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## Legal Matters

## There Isn't Enough Narcan to Fix This

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The United States is facing a public health emergency associated with the significant increase in drug overdoses in recent years. Statistics collected from the US Department of Health and Human Services from 1999 to 2017 tell a story of more than 700,000 deaths from drug overdoses with almost 400,000 of those dying from an opioid overdose, including both prescription and illegal opioids.<sup>1</sup> Roughly 68% of the more than 70,200 drug overdose deaths in 2017 involved an opioid. This opioid overdose rate is 6 times higher than it was in 1999. Unceremoniously, 130 people in the United States die every day from an opioid overdose.<sup>2</sup>

Additional data from the US Department of Health and Human Services show that 11.4 million people misused prescription opioids<sup>3</sup> with 2.1 million people having an opioid use disorder.<sup>3</sup> Of those, 47,600 died from overdosing on opioids,<sup>4</sup> and 28,466 additional deaths are attributed to overdosing on synthetic opioids other than methadone.<sup>4</sup> Compare those numbers with the 886,000 people who use heroin,<sup>3</sup> which resulted in only 15,482 deaths from heroin overdoses.<sup>4</sup> The Centers for Disease Control and Prevention places the total “economic burden” of prescription opioid misuse alone in the United States at \$78.5 billion a year, including the costs of health care, lost productivity, addiction treatment, and criminal justice involvement.<sup>5</sup>

The Controlled Substances Act<sup>6</sup> places all regulated substances under federal law into 5 schedules. Drugs, substances, and certain chemicals used to make drugs are classified

*Editor's Note: While the information in this article deals with legal issues, it does not constitute legal advice. If you have specific questions related to this topic, you are encouraged to consult an attorney who can investigate the particular circumstances of your individual situation. If you have an issue you would like to see addressed in a future issue of AMJ, please contact the author at [clarkjrc@gwmail.gwu.edu](mailto:clarkjrc@gwmail.gwu.edu) to suggest a topic.*

into schedules based on the drug's acceptable medical use and its potential for abuse or dependency. Schedule I addresses the most dangerous drugs and is reserved for drugs that have no currently accepted medical use and a high potential for abuse. At the other end of the spectrum are Schedule V drugs, which have a lower potential for abuse and generally cover antidiarrheal, antitussive, and mild analgesic medications. Opioids are Schedule II drugs that have a high potential for abuse, potentially leading to severe psychological or physical dependence. Schedule II drugs are considered dangerous.<sup>7</sup>

To highlight the problem, consider the disciplinary actions of the Pennsylvania Board of Nursing for January 2019.<sup>8</sup> In a single month, the board took action against 16 nurses, suspending their licenses because of “psychological dependence upon drugs or alcohol.” The American Nurses Association estimates that approximately 6% to 8% of nurses are practicing while impaired.<sup>9</sup> Although the public records do not specifically note the exact dependency issue, the list is illustrative of the problem.

Jill Ireland Sweeney, license no. RN527974L, of Pittsburgh, Allegheny County, was indefinitely suspended for no less than 3 years with such suspension to be immediately stayed in favor of no less than 3 years of probation subject to the board's terms and conditions because she was unable to practice nursing with reasonable skill and safety to patients by reason of physical or mental illness or condition or physiological or psychological dependence on drugs or alcohol and has violated a lawful disciplinary order of the board (January 23, 2019).

Karen Lynn Hertzog, license no. RN598308, of Downingtown, Chester County, was indefinitely and actively suspended for no less than 1 year, and after the reinstatement, her license to practice as a

registered nurse will be placed on probation for no less than 3 years subject to the terms and conditions of the board because she is unable to practice professional nursing with reasonable skill and safety by reason of mental or physical illness or condition or dependence on alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination; she also violated a lawful order of the board by failing to comply with the terms of a consent agreement and order issued by the board on April 7, 2014 (January 24, 2019).

Debora Lynn Brooks-Wilson, license nos. SP009508, RN533336, and PN257642L, of Coatesville, Chester County, was indefinitely suspended for no less than 3 years and 6 months, and after a period of 6 months from the time of this consent agreement and upon petition by the respondent, such suspension shall be stayed in favor of no less than 3 years of probation because she is unable to practice professional nursing with reasonable skill and safety by reason of mental or physical illness or condition or dependence on alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination (January 8, 2019).

Christopher Michael Thomas, license no. PN269539, of Dauphin, Dauphin County, had his license indefinitely suspended, retroactive to March 13, 2018, and was assessed \$350 in costs of investigation for being addicted to alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination and failure to submit to a mental and physical examination (July 2, 2018).

Darlene Tenza Seiling, license no. PN077709L, of Union City, Erie County, was indefinitely suspended retroactive to April 17, 2018, and ordered to pay the costs of investigation in the amount of \$900 based on being addicted to alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination and failure

to submit to mental and physical examination (June 27, 2018).

Nicole Dawn Lickenfelt, license no. RN629089, of Blairsville, Indiana County, had her registered nurse license automatically suspended based on her misdemeanor conviction under the Controlled Substance, Drug, Device and Cosmetic Act (June 8, 2018).

Lori Ann Mroczka, license no. PN274598, of Jermyrn, Lackawanna County, was indefinitely suspended retroactive to January 22, 2018, because she is addicted to alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination or has become mentally incompetent and has violated a lawful disciplinary order of the board (January 23, 2019).

Lillian A. Ogowang, license no. PN283442, of Lancaster, Lancaster County, had her license to practice nursing in the Commonwealth of Pennsylvania indefinitely suspended for no less than 3 years with such suspension immediately stayed in favor of probation and subject to terms and conditions because she is addicted to alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination or has become mentally incompetent (January 23, 2019).

Sonia Kosior Kuczynski, license no. PN069443L, of Newcastle, Lawrence County, had her practical nurse license automatically suspended based on her felony conviction under the Controlled Substance, Drug Device and Cosmetic Act (May 11, 2018).

Christopher Michael McGowan, license no. PN269672, of Bear Creek, Luzerne County, had his license to practice nursing indefinitely suspended for no less than 3 years with such suspension to be immediately stayed in favor of no less than 3 years of probation because he is addicted to alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination or has become mentally incompetent (January 23, 2019).

Dale John Kersteen, license no. RN596079, of Forty Fort, Luzerne County, was automatically suspended for 1 year and indefinitely suspended for no less than 3 years to run concurrently with such suspension to be immediately stayed in favor of no less than 3 years of probation subject to the terms and conditions of the board, and he was ordered to pay an assessment fee in the amount of \$1,200 toward costs of investigation because he has been convicted of a misdemeanor under the Drug Act and he is unable to practice the profession with reasonable skill and safety to patients by reason of mental or physical illness or condition or physiological or psychological dependence on alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment and coordination (January 23, 2019).

Stacy Renee Savage, license no. PN281906, of Hazelton, Luzerne County, was indefinitely suspended retroactive to January 17, 2018, and ordered to pay the costs of investigation in the amount of \$350 based on being addicted to alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination and failure to submit to mental and physical examination (July 2, 2018).

Lori Scanlan Cashatt, license no. PN096963L, of Pottstown, Montgomery County, voluntarily surrendered her license to practice as a practical nurse in the Commonwealth of Pennsylvania because she is addicted to alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination or has become mentally incompetent (January 23, 2019).

Lisa Ann Conte, license no. RN582505, of Easton, Northampton County, was indefinitely suspended for no less than 3 years with such suspension to be immediately stayed in favor of no less than 3 years of probation subject to the board's terms and conditions because she was unable to practice nursing with reasonable skill and safety to patients by reason of physical or mental illness or condition or physiological or psychological dependence on drugs or alcohol (January 23, 2019).

Sabrina R Redding, license no. RN525462L, of Philadelphia, Philadelphia County, had her license to practice as a nurse in the Commonwealth of Pennsylvania indefinitely suspended for no less than 3 years with such suspension immediately stayed in favor of no less than 3 years of probation because she is unable to practice professional nursing with reasonable skill and safety to patients by reason of mental or physical illness or condition or dependence on alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination (January 23, 2019).

Rachel Marie Baker, license no. RN582879, of Monongahela, Washington County, was automatically suspended for 2 years and indefinitely suspended for no less than 3 years with such suspensions immediately stayed in favor of no less than 3 years of probation because she is unable to practice the profession with reasonable skill and safety to patients by reason of mental or physical illness or condition or psychological dependence on alcohol, hallucinogenic or narcotic drugs, or other drugs that tend to impair judgment or coordination (January 23, 2019).

Obviously, this is not a problem that is limited to nurses. Anyone with access to controlled substances can fall victim to abuse. Last year, on August 21, 2018, a paramedic supervisor for MedStar Ambulance

Inc in suburban St Louis, MO, was convicted for stealing and tampering with MedStar's narcotic supplies.

Between January 2013 and May 2015, Jason Laut changed, altered, and falsified documents and records to conceal his theft of 2 federally controlled substances (fentanyl and morphine) from the narcotic boxes of the ambulances. Laut tampered with the vials by removing the fentanyl and morphine with a syringe and replacing it with saline or some other solution. The altered vials were placed back into the narcotics box and returned to the ambulances. At 1 point in 2015, 26 out of 28 fentanyl vials on ambulances were found to have been tampered with.<sup>10</sup>

A jury convicted him on all 38 counts of the federal indictment, which charged Laut with wire fraud, falsifying medical records, aggravated identity theft, and tampering with a consumer product.<sup>10</sup> He was sentenced to 9 years 3 months in federal prison for his crime.

Beyond the personal devastation related to opioid abuse, employers need to be aware of the legal impact of providers who are working while impaired and the potential for life-threatening consequences for patients who may not receive the proper dose of a narcotic or, even worse, the solution that was used to replace the opioid causes an untoward effect. As shown earlier by the Pennsylvania Board of Nursing actions, providers who are impaired could face a licensure action that could result in revocation of their license and in some cases fines. Additional legal peril awaits impaired providers and the employers to include medical malpractice, criminal liability for theft, fraud, misrepresentation, and exposure to civil actions for recovery of damages. Medical directors may face suspension of their Drug Enforcement Administration license, fines, and criminal and/or civil actions. Patients who receive drugs that have been tampered with may have a cause of action for a civil lawsuit and claims of battery.

The problem isn't going away anytime soon. Mitigation strategies include strong narcotic controls, inspection of drug logs looking for any discrepancies or alterations, monitoring of excessive sick time by employees, and review of patient care records that outline liberal use of pain control in patients who do not seem to have significant pain. Attention must be paid to wasting practices and even who and how many staff need to sign off on narcotic waste. Really anything that creates "reasonable suspicion" of diversion or any suspected impairment of individuals should be investigated. Departments and programs who do not act when they have knowledge of drug diversion or addiction could face additional liability. Vigilance is necessary to contain the

epidemic before more people fall victim to this very real crisis.

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