

Attorneys General: Curbing Prescription Drug Abuse and Protecting Military Service Members from Predatory Lenders

By Francesca Liquori and Jesse Longbrake

State and territorial attorneys general have made it a priority to combat the epidemic of prescription opioid abuse and to protect military service members from predatory lenders. Their efforts include law enforcement operations, state drug monitoring programs and education campaigns.

The number of Americans abusing prescription pain relievers known as opioids has skyrocketed over the past decade.¹ From 2000 through 2009, the number of opioid prescriptions dispensed by pharmacies increased by 48 percent.² Nationally, enough prescription opioids were sold in 2010 to provide every adult with 5 milligrams of hydrocodone every four hours for one month.³ According to the Centers for Disease Control and Prevention, drug overdose was the leading cause of injury-related death for people ages 1 to 44 in 2010, and 60 percent of such overdoses were related to pharmaceuticals.⁴

The prescription drug abuse epidemic is a national health crisis. State attorneys general are working to combat this epidemic through a comprehensive approach that includes evidence-based prevention and education efforts, law enforcement operations, and the implementation and improvement of prescription drug monitoring programs. The first part of this article will outline the steps taken by the attorneys general this past year to fight the scourge of opioid abuse and will detail the results of these efforts.

Prescription Drug Monitoring Programs

Prescription drug monitoring programs are state-run electronic databases that track the prescribing and dispensing of prescription drugs. They are designed to monitor for abuse or diversion at the retail level by providing a patient's controlled substance prescription history to prescribers and pharmacists.⁵ Forty-nine states and one territory have legislation authorizing these programs, and 48 states and one territory have operational programs.⁶ Leaving only Missouri and New Hampshire with no operational prescription drug monitoring program. Attorneys general have worked during the past year to expand access and implement improvements to state programs.

The New Jersey Attorney General's Division of Consumer Affairs has developed enhancements that enable its prescription drug monitoring program to generate reports on geographical areas with suspicious controlled substance prescription activity. New Jersey health care providers also have gained real-time access to information entered into the system. Investigators can target patients who obtain multiple prescriptions from different doctors, a practice known as doctor shopping.⁷ In Colorado, the attorney general's office provided legal advice to the Colorado State Department of Regulatory Agencies⁸ in formulating a consistent approach to enhance the drug monitoring program's use.

New York Attorney General Eric Schneiderman participated in the drafting of the Internet System for Tracking Over-Prescribing Act. This comprehensive legislation mandates that physicians consult a real-time database of a patient's prescription history before prescribing a controlled substance. The act also reclassifies hydrocodone, an addictive and widely used opioid, as a Schedule II controlled substance under New York law, meaning that automatic refills are now prohibited.

Law Enforcement Efforts to Stop Prescription Diversion

Attorneys general also have worked to combat pill mills—pain management clinics where doctors prescribe large quantities of painkillers to people who have no medical need for the pills. Florida Attorney General Pam Bondi worked with her state's governor and legislature to establish seven Regional Drug Enforcement Strike Force teams. The strike forces conducted multi-jurisdictional operations against wholesalers, physicians, pharmacies and doctor shoppers to reduce the number of pill mills as well as the demand for prescription drugs. Deaths caused by oxycodone dropped by 52

percent from 2010 to 2012, and overall prescription drug-related deaths dropped by 23 percent.

The attorneys general also use their law enforcement powers to ensure that prescribers are not acting outside of recommended medical guidelines or prescribing opioids for illegitimate purposes. During the past two years, the Ohio Attorney General's Office has been involved in the permanent license revocation of more than two dozen doctors and pharmacists who improperly authorized and filled opioid prescriptions.

The attorneys general in Colorado, Florida, Indiana, Kentucky, Maine, Maryland, Ohio, Pennsylvania and Rhode Island have been instrumental in the prosecution of doctors for the criminal diversion of prescription medication. Colorado Attorney General John Suthers investigated and prosecuted, under Colorado's enterprise corruption statute, a prescription opiate diversion and distribution enterprise whose members operated in multiple states, resulting in lengthy sentences for many of its key leaders.

Education, Prevention and Treatment

The prescription drug epidemic is not solely a law enforcement concern—it is a public health issue as well. Therefore, attorneys general have focused on the education of all stakeholders, including law enforcement, prescribers, pharmacists and community members.

The attorneys general collectively have taken numerous and effective steps to inform the public about the importance of the safe storage and disposal of prescription drugs and the dangers of illicit use. Within the last year Wisconsin Attorney General J.B. Van Hollen introduced a statewide campaign to educate teens and young adults about the dangers of heroin use. The campaign targets prescription drugs as a gateway to heroin use. Kentucky Attorney General Jack Conway continued the "Keep Kentucky Kids Safe" program. Conway and other stakeholders travel to Kentucky schools to educate thousands of students, teachers and parents about the dangers of prescription drug abuse.

More than 70 percent of the people who abused prescription opioids obtained the drugs from friends or relatives.⁹ For years, attorneys general have promoted the federal Drug Enforcement Agency's National Drug Take Back Initiative, which works to safely collect and dispose of unused prescription drugs in order to reduce the supply in the community. Alabama Attorney General Luther Strange sponsored Act 2013-298, legislation that

now allows pharmacies to accept unused or expired prescription medications solely for the purposes of destroying it.

Drug addiction is a disease; therefore, the attorneys general have focused on improving substance abuse treatment options within their jurisdictions. Kentucky's Conway is co-chair of the newly created Substance Abuse Treatment Advisory Committee, which oversees the funding of substance abuse programs. He announced a large portion of more than \$32 million recovered in recent settlements with two pharmaceutical companies will be used to fund a grant program for juvenile treatment centers and to expand treatment programs for pregnant women struggling with substance abuse.

Collaborating with Stakeholders

Attorneys general have formed statewide task forces to increase communication and information sharing among law enforcement, state agencies, doctors and treatment providers. Indiana Attorney General Greg Zoeller launched the state's Prescription Drug Abuse Task Force. During the past year and a half, it secured funding for the state's prescription drug monitoring program and authored legislation to strengthen the program. New Mexico Attorney General Gary King in 2013 sponsored a prescription drug abuse summit together with federal stakeholders. Representatives from the medical, law enforcement and treatment communities discussed key issues relating to the prescription drug epidemic.

Perhaps most notable are the steps attorneys general have taken as a community to combat this epidemic. Attorneys general in Florida, Georgia, Kentucky, Maine and West Virginia are working as members of the National Association of Attorneys General's Substance Abuse Committee to identify and explore key issues relating to drug abuse. Moreover, different groups of attorneys general sent four policy-oriented letters in 2013 to the Food and Drug Administration urging the agency to implement additional regulations on prescription opioids.

Protecting Military Service Members from Predatory Lenders

The brave men and women of the U.S. Armed Forces make personal sacrifices every day to protect our nation. Although these service members are respected and admired for their service, it has become evident more must be done to protect them from predatory and fraudulent business

ATTORNEYS GENERAL

practices while they are at home. State attorneys general are taking action.

Military service members have become prime targets for predatory lenders who utilize deceptive consumer product financing agreements to saddle service members with burdensome debt obligations and subsequently engage in aggressive debt collection practices. Beyond the severe personal hardships associated with these practices, these circumstances impair overall military mission readiness.

A particularly egregious example arose around Fort Drum, N.Y. Retailer SmartBuy sold consumer electronics that were marked up as much as 325 percent over other retailers. The company sold its products on credit, obscuring the final cost of the items from the purchaser. SmartBuy targeted service members from Fort Drum for these sales because of the military allotment system that guarantees payment. By signing up service members for allotments, SmartBuy could collect monthly payments directly from the service member's payroll. If a service member defaulted, SmartBuy illegally contacted their commanding officers. This tactic could result in disciplinary action being taken against the service member under the Uniform Code of Military Justice for falling into a precarious financial position.

SmartBuy was able to avoid running afoul of the Military Lending Act, which caps interest rates at 36 percent for certain loans to military service members, by severely marking up initial purchase costs. While the disclosed interest rates on SmartBuy's product financing agreements ranged from 10 to 20 percent, the total cost of the purchases compared to purchases from other retailers of similar products revealed effective interest rates averaging 244 percent. All told, SmartBuy financed more than \$4 million in unsecured debt to military customers before being put out of business in Fort Drum by the New York Attorney General's Office.

While the enforcement action against SmartBuy was a victory, much more work remains. Retailers in a variety of industries—from furniture to used cars to jewelry—use similar practices to take advantage of military service members. In fact, service members and their families are three times more likely to fall victim to predatory lenders than the average civilian. Many service members are young and inexperienced in financial matters, but their incomes are stable in an otherwise unstable market. Abuse of the military allotment system makes it much easier for predatory lenders to collect payments. Further, lenders know the potential adverse

consequences on a service member's career for accruing too much debt makes service members less likely to report abusive practices. Indeed, those potential adverse career consequences also provide a lender with another, albeit illegal, avenue through which to coerce payment—by contacting a service member's superior officers.

Attorneys general are placing a greater emphasis on improving the financial literacy of service members so they can identify predatory lenders rather than fall victim to them. Through partnerships with the military and the National Association of Attorneys General, also known as NAAG, attorneys general will provide the informational materials and assistance necessary to educate service members on their rights in the lending context and how to choose an appropriate lender.

Improving enforcement efforts against predatory lenders will be the focus of initiatives aimed at increasing coordination among attorneys general and providing enforcement entities with more tools with which to prosecute predatory lending practices.

Increasing coordination among the attorneys general is of particular importance because the predatory lenders targeting service members are no longer simple, local operations. Not only can these businesses operate in multiple locations across several states, but they also often possess the resources and infrastructure to relocate when they are shut down in any given location. The Tennessee Attorney General's Office forced SmartBuy out of the state, but the company then started operating in New York; it now operates in at least six other states. A newly-formed NAAG working group on military matters will focus on the ability of attorneys general to track predatory lenders as they move from state to state. This will allow them to take appropriate action against predatory lenders as soon as they begin operating in violation of the law, limiting their negative impact on service members.

Improving enforcement efforts also requires revitalizing some of the legal tools available to the attorneys general. Most importantly, the attorneys general—along with the U.S. Consumer Financial Protection Bureau and the Federal Trade Commission—are urging Congress and the U.S. Department of Defense to close loopholes in the Military Lending Act. Although the act has been effective at reining in interest rates on certain payday and auto title loans, over time predatory lenders have proved adept at structuring their

loans to fall outside the act's narrow applicability. In fact, predatory lenders have proved that evading the Military Lending Act is as simple as structuring a loan's payment period for a day longer than the act covers. Enforcement agencies will receive a powerful tool if the act is reformed to make its practical application as broad as its intended application and the attorneys general are helping to bring that reform to fruition.

Notes

¹ Examples of prescription opioids include hydrocodone (e.g. Vicodin) and oxycodone (e.g. OxyContin, Percocet).

² Executive Office of the President of the United States, *Epidemic: Responding to America's Prescription Drug Abuse Crisis*, available at http://www.whitehouse.gov/sites/default/files/ondcp/issues-content/prescription-drugs/rx_abuse_plan_0.pdf (2011).

³ Centers for Disease Control and Prevention, *Vital Signs: Overdoses of Prescription Opioid Pain Relievers—United States, 1999–2008*, *Centers for Disease Control and Prevention Analysis: Morbidity and Mortality Weekly Report (MMWR)*, available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6043a4.htm?s_cid=mm6043a4_w (Nov. 4, 2011).

⁴ Centers for Disease Control and Prevention, *Wide-Ranging Online Data for Epidemiologic Research (WONDER)*, at <http://wonder.cdc.gov/mortsql.html> (last visited Jan. 14, 2014).

⁵ Prescribers can check PDMPs to see whether a patient is filling the prescriptions provided and/or obtaining prescriptions for the same or similar drug from multiple physicians.

⁶ Brandeis University Prescription Drug Monitoring Program Training and Technical Assistance Center, *Status of PMPs*, at http://www.pdmpassist.org/pdf/pdmpstatable_2014.pdf (April 2014).

⁷ Detecting “doctor shopping” early can help identify those in need of drug treatment as well as prevent diversion.

⁸ This department includes Colorado's Medical, Pharmacy, Dental and Nursing boards.

⁹ *Results from the 2009 National Survey on Drug Use and Health (NSDUH): National Findings*, SAMHSA (2010). Among those receiving drugs from a friend or family for free, 79.3 percent of friends or relatives received drugs from a doctor's prescription. (NASADAD presentation citing NSDUH).

About the Authors and the National Association of Attorneys General

Francesca Liquori is program counsel for the National Association of Attorneys General Training and Research Institute, a branch of the National Association of Attorneys General (NAAG). **Jesse Longbrake** is NAAG visiting counsel.

NAAG, www.naag.org, was founded in 1907 to help attorneys general fulfill the responsibilities of their office and to assist in the delivery of high quality legal services to the states and territorial jurisdictions. Its members are the attorneys general of the 50 states and Washington, D.C., and the chief legal officers of the commonwealths of Puerto Rico (secretary of justice) and the Northern Mariana Islands, and the territories of American Samoa, Guam and the U.S. Virgin Islands.