contributors' opinions and statements should not be considered as an endorsement for any policy, program, or service by the FBI.

The Attorney General has determined that the publication of this periodical is necessary in the transaction of the public business required by law of the Department of Justice. Use of funds for printing this periodical has been approved by the Director of the Office of Management and Budget.

Editor—Stephen D. Gladis, D.A.Ed.
Managing Editor—Kathryn E. Sulewski
Art Director—John E. Oit
Assistant Editors—Alice S. Cole
Karen F. McCarron
Production Manager—Andrew DiRosa
Staff Assistant—Carolyn F. Thompson

The *FBI Law Enforcement Bulletin* (ISSN-0014-5688) is published monthly by the Federal Bureau of Investigation, 10th and Pennsylvania Avenue, N.W., Washington, D.C. 20535. Second-Class postage paid at Washington, D.C., and additional mailing offices. Postmaster: Send address changes to *FBI Law Enforcement Bulletin*, Federal Bureau of Investigation, Washington, D.C. 20535



Photo courtesy of
Thomas Babicke

The Respectable Pusher

By
JEFFREY D. LANE

In November 1989, children playing in a wooded area behind their apartment complex discovered a partially decomposed body. Although an autopsy revealed that the person died of hypothermia, a contributing factor to the death was an overdose of drugs.

After a search warrant was issued, investigators found numerous empty bottles of prescription drugs from surrounding pharmacies in the victim's apartment. These labels revealed that the deceased had received drugs from the same doctor on a regular basis over an extended period of time, which most likely resulted in addiction.

Did the doctor prescribing the drugs contribute to this person's death? Were any criminal statutes violated in this case? Was this doctor a "pusher" or a "healer"?

This article discusses how Federal statutes apply to medical practitioners when they prescribe controlled substances. It also offers an overview of how law enforcement personnel should conduct investigations concerning unscrupulous medical practitioners who illegally dispense prescription drugs.

FEDERAL STATUTES

Medical practitioners are licensed by the States in which they

practice, and in order to prescribe controlled substances lawfully, they must also be registered with the Drug Enforcement Administration. According to Federal statutes, practitioners must issue prescriptions in the usual course of a professional practice, and these prescriptions must be issued for a legitimate medical purpose.¹

When patients come to them with medical problems, physicians must determine whether controlled substances are necessary to treat the problem. However, to show that prescribing the drugs was in the course of professional practice, it is essential that physicians establish

a doctor/patient relationship.² In order to establish this type of relationship, three criteria must be met:

- The patient must desire treatment for a legitimate illness or condition,
- The physician must make a reasonable effort to determine what the patient's legitimate medical needs are through physical examinations and questioning the patient about medical problems,
- There must be reasonable correlations between the drugs prescribed and the patient's legitimate medical needs.³

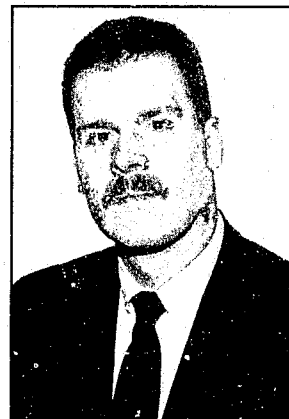
INVESTIGATION OF PRESCRIPTION ABUSE CASES

When abuse is suspected, there are two basic methods of investigation—undercover operations and documentary investigations (commonly referred to as “paper cases”). Both methods work, but investigators should not opt for one method over another without considering the circumstances surrounding the case. Therefore, it is necessary to conduct preliminary investigations before deciding which method to use.

Preliminary Investigation

During the preliminary investigation of suspected offenders, officers should determine what specific drugs the doctor is prescribing, the patient traffic patterns in and out of the medical office, whether the doctor conducts physical examinations,

“
...law enforcement officers must [keep] legitimate drugs out of the hands of the ‘respectable pushers.’
”



Agent Lane serves as the Director of Investigations, Georgia Examining Boards Division, Office of the Secretary of State, in Atlanta, Georgia.

the frequency and quantity of drugs prescribed, and whether the doctor accepts new patients. This information, which is invaluable when investigators try to develop a believable undercover scenario or decide what areas to target for pharmacy surveys, can come from several sources, including other practitioners, pharmacists, family members of patients, informants/defendants, wholesalers/distributors, other law enforcement/regulatory agencies, surveillance of suspect, and reference materials and texts.

Interviews with persons listed above can provide details concerning what specific drugs were prescribed and ordered, current investigations, practitioner history, required examinations, and the cost of a prescription for undercover purposes. Surveillance helps to determine patient traffic patterns, number of out-of-State patients, parking lot transactions, and the type of patient clientele. Reference materials help to identify drugs and determine

their legitimate uses and abuse potential.

The information developed during the preliminary investigation helps investigators to determine if further investigation is warranted, to plan successful undercover operations, and to decide what undercover scenarios might be most effective. Any undercover operation should precede the documentary investigation, because interviews and subpoenas may alert the doctor to the fact that there is an ongoing investigation.

Undercover Operation

Before undertaking an undercover operation, it is important to consult with the local prosecutor to clarify any legal questions concerning the operation. Once this has been done, and all the legal issues have been addressed, planning for the undercover office visit can continue. The undercover scenario must be plausible or the operative will be told to leave the office. Also impor-

tant to a successful undercover operation is that the operative not give a legitimate medical need for the drugs that are prescribed.

The purpose of the initial undercover operation is threefold: To obtain evidence, to gather information for future undercover visits,

drugs on a patient information form, the officer should respond by asking what, exactly, should be written.

Also, some physicians, after writing a prescription, instruct patients to go to a particular pharmacy to have it filled or to fill it in

operative should be different in gender from the first, and a different scenario might also be used. If the physician fails to prescribe drugs illegally during this visit, officers should end the undercover operation and begin a documentary investigation.

The length of the undercover operation, as well as how soon the undercover operative can repeat a visit, depends on the type of drugs the operative receives. The information gathered during the preliminary investigation will help investigators make a decision on how frequent the visits should be. For example, if the doctor is running a "diet" practice and prescribes amphetamines, the operative may only be able to go in once every 30 days, the usual time period diet pills are prescribed. Other doctors may give another 30-day supply after only 2 weeks.

If, on the other hand, the physician prescribes pain pills, the undercover operative may be able to go in more often. This type of medication is prescribed more frequently than diet pills or sleeping pills.

Documentary Investigation

Officers should pursue a documentary investigation when the preliminary investigation reveals that there is little chance of a successful undercover operation, the physician accepts no new patients, or if the undercover operation fails to produce evidence of the physician's guilt. However, even when the undercover operation does produce evidence, it is still important to document the investigation with interviews, patient records, pre-

“

Prescription drug abuse is a serious problem that is sometimes overlooked.

”

and to determine whether to continue the investigation. During the initial undercover visit, investigators should determine whether examinations are given, the kind of questions asked by the doctor, and whether the physician tries to establish a doctor/patient relationship. A minimum of two people is necessary to conduct this visit to the physician's office. (One to act as a patient; the other to monitor any recording equipment and to serve as backup.)

Recording undercover visits provides the best evidence, because taped conversations reveal that the doctor knows that the drugs being prescribed are not for legitimate purposes. Also, if the physician requires the "patient" to state a legitimate reason for needing drugs, the investigator can direct the conversation to show that the physician is merely trying to appear legitimate. For example, if the doctor requests that the undercover officer write a legitimate reason for the

another area of town to avoid suspicions. These types of interchange are an indication of the lack of a legitimate doctor/patient relationship, and having these conversations recorded strengthens the case against the physician.

Once a physician issues an illegal prescription to one operative, other undercover investigators should make appointments with the same physician. However, too many new "patients" may arouse suspicion. Doctors who operate illegally will be wary of undercover operatives and may attempt to weed them out by questions and examinations. Several operatives who make a minimum of two to three successful visits each will show an abusive practice, establish multiple counts, and corroborate that the physician is dispensing drugs indiscriminately.

If no drugs are prescribed illegally during the initial undercover visit, a second operative should visit the physician. This

scriptions, prescription data, and expert witness reports.

A documentary investigation is a five-step process, with each step building upon the preceding step. For this reason, investigators should complete the steps in proper sequence. They should:

- 1) Survey pharmacies within certain geographical boundaries to obtain prescription data,
- 2) Organize the prescription data,
- 3) Obtain and review patient records,
- 4) Interview patients, and
- 5) Obtain expert witness reports/testimony.

Survey area pharmacies

In order to obtain data and information about a physician's prescribing patterns, investigators should survey all pharmacies that are located within an established geographical target area. Investigators should also review all prescriptions issued by the physician during a particular time span, such as 1 or 2 years. Knowing the length of time the doctor has kept certain patients on addictive medications helps to establish a pattern of abuse.

Pharmacists can be either of great value or a hindrance to the investigation. Their information contains details and knowledge to which only they are privy. However, because pharmacy income is directly tied to the prescriptions from the doctors in the area, some pharmacists will inform them

of current investigations. Because the interview of only one pharmacist has caused some doctors to close their practices immediately, investigators should weigh this factor heavily when conducting the investigation.

Some pharmacists will not allow investigators to review the prescriptions, making it necessary to obtain subpoenas or search warrants. Other pharmacists will provide investigators with computer printouts of the requested information. If there is a problem with a particular pharmacist, the State Medical Board or Pharmacy Board may be able to assist investigators.

Investigators should record the information found on the prescription forms in an organized

“**Pharmacists can be either of great value or a hindrance to the investigation.**”

format for future reference. Of particular interest are the date the prescription was issued to the patient, the drug name, drug dosage, total amount prescribed, and the prescription number.

Perhaps the most important piece of information found on the prescription form, aside from the drug and quantity, is the prescription number. This is usually a four-to eight-digit number found either on the container label of the drug or on the prescription form. Each pre-

scription has a separate number that investigators can use to prepare search warrants or identify particular prescriptions in court. This number also assists investigators in finding a specific prescription among thousands.

Organize the prescription data

After investigators contact all the pharmacies in the target area for prescription information, the data should be organized to help investigators concentrate on the blatant cases. The prescriptions should be put in alphabetical order by the patient's last name, and then each patient's prescriptions should be placed in chronological order. By doing this, investigators immediately know what drugs each patient received, the quantity, and how frequently the drug was prescribed. Organizing the data also reveals dangerous drug combinations and helps investigators to determine which patients should be interviewed later.

Since many "patients" go to numerous pharmacies to avoid detection, a computerized data base is helpful for recording and organizing all the data collected. Once the information is entered into the data base, it can be sorted in a variety of ways that will reveal patterns or other clues to investigators. For example, a profile will show which pharmacy filled the majority of the prescriptions. This information is important if investigators suspect a conspiracy between the doctor and pharmacist.

In some cases, the prescription data, coupled with expert witness

testimony, can establish probable cause for a search warrant to obtain patient records from the physician's office. If this is not the case, investigators should interview the doctor's patients to determine whether a doctor/patient relationship existed. These interviews, along with the other information obtained up to this point in the investigation, should be sufficient to obtain a search warrant.

*Obtain and review
patient records*

Investigators should thoroughly review all of the patient records to pinpoint inconsistencies and document the fact that the physician prescribed drugs illegally. For example, a patient may have been receiving an amphetamine, supposedly to lose weight. If, however, this patient had a history of hypertension, with dangerously high blood pressure recorded on the day of the doctor's visit, an amphetamine prescription would be inappropriate because amphetamines tend to further elevate the blood pressure. In addition, the patient's recorded height and weight may show there was not a legitimate need for a diet medication.

Patient records that do not document patient histories, physical exams, laboratory tests, consultations, or referrals are also an indication that a legitimate doctor/patient relationship did not exist. On the other hand, some physicians keep thorough patient records in order to appear legitimate. Patient interviews and expert witness reviews help refute this false documentation.

Interview patients

Investigators should interview patients to determine as much as possible about whether the doctor establishes a doctor/patient relationship before prescribing drugs. For

“
**...a computerized
data base is helpful
for recording and
organizing all the
data collected.**
”

example, one physician assigned six patients per examining room for cursory examinations, and investigators were later able to interview these patients to corroborate the lack of a legitimate doctor/patient relationship. When witnesses learn that they are not the focus of the investigation, they will oftentimes cooperate with investigators. Investigators can then subpoena these witnesses to testify at trial.

*Obtain expert witness
reports/testimony*

Expert witnesses may include physicians, dentists, medical school professors, pharmacology professors, or other professionals who can testify to the proper legal procedures needed to practice medicine. These witnesses may give expert opinions concerning drug tolerance and addiction. They may testify about the appropriateness of the time period the drugs were prescribed and what

the law requires with regard to the usual course of professional practice.

It is important for investigators to inform expert witnesses that their review may require them to testify in court. If they are not aware of this from the beginning, they may be hostile or uncooperative on the witness stand. It is also important that investigators give expert witnesses copies of the original records so that important evidence is not altered in anyway.

When this last step of the investigation is complete, investigators should discuss the case with their local prosecutors. They can troubleshoot any problems before the grand jury hears the case and arrest warrants are issued.

CONCLUSION

Prescription drug abuse is a serious problem that is sometimes overlooked. This may be a result of a lack of interest or a lack of knowledge on the part of investigators, who are unsure about how to pursue such an investigation.

However, law enforcement officers must dedicate themselves to the problem of drug abuse, not only where hard drugs are concerned but also by keeping legitimate drugs out of the hands of the "respectable pushers." By doing this, they will bring to the forefront a problem that has, in the past, been largely ignored.

LEB

Footnotes

¹ 21 USC 802, 21 CFR 1306.02 (b).

² U.S. Drug Enforcement Administration Bulletin issued by the Associate Chief Counsel, 1987.

³ Supra, note 1.