

RISE OF THE PILLS

Ken Lammers, Jr.

INTRODUCTION

Imagine a pharmaceutical company offering heroin for use as a pain killer and falsely advertising it as less addictive than other pain killers. Doctors begin to prescribe heroin to handle a wide range of maladies from work injuries to chronic back pains. Medicaid and insurance companies finance the vast majority of the distribution of heroin, allowing people to pay for their prescriptions for a tenth of the actual sale price. Unfortunately, if you live in the Appalachians and many parts of rural America you don't have to imagine any of this.

In 1995, Purdue Pharma introduced the world to OxyContin¹ (generic name oxycodone). “Although heroin and OxyContin have a similar unhappy effect on the lives of people addicted to them, there is a critical and simple difference between the two: heroin is illegal; OxyContin, when used as directed, is legal.”² Purdue Pharma trained “its sales force to falsely promote the opioid analgesic as less likely than other pain medications to cause abuse, addiction, tolerance, and withdrawal” and “healthcare providers were deliberately misinformed that the extended-release formulation rendered oxycodone extraction more difficult and therefore decreased the potential for abuse, and that a lack of euphoria rendered it less addictive than immediate-release opiates or even morphine.”³ Before Purdue Pharma abandoned these claims in 2001 “the drug produced \$2.8 billion in revenue for Purdue Pharma.”⁴ Meanwhile, OxyContin was easily affordable by users “since the insurance provider covers most costs associated with doctor visits and the prescription.”⁵

This was the beginning of the modern era of prescription drug abuse. In the Appalachian Mountains, including Maine, Ohio, West Virginia, Eastern Ken-

1 Phillip J. Winger, *Pharmaceutical Overpromotion Liability: The Legal Battle Over Rural Prescription Drug Abuse*, 93 KY. L.J. 269 (2004).

2 Paul Tough, *The Alchemy of OxyContin: From Pain Relief to Drug Addiction*, N.Y. TIMES, Jul. 29, 2001, available at <http://www.nytimes.com/2001/07/29/magazine/29OXYCONTIN.html?pagewanted=3>.

3 Yael Waknine, *False Promotion of OxyContin Costs Purdue Frederick \$600 Million*, MEDSCAPE TODAY, May 11, 2007, available at <http://www.medscape.com/viewarticle/556381>; see also U.S. GOV'T ACCOUNTABILITY OFFICE, GAO-04-110P, *PRESCRIPTION DRUGS: OXYCONTIN ABUSE AND DIVERSION AND EFFORTS TO ADDRESS THE PROBLEM* (2003), available at <http://www.gao.gov/new.items/d04110.pdf> (general overview of problems with Purdue's advertising).

4 Barry Meier, *Big Part of OxyContin Profit Was Consumed by Penalties*, N.Y. TIMES, June 19, 2007, available at <http://www.nytimes.com/2007/06/19/business/19drug.html>.

5 U.S. DEP'T OF JUSTICE NAT'L DRUG INTELLIGENCE CTR., INFO. BULL. NO. 2001-L0424-001, *OXYCONTIN DIVERSION AND ABUSE* (2001), available at <http://www.justice.gov/ndic/pubs/651/651p.pdf>.

tucky, Maryland, Western Pennsylvania, and Southwestern Virginia, OxyContin addiction and abuse spiraled out of control.⁶ This wave of prescription drug abuse brought with it other pills to be abused including hydrocodone (Lortab, Vicodin, another opioid pain killer), alprazolam (Xanax, used to treat anxiety and depression), and buprenorphine (Suboxone, Subutex, an opioid approved to treat addiction to other opioids).⁷

From the Appalachians, the abuse of these prescription drugs has spread. By 2002, the abuse of OxyContin spread to the point that it was a serious problem in New Orleans, Cincinnati, Philadelphia, and Phoenix.⁸ In more recent times it has been an issue in San Diego,⁹ Seattle,¹⁰ New York City,¹¹ and Boston.¹² In fact, OxyContin abuse in cities has become significant enough that it is beginning to climb into public awareness; even Hollywood has taken notice and portrayed the abuse of OxyContin in poorer sections of Boston in “The Town.”¹³

I. ADVANTAGES OF THE ILLEGAL PILL TRADE

A. Legacy Drugs

In many urban areas the primary illegal drugs are cocaine and heroin. From 1980 through 2000, crack cocaine was found to be prevalent in Newark, Philadelphia, New York, Oakland, Boston, San Francisco, Seattle, New Orleans, Baltimore, Washington, D.C., and Los Angeles.¹⁴ More recent, if less scientific,

6 *Id.*

7 U.S. DEP'T OF JUSTICE NAT'L DRUG INTELLIGENCE CTR., NATIONAL DRUG THREAT ASSESSMENT (2003), available at <http://www.justice.gov/ndic/pubs3/3300/pharm.htm>; DEA OFFICE OF DIVERSION CONTROL, DRUG AND CHEMICAL EVALUATION SECTION, BUPRENORPHINE (Feb. 2011), available at http://www.deadiversion.usdoj.gov/drugs_concern/buprenorphine.pdf.

8 U.S. DRUG ENFORCEMENT AGENCY, OXYCONTIN, http://www.justice.gov/dea/concern/oxydone_factsheet.html (last visited Mar. 2, 2011).

9 Teri Figueroa, *REGION: Task Force to Fight OxyContin Abuse*, NORTH COUNTY TIMES, Oct. 19, 2009, available at http://www.nctimes.com/news/local/sdcounty/article_5863fba1-6bcf-55c5-803e-9b5b272fa47e.html.

10 Levi Pulkkinen, *Ex-Rainier Beach High Drug Counselor Convicted of Painkiller Dealing*, SEATTLE POST-INTELLIGENCER, Sept. 22, 2010, available at http://www.seattlepi.com/local/427197_Beach22.html.

11 Press Release, Fed. Bureau of Investigation, Ringleader of NYC Oxycontin Drug-Dealing Crew Sentenced in Manhattan Federal Court to 10 Years in Prison (Dec. 9, 2009), available at <http://newyork.fbi.gov/dojpressrel/pressrel09/nyfo120909.htm>.

12 *Battle OxyContin in Streets, and Pharmacies and Hospitals*, BOSTON GLOBE, Jan. 25, 2010, available at http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2010/01/25/battle_oxycontin_in_streets_and_pharmacies_and_hospitals/.

13 Loren King, *Affleck Delivers Boston-based 'The Town' with Aplomb*, PROVINCETOWN BANNER Sept. 29, 2010, available at <http://www.wickedlocal.com/wellfleet/fun/entertainment/arts/x236502561/Affleck-delivers-Boston-based-The-Town-with-aplomb>.

14 Steven D. Levitt & Kevin M. Murphy, *How Bad Was Crack Cocaine? The Economics of an Illicit Drug Market*, CAPITAL IDEAS: SELECTED PAPERS ON PRICE THEORY (Apr. 2006), available at <http://www.chicagobooth.edu/capideas/apr06/5.aspx>.

studies have shown indications that in 2009 cocaine was more prevalent in Baltimore, Boston, Detroit and Washington, D.C.¹⁵ As for heroin, Chicago is the city with the largest numerical presence.¹⁶ New York, the city with the second largest numerical presence, has about half that of Chicago.¹⁷ However, Boston may actually have the largest heroin use per capita.¹⁸ In the District of Columbia, heroin use is higher than the national average, but secondary to cocaine use.¹⁹ Cocaine and heroin are both delivered to localities in the United States at the end of a long, illegal supply chain across international borders from South America and Mexico.²⁰ While interdiction of these supply lines has never proven highly successful, national and international law enforcement officials are constantly attempting to intercept these drugs before they reach the locality where they will be distributed.

B. *The Pills*

1. No Extended Illegal Supply Chain for Pills

In contrast to the legacy drugs, prescription drugs are already within the United States and legally delivered to every city, county, and town. The ubiquity of legally present drugs makes them a strong temptation for those inclined to divert the pills either for personal abuse or sale to other abusers.²¹ Once the pills are legally delivered to a locality, the chain from illegal diversion to abuser is much shorter than that of traditionally abused drugs such as heroin or cocaine.²²

15 Mark T. Sampson, *New Study: Up to 90 Percent of U.S. Paper Money Contains Traces of Cocaine*, AM. CHEMICAL SOC'Y (Aug. 16 2009), available at http://portal.acs.org/portal/acs/corg/content?_nfpb=true&_pageLabel=PP_ARTICLEMAIN&node_id=222&content_id=CNBP_022755&use_sec=true&sec_url_var=region1&_uuiid=ca4e3200-e7ec-4964-8d75-589107a96d6f.

16 Stephanie Schmitz & Kathleen Kane-Willis, *Heroin Use in Illinois: A Ten-Year Multiple Indicator Analysis, 1998 to 2008 Executive Summary and Findings*, ROOSEVELT UNIV.: THE ILL. CONSORTIUM ON DRUG POLICY, available at http://www.roosevelt.edu/~media/Files/pdfs/CAS/IMA/IMA%20Publications/Heroin_Use_in_Illinois_EXECUTIVE_SUMMARY_AND_FINDINGS.ashx.

17 *Id.*

18 *Id.*

19 U.S. DEPT. OF JUSTICE NAT'L DRUG INTELLIGENCE CTR., PRODUCT NO. 2003-L0390H-001, HEROIN IN THE NORTHEAST: A REGIONAL DRUG THREAT ASSESSMENT (2003), available at <http://www.justice.gov/ndic/pubs5/5787/heroin.htm>.

20 U.S. DEPT. OF JUSTICE NAT'L DRUG INTELLIGENCE CTR., SOUTH FLORIDA HIGH INTENSITY DRUG TRAFFICKING AREA DRUG MARKET ANALYSIS 2008 (2008), available at <http://www.justice.gov/ndic/pubs27/27512/dtos.htm>.

21 See, e.g., Almin Alton, *The common denominator of narcotic diversion*, EMS1.com (May 18, 2010) <http://www.ems1.com/ems-management/articles/820734-The-common-denominator-of-narcotic-diversion/>.

22 See, e.g., Andrew Knapp, *Pill Mills Prove Tough to Stop: 'Obvious' overprescribing not enough to arrest*, FloridaToday.com (Oct. 28, 2011) (distribution at pain clinic takes 60 seconds), <http://www.floridatoday.com/article/20111028/NEWS01/310280043/Pill-mills-prove-tough-stop>; see also David Luhnnow, *Saving Mexico: To weaken the cartels, some argue the U.S. should legalize marijuana, let cocaine pass through the Caribbean and take the profit motive out of the drug trade*, WALL ST. J.:

Also, there are a great number of fairly simple means to divert prescription drugs for illegal use.

2. The Ease of Abuse After the Pills Are Legally Prescribed

The simplest way that these drugs are obtained is for an abuser to take them from a medicine cabinet. While there have been reports of adult caregivers stealing pills from the elderly,²³ a more disturbing trend has been high school youths taking random pills from their parents' and grandparents' cabinets (a.k.a. "pharming"),²⁴ dumping them all in a plastic bag (a.k.a. "trailmix") and going to "pharm parties."²⁵ Once at the pharm party, everyone dumps their pills into a bowl and throughout the party people swallow handfuls of random pills, washing them down with alcohol.²⁶

Another way in which pills are diverted to abusers occurs when people with legitimate prescriptions sell their pills. This includes both persons who have serious medical conditions²⁷ and elderly who have pills to deal with chronic pain.²⁸ OxyContin 40 milligram pills are purchased for \$4 a pill at the pharmacy²⁹ and that price can be significantly reduced if the purchaser is only paying a co-pay amount.³⁰ The street price for OxyContin ranges between \$.50 to \$2 per milligram.³¹ Therefore, a patient who has a prescription for 60 OxyContin 40 mg pills

Politics, Dec. 26, 2009 (illegal cocaine supply chain travels from Colombia thru the Caribbean or Mexico), available at <http://online.wsj.com/article/SB10001424052748704254604574614230731506644.html>.

23 Sanford J. Schmidt, *Police See Pill-Popping as Plague*, THE TELEGRAPH, Sept. 18, 2010, available at <http://www.thetelegraph.com/news/drugs-45040-drug-people.html>.

24 Donna Leinwand, *Prescription Drugs Find Place on Teen Culture*, USA TODAY, June 13, 2006, available at http://www.usatoday.com/news/health/2006-06-12-teens-pharm-drugs_x.htm.

25 *Id.* See also Carolyn Johnson, *Prescription Drug Abuse By Teens on the Rise*, KGO-TV, (Nov. 18, 2010), <http://ABCLocal.go.com/kgo/story?section=news/health&id=7798022> (pills in bowl also called "skittles").

26 Jean Johnson, *Dangerous Mix: Teens Finding New Uses for Parents' Prescription Pills with 'Pharm Parties'*, THE FLINT JOURNAL, Oct. 18, 2009, available at http://www.mlive.com/news/flint/index.ssf/2009/10/post_48.html.

27 Shoshana Walter, *In Tough Times, Grandpa Pushes Pills*, THE BAY CITIZEN, Sept. 18, 2010, available at <http://www.baycitizen.org/crime/story/tough-times-grandpa-pushes-pills/>.

28 Aaron Mesmer, *Elderly Woman Arrested on Drug Trafficking Charges in Cleveland Co.*, NEWS 14 CAROLINA (Oct. 7, 2010), http://charlotte.news14.com/content/local_news/charlotte/631237/elderly-woman-arrested-on-drug-trafficking-charges-in-cleveland-co- (last visited Dec. 3, 2011).

29 Oxycontin: Prescription Drug Abuse – 2006 Revision, SUBSTANCE ABUSE TREATMENT ADVISORY, (Apr. 2006), <http://kap.samhsa.gov/products/brochures/advisory/pdfs/Oxycontin-Advisory.pdf>. (last visited Dec. 2, 2011).

30 Oxycodone Street Price Compared to Oxycontin, TOPIX, OXYCONTIN, ROXICODONE, OXYCODONE FORUM, <http://www.topix.com/forum/drug/oxycontin/T0KAPR1H294IRMU4G> (last visited Mar. 8, 2011).

31 NAT'L DRUG INTELLIGENCE CTR, NATIONAL PRESCRIPTION DRUG THREAT ASSESSMENT 2009: APPENDIX B. CONTROLLED PRESCRIPTION DRUG PRICES COLLECTED IN 2008 (April 2009), <http://www.jus tice.gov/ndic/pubs33/33775/appendb.htm#Top> (last visited Dec. 3, 2011).

has paid a maximum of \$240 for the pills and, assuming a \$1 street value per milligram, can sell the pills for \$2,400. For someone on a limited income the temptation to augment his or her income through the sale of some or all of his or her pills can be extremely hard to resist.

3. Pharmacy Exploitation

For anyone trying to get prescription drugs, either to abuse herself or to sell to others, the pharmacy is a prime target. One approach to illegally diverting pills is prescription fraud. The most common form of prescription fraud is probably a patient altering a prescription (“scrip”) so that it states she should receive more pills than the doctor approved;³² quite often this is as unsophisticated as a patient adding a zero after the number the doctor wrote on the scrip.³³ Other abusers call in prescriptions in doctors’ names and give a false callback number so that confirmatory calls go to a person prepared to give a false confirmation.³⁴ False prescriptions written on stolen prescription pads³⁵ or created on the abuser’s computer³⁶ are also used to get pills from pharmacies. Abusers are encouraged in this type of behavior by the pharmacists themselves who report that they will contact law enforcement in less than half the cases of prescription fraud.³⁷

Of course, fraud is not the only means by which pills are illegally removed from pharmacies. Pharmacists and pharmacy techs also steal a significant amount of pills that eventually see distribution on the street.³⁸ Traditional criminal acts, such as burglary³⁹ and robbery⁴⁰ are also used to steal pills.

32 A Pharmacist’s Guide to Prescription Fraud, U.S. DEP’T OF JUSTICE, OFFICE OF DIVERSION CONTROL (Feb. 2000), <http://www.deadiversion.usdoj.gov/pubs/brochures/pharmguide.htm> (last visited Dec. 10, 2011) [hereinafter Pharmacist’s Guide].

33 Chippewa Falls Man Charged with Prescription Drug Fraud, WQOW (Sept. 17, 2010), <http://www.wqow.com/Global/story.asp?S=13174365>.

34 Pharmacist’s Guide, *supra* note 32. See also Deborah Sharp, *Jeb Bush’s Daughter Charged with Prescription Fraud*, USA TODAY, Jan. 29, 2010, available at <http://www.usatoday.com/news/nation/2002/01/29/noelle-bush.htm>.

35 Pharmacist’s Guide, *supra* note 32. See also *Woman Arrested for Using Stolen Prescription Pad*, THE CHATTANOOGAN.COM (Apr. 20, 2010), available at http://www.chattanooga.com/articles/article_173882.asp.

36 Pharmacist’s Guide, *supra* note 32. See also *Billings Woman Admits Prescription Fraud*, BILLINGS GAZETTE, June 29, 2010, available at http://billingsgazette.com/news/local/crime-and-courts/article_1bd214b0-83d9-11df-983b-001cc4c03286.html.

37 UNDER THE COUNTER: THE DIVERSION AND ABUSE OF CONTROLLED PRESCRIPTION DRUGS IN THE U.S., THE NAT’L CTR ON ADDICTION & SUBSTANCE ABUSE AT COLUM. U., July 2005, at 50, available at www.casacolumbia.org/download.aspx?path=/UploadedFiles/tt3b14lk.pdf [hereinafter UNDER THE COUNTER].

38 Marshall Allen, *For Pharmacy Techs, Drugs Easy to Steal*, THE LAS VEGAS SUN, Aug. 25, 2008, available at <http://www.lasvegassun.com/news/2008/aug/25/pharmacy-techs-drugs-easy-steal/>.

39 Teen Passes Out in Ceiling After Robbing Pharmacy, FOX 25/MYFOX BOSTON, (Sept. 14, 2010), <http://www.myfoxboston.com/dpp/news/local/teen-arrested-for-stealing-cough-syrup-20100914>.

A serious problem has been the onset of internet pharmacies. Estimates have placed the number of these pharmacies as high as 1,400.⁴¹ These sites provide thousands of prescriptions each year without requiring medical records or examinations.⁴² Some of these sites provide “online consultations” while others refer customers to doctors willing to write prescriptions for money.⁴³

4. The Involvement of Doctors

Abusers often involve doctors in the diversion without the doctors’ knowledge. “Doctor shopping” is the practice of going to several doctors for treatment which involves the prescription of pills without telling any of the doctors that other doctors are also treating and prescribing the same pills.⁴⁴ Doctor shopping is not necessarily limited to single abusers. In some schemes, patients are paid to go to doctors to get prescriptions and then turn over the pills to persons who will sell them on the illegal market.⁴⁵

Doctor shopping is generally a low risk, high return behavior. Doctors can be surprisingly naïve about prescribing pills. “Most physicians believe that diversion is not much of a problem in their own offices or clinics.”⁴⁶ Having been trained to build a positive relationship with the patient, doctors often have difficulty refusing to give manipulative patients drugs.⁴⁷ Even if the doctor is neither naïve nor manipulable, only 10.7% of doctors report a patient believed to be doctor shopping to law enforcement.⁴⁸

Of course, not all doctors are naïve. Some doctors refuse to look for pill diversion. One doctor was quite open about his willful blindness: “I don’t find myself being the drug police . . . I have enough things I have to do. If I prescribe an adequate amount, and if someone loses it or whatever, then obviously I’ll see them again and if they need more medication, I’ll give it to them.”⁴⁹ Other doctors become entirely suborned. In some cases doctors have exchanged pills for

40 Casey McNerthney, *Robbing Pharmacies . . . is the Only Way to Go*, SEATTLE POST-INTELLIGENCER, Jan. 6, 2010, available at http://www.seattlepi.com/local/413916_drugs07.html.

41 UNDER THE COUNTER, *supra* note 37, at 64.

42 UNDER THE COUNTER, *supra* note 37, at 64.

43 UNDER THE COUNTER, *supra* note 37, at 64.

44 Luis Perez, *Man Charged with Obtaining 7,000 Pills by Doctor Shopping*, ST. PETERSBURG TIMES, Sept. 15, 2010, available at <http://www.tampabay.com/news/publicsafety/crime/man-charged-with-obtaining-7000-pills-by-doctor-shopping/1121653>.

45 Valarie Honeycutt Spears & Bill Estep, *Louisville Man Indicted in Pain Pill Scheme*, LEXINGTON HERALD-LEADER, June 5, 2009, available at <http://www.kentucky.com/2009/06/05/819563/xlouisville-man-indicted-in-pain.html>.

46 UNDER THE COUNTER, *supra* note 37.

47 UNDER THE COUNTER, *supra* note 37, at 54-55.

48 UNDER THE COUNTER, *supra* note 37, at 55.

49 UNDER THE COUNTER, *supra* note 37, at 57.

favors such as sex⁵⁰ or even babysitting.⁵¹ In other cases doctors sell pills directly for money⁵² or through a proxy.⁵³ Doctors are also involved in the diversion of drugs by organized groups.⁵⁴ Additionally, doctors have a tendency to protect their own, even when they believe other doctors are breaking the law. Only 1.7% of doctors claim they would contact law enforcement if they thought another doctor was illegally diverting prescription drugs.⁵⁵

5. Pain Management Clinics

Palliative care has been an issue in the United States since the 1950's, with a steady growth in clinics since the 1970's.⁵⁶ However, in more recent times pain management clinics have become a front for the distribution of pills. While there are undoubtedly legitimate pain management clinics, the recent boom in their numbers seems driven by the decision to distribute bulk quantities of pills.

There are many locales where drug seekers have pursued pills in order to bring them back to the Appalachians. They have gone to Louisiana, Pennsylvania, Ohio,⁵⁷ New York,⁵⁸ and Michigan⁵⁹ in order to get pills. However, the most favored location to procure pills for the last several years has been Florida.

Until 2010, Florida lacked any regulation of pain management clinics by the Florida Board of Medicine⁶⁰ and had no prescription drug monitoring plan

50 Carl Hessler Jr., *Ex-Delco Doc Gets Jail in Rx-for-Sex Scam*, DAILY TIMES, Mar. 16, 2010, available at <http://www.delcotimes.com/articles/2010/03/16/news/doc4b9fbb11aed29871459139.txt>.

51 Rhonda Simmons, *Culpeper Dentist Begins 28-Month Prison Sentence*, STAR EXPONENT, June 11, 2010, available at http://www2.starexponent.com/news/2010/jun/11/culpeper_dentist_begins_28-month_prison_sentence-ar-324302/.

52 Greg Risling, *Doc Gets 4 Years for Dispensing Drugs for Cash*, MSNBC.COM (Apr. 14, 2010), http://www.msnbc.msn.com/id/36528589/ns/health-more_health_news/.

53 *Doctor Charged with Conspiring to Sell Prescription Drugs*, THE HUB (Sept. 2, 2010), http://hub.gmnews.com/news/2010-0902/Front_Page/Doctor_charged_with_conspiring_to_sell_prescriptio.html.

54 Bill Estep, *Former Doctor Gets 48 Months in Eastern Kentucky Pain-Pill Case*, KENTUCKY HERALD-LEADER, <http://www.kentucky.com/2009/09/25/951264/former-doctor-gets-48-months-in.html> (last modified Nov. 19, 2009, 5:04 PM).

55 UNDER THE COUNTER, *supra* note 37, at 58.

56 CHRIS J. MAIN & CHRIS C. SPANSWICK, PAIN MANAGEMENT: AN INTERDISCIPLINARY APPROACH 114 (Churchill Livingstone, 2000).

57 Estep, *supra* note 54.

58 Claire Galofaro, *Two-Year Drug Investigation Nets Three Dozen Mountain Empire Residents*, TRICITIES.COM (Jan. 15, 2010), http://www2.tricities.com/news/2010/jan/15/two-year_drug_investigation_nets_three_dozen_mount-ar-238411/.

59 Honeycutt Spears & Estep, *supra* note 45.

60 Judy McKee, *A Prescription for Pill Mills: The Broward County Grand Jury Report*, NAA GAZETTE, <http://www.naag.org/a-prescription-for-pill-mills-the-broward-county-grand-jury-report.php> (last visited Feb. 26, 2011).

(“PDMP”).⁶¹ This lack of oversight allowed abusers to go from clinic to clinic. At each place the abuser would claim to be in pain, the doctor would prescribe 30 days worth of pills, and the prescription was filled on site.⁶² This system proved immensely profitable for the pain clinics and their number skyrocketed. In particular, the number of pain clinics exploded in Broward and Palm Beach Counties. Broward County had 4 pain clinics in 2007, 47 pain clinics in 2008, 115 pain clinics in 2009,⁶³ and 154 pain clinics in 2010.⁶⁴ At the same time, the number of pain clinics in Palm Beach County grew to 122 and the number of pain clinics in Florida grew to 942.⁶⁵ In 2008, among all doctors in the United States, the top 25 (first six months) and top 50 (last six months) for prescribing oxycodone were in Florida and the majority of these were in Broward County, where 6.5 million “dose units” were dispensed in just the last six months of 2008.⁶⁶

There is hope that the Florida problem will be solved by new statutes. Florida’s legislature has finally passed some laws to ameliorate this problem, providing for a PDMP that should have been in operation in December 2010. However, it is uncertain that the PDMP will become and remain operational. Despite a startup cost of \$1 million and a yearly projected budget of \$450,000, the Florida legislature denied it any funding. According to Bruce Grant, the director of the Florida Office of Drug Control, “It was not a priority.”⁶⁷ The implementation of Florida’s PDMP is also mired in a bureaucratic fight over who should be allowed to run it.⁶⁸ Additionally, pain management clinics that are impacted by the new

61 MICHAEL J. SATZ, INTERIM REPORT OF THE BROWARD COUNTY GRAND JURY, THE PROLIFERATION OF PAIN CLINICS IN SOUTH FLA. 3 (Nov. 19, 2009), available at <http://sao17.state.fl.us/Pill%20Mill%20Grand%20Jury.pdf>.

62 *Id.* at 4.

63 *Id.* at 6.

64 Tonya Alanez, ‘Pill Mills,’ Pain-Management Clinics Accountability: Palm Beach, Broward Counties Seek Stricter Guidelines, PALM BEACH POST, Sept. 24, 2010, available at <http://www.palmbeachpost.com/news/state/pill-mills-pain-management-clinics-accountability-palm-beach-934978.html>.

65 Alanez, *supra* note 64.

66 Satz, *supra* note 61, at 6-8.

67 Marcos Restrepo, Florida Has Taken Steps to Combat its Prescription Drug Abuse Problem, but the Funding Still Hasn’t Arrived, FLA. INDEPENDENT (June 01, 2010, 8:30 AM), <http://florida-independent.com/1235/florida-has-taken-steps-to-combat-its-prescription-drug-abuse-problem-but-the-funding-still-hasnt-arrived>.

68 Brandon K. Thorp, Bruce D. Grant, of Florida Office of Drug Control, Explains Delays in Establishing Prescription Pill Database, BROWARD/PALM BEACH NEW TIMES (Nov. 10, 2010, 10:00 PM), http://blogs.browardpalmbeach.com/juice/2010/11/bruce_d_grant_drug_control_pill_mills.php.

legislation are challenging it in federal court⁶⁹ and Florida's legislature has passed legislation, making it financially difficult for the statutes to be enforced.⁷⁰

If Florida were to shut down all its pain clinics tomorrow, it would not solve the problem. As of July 2010, 34 states have PDMP's, 7 states have plans to implement a PDMP, 1 state has discontinued its PDMP (Washington), and 8 states have no PDMP.⁷¹ Among those without PDMP's, the District of Columbia, Maryland, Delaware, Missouri, Arkansas, and Georgia are all even easier to reach than Broward County, in the southern part of Florida. There is an abiding belief that Florida's crackdown will merely cause the pain clinics to migrate to Georgia.⁷² There are already indications that owners of Florida pain clinics are already setting up clinics in Georgia and Missouri.⁷³ Indeed, a pharmacist from a Chattanooga pharmacy reports "[s]ix prescriptions between the two people containing identical drugs, doses and quantities totaling 480 oxycodone tablets, 240 Xanax tablets and 180 Soma tablets" coming from a Georgia pain clinic.⁷⁴ Even in states where there is a PDMP, effectiveness varies. In Massachusetts, there have been calls to reform an ineffective PDMP.⁷⁵ In Ohio, the PDMP has not stopped the opening of so many pain clinics in Plymouth County that Kentucky law enforcement has taken to calling it "Broward North."⁷⁶

II. THE ACTORS

There are three broad categories of actors involved in the illegal diversion of prescription drugs: the providers, the abusers, and law enforcement. In many ways, these follow the same patterns present in any illegal drug trade. Providers develop abusers and then satisfy the need they have nurtured. Law enforcement

69 Robert Napper, *Pain Clinics Challenge Florida's Pill Mill Bill in Federal Court*, FLA. INDEPENDENT (Oct. 01, 2010, 7:59 AM), <http://floridaindependent.com/9273/pain-clinics-challenge-floridas-pill-mill-bill-in-federal-court>.

70 Kate Howard, *New Florida Law is Delaying Regulation of Pill Mills*, FLA. TIMES-UNION, Nov. 24, 2010, available at <http://jacksonville.com/news/florida/2010-11-24/story/new-florida-law-delaying-regulation-pill-mills>.

71 Which States Currently Have a PDMP?, Comment to Q&A - State Prescription Drug Monitoring Programs, U.S. D.O.J. D.E.A. OFFICE OF DIVERSION CONTROL (July 2010), http://www.dea.diversion.usdoj.gov/faq/rx_monitor.htm#4 (last visited Dec. 2, 2011).

72 Kate Howard & Paul Pinkham, *Florida Pill Mills Pump Poison through South*, FLA. TIMES-UNION, Sept. 24, 2001, available at <http://jacksonville.com/news/crime/2010-09-24/story/florida-pill-mills-pump-poison-through-south>.

73 *Id.*

74 Phil Hopkins, *Controlling Controlled Substances (Part Two): Florida Pain Clinics Move North*, NASHVILLE HEALTH EXAMINER, July 30, 2010, available at <http://www.examiner.com/health-in-nashville/controlling-controlled-substances-part-two-florida-pain-clinics-move-north?render=print>.

75 Editorial, *Battle OxyContin in Streets, and Pharmacies and Hospitals*, BOSTON GLOBE, Jan. 25, 2010, available at http://www.boston.com/bostonglobe/editorial_opinion/editorials/articles/2010/01/25/battle_oxycontin_in_streets_and_pharmacies_and_hospitals/.

76 Howard & Pinkham, *supra* note 72.

attempts to interdict supply and punish those involved in the illegal prescription pill trade. Abusers are in the middle; they are being exploited by providers, seeking the pills themselves, and suffering the most through the affects of the pills and the efforts of law enforcement. However, there are also some unique aspects to each category when considering their interaction in the illegal prescription pill trade.

A. Incentivized “Legitimate” Providers

When dealing with most illegal drugs, there is usually some sort of organized crime cartel at the far end, arranging for the delivery and distribution of the drug into the United States.⁷⁷ When dealing with prescription drugs, organized criminals can be involved,⁷⁸ but there is also a great amount of participation by moneyed American interests. Purdue Pharma, the company selling OxyContin, made \$2.2 billion in 2003, with \$1.8 billion of its sales coming from OxyContin alone.⁷⁹ A doctor can make \$6,000 each month from a single client.⁸⁰ A pharmacist sells OxyContin at \$4 per 40mg pill⁸¹ and \$6 per 80mg pill.⁸² No one is dealing OxyContin on the street without a “legitimate” business profiting as well.

Of course, in order for the legitimate businesses to prosper they must have clients. Along these lines, Purdue Pharma has continued to aggressively market OxyContin. Despite the federal government levying a \$600 million fine on Purdue Pharma in 2007 for purposefully and falsely marketing OxyContin as less addictive than it was,⁸³ the company continues to push its product. There is even a claim that, after it was required by the federal government to remove from its website marketing for “pregnancy pain” and “undertreatment of pain in newborns,” Purdue Pharma is now using proxies to push for pain medication for children who are too quiet.⁸⁴ Doctors in Florida advertise in newspapers and on

77 Amy Isackson, Prop. 19 Won't Immediately Calm Cartel Violence, If At All, KPBS, PUBLIC BROADCASTING, (Oct. 04, 2010), <http://www.kpbs.org/news/2010/oct/14/prop-19-wont-immediately-calm-cartel-violence-if-a/> (last visited Dec. 2, 2011).

78 Howard & Pinkham, *supra* note 72.

79 Larry Sellers, Pharm Exec 50: Last Year, Pharma Sold \$466 Billion in Rx Drugs. Here Are the Companies Driving Industry's Growth, Pharmaceutical Executive, May 2004 (on file).

80 Doctors Charged With Dealing OxyContin, THE BLOTTER, ABC News, (May 15, 2007), http://blogs.abcnews.com/theblotter/2007/05/doctors_charged.html (last visited Dec. 2, 2011).

81 U.S. DEP'T OF HEALTH & HUM. RESOURCES, OXYCONTIN: PRESCRIPTION DRUG ABUSE – 2SE 6 REVISION (2006), available at <http://kap.samhsa.gov/products/brochures/advisory/pdfs/Oxycontin-Advisory.pdf>.

82 Oxycontin Diversion and Abuse, National Drug Intelligence Center (2001), <http://www.justice.gov/ndic/pubs/651/abuse.htm> (last visited Dec. 2, 2011).

83 Yael Wakinne, *False Promotion of OxyContin Costs Purdue Frederick \$600 Million*, MED-SCAPE TODAY, May 11, 2007, available at <http://www.medscape.com/viewarticle/556381>.

84 Marianne Skolek, Fear Drug Pushers? Add Purdue Pharma's Pain Societies to the List, -Salem-News.com (Jul. 25, 2010), <http://salem-news.com/articles/july252010/pain-purdue-ms.php> (last visited Dec. 2, 2011).

billboards that out-of-state customers are welcome and there will be no wait for walk-ins; one doctor even offers a \$25 coupon to cover some of the gasoline expended on the drive to Florida.⁸⁵ In Ohio, when pharmacists began to refuse to dispense suspicious prescriptions because they had to report to Ohio's PDMP, doctors, who are not required to report to Ohio's PDMP, began to hand out the pills themselves.⁸⁶ The number of pharmacists in the United States has boomed at the same time as the rise of abuse of pills. In 1994, there were 168,000 pharmacists in the United States⁸⁷ and this grew to 230,000 in 2002,⁸⁸ a growth of 73%. At the latest count, there were 269,900 pharmacists in 2008 with a median salary of \$106,410.⁸⁹

B. *The Abusers*

1. Aggressive Pursuit of Prescription Drugs

Abusers of legacy drugs (heroin and cocaine) are essentially passive. They receive their drugs at the end of a supply chain that has international exporters, upper-level distributors, wholesale distributors, local distributors, and street dealers.⁹⁰ The entire process is dedicated to bringing these drugs to the abusers.

On the other hand, while there are some local distributors and street level dealers in the pill trade, the provision of multiple legal outlets for prescription pills has led to aggressive abusers. Sometimes this manifests itself in the form of criminal activity, which is bent toward the use of force to take pills, such as robbery or burglary.⁹¹ More commonly abusers seek to defraud a doctor or pharmacy in order to get drugs.⁹²

85 Scott Hiaasen, *Broward's pill mills: Clinics Multiply, Drug Overdoses Climb*, PALM BEACH POST NEWS, Apr. 5, 2009, available at <http://www.palmbeachpost.com/state/content/state/epaper/2009/04/05/0405pillmills.html>.

86 Frank Lewis, *Ohio Leads in Physician Purchased Oxycontin*, PORTSMOUTH DAILY TIMES, Sept. 26, 2010, available at <http://portsmouth-dailytimes.com/bookmark/9641916>.

87 RESEARCH AND EDUCATION ASSOC., CAREERS FOR THE YEAR 2000 AND BEYOND, 168 (1997).

88 U.S. DEPARTMENT OF LABOR, BUREAU OF LABOR STATISTICS, OCCUPATIONAL OUTLOOK HANDBOOK 289 (2004).

89 BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR (2010), <http://www.bls.gov/oco/ocos079.htm> (last visited Dec. 11, 2011).

90 Bruce D. Johnson, *Patterns of Drug Distribution: Implications and Issues*, 38 SUBSTANCE USE & MISUSE 1789 (2003), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC1975811/>.

91 Tom Smith, *Hike in Pharmacy Burglaries Linked to Drug Problems*, TIMES DAILY, Sept. 13, 2010, <http://www.timesdaily.com/article/20100913/NEWS/100919944?Title=Hike-in-pharmacy-burglaries-linked-to-drug-problems> (last visited March 01, 2011).

92 Diana Baldwin, *Edmond Woman Arrested Nine Times on Complaints of Drug Fraud*, OKLAHOMAN, Oct. 16, 2010, available at <http://newsok.com/edmond-woman-arrested-in-drug-fraud-incident/article/3504904>. See also *Police Arrest Serial Prescription Fraud Suspect*, Oct. 13, 2010, available at <http://www.myfoxphoenix.com/dpp/news/crime/prescription-fraud-arrest-10-13-2010>, and Lisa Irish, *Silent Witness Tip Leads Police to Prescription Drug Fraud Suspect*, DAILY COURIER, Oct. 06,

However, the most aggressive act taken by abusers is the seeking of pills from doctors and pain clinics several states away. As pain management clinics coalesced in states that are not properly regulating them, particularly in Florida, abusers sought them out with a vengeance. People drive from Virginia, Kentucky,⁹³ Tennessee, Ohio and West Virginia⁹⁴ to mob these clinics. There is even a flight from West Virginia to Fort Lauderdale that is so notorious for carrying drug seekers that it is called the “O.C. Express.”⁹⁵ As a law enforcement official in Kentucky stated, “We’re just seeing a phenomenal amount of people from Kentucky going to Florida for these pills. They drive down there to Boca Raton and Fort Lauderdale, and they’re getting bags full of pills, and they’re driving back the same day.”⁹⁶ Another Kentucky law enforcement official was more blunt: “We’re inundated with it. Florida is killing us. There’s a carload that leaves here so often – hell, every week or so – to go to Florida.”⁹⁷

2. Source of Addiction

A major, and disturbing, difference between abusers of illegal legacy drugs and diverted prescription drugs is that abusers of prescription drugs often start as legal users. As a director of one addiction resource council put it, “OxyContin abuse is a growing problem because many users have enough money and access to medical care to get it prescribed initially, starting them on the road to problems. Abusers are not buying OxyContin pills on the street.”⁹⁸ OxyContin is handed out in large quantities in areas where people’s bodies are hurt doing heavy labor. For instance, “[i]n the counties of far southwest Virginia, where the hard physical labor of coal mining and farming leads to a higher incidence of injuries, OxyContin prescriptions were generally 500 percent above the national average.”⁹⁹ This legal exposure to prescription drugs is aided by Medicare¹⁰⁰ or

2010, available at <http://www.dcourier.com/main.asp?SectionID=1&SubSectionID=1&ArticleID=86027>.

93 *JSO Serves Warrants At Pain Management Clinic*, FIRST COAST NEWS, Sept. 30, 2010, available at <http://www.firstcoastnews.com/news/local/news-article.aspx?storyid=169679&catid=3>.

94 Scott Hiaasen, *Pills from S. Fla. Flood Appalachian States*, MIAMI HERALD, Apr. 10, 2010, available at <http://www.miamiherald.com/2009/04/06/1573270/pills-from-s-fla-flood-appalachian.html>.

95 *Id.*

96 Michael J. Moore, *Kentucky Police Struggle to Halt Pipeline of Pain Pills From South Florida*, BROWARD-PALM BEACH NEW TIMES, Mar. 18, 2010, available at http://blogs.browardpalmbeach.com/juice/2010/03/kentucky_police_struggle_pain_pill_pipeline.php.

97 Hiaasen, *supra* note 94.

98 Jacqueline Seibel, *OxyContin Abuse Spurs Robberies Across the State*, MILWAUKEE-WISCONSIN J. SENTINEL, June 10, 2007, available at <http://www.jsonline.com/news/wisconsin/29367529.html>.

99 U.S. DEP’T OF HEALTH & HUM. RESOURCES, *supra* note 81.

100 Press Release, D.C. U.S. Attorney’s Office, Maryland Man Sent to Prison for Prescription Fraud (May 19, 2010), http://www.justice.gov/usao/dc/Press_Releases/2010%20Archives/May/10-099.pdf (last visited Dec. 3, 2011).

Medicaid¹⁰¹ so that during initial exposure, and perhaps later, the cost of the drugs is minimal. Therefore, the abuse of illegal prescription drugs does not have to start with a conscious choice to partake in drug abuse and does not initially carry as much of a cost burden as the use of illegal legacy drugs.

C. Law Enforcement

1. Street Level / Local Police

The enforcement methods used against prescription pill abusers on the street are mostly the same ones used against abusers and low level dealers of any illegal drug. Law enforcement tries to interdict the supply of pills being brought into their locality by using traffic stops, “knock-and-talks,” and informants.¹⁰² Once the pills have reached the community, law enforcement uses methods such as confidential informants to buy drugs from those dealing and arrest the dealers.¹⁰³ However, there are some differences in enforcement in the illegal pill trade. For instance, while a person with a prescription, wherever obtained, carries with her prescription a presumption of regularity, pill counts are often used by police and probation officers to determine if there has been overuse/distribution of the pills.¹⁰⁴

2. Interdicting Legal Distribution

a. *Obstacles*

Interdiction of the legal distribution has taken two paths. The first is to place obstacles in the path of illegal distribution. There are three choke points where such obstacles can be placed: at production; at scrip writing; and at actual distribution.

At the production level, the primary method of interdicting illegal use is to manufacture pills that are very difficult to misuse. Purdue Pharma has responded to years of criticism and law suits by changing its OxyContin to a new “OP” pill rather than the previous “OC” pill.¹⁰⁵ This pill “is intended to prevent the opioid

101 NAT'L DRUG INTELLIGENCE CTR., RELATED CRIMINAL ACTIVITY AND DIVERSION, OXYCONTIN DIVERSION AND ABUSE (2001), <http://www.justice.gov/ndic/pubs/651/related.htm> (last visited Dec. 3, 2011).

102 Howard & Pinkham, *supra* note 72.

103 Eric Morrison, *Scroggins Pleads Guilty to Selling OxyContin*, JUNEAUEMPIRE.COM (Aug. 20, 2009), http://juneauempire.com/stories/082009/loc_483649741.shtml (last visited Dec. 2, 2011).

104 Brad Hicks, *Two Arrested in Prescription Drug Trafficking Bust*, JOHNSON CITY PRESS (June 27, 2011), <http://www.johnsoncitypress.com/News/article.php?ID=73282> (last visited Dec. 4, 2011).

105 “OC” and “OP” are the letters on the pill. See pictures at http://www.foxprovidence.com/dpps/news/local_news/region_2/providence-four-men-oxycodone-drug-trafficking-charges-tiverton-fall-river_3704055.

medication from being cut, broken, chewed, crushed or dissolved to release more medication.”¹⁰⁶ However, as soon as the new OP pills were released, internet forums were abuzz with methods to defeat the new formulation. On sites such as Bluelight,¹⁰⁷ cafepharm,¹⁰⁸ and Topix¹⁰⁹ various techniques were discussed and critiqued. Making pills harder to abuse is probably the best method of interdicting illegal use. However, it is not a panacea; while it seems that OxyContin OP may be a little harder to abuse, the almost simultaneous appearance of methods to defeat the new pill show that motivated abusers will find a way around the protections.

The obstacles involving prescription writers are primarily regulatory. Laws requiring doctors to report prescriptions to a PDMP and consult the PDMP before writing a prescription are probably the strongest tools. This is the reason that Florida passed legislation, which should have put a statewide PDMP in place on December 1, 2010¹¹⁰ and why most of the states who have PDMP's are being asked to join a national Prescription Monitoring Program Information Exchange, which will swap information from the various states through a database at the Ohio Board of Pharmacy starting in 2011.¹¹¹ Beyond the PDMP's, there are a number of other regulations that can be placed upon doctors in order to make it more difficult for pills to be improperly distributed. The new Florida statutes are examples of the kinds of regulations that can be employed. In part, they require pain clinics to be owned by doctors¹¹² who have not been convicted of felonies,¹¹³ limit the amount of pills a doctor can personally distribute to a client to a three day supply unless the patient uses insurance to pay,¹¹⁴ require doctors specializing in pain management to be trained in pain management,¹¹⁵ and require

106 *Harder-to-Break OxyContin Pill Wins Approval*, N.Y. TIMES, Apr. 5, 2010, available at <http://www.nytimes.com/2010/04/06/business/06oxy.html>.

107 Advice on Mallinckrodt Generic Oxycontin 80mg, BLUELIGHT (Sept. 17, 2010), <http://www.bluelight.ru/vb/showpost.php?p=8787072&postcount=48> (last visited Dec. 3, 2011).

108 Re: The New OP Oxycontin Is Not Nearly As Effective As Previous OC, CAFEPHARMA.COM (Oct. 30, 2010), <http://www.cafepharm.com/boards/showpost.php?p=3704094&postcount=7>.

109 Rurik's Method to Snort, IV, Etc. the New "OP" OxyContin, TOPIX.COM (Sept. 21, 2010), <http://www.topix.com/forum/drug/oxycontin/TH55RSHFFBVACGDR7#e2>.

110 FLA. STAT. § 893.055(2)(a).

111 States Linking Prescription Databases, Fight Abuse, ABCNEWS/U.S. (Oct. 15, 2010), <http://abcnews.go.com/US/wireStory?id=11887950> (last visited Dec. 2, 2011).

112 Kate Howard, *Florida's New Pill Mill Law Goes Into Effect Today*, FLA. TIMES-UNION, Oct. 1, 2010, available at <http://jacksonville.com/news/crime/2010-10-01/story/florida's-new-pill-mill-law-goes-effect-today>.

113 Gabriella Souza, *New Florida Laws Kick In*, NEWS-PRESS.COM (Oct. 1, 2010), <http://www.news-press.com/article/20101001/NEWS01/100930081/New-Florida-laws-kick-in> (last visited Dec. 4, 2011).

114 Howard, *supra* note 112.

115 Howard, *supra* note 112.

that the doctor give a physical exam before any prescription is written.¹¹⁶ Some states pass even more stringent requirements. Tennessee went so far as to require doctors to report those whom the doctors believe are trying to illegally obtain drugs.¹¹⁷

The final level at which obstacles to illegal diversion of pills can be placed is between the abusers and the actual distributors. This is the place where there is the most variety in interdiction. On the one hand, there are non-governmental entities, such as Google,¹¹⁸ fighting a continuing battle to keep abusers from easy contact with overly facilitative distributors. On the other hand, it might be something as simple as Walgreens putting its OxyContin in time-delayed safes in order to discourage robberies.¹¹⁹ One of the more promising interdiction possibilities is the replacement of paper prescriptions with e-prescriptions so that abusers cannot steal, forge, or alter a prescription.¹²⁰ Even when states have not required e-prescriptions, they have engaged in other efforts to discourage abusers from seeking out the local pharmacy. For instance, Virginia recently passed legislation requiring a pharmacist to get identification – and keep a copy of it for a year – of individuals seeking a schedule II drug, who the pharmacist does not know personally, and for any individual filling a prescription for anyone other than herself.¹²¹

b. Punishment

Of course, no matter how many obstacles are placed in the way, there will always be those devious or desperate enough to get around them. Once the legal boundaries are bypassed, punishment comes to the fore. Usually, the purpose of this punishment is dissuasion, segregation, or a mixture of the two.

Dissuasion is the primary purpose of the punishments levied against the pharmaceutical companies. It may be debatable whether a \$700 million dollar fine levied against Purdue Pharma for its bad acts in promoting the use of OxyContin

116 Howard, *supra* note 112.

117 Mac McLean, *Doctors Now Required to Report Patients Who Seek Drugs Illegally*, TRICITIES.COM (July 9, 2009), http://www2.tricities.com/news/2009/jul/09/doctors_now_required_to_report_patients_who_seek_d-ar-243237/ (last visited Dec. 4, 2011).

118 Stephanie Madeiros, *Google Suing Illegal Online Pharmacies*, DIGITAL JOURNAL (Sept. 24, 2010), <http://www.digitaljournal.com/article/298055>.

119 Meghann M. Cuniff, *Walgreens Hopes Special Safes Suppress OxyContin Robberies*, THE SPOKESMAN-REVIEW, Sept. 2, 2010, available at <http://www.spokesman.com/stories/2009/sep/02/chain-fights-back/>.

120 Debbie Gilbert, *Government Prods Doctors to Write E-Prescriptions*, GAINESVILLE TIMES, Jan. 5, 2009, available at <http://www.gainesvilletimes.com/archives/12996/>.

121 H.B. 964 196th Leg., Reg. Sess. (Va. 2010), available at <http://leg1.state.va.us/cgi-bin/legp504.exe?101+ful+CHAP0193>.

was adequate,¹²² but it is clear that Purdue was concerned enough to alter its pills to the new OP tablet designed to make abuse difficult.¹²³ Other pharmaceutical companies clearly got the message. When Reckitt Benckiser created Suboxone, it purposefully added naloxone to the pill to defeat the ability to crush and inject the pill¹²⁴ and it later replaced the pill form with a sublingual film (under the tongue strips) in order to make it difficult to crush and snort the medicine.¹²⁵ The government's intervention against Purdue Pharma seems to have persuaded some companies to produce more abuse-resistant drugs.

There are basically two options in enforcement against prescription providers. The first is license suspension by a state's medical board,¹²⁶ without criminal sanctions. The second is indictment and trial. Usually, by the time indictment occurs the pernicious distribution of prescriptions has been linked to multi-state abuse¹²⁷ or the death of several individuals.¹²⁸ Most often these cases are tried in federal courts and punishments are severe.¹²⁹ In a recent case in a federal district court in Kansas, both a doctor and his wife were sentenced to thirty years for distributing pills to clients who did not need them after their prescriptions were linked to the death of ten people.¹³⁰ Prior to the last decade, doctors were traditionally charged with fraud or illegally prescribing controlled substances, but with the rise of the current wave of pill abuse prosecutors have stepped up the charges against doctors to include manslaughter and felony murder.¹³¹

122 Dan Childs, *The OxyContin 'Conspiracy' – Is \$700 Million Enough?*, ABC NEWS HEALTH (May 11, 2007), <http://abcnews.go.com/Health/PainManagement/story?id=3162393&page=1>.

123 Jessica Peres, *New Oxycontin Pills Prevent Abuse*, ABC 30 HD HEALTH WATCH (KFSN-TV Fresno, CA broadcast (Oct. 17, 2010), http://abclocal.go.com/kfsn/story?section=news/health/health_watch&id=7723536).

124 Press Release, Suboxone® (Buprenorphine/Naloxone), A New Alternative to Methadone for the Treatment of Heroin Dependence, is Launched in the UK, GP (Jan. 17, 2007), <http://www.healthcarerepublic.com/news/rss/931837/Suboxone®-buprenorphine-naloxone-new-alternative-methadone-treatment-heroin-dependence-launched-UK/> (last visited Dec. 3, 2011).

125 SUBOXONE Film Key Benefits, RECKITT BENCKISER PHARMACEUTICALS INC., http://www2.suboxone.com/hcp/about_suboxone/key_benefits.aspx (last visited Dec. 3, 2011).

126 Karen Gardner, *Frederick Pediatrician's License is Suspended*, FREDERICK NEWS POST, Aug. 19, 2010, available at <http://www.fredericknews.com/sections/news/display.htm?StoryID=108757>.

127 Lisa Girion, *Doctor Accused of Prescribing Painkillers for Cash*, L.A. TIMES, Oct. 21, 2010, available at <http://www.latimes.com/news/local/la-me-doctor-arrest-20101021,0,1877550.story>.

128 *Schneiders Get 30 Years*, TOPEKA CAP.-J., Oct. 20, 2010, available at http://cjonline.com/news/state/2010-10-20/schneiders_await_sentencing.

129 Cases Against Doctors, U.S. DEP'T OF JUSTICE, OFFICE OF DIVERSION CONTROL (Nov. 2, 2010), http://www.deadiversion.usdoj.gov/crim_admin_actions/doctors_criminal_cases.pdf.

130 TOPEKA CAP.-J., *supra* note 128.

131 Barry Meier, *OxyContin Prescribers Face Charges in Fatal Overdoses*, N.Y. TIMES, Jan. 19, 2002, available at <http://query.nytimes.com/gst/fullpage.html?res=990CE6DC173BF93AA25752C0A9649C8B63>.

Pharmacists, and others working at pharmacies, are usually the last part of the legal supply chain. While they are often the barrier between the abuser and the pills,¹³² they are also probably the most often punished for aiding in diversion of prescription pills. Much like a doctor, a pharmacist can also face the non-criminal sanction of losing his license.¹³³ They are also subject to criminal prosecution for pill diversion, although it seems that they receive lesser charges and punishments. Stealing pills from the grocery pharmacy¹³⁴ as well as 3,000 doses of medicine from a hospital,¹³⁵ can both result in probated sentences. Even when pharmacists are convicted for taking part in a distribution scheme, sentences can be as short as 46 months¹³⁶ or 10 years.¹³⁷

III. THE POTENTIAL SPREAD OF PILL ABUSE

The abuse of prescription drugs first took hold in the Appalachians and other rural areas. They were helped along by initial market penetration as legal drugs for working men and women who had legitimate chronic pain problems.¹³⁸ These areas are now saturated with pills. The question for the future is whether the pill problem will spread to more urban areas where the legacy drugs are still strongly entrenched.

A. *Why Displacement of Legacy Drugs “Should” Occur*

The primary reason that prescription drugs should displace legacy drugs, such as cocaine and heroin, is their legal ubiquity. This leads to a much shorter supply chain and fewer points of illegal activity. Instead of heroin traveling from Burma or Colombia,¹³⁹ oxycodone comes from local pharmacists and the supply line to that pharmacist is entirely legal. Even if local pharmacists prove diversion-resistant, a low level dealer’s drive to a pharmacist two or three states away (e.g. Florida) is still a shorter illegal supply chain than Asia or South America.

132 Baldwin, *supra* note 92.

133 Cindy Scharr, *Springfield Pharmacist Sentenced to 46 Months*, DAILY TIMES, Oct. 7, 2010, available at <http://www.delcotimes.com/articles/2010/10/07/news/doc4cad260d2d86d971799422.txt>.

134 Erika Platt, *Former Kroger Pharmacist Sentenced*, ADVERTISER-TRIB., May 28, 2009, available at <http://www.advertiser-tribune.com/page/content.detail/id/515113.html?nav=5005>.

135 Shane Bryant, *Ex-Casper Pharmacist Sentenced On Drug Charge*, SHERIDAN MEDIA.COM (Oct. 10, 2010), <http://www.sheridanmedia.com/news/ex-casper-pharmacist-sentenced-drug-charge> 12716.

136 Scharr, *supra* note 133.

137 Nick Tran Sentenced To 10 Years On Federal Drug Charges, WSFA12 News (Oct. 07, 2010), <http://www.wsfa.com/Global/story.asp?S=13285165>.

138 Rex Bowman, *Prescription for Crime*, TIME, Mar. 21, 2005, available at <http://www.time.com/time/magazine/article/0,9171,1039712,00.html>.

139 *A Look at Major Drug-Producing Countries*, USA TODAY, Feb. 29, 2008, available at http://www.usatoday.com/news/washington/2008-02-29-4071798322_x.htm.

Legal ubiquity also makes prescription pills easily available to young abusers. The ability to divert the drugs straight out of their parents' and grandparents' medicine cabinets¹⁴⁰ has made it easy for teenagers to experiment with and become regular abusers of prescription drugs. In 2005, almost 1 in 5 teenagers admitted the use of prescription drugs to get high.¹⁴¹

Beyond legal ubiquity, the perception and reality of prescription drugs being safer than legacy drugs contributes to bringing abusers into the fold. On the one hand, there is a perception that any drug that can be prescribed by a doctor must be safer than legacy drugs such as cocaine or heroin.¹⁴² However, addiction and overdose can occur with pills even though they can also be used safely. On the other hand, there is a reality that prescription drugs have better quality control than legacy drugs. The fact that prescription drugs are manufactured in a controlled, government-regulated factory makes them a safer, more predictable high¹⁴³ than cocaine – whether it is powder cocaine made in Peru¹⁴⁴ or crack cocaine refined in someone's house.¹⁴⁵ Legacy drugs such as cocaine and heroin are subject to cutting, in which anyone along the supply chain adds an unknown material to the product in order to increase the weight, thus increasing the amount that can be sold. Typically, the primary reason a cutting agent is selected is that it resembles the drug so that the cutting is not obvious. As an example, cutting agents for cocaine can be medically dangerous items such as phenacetin,¹⁴⁶ which is tied to deaths from kidney disease,¹⁴⁷ and benzocaine,¹⁴⁸ which

140 Rebecca Miller, *A Dose of Reality: Medication Misuse in Mid-Coast Maine*, TIMES REC., Oct. 22, 2010, available at <http://www.timesrecord.com/articles/2010/10/22/opinion/commentaries/doc4cc1cb7e53397511774487.txt>.

141 Jillian Aramowicz, *Experiments in Recreational Drugs Lead to Trouble*, KANSAS STATE COLLEGIAN, Oct. 14, 2010, available at <http://www.kstatecollegian.com/opinion/experiments-in-recreational-drugs-lead-to-trouble-1.2365721>.

142 Miller, *supra* note 140.

143 Chris Olwell, *Pills of Death: Prescription Drug Abuse Taking Lives*, NEWS HERALD, Oct. 9, 2010, available at <http://www.newsherald.com/news/prescription-87625-deaths-drug.html>.

144 Joseph B. Treaster, *The World; Cocaine Manufacturing Is No Longer Just A Colombian Monopoly*, N.Y. TIMES, June 30, 1991, available at <http://www.nytimes.com/1991/06/30/weekinreview/the-world-cocaine-manufacturing-is-no-longer-just-a-colombian-monopoly.html>.

145 *Judge Gives Life in Prison to Drug Dealer*, CLEVELAND ADVOC., Oct. 21, 2010, available at http://www.hcnonline.com/articles/2010/10/21/cleveland_advocate/news/4410_cobb_convicted_ca.txt.

146 Emily Koch, *Smugglers Concealed Cocaine in Skin Cream*, EVENING POST (Oct. 9, 2010), <http://www.thisisbristol.co.uk/crime/Smugglers-concealed-cocaine-skin-cream/article-2740332-detail/article.html>.

147 Ulrich C. Dubach, M.D., Bernard Rosner, and Til Stürmer, M.D., *An Epidemiologic Study of Abuse of Analgesic Drugs – Effects of Phenacetin and Salicylate on Mortality and Cardiovascular Morbidity (1968 to 1987)*, “Discussion”, 324(3) N. ENGL. J. MED. 155 (1991), available at <http://www.nejm.org/doi/full/10.1056/NEJM199101173240304#t=articleBackground>.

148 Mike McIntyre, *High-tech Aids Major Drug Bust*, WINNIPEG FREE PRESS, Oct. 5, 2010, available at <http://www.winnipegfreepress.com/local/high-tech-aids-major-drug-bust-104327774.html>.

can affect the blood so that it cannot transport oxygen.¹⁴⁹ Pills are inherently proofed against cutting. A round, yellow pill with “OC” imprinted on one side and “40” on the other is a 40mg OxyContin pill and a dealer cannot add anything to it in order to make two pills.

Additionally, incentivized legal providers continue to push sales of prescription drugs. Unlike legacy drug providers, prescription providers can engage in a wide range of advertising. Pharmaceutical companies have marketing conferences at which they discuss how to “Drive Consumer Demand”¹⁵⁰ and spent \$57.5 billion promoting their drugs in 2004 alone.¹⁵¹ Likewise, when one company puts safeguards in place to limit the misuse of its pills, others step up with abusable pills of their own. An example of this can be found in OxyContin. While Purdue Pharma is moving to the more-difficult-to-abuse OP, other manufacturers, such as Xanodyne, have produced an instant release version of oxycodone, called Roxicodone,¹⁵² without any protections. Moreover, once the pills have been pushed out to the local distributors, local doctors and clinics push to develop their own clientele. Florida pain clinics are notorious for advertising that out-of-state patients are welcome, offering discounts for clients bringing new referrals, and advertising price per pill.¹⁵³ Florida attempted to stop this, but when Florida’s new laws prohibited advertising specific controlled substances, the clinics switched to advertising “No appointment needed, same-day prescriptions,”¹⁵⁴ clearly courting the same out-of-state clients as they had previously. Comparatively, those trying to sell legacy drugs can neither advertise openly nor match the funds available to legal providers when trying to penetrate a market.

149 Rajesh Sachdeva, M.D., Jaime G. Pugada, M.D., Linda R. Casale, M.D., Jay L. Meizlish, M.D., and Stuart W. Zarich, M.D., *Benzocaine-Induced Methemoglobinemia: A Potentially Fatal Complication of Transesophageal Echocardiography*, 30(4) *TEX. HEART INST. J.* 308 (2003), available at <http://www.ncbi.nlm.nih.gov/pmc/articles/PMC307717/>.

150 Pharma Market Research Experts to Reveal Winning Strategies at Feb. 2011 Pharma Market Research Conference, *REDORBIT* (Oct. 20, 2010), http://www.redorbit.com/news/health/1934535/pharma_market_research_experts_to_reveal_winning_strategies_at_feb/.

151 Geoffrey K. Spurling, Peter R. Mansfield, Brett D. Montgomery, Joel Lexchin, Jenny Doust, Noordin Othman, and Agnes I. Vitry, *Information from Pharmaceutical Companies and the Quality, Quantity, and Cost of Physicians’ Prescribing: A Systematic Review: Abstract-Background*, *PLOS MEDICINE* (Oct 19, 2010), <http://www.plosmedicine.org/article/info%3Adoi%2F10.1371%2Fjournal.pmed.1000352>.

152 Roxicodone, U.S. FOOD & DRUG ADMIN. (2008), http://www.accessdata.fda.gov/drugsatfda_docs/label/2009/021011s0021b1.pdf (last visited Dec. 10, 2011).

153 Hiaasen, *supra* note 94, at 2.

154 Howard, *supra* note 112.

B. *Barriers to the Displacement of Legacy Drugs*

Prescription drug abuse has been strongly tied to mountain areas and has been given the moniker “hillbilly heroin”¹⁵⁵ with its users labeled “pillbillies.”¹⁵⁶ These disdainful nicknames show a tendency to view pill abuse as a problem limited to the poor mountainous regions. Furthermore, prescription drug abuse has been shown to have stronger ties to White communities.¹⁵⁷ The combination of these factors may limit the spread of prescription drug abuse in cities where the residents perceive themselves as more sophisticated and the communities within the city are more ethnically diverse.

However, the greatest barrier to the spread of prescription drug abuse is probably the street price of the pills. The street price of cocaine varies considerably, but the average price seems to be currently about \$80 per gram¹⁵⁸ and the dose usage is about 5% of a gram in powder form,¹⁵⁹ indicating a price per usage of about \$4; the cost of a rock of crack cocaine sells for between \$10 to \$20.¹⁶⁰ Bags of heroin can be purchased for as little as \$5.¹⁶¹ Comparatively, OxyContin sells for an average street price of \$1 per milligram and 40 milligram or 80 milligram pills are sold as a unit.¹⁶² Obviously, it is cheaper to buy cocaine or heroin. In fact, heroin dealers have purposefully targeted areas of the Appalachian Mountains where OxyContin addiction is high and offered heroin as a cheaper alternative.¹⁶³

155 *Prescription Drug Thieves Sought*, OTTAWA CITIZEN, Oct. 13, 2010, available at <http://www.ottawacitizen.com/Prescription+drug+thieves+ought/3661785/story.html>.

156 *State Can Shut Down Dangerous ‘Pill Mills,’* THE DAYTONA BEACH NEWS J., Oct. 12, 2010, available at <http://www.news-journalonline.com/opinion/editorials/n-j-editorials/2010/10/12/state-can-shut-down-dangerous-pill-mills.html>.

157 *Nonmedical Use of Prescription Pain Relievers*, THE NAT’L SURVEY ON DRUG USE & HEALTH (May 21, 2004), http://www.oas.samhsa.gov/2k4/pain/pain.htm#link_group_1 (last visited Dec. 3, 2011).

158 *People v. Kidd*, No. H034496 (Cal. Ct. App. 6th, September 30, 2010), available at <http://www.leagle.com/xmlResult.aspx?xmldoc=in%20caco%2020100930093.xml&docbase=csllwar3-2007-curr>; see also Keith Phucas, *DA: Man Rode 3-Year Old to Drug Deals on Bicycle*, THE TIMES HERALD, Oct. 24, 2010, available at <http://www.timesherald.com/articles/2010/10/24/news/doc4cc4c64300eb3283163658.txt> (½ gram sold for \$40).

159 Questions and Answers: What exactly is the Dosage for Coke?, THE GOOD DRUGS GUIDE <http://www.thegooddrugsguide.com/cocaine/faq.htm#13> (last visited Dec. 3, 2011).

160 State Factsheets – Cocaine: Prices and Purity, U.S. DRUG ENFORCEMENT ADMIN., http://www.justice.gov/dea/pubs/state_factsheets.html (last visited Dec. 3, 2011).

161 Aimee Keenan-Greene, *Teen Heroin Addiction on the Rise*, EXAMINER.COM (Oct. 19, 2010), <http://www.examiner.com/children-s-health-in-providence/teen-heroin-addictions-on-the-rise>.

162 Mark ST.J. Couhig, *Handle with care: Solving the Problem*, SEQUIM GAZETTE, Oct. 20, 2010, available at http://www.sequimgazette.com/news/article.exm/2010-10-20_handle_with_care.

163 Sam Quinones, *A Lethal Business Model Targets Middle America*, L.A. TIMES, Feb. 14, 2010, available at <http://www.latimes.com/news/nation-and-world/la-me-blacktar14-2010feb14,0,674979.story>.

C. *Where things are trending*

When prescription drugs become established in an area they seem to marginalize cocaine. The head of the Floridian Bay Area Drug Gang Enforcement Squad has seen this first hand: “You can put a bottle of OxyContin right there and an ounce of cocaine right there and the OxyContin’s going to go 10 to one.”¹⁶⁴ However, oxycodone – whether OxyContin or the increasingly popular instant-acting Roxicodone – seems to compete directly with heroin. As such, heroin currently has an advantage of a much lower price point. Nevertheless, oxycodone has made inroads into urban areas. In the District of Columbia, pill abuse – most commonly methadone, OxyContin, and hydrocodone – is increasing among adolescents and young adults because of the perception that they are safer than legacy drugs.¹⁶⁵ In Boston, oxycodone has become a drug of choice both as Percocet¹⁶⁶ and OxyContin.¹⁶⁷ Still, the greatest overall concern seems not to be oxycodone itself, but the fear that the price of oxycodone will drive abusers to heroin.¹⁶⁸

Perhaps the biggest threat to legacy drug dominance is the burgeoning spread of Opana.¹⁶⁹ For those concerned with prescription drug abuse, Opana is a potential nightmare. Instead of oxycodone, it is oxymorphone,¹⁷⁰ and it delivers five times the strength of oxycodone at approximately the same price.¹⁷¹ Oxymorphone has been used intravenously at hospitals since 1959, but when it was previously offered as Numorphan in the 1970’s it was taken off the market due to heavy abuse.¹⁷² As one opioid abuser states, “it easily steals the top spot from heroin” and “it’s easily described as heroin’s bigger, tougher brother.”¹⁷³ With this in mind, it is not hard to envision the chain of escalating abuse so that abusers without the money to buy oxycodone buy smaller doses of Opana rather than heroin and stay hooked on Opana’s greater high. Furthermore, heroin abusers finding a quality-controlled, dosage-assured pill with a greater high could switch to Opana as their preferred drug. Thus, places that have proven somewhat im-

164 Olwell, *supra* note 143.

165 Washington/Baltimore High Intensity Drug Trafficking Area Drug Market Analysis 2009: Abuse, U.S. DEP’T OF JUSTICE NAT’L DRUG INTELLIGENCE CTR., (2009), <http://www.justice.gov/ndic/pubs32/32764/distro.htm> (last visited Dec. 3, 2011).

166 Police: Painkiller Becoming Teen Drug Of Choice, THE BOSTONCHANNEL.COM (Oct. 7, 2010), <http://www.thebostonchannel.com/r/25319163/detail.html>.

167 BOSTON GLOBE, *supra* note 12.

168 BOSTON GLOBE, *supra* note 12.

169 OPANA, ENDO PHARMACEUTICALS, <http://www.opana.com/> (last visited Dec. 10, 2011).

170 *Id.*

171 Julia Roberts Goad, *New Drug in Eastern Ky.*, WILLIAMSBURG DAILY NEWS, Oct. 6, 2010, available at http://www.williamsdailynews.com/view/full_story/9941208/article-New-drug-in-Eastern-Ky--?instance=secondary_news_left_column.

172 Matt Elzweig, *Opana: A Brief History*, N.Y. PRESS, Mar. 12, 2010, available at <http://www.nypress.com/article-18005-opana-a-brief-history.html>.

173 “vilbe,” Topic: Oxymorphone, the End of the Line, CHEMPHORIA (Apr. 21, 2009), <http://chemphoria.com/forum/index.php?topic=591.0> (grammatical errors in original).

mune to penetration of prescription drugs because of the dominance of heroin, such as Baltimore,¹⁷⁴ could become fertile ground for the next stage of the growth of prescription drug abuse.

CONCLUSION

The extent to which prescription drugs will penetrate into the illegal drug market has yet to be fully determined. It appears as though they are on their way to becoming fully realized as among the top three abused drugs in most markets (along with the legacy drugs, heroin and cocaine). However, various factors could lead to various localities differing in which drug is most abused. In areas where the legacy drugs had never penetrated extensively, prescription abuse has become the major form of abuse and looks to remain primary. In some urban areas prescription drugs may become a superior competitor to cocaine, but a lesser competitor to heroin. In some places where heroin and cocaine are plentiful, higher quality, and cheap, the abuse of pills may remain a tertiary matter.

There are three factors to watch when considering whether prescription drug abuse will continue to spread and increase. The first is interdiction of prescription drugs. In particular, the failure of certain states to pass PDMP's or have effective PDMP's should be a concern. In places like Maryland, the District of Columbia, and Georgia, the failure to have a PDMP invites the spread of prescription drug abuse within their borders. The second is whether law enforcement accomplishes serious interdiction against legacy drugs. On the rare occasions when law enforcement is able to make serious inroads on delivery of the legacy drugs, their prices can increase precipitously. If this occurs, abusers could switch their pattern of abuse to pills that have remained at a steady price. Finally, an eye must be kept on Opana. It is the one pill to rule them all. If it becomes widespread, there is a good chance that it will squeeze out both other prescription drugs and legacy drugs.

Currently, the situation is fluid. Some locales have awoken to the fact that prescription drugs are a serious problem, while other locales continue to slumber. While law enforcement in many urban areas remains concentrated on legacy drugs, which are easier to identify as being illegal and therefore easier to use in justifying an arrest or conviction, the failure to pay attention to, or take seriously, pill abuse leaves the market open for potentially serious penetration. Many will wake to find that the pill plague is not just a matter for the pillbillies anymore.

174 NATIONAL DRUG INTELLIGENCE CENTER, WASHINGTON/BALTIMORE HIGH INTENSITY DRUG TRAFFICKING AREA DRUG MARKET ANALYSIS, June 2007, <http://www.justice.gov/ndic/pubs23/23834/crime.htm> (last visited Dec. 3, 2011).