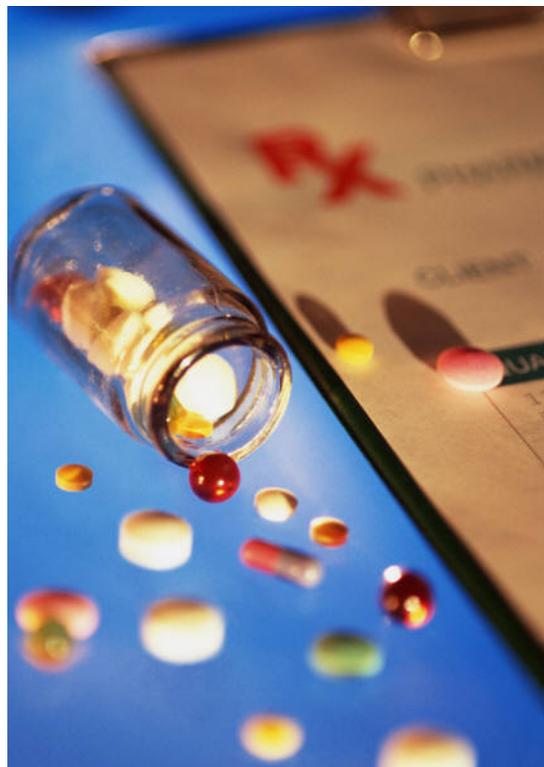


Doctor Shopping in Tennessee

A Prescriber's Responsibility Under Tennessee Law
Version 7 – July 2012



Created by the Tennessee Medical Association Legal Department

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Tennessee Drug Facts

- ❖ Tennesseans utilization of prescriptions is 1.5 times the national average, ranking Tennessee as the highest state per capita in utilization of prescription drugs in the United States.
- ❖ Tennessee ranks 2nd in prescription drug abuse in the U.S.
- ❖ Hydrocodone is the number one prescribed drug in Tennessee, making up 2.8% of total prescriptions.

From the Drug Enforcement Administration's publication *Don't Be Scammed By A Drug Abuser*.

Recognizing the Doctor Shopper

Telling the difference between a legitimate patient and a drug abuser isn't easy. The drug-seeking individual may be unfamiliar to you. They could be a person who claims to be from out-of-town and has lost or forgotten a prescription of medication. Or the drug seeker may actually be familiar to you such as another practitioner, co-worker, friend or relative. Drug abusers or "**doctor-shoppers**" often possess similar traits and modus operandi. Recognizing these characteristics and modus operandi is the first step to identifying the drug-seeking patient who may be attempting to manipulate you in order to obtain desired medications.

Common Characteristics of the Drug Abuser:

- Unusual behavior in the waiting room;
- Assertive personality, often demanding immediate action;
- Unusual appearance - extremes of either slovenliness or being over-dressed;
- May show unusual knowledge of controlled substances and/or gives medical history with textbook symptoms **OR** gives evasive or vague answers to questions regarding medical history;
- Reluctant or unwilling to provide reference information. Usually has no regular doctor and often no health insurance;
- Will often request a specific controlled drug and is reluctant to try a different drug;
- Generally has no interest in diagnosis - fails to keep appointments for further diagnostic tests or refuses to see another practitioner for consultation;
- May exaggerate medical problems and/or simulate symptoms;
- May exhibit mood disturbances, suicidal thoughts, lack of impulse control, thought disorders, and/or sexual dysfunction;
- Cutaneous signs of drug abuse - skin tracks and related scars on the neck, axilla, forearm, wrist, foot and ankle. Such marks are usually multiple, hyper-pigmented and linear. New lesions may be inflamed. Shows signs of "pop" scars from subcutaneous injections.

Modus Operandi Often Used by the Drug-Seeking Patient Include:

- Must be seen right away;
- Wants an appointment toward end of office hours;
- Calls or comes in after regular hours;
- States he/she's traveling through town, visiting friends or relatives (not a permanent resident);

- Feigns physical problems, such as abdominal or back pain, kidney stone, or migraine headache in an effort to obtain narcotic drugs;
- Feigns psychological problems, such as anxiety, insomnia, fatigue or depression in an effort to obtain stimulants or depressants;
- States that specific non-narcotic analgesics do not work or that he/she is allergic to them;
- Contends to be a patient of a practitioner who is currently unavailable or will not give the name of a primary or reference physician;
- States that a prescription has been lost or stolen and needs replacing;
- Deceives the practitioner, such as by requesting refills more often than originally prescribed;
- Pressures the practitioner by eliciting sympathy or guilt or by direct threats;
- Utilizes a child or an elderly person when seeking methylphenidate or pain medication.

What You Should Do When Confronted by a Suspected Drug Abuser

DO:

- Perform a thorough examination appropriate to the condition.
- Document examination results and questions you asked the patient.
- Request picture I.D., or other I.D. and Social Security number. Photocopy these documents and include in the patient's record.
- Call a previous practitioner, pharmacist or hospital to confirm patient's story.
- Confirm a telephone number, if provided by the patient.
- Confirm the current address at each visit.
- Write prescriptions for limited quantities.

DON'T:

- "take their word for it" when you are suspicious.
- dispense drugs just to get rid of drug-seeking patients.
- prescribe, dispense or administer controlled substances outside the scope of your professional practice or in the absence of a formal practitioner-patient relationship.



TennCare Doctor Shopping Reporting Requirements

In 2007 the Tennessee General Assembly amended a law to require prescribers to report TennCare patients that are “doctor shoppers.”

T.C.A. §71-5-2601(a)(1)(A)(iii) states that a patient commits an offense when he/she knowingly obtains/attempts to obtain by means of a false statement or representation, concealment of a material fact or any other fraudulent means:

1. a controlled substance or a prescription for a controlled substance from a prescriber (physician, nurse practitioner, ancillary staff); and
2. the patient knowingly, willfully and with an intent to deceive fails to disclose the receipt of the same or a similar controlled substance within the previous 30 days; if
3. The individual used TennCare to obtain the benefits.

T.C.A. §71-5-2603 requires providers to report actual fraud by a TennCare recipient. The report must be made to the Office TennCare Inspector General.

The phone number to call is 800-433-3982.

The TennCare Inspector General has developed a poster that practices may post in exam rooms to notify patients that Doctor Shopping is a crime. Click [here](#) to download the poster for your practice.



Non-TennCare Patients Doctor Shopping Reporting Requirements

Patient Responsibility

A patient must disclose to a prescriber (physician, nurse practitioner, dentist, optometrist or podiatrist) that he/she has received the same controlled substance or one with similar therapeutic use or a prescription for a controlled substance or one with similar therapeutic use from another practitioner within the previous 30 days. (T.C.A. §53-11-402(a)(6))

Prescriber Responsibility

If a prescriber has *actual knowledge* that a patient has knowingly, willfully and with an intent to deceive, obtained or has attempted to obtain a controlled substance or one with similar therapeutic use within the previous 30 days from another prescriber the patient must be reported to local law enforcement or a judicial district or multi-district judicial drug task force where the prescriber is located within 5 business days of obtaining actual knowledge. (T.C.A. §53-11-309)

A prescriber may report a patient with a mental illness (psychiatric disorder, alcohol dependence, or drug dependence, but does not include mental or developmental disabilities). The prescriber is not required to report this patient.

The Department of Health has developed a form for reporting that may be accessed by clicking [here](#). Those filing a report under this law do not have to use this form.

Judicial District & Multi-District Judicial Drug Task Force Contact Information

A prescriber may report to local law enforcement or a judicial district or multi-district judicial drug task force. A list of the Tennessee Judicial District Drug Task Forces may be found at <http://www.drugtaskforce.net/dtfdirectory.htm>.

Non-TennCare Patients Doctor Shopping Reporting Requirements Continued

Controlled Substance Database

Please note that while a prescriber may query the controlled substance database to check the prescription history of any patient, beginning April 1, 2013, the law requires the prescriber to query the database if prescribing an opioid or benzodiazepine controlled substance. Additionally it must be checked annually as long as it remains a part of the patient's treatment. There are four exceptions to the requirement to check the database and they are discussed in TMA's Law Guide topic titled *Controlled Substance Database* under VIII.

Should a prescriber decide to query the database and see that a patient has obtained a controlled substance from another prescriber within the previous 30 days and believes that the patient knowingly, willfully and with an intent to deceive in order to obtain or has obtained a controlled substance from the prescriber then the prescriber will be required to report the patient to local law enforcement or a judicial district or multi-district judicial drug task force unless the mental illness exception applies in which case reporting is discretionary. For more information on accessing the database, see TMA's Law Guide topic titled *Controlled Substance Database*.

If the prescriber's actual knowledge that the patient is doctor shopping is based upon information gleaned from the database, then the prescriber may, when reporting the patient, state that the information is from the database and reveal pertinent information from the report for the 30 days prior to the date of treatment.

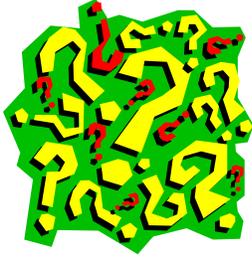
Immunity

The prescriber, any person the reporting is delegated to, or any entity that assumes the reporting responsibility are immune from liability if a complaint, report, information or record is furnished to a law enforcement agency.

Penalty for Not Reporting Doctor Shoppers

Any prescriber that demonstrates a pattern of willful failure to comply with the reporting requirements will only be subject to sanctions and/or civil penalties issued by his/her licensing board.

TMA has developed a poster that practices may post in exam rooms to notify patients that Doctor Shopping is a crime and requires the physician to report to local law enforcement. Click [here](#) to download the poster for your practice.



Frequently Asked Questions About the Non-TennCare Patient Doctor Shopping Law

HIPAA Related FAQ

Q1: Is it a violation of HIPAA to report a patient to law enforcement?

A: No, a physician who cooperates with local law enforcement as required by this statute and provides appropriate medical records or documentation will not be in violation of HIPAA for providing records without a patient authorization. (45 CFR §164.512(f))

Immunity – Civil Liability FAQ

Q1: Will my patient be able to prevail in a lawsuit against me for reporting him/her to law enforcement?

A: No. The reporting health care provider is immune from civil liability if he/she makes a report or complaint or furnishes information or records to law enforcement in good faith as required by law. This immunity extends to any person that makes the report when requested to do so by the provider (nurse, practice manager, etc.) and to an entity that assumes the reporting responsibility for the prescriber. All are immune from liability if a complaint, report, information or record is furnished to a law enforcement agency. When reporting information from the Controlled Substance Database, remember that you can only go back 30 days prior to the date of treatment. If you go back further, you may risk elimination of the immunity.

Medical Practice – Prescribing FAQ

Q1: What if a patient has received a controlled substance from another provider in the previous 30 days, tells me about and I think he needs a prescription from me that is a controlled substance. Does this law prevent me from prescribing what my patient needs?

A: No. It is only a violation of the law if the patient does not tell you about the previous prescription and knowingly, willfully and intends to deceive you to obtain a controlled substance or a prescription for one. You still have the ability to determine what is medically necessary for your patient.

Reporting – Law Enforcement FAQs

Q1: What criteria need to be met before one should reasonably report? (i.e., report from family, report from other physician office(s), report from pharmacies, printed report from TN controlled substance database?)

A: The law says a physician should have actual knowledge that a patient has knowingly, willfully and with intent to deceive, obtains or tries to obtain controlled substance(s) or a prescription for controlled substance(s) from a prescriber. A physician may use his/her judgment and knowledge of the patient to determine if the patient didn't realize that a previous prescription is a controlled substance, is within the 30 day time limit or simply forgot about it and not report. For instance, an Alzheimer's patient may forget about a previous prescription. Because of that patient's condition, a physician may determine that the patient is not acting willfully or deceptively. Such a patient would not need to be reported.

Q2: Scenario: A family member tells me that a patient is addicted to X and is getting multiple prescriptions from physicians in the county for the drug. May I report the patient to local law enforcement and will I have immunity?

A: Yes, if a physician receives a report from a family member and believes the veracity of the statement then a report may be made to law enforcement or a judicial drug task force without independently verifying the information.

Q3: The law requires reporting to local law enforcement by a prescriber "... who has actual knowledge that a person knowingly, willfully and with intent to deceive..." to obtain a controlled substance or a prescription for a controlled substance. Is a report from the Controlled Substance Database considered "actual knowledge" and therefore I must report or is it still up to me to determine if I should report?

A: It will depend on the facts of the case. One can reasonably infer actual knowledge if you have a report from the last 30 days showing that the patient got prescriptions from 10 different sources. On the other hand, if it is just one prescriber in the last 30 days and the physician knows the patient well and does not believe there is an intent to defraud, then he/she does not have to report.

Q4: Can office staff report? (It doesn't specify that office staff may report but wonder if a note of delegation in the medical record by the physician to the staff would be appropriate)

A: Yes, the physician may delegate the report to a staff person in the office or to an entity that will assume the responsibility of reporting for the physician.

Q5: Who do I call locally to report a patient? What phone number do I use? Who do I ask for?

A: The law **requires** that the prescriber report to local law enforcement or a judicial district or multi-district judicial drug task force and does not specify further. The law enforcement contact will vary from location to location and may be made to law enforcement in the city, town or county where the physician's office is located. Callers in a city or town with its own police department should start there. Callers in rural areas not serviced by a police force should call the county sheriff's department. When you call to make a report, ask to speak to the drug officer or drug investigator. If the prescriber chooses to report to a drug task force, choose the one appropriate for the location of the provider's office. A list of the Tennessee Judicial Drug Task Forces may be found at <http://www.drugtaskforce.net/dtfdirectory.htm>. If the law enforcement agency is unfamiliar with the law, explain to them that the General Assembly enacted it as Public Chapter 67 in 2009 and amended it again in 2010. The effective date of the 2010 amendments (Public Chapter 663) was March 30, 2010.

Q6: I called local law enforcement and left a message. No one has called me back. What is my obligation to follow-up on this report?

A: The law states that a report must be made to local law enforcement or a judicial district or multi-district judicial drug task force and there is nothing in the statute to determine what fulfills a report to local law enforcement or a judicial district or multi-district judicial drug task force. You should document in the patient's medical record when and to whom you report the patient. As long as the prescriber documents attempt(s) to report the patient then he/she should be okay.

Q7: Is there a form that law enforcement, TMA or some other entity has generated to report this crime?

A: A form that a prescriber may use has been developed by the Tennessee Department of Health. You may access the form by clicking [here](#). The prescriber does not have to use this form to report a doctor shopper.

Q8: Am I able to provide law enforcement with a copy of the report from the Controlled Substance Database or do I have to transcribe the information from the report onto another piece of paper?

A: You may provide a copy of the database report to Law Enforcement. **BE VERY CAREFUL** and only copy data for the 30 days prior to the date of treatment. The language in the law states, "A report with information from the database not exceeding thirty (30) days prior to the date of treatment" suggests that it is okay to provide the report to law enforcement. If you provide

information that is older than 30 days then you possibly risk the immunity provided by this law (see the FAQ under Immunity – Civil Liability above for a more detailed discussion).

Q9: Do I have to verify (if possible) the information contained in the Controlled Substance Database report?

A: No. The language in the law states, “If the health care provider’s actual knowledge of conduct prohibited by §53-11-402(a)(6) is a result of the health care provider accessing the information available in the controlled substance database...” suggests that the prescriber can rely on the contents of the database to satisfy the “actual knowledge” standard for reporting and still maintain the immunity for reporting.

Q10: What can a physician expect to happen after reporting?

A: The practice may be contacted by law enforcement or the drug task force for a formal statement or for copies of relevant medical records.

Q11: Should the physician expect to be called to court to testify against the patient?

A: Not in most cases. These are usually pled out for probation or the violator is placed on diversion (not considered a conviction) and has to meet certain conditions in order to avoid a criminal record.

Violation of Law – Failure to Report FAQ

Q1: What happens if a physician fails to report?

A: A physician who demonstrates a pattern of willful failure to comply with the reporting requirement may only be subject to sanctions and/or civil penalties issued by his/her licensing board.

The information in this guide is for educational purposes only as a service to TMA members from the Legal Department. It is not, and should not be construed as, legal advice. TMA cannot represent you in your individual capacity. You should consult your personal attorney for legal advice and/or representation.

If you have any questions, please contact the Legal Department at 800-659-1862 or becky.morrissey@tnmed.org