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Top Utah prescribers of addictive painkiller face scrutiny

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Advanced practice nurse Kathleen Stillion-Allen gave a single patient 15,310 pain pills over 13 months, the equivalent of 39 a day.

Pain management doctor Robert Finnegan prescribed anti-anxiety medicine to fellow employees at a Utah Department of Health-owned clinic. And orthopedic surgeon Dewey C. MacKay III was indicted for writing prescriptions for oxycodone and hydrocodone without conducting exams, leading to the death of a patient.

In 2008 they all ranked among the Utah Medicaid program's top 10 prescribers of OxyContin, an addictive and commonly abused painkiller. And they've all been scrutinized by professional licensing boards for unprofessional conduct linked to their prescribing practices, with MacKay facing criminal charges.

That overlap highlights the need for states to use every tool at their disposal to police providers, said Sidney Wolfe, director of health research at the Washington, D.C., watchdog group Public Citizen.

"One of the tragedies in this country is [that] people are under-treated for severe pain. Another is the problem of prescription drug abuse," Wolfe said. "They're two competing problems and there's no one cookie-cutter approach for determining a doctor's fault with either. It needs to be a doctor-by-doctor investigation."

Stillion-Allen did not respond to requests for comment. Finnegan and MacKay deny any wrongdoing with respect to their handling of narcotics.

Health officials and regulators with Utah's Division of Occupational and Professional Licensing (DOPL) say they take prescription drug abuse seriously. The pervasive and deadly problem has given rise to public awareness campaigns and a controlled substances database to help regulators spot doctor shoppers and pill mills.

"My guess is if these are the high prescribers, we've already looked at them," said DOPL director Mark B. Steinagel.

But licensing probes of these providers weren't triggered by a review of Medicaid claims. Two started with citizen complaints; DOPL officials won't discuss MacKay's ongoing investigation.

"It's not the mission of Medicaid to monitor the provider but rather to ensure the best outcomes for its clients," said Kolbi Young, a health department spokeswoman.

Questioning use • The top 10 prescriber list was created at the behest of Sen. Charles E. Grassley, R-Iowa, who queried states' Medicaid programs to see whether doctors were over-dispensing drugs at taxpayers' expense. Grassley zeroed in on expensive mental health drugs and regulated substances prone to abuse, such as OxyContin and Xanax.

In several states he found the top prescribers of certain drugs were writing seven to eight times as many prescriptions as other high prescribers. In Utah the spread was far less pronounced.

Grassley shared his findings in a October 2010 letter to U.S. Health and Human Services Secretary Kathleen Sebelius, stressing he wasn't accusing anyone of illegal behavior.

They "merely demonstrate there are providers that prescribe certain drugs at significantly higher rates than their peers," he wrote last October. "This may be because a particular physician has a specific expertise or patient population, but it might also suggest over utilization."

The problem of over using health care, a primary driver of unsustainable costs, is at the forefront of policy debates nationwide. Waste and abuse in Utah's Medicaid program has been the subject of three audits by the legislative auditors.

State health officials have promised to more closely examine Medicaid billings. Underway now is the creation of an independent Office of the Inspector General.

DOPL investigators sometimes pull information from a data bank of all controlled substances prescribed statewide, looking for standout trends that might signal problems.

"Should we be looking at high prescribers? We do," Steinagel said. "There's no magical statistical formula. Just because someone prescribes a lot doesn't mean they're a bad clinician."

Looking just at Medicaid claims is especially problematic, because they represent only a portion of any doctor's business, said Steinagel.

Changing habits • Indeed, Finnegan billed Medicaid for 86 OxyContin prescriptions in 2008 and 96 in 2009, which he says is small for the number of patients he treats.

"I probably wrote more than that," said the 64-year-old pain specialist. "I'm probably the only pain expert Medicaid has."

Finnegan joined the state-owned Health Clinics of Utah about three years ago. Many of his patients are in chronic pain and most are poor and disabled, a population for whom he says drugs are the primary means of treatment.

Behavioral treatment options are limited and Medicaid pays only for one session of physical therapy a month, Finnegan said. "That's not enough for these patients. Their coping skills aren't adequate. They're not operating under their own initiative and they need someone to light a fire under them."

DOPL began investigating Finnegan in 2009 following a complaint from someone who said he was prescribing pain medications to co-workers without documenting it on their charts.

Finnegan denies this and said it was a different controlled substance, benzodiazepines, that he gave co-workers for anxiety and sleep problems.

Finnegan, however, told investigators that he was not running patients through the controlled substances database, a tool for preventing doctor shopping. The Physician Licensing Board placed him on probation for three years.

“It’s been fairly common practice in physician groups to grab a colleague and say, ‘I’ve got this problem, can you help?’ Now the feeling is that maybe we shouldn’t do this. Maybe we should go to a doctor outside the clinic,” Finnegan said. “I’ve been practicing 37 years. [DOPL] is looking forward, and working with the older doctors to educate us and change our habits and I think it’s a good thing.”

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Weighing pills and pain • Stillion-Allen came to DOPL’s attention in 2008. That same year, she was the third-highest Medicaid prescriber of OxyContin. In 2009, she was the fourth-highest with 77 prescriptions for \$52,035.06.

It’s unclear how many or which type of patients Stillion-Allen was treating. OxyContin is typically dispensed in 30-day supplies.

But she was publicly reprimanded and fined \$2,000 by the state Board of Nursing for prescribing narcotics to one John Doe “in excess of medically recognized quantities.”

Over 13 months in 2007 and 2008, she gave John Doe 8,374 oxycodone pills (about 23 a day), 4,452 units of methadone and 2,484 hydrocodone pills, DOPL records show.

A licensed advanced practice nurse in Utah since 1987, Stillion-Allen worked at Nurse Practitioner Health Care in Holladay, which has since folded.

After she completed a prescribing course, the nursing board waived her fine. And she remains in good standing with Medicaid.

MacKay is no longer a Medicaid provider, having opted not to renew. He was a leading prescriber of pain relievers by any measure.

In 2008, the Brigham City doctor billed Medicaid for more OxyContin than anyone else: 118 prescriptions, compared to runners-up Finnegan and Stillion-Allen.

But that’s just a sliver of the millions of opioids he’s alleged in court documents to have given patients.

The 63-year-old was charged last fall with 130 counts related to his prescribing more than 1.9 million hydrocodone pills and nearly 1.6 oxycodone pills between June 1, 2005 and October 30, 2009. The first two counts are tied to the death of a patient in 2006, the indictment says.

MacKay dispensed more hydrocodone than any other doctor in Utah, according to the U.S. Attorney’s Office. He saw 100 to 120 patients in an eight-hour workday, prosecutors say.

The doctor has since retired and denies wrongdoing through his lawyer Peter Stirba.

MacKay is a respected doctor with close to 40 years of practice, said Stirba. “For health reasons peculiar to him he could no longer do surgery and because many of his patients are in chronic pain, he developed a chronic pain practice.”

The under-treatment of chronic pain is a recognized public health problem that has sparked malpractice lawsuits in other states, said Stirba, who says his client has a spotless track record.

DOPL contributed to the investigation of MacKay along with the FBI and DEA, but has taken no action against his license.

Stirba said to date there have been no plea negotiations. A trial is set for July 6.

Without discussing the MacKay investigation, DOPL spokeswoman Jennifer Bolton said it's not unusual to refer complicated cases to law enforcement agencies that have broader investigatory powers.

Problem doctors are rare in Utah, and early warning signs are often best handled through education, said Steinagel. "I recently sat in on a meeting with a doctor who had a good explanation for the drugs he was prescribing. But he was scared. He said he had received pressure from his employer to be customer-service oriented. But he realizes now his license is on the line."

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Policing the prescribers

The Utah Division of Occupational and Professional Licensing has a record of every controlled substance dispensed statewide. The Controlled Substance Database is used by pharmacists and doctors to spot doctor shoppers and by investigators to identify pill mills.

It's been slow to catch on, but all prescribers must now register and take a tutorial on using the database.

94 percent of active prescribers have registered

Prescribers actively using the database more than tripled from 7 percent to 23 percent in 2010.

Starting this summer, Medicaid's fraud control unit will have unfettered access to the database.

Soon every hospital will have to report drug overdoses.

Utah's Medicaid program monitors prescription drug use through the patient, not the provider. It flags frequent users of emergency rooms for further scrutiny and contracts with the University of Utah to run monthly reports on patients with the highest number of prescriptions. Those patients' files are reviewed to ensure the drugs were properly prescribed; any problems are addressed with providers.