

'But I Had a Prescription!"

By: Brad Cunningham, City Attorney, Lexington, South Carolina

I was slapped right in the face again this past week, given another example of the realities of life and the repercussions of growing less young. I received a note from the wife of a very old friend, "John." She advised me that John had passed away last week.

I was floored. John and I go all the way back to first grade – Mrs. Pittman's class at Bruce Drysdale Elementary School in Hendersonville, NC. I still remember the day that first year when we had to sit in the hall because we had decided to engage in a belching contest. Then there was the time we had a skit on the Constitutional Convention, and during contentious debate with "Ben Franklin," John adlibbed a line telling him to "Go Fly a Kite."

Those kind of laughs could go on and on as well as the memories. However, one of the roots of John's issues was something we all face as we operate our various municipal governments today. John had an opioid problem, so I am told.

It all started back during his service to the country in the United States Air Force. John was injured following a parachute operation, and spent time in the hospital to recover. When discharged, he had to continue on pain prescriptions. This continued longer than he had wished. I'm not sure it ever actually ended.

A little background look into this area reveals 10 interesting statistics regarding opioid addiction, contained in the following report from addiction.com)

1. Prescribed medications, not thefts from pharmacies, account for the vast majority of all overdose incidents caused by prescription pain medications. As many as three out of four people abusing prescription drugs obtained them from a friend or family member.
2. An estimated 80 percent of the prescription pain killers are prescribed by 20 percent of prescribers. The majority of scripts come from primary care and internal medicine physicians. Very few originate from physician specialists.
3. Medicaid enrollees receive pain prescriptions at twice the rate of non-Medicaid patients. Results from a Washington study show Medicaid enrollees accounted for 45 percent of overdose fatalities in the state.
4. While drug overdose rates vary from state to state, the highest rate of overdose fatality incidents occurred in New Mexico and West Virginia in a recent study. Opiate addiction rates in these two states were five times more than in Nebraska, the state with the lowest rate.
5. Data collected by the National Institute on Drug Abuse show as many as 4.2 million Americans reported using heroin at least once in their lives. Of this number, an estimated 23 percent became addicted to the drug.
6. For an eleven-year period in the early 2000s, sales of prescription painkillers to hospitals, doctors and pharmacies increased by 400 percent. At the end of this period, the number of pain medications prescribed was enough to keep every single American medicated for one month's time.
7. Since the end of 1999, the number of overdose deaths from pain medication has increased by 300 percent. In 2008, opiate addiction numbers show deaths resulting from pain meds totaled 14,800. (And this has only gotten worse)
8. In 2009, the abuse of prescription painkiller drugs accounted for more than 475,000 emergency room visits. This number represents a 200 percent increase in the same type visits from only three years earlier.
9. As of 2010, opiate addiction statistics show over 12 million Americans reported using prescription pain medications for non-medical purposes without having obtained an actual prescription.
10. In 2010, an estimated two million people reported abusing prescription pain medication for the first time within the previous 12-month period. This number amounts to 5,500 people a day abusing prescription pain meds for the first time.

I have personally prosecuted DUI cases where drugs were at issue. Quite often the first defense is "But, I had a prescription." Too many people, including some very good defense lawyers, can't see that a prescription isn't a magic wand that makes everything OK... See above... Ever wondered why the drug labels almost always bear a sticker containing a warning such as "CAUTION: Do not drive or operate machinery after taking this product." Well, now you know why!

What does all this have to do with the operation of local government, one might ask? Well, as recited above it has created a "novel" area of expertise for DUI enforcement. Here in little old Lexington, SC, we had been forced to send several of our officers to attend Drug Recognition Training, and many of them have become certified as Drug Recognition Experts. Their testimony comes in handy during a DUI trial where drugs are suspected to be involved.

I can't tell you how many times on a suspected DUI case, I have heard "Well, she blew a 0.0 on the machine, so you have to dismiss this case. What? Drugs? Oh yeah, well she had a prescription. So, you have to dismiss this case."

Really? Since when did having a prescription negate the side effects? Wake up!!! Prescription or not – IT IS STILL DANGEROUS TO DRIVE WHILE IMPAIRED. PERIOD.....

This summer, an article in the *Orange County Register* delved into the problems created by the opioid epidemic for county and municipal governments. In response to the problem, cities in the area have started moving to seek damages from the companies that make and market the drugs. This is to combat fiscal problems following an alarmingly increasing number of emergency calls, hospital visits and homeless issues attributed to opioid abuse.

Once unnamed city, according to the article, hired an area law firm that specializes in drug company litigation to "pursue all civil remedies" against opioid makers, according to the Register article. Several other cities followed suit, and began looking into ways to recover costs.

A reported "several hundred" U.S. cities and more than 20 states are suing Purdue Pharma, according to the article. This company, as well Janssen Pharmaceuticals, is a maker of Oxycontin. According to the suit, the companies are alleged to have made billions of dollars by marketing painkillers to patients with chronic pain and downplaying the risk of addiction.

According to the mayor of the unnamed city, "We've seen a significant uptick in the issues with respect to mental health and addiction" such as overdoses and suicides. "We want to make sure that the costs of these are appropriately borne by those responsible, as opposed to the taxpayers."

According the Register article, citing an Orange County Health Care Agency Report, the rate of opioid related visits to the county emergency rooms more than doubled from 2005 to 2015, from more than 20 visits per 100,000 people to 50 visits per 100,000 people. More than 1,200 county residents died of opioid related overdoses from 2011 to 2015, the report said.

In early summer, Los Angeles announced a lawsuit against nine drug companies in the same month the San Francisco Chronicle reported 30 California counties were filing similar suits. Some of the suits allege opioid makers engaged in false and misleading marketing. One city councilmember claims extra city expenses also include social workers, code enforcement and consultant fees in excess of five million dollars. (Orange Cunty Register.)

One of the legal theories (Common Nuisance) used to attempt financial recovery by an area law firm is the same theory used in litigation against big tobacco companies which resulted in a 1998 settlement. In that settlement, companies were barred from engaging in advertising that targeted youths, limited where and how they could advertise and required to pay states more than $200 Billion over 25 years.

We have a long way to go in this opioid battle, but I would urge everyone to take seriously measures to combat it. One interesting measure is where some cities have begun to initiate "give back" programs for prescription drugs. Drugs that are no longer needed, have expired or for other reasons have been abandoned and left behind are eligible to be placed in "safe drug disposal bins" at area police departments where they can then be disposed of safely. This lowers the risk of children, addicts or other vulnerable parties from finding "Grandpa's old cough medicine" and trying it for a thrill.

Here in Lexington, our officers have been trained in the use of *Narcan*, a nasal spray used to combat opioid overdoses. Narcan is easily administered, and can be an instant life saver. I, myself, have seen this happen on video following a case where one of our newly trained officers received a lifesaving award in an incident where she had to administer Narcan.

I am encouraged that states, municipalities and groups like IMLA are increasingly looking for ways to combat this issue. Frankly, I am more worried that it is happening than the fact that it is very expensive to combat. Let's spend some resources fighting it, instead of just "affording it." But, as with most issues we face in local government, this is easier said than done. Stay tuned...

Back to my old buddy, John. His life didn't end with an opioid overdose or issue, and he did not take his own life. But, apparently, his downfall began with an opioid issue following his injury. Nobody intended for it to happen, but accidents can hurt just as bad as incidents of purpose.

John was a good man, a talented singer, a funny man, and a starting punter on the football team. He had a great wife and wonderful daughter. He lost all of this because of a substance. He didn't intend for it to end this way. And, to be clear, opioids did not actually bring about the end of his life, they only brought about the beginning of the end. The fight for freedom from addiction consumed his life, and took its toll in other health related ways.

Please for heaven's sake, go without that prescription renewal if you can. If you need help stopping, go get it. Properly dispose of medicines that are no longer required, and discuss matters carefully with your doctor when you are prescribed these medications. Get help from a friend if needed, and don't try to do it alone. We are all in this together.

I hadn't intended to write this issue's column on opioids, but after last week I couldn't help but think of any other topic. And, pardon me for departing from my usual practice of ending the column with a joke. I'm not going to do it this time, as it just doesn't seem appropriate. There isn't anything funny about this topic at all.

The prosecution rests, your honor. **ML**

