Prosecuting Overprescribing Cases: Trials and Errors

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Everything starts with the complaint…

Two approaches to drafting overprescribing/non-therapeutic CS complaints:

1. WHAT DID THE RESPONDENT KNOW or

2. DAY-TO-DAY
WHAT DID THE RESPONDENT KNOW:

Starting Points:

1. Between then and now, Respondent was prescribing multiple Controlled Substances for patient A, including but not limited to:

2. Chronic use of Controlled Substances, including … is associated with the development of physical dependence and severe withdrawal symptoms.

3. Chronic use of Controlled Substances, including, is associated with the development of substance abuse disorder and/or addiction.

4. Patients who are prescribed CS should be carefully monitored for development of the following:
   a. Physical dependence;
   b. Severe withdrawal symptoms;
   c. Substance abuse disorder and/or addiction;
   d. Signs and symptoms that are associated with drug abuse, diversion and/or misuse.
WHAT DID THE RESPONDENT KNOW (con’t):

5. While Respondent was prescribing aforementioned multiple CS for patient A, Respondent knew and/or should have known the following clinical data and/or information regarding patient:

(any red flags that appear in Respondent’s records)

- Multiple pharmacies
- Inconsistent drug screens
- Failure to follow up with the tests, referrals
- Meds lost in ....
- Multiple prescribers
- Early refills
- Clinical symptoms that do not support prescribing
WHAT DID THE RESPONDENT FAIL TO DO?:

6. While Respondent was responsible for care, treatment and evaluation of patient A, Respondent authorized multiple prescriptions for Controlled Substances without properly evaluating and/or monitoring patient A, for signs, symptoms and/or warning signs of drug diversion, addiction and/or abuse, including but not limited to:

7. Respondent continuously prescribed multiple Controlled Substances for patient A between (date x) and (date y) while ignoring multiple red flags and/or signs of drug abuse and/or diversion exhibited by patient A, including:
   a. In 2011, Respondent prescribed a Schedule II CS in the amount of approximately…
   b. In 2012, Respondent prescribed, etc…

8. Respondent breached his physician responsibility to patient A and Respondent prescribed multiple Controlled Substances for other than medically accepted therapeutic purposes
DAY-TO-DAY COMPLAINT SAMPLE:

Very detailed - describes every office visit:

1. Patient B presented to Respondent’s office for an office visit to establish care and treatment with Respondent.

2. Patient B paid Respondent cash for an office visit and had to make approximately “x” miles roundtrip.

3. Patient B’s ongoing medical problem list included: (i) depression, (ii) back pain, (iii) COPD.

4. Respondent’s documented review of patient B systems revealed the following relevant clinical data and/or information: a. 31 y. o. male, no weight change, generally healthy, no change in strength or exercise tolerance; b. Chest: no dyspnea, no wheezing, no hemoptysis, no cough; c. Musculoskeletal: no pain in muscles or joints, no limitation of range of motion, no paresthesias or numbness.
5. Respondent’s documented physical examination and/or evaluation of patient B revealed the following clinical data and/or information: a. General: Normotensive, in no acute distress; b. Chest: Lungs show no rales, no wheezes, no rhonchi; c. Extremities: FROM, no deformities, no edema, no erythema., d. VSS

6. Respondent’s assessment/diagnoses of patient B were as follows: a. Depressive Disorder, NOC; b. Chronic Airway Obstruction, NOC; c. Pain in joint, multiple sites.

7. Respondent authorized and/or prescribed the following Controlled Substances to patient B: a. Xanax 2 mg in the amount of 90 tablets; b. Norco 10mg-325 mg in the amount of 90 tablets; c. Promethazine with Codeine 10 mg-6.25 mg/5 ml oral syrup in the amount of 8 oz. with 1 refill.

8. Respondent’s evaluation and/or assessment of patient B failed to provide clinical rationale/justification to prescribe multiple Controlled Substances for patient B during the >>>>office visit.

Then use similar questions from Complaint 1 to finish up
OTHER POINTS TO CONSIDER WHEN DRAFTING A COMPLAINT:

- Respondent’s area of practice, including any Boards;
- Respondent’s prior disciplinary history;
- Respondent’s scope of practice (solo practitioner that has no hospital privileges);
- Method of payment – cash only;

DISCOVERY:

- Request complete copy of the chart, including billing records;
- Request that Respondent certify that the produced records are complete, accurate and represent the entire copy of the patient chart;
- Request proof of completion of all Category I CMEs for at least 2 renewal Cycles;
- Request Respondent’s practice CS prescribing protocols/policies;
- Request cutoff discovery dates and make Judges enforce them
LET THE FUN BEGIN: MEDICINE 101

- Medical School and Residency, including importance of documentation, assessment, physical exam, history and collateral information;
- Why CS are dangerous, addictive and must be prescribed with great deal of care and vigilance and how Respondent specifically addresses it in his/her practice;
- If any CMEs are applicable, discuss what if anything Respondent learned from the specific CMEs;
- Medical records are the only records;
- Use of credentialing applications;
- Importance of the first office visit;
- Billing
LET THE FUN CONTINUE

If the subsequent office visit is not very eventful, the transcript usually would look like this:

**Q:** And the next time patient showed up at your door, you gave him X and you charged him Y based on the minimal exam and no reported complaints from the patient, correct?

**Objection:** Compound question

**Judge:** Sustained, Mr. Lozovskiy ask your question again.

**Q:** I am sorry, as you can tell English is not my first language, so I was trying to move along, but since you directed my to ask my question again… Dr. you authorized the following CS to patient, correct?

**A:** If it is what my record says, then yes.

**Q:** You authorized them without assessing patient ….

**A:** I cannot document everything, I only document pertinent findings of my focused limited examination, but I know that I examined the patient thoroughly…
NO FUN FOR RESPONDENT

- **Red flag** questions: what, when, why and what was done

- **Blame Game:**
  - Patients – “I’m not a detective…”
  - Insurance companies
  - Economy
THE FUN COMES TO AN END

Patients’ family members

Patients

Pharmacists

DEA Special Agents/Diversion Investigators

Office staff

Experts