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DEA Ramps Up Diversion Audits, Investigations in Opioid Crisis; Wastage Is a Big Risk

By Nina Youngstrom

When a call came into the compliance officer that leftover fentanyl was wasted by a nurse without a witness, the compliance officer concluded the problem could be solved with more education and didn't mention it to the nursing supervisor or human resources. The same nurse, meanwhile, had been falling asleep on the job, but the nursing supervisor, unaware of the wastage complaint to the compliance officer, accepted the nurse's explanation that she was exhausted because she's the mother of young kids.

"If both parties have the same knowledge, they may look closer and make sure it's not a diversion issue," said attorney Amy Boring, with King & Spalding, who spoke at a webinar sponsored by the law firm. "When hospital departments act like fiefdoms, it limits their effectiveness."

Hospitals have broken down silos with diversion committees, which have been required in settlements with the Drug Enforcement Administration (DEA) for violations of the Controlled Substances Act (CSA), she said. With opioid-related enforcement high on the agenda of the Department of Justice, which includes DEA, hospitals may want to redouble their efforts to prevent and detect diversion. DEA audits and investigations are on the rise, and three hospitals have already settled multi-million dollar cases. "We are basically talking about drug trafficking," said former U.S. Attorney John Horn, an attorney with King & Spalding. If medication is dispensed or used without medical justification, it is treated by DEA like any other drug deal. It applies to a doctor in a hospital or an employee who steals medication to use or sell. "That falls under the Controlled Substances Act and is considered in the same way as drug trafficking," Horn said.

For example, in April 2018, John Michael Gowder, CEO of Union General Hospital in Blairsville, Georgia, along with physician David Gowder, the director of the emergency room, and physician James Heaton, who operated a family clinic, were indicted on federal charges for "prescribing and obtaining thousands of doses of prescription pain medications outside the usual course of professional medical practice and for no legitimate medical purpose," according to the U.S. Attorney's Office for the Northern District of Georgia. They allegedly used employees to fill prescriptions, which were written in the names of hospital patients, family members and fictitious patients.

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