

Prescription Drug Abuse and Pain Management Clinics

2015 Report to the 109th Tennessee General Assembly



TENNESSEE
DEPARTMENT OF
HEALTH

Our mission is to protect, promote and improve the health and prosperity of people in Tennessee.

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Tennessee Department of Health

Office of General Counsel

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Table of Contents

Executive Summary 2

Prescription Drug Abuse in Tennessee 3

New Certification Process for Pain Clinics 4

Regulating the Treatment of Chronic Pain 4

Enforcement 5

Conclusion 6

Appendix A. – 2014 Prescribing Cases..... 6



Executive Summary

Background

In recent years, the number of deaths in Tennessee caused by drug overdose has been higher than the number of deaths caused by motor vehicle accidents. *Death Statistics*, Office of Policy, Planning and Assessment, TN Department of Health (1999-2012). In fact, **in 2013, 1,166 people died of drug overdose in Tennessee compared to 1,008 people who died as the result of a motor vehicle accident.**

In 2012, the legislature enacted the Prescription Safety Act. One requirement of the Act is that, effective April 1, 2013, practitioners who prescribe certain controlled substances must query the Controlled Substance Monitoring Database (CSMD) prior to issuing a new prescription to a patient and at least annually thereafter. *Tenn. Code Ann.* § 53-10-310(e)(1). The purpose of the requirement is to allow practitioners to identify patients who may have a substance abuse problem and/or who may be doctor shopping (i.e., going to different doctors for treatment and obtaining prescriptions from each one).

Pain Clinic Certification

Prior to the Prescription Safety Act of 2012, the General Assembly passed legislation in 2011 regulating pain clinics and requiring that all pain clinics register with the state. *Tenn. Code Ann.* § 63-1-301 *et seq.* The result of such registration is better oversight of pain prescribing and the assurance that only qualified medical professionals own and work within the clinics.

There are currently 307 certified pain management clinics in Tennessee. That equates to one clinic per 21,160 Tennesseans. Random clinic inspections are not required by the law, but have been undertaken by the department as a best practice. During the 2014 calendar year:

- Three (3) clinic certifications were revoked, and one clinic certification was denied renewal.
- 111 clinic inspections were conducted (35 were the result of a complaint; 76 were random).
- Five cases have been referred to the Office of General Counsel for prosecution.

Clinical Practice Guidelines for Outpatient Management of Chronic Non-Malignant Pain

In 2013 and as part of the Addison Sharp Prescription Regulatory Act, *Tenn. Code Ann.* 63-1-401 *et seq.*, the General Assembly directed the Department to create treatment guidelines for prescribing of opioids, benzodiazepines and other drugs to be used by Tennessee practitioners in caring for patients. The method used to formulate these guidelines included a review of national expert panel recommendations and state practice guidelines, multiple listening sessions with clinicians in Tennessee, oversight by a multidisciplinary steering committee and recommendations from an advisory committee with strong representation by clinicians with specialty training in pain medicine. Draft clinical guidelines were also circulated to a broader group of professional associations within Tennessee, including but not limited to mental health and substance abuse and workers' compensation programs.

These guidelines are available at the following URL:

<http://health.state.tn.us/Downloads/ChronicPainGuidelines.pdf>

Prosecution of Prescribing Cases

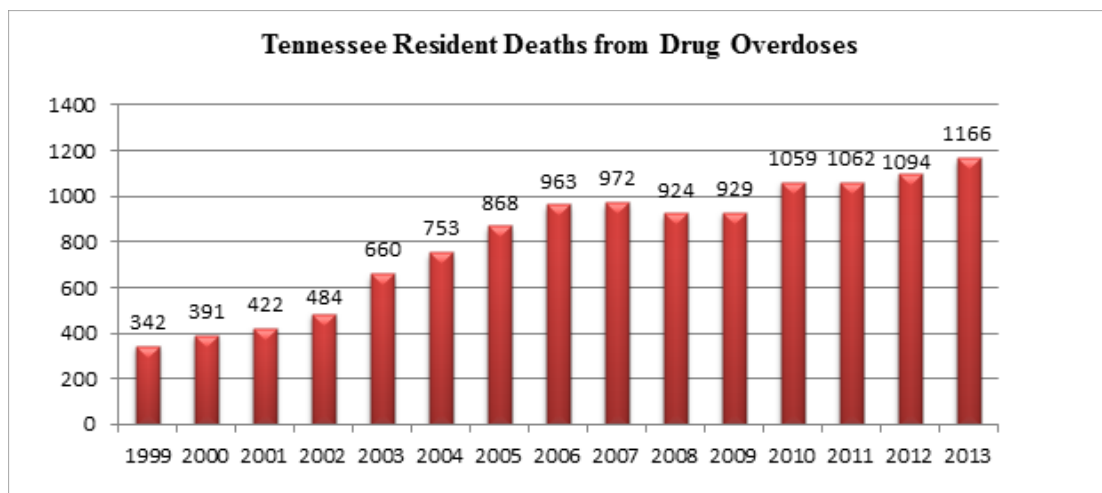
The Department's Division of Health Licensure and Regulation, Office of General Counsel (OGC) has assigned several of its attorneys to a team that solely reviews and prosecutes cases involving inappropriate prescribing and overprescribing. The team handles cases for all of the disciplines in which practitioners have the authority to prescribe controlled substances. The team ensures that cases are presented to the respective boards in a fair and consistent manner, which allows the boards to better protect the health and safety of the people of Tennessee.

2014 data reveals:

- OGC closed 34 prescribing cases with public discipline, including fifteen cases resulting in either the revocation or voluntary surrender of the practitioners' licenses.
- The Office of Investigations received 39 complaints logged as related to inappropriate prescribing and overprescribing.
- OGC received 53 new cases. See Appendix A, Collective Charts – 2014 Prescribing Cases.

Prescription Drug Abuse in Tennessee

Prescription drug abuse is an increasingly serious problem in Tennessee. In 2000, there were 391 deaths resulting from drug overdose. In 2010, that number more than doubled to 1,059. *Death Statistics*, Office of Policy, Planning and Assessment, TN Department of Health (1999-2012). In 2012, that number increased to 1,094 and increased again in 2013 to 1,166. *Id.* The number of deaths in Tennessee resulting from drug overdose has outpaced the national death rate per 100,000 people since 2002. In 2011, there were approximately 13 overdose deaths per 100,000 nationally. *Drug Poisoning Deaths in the United States, 1980-2008*, Data Brief 81, National Center for Health Statistics (NCHS). In Tennessee, the rate was over 16 deaths per 100,000 people. *Death Statistics*, Office of Policy, Planning and Assessment, TN Department of Health. In recent years, the number of deaths in Tennessee caused by drug overdose has been higher than the number of deaths caused by motor vehicle accidents. *Id.*



The most prescribed controlled substances are prescription opioids used to treat pain. In 2014, as in many previous years, the top three most prescribed controlled substances in Tennessee were hydrocodone products (e.g., Lortab, Lorcet, Vicodin), alprazolam (e.g., Xanax), and oxycodone (e.g., OxyContin, Roxicodone). *Report to the 109th Tennessee General Assembly*, TN Department of Health Controlled Substance Monitoring Database Committee (2014). According to analysis of data in the Controlled Substance Monitoring Database, pain killer prescriptions in Tennessee decreased 4.6% in 2014. This is the first decrease in six years since this data has been subject to tracking.

New Certification Process for Pain Clinics

In 2011, the General Assembly enacted Public Chapter 340, which created Tennessee Code Annotated § 63-1-301 *et seq.* This legislation created a certification process for pain management clinics and required that all clinics register with the state. *Id.* Each clinic must have a medical director who meets certain educational and training requirements. The medical director must be on-site at the clinic at least 20% of the clinic's weekly operating hours and may serve as medical director for no more than 4 pain clinics. Additionally, neither the medical director nor any owner or prescriber at the clinic may have any prior disciplinary action related to inappropriately prescribing, dispensing, administering, supplying or selling a controlled substance or any criminal convictions for offenses involving the distribution of illegal prescription drugs or controlled substances as defined in T.C.A. § 39-17-402. T.C.A. § 63-1-309(b)(1), (2). Convicted felons are prohibited from owning a pain clinic. *Id.*

There are currently 307 certified pain clinics in Tennessee, which amounts to one clinic per 21,160 Tennesseans. During the 2014 calendar year, there were 111 clinic inspections, 76 of which were random. Five have been referred to the Office of General Counsel. The Department's goal is to obtain sufficient staff and training so that every pain clinic is audited at least every three years.

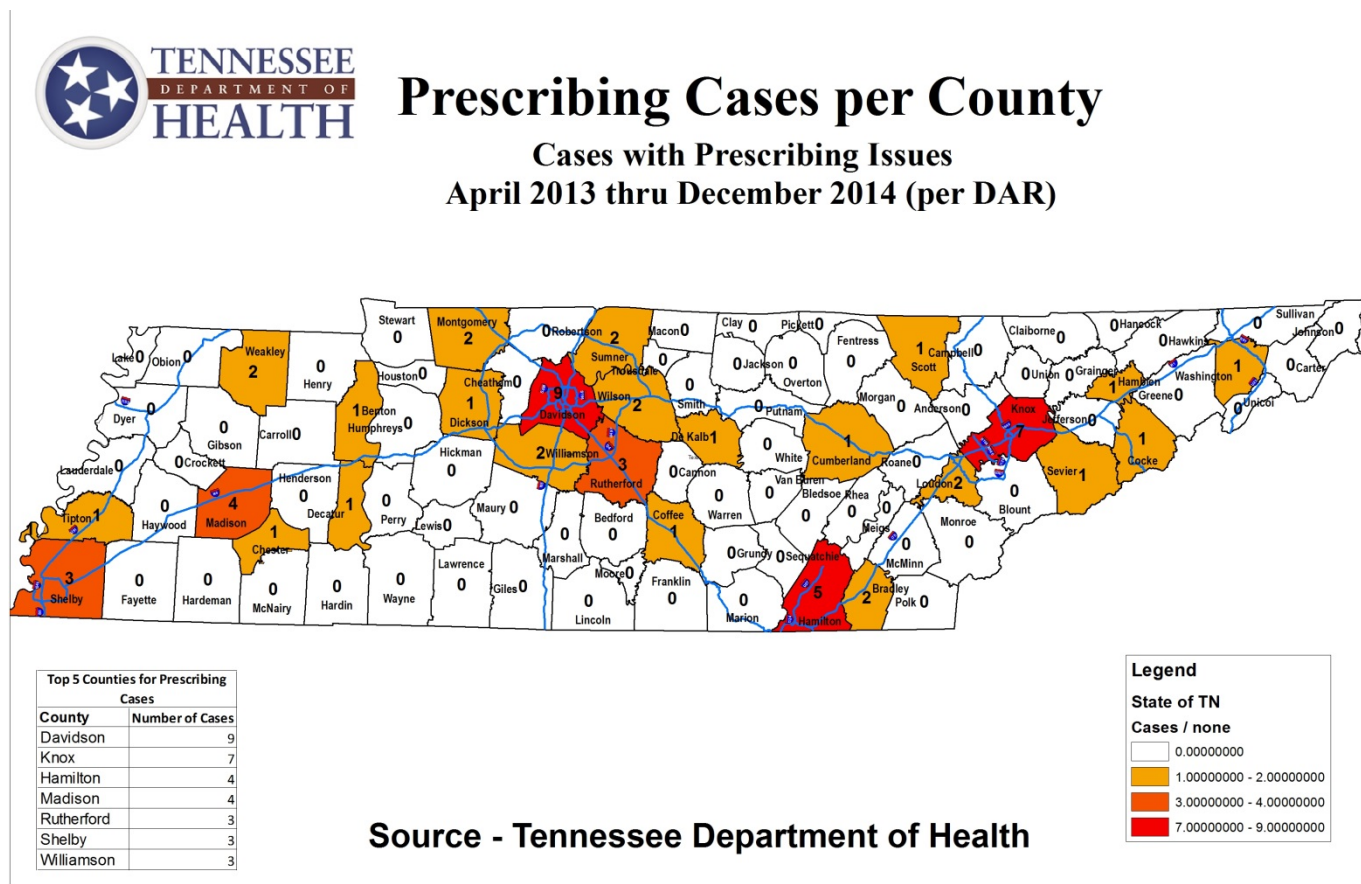
Regulating the Treatment of Chronic Pain

In addition to the legislation passed by the General Assembly, in 2012 the Department created the position of medical director of special projects, whose duties include facilitating the creation and review of guidelines for prescribing opioids, benzodiazepines, barbiturates, and carisoprodol as required by T.C.A. § 63-1-401 *et seq.* The medical director has traveled throughout the state discussing pain management with practitioners and getting feedback on the guidelines. Additionally, as required by *Tenn. Code Ann.* § 68-1-128, the medical director along with the Office of General Counsel has reviewed data on the top 50 prescribing practitioners in the state of Tennessee and has used that data to assist in identifying practitioners of concern as well as educating practitioners. On the most recent Top 50 survey, 35 of the top 50 prescribers were advanced practice nurses, 9 were medical doctors, and 6 were physician assistants. There has been a 12% decrease in the morphine milligram equivalents prescribed by the Top 50 Prescribers in 2014 compared to 2013. *Report to the 109th Tennessee General Assembly*, TN Department of Health Controlled Substance Monitoring Database Committee (2014).

Enforcement

In addition to the Department's creation of the position of medical director of special projects, the Department's Office of General Counsel created a team (the "prescribing team") that solely reviews and prosecutes cases involving inappropriate prescribing and overprescribing. The team handles cases for all of the disciplines in which practitioners have the authority to prescribe controlled substances, such as medical doctors, osteopathic physicians, advanced practice nurses and physician assistants. This approach allows for expertise and consistency in the handling of disciplinary actions against practitioners who are accused of inappropriate prescribing or overprescribing.

In 2014, the Office of Investigations received 39 complaints of inappropriate prescribing and overprescribing.



In 2014, OGC was assigned 53 new cases for prosecution. See Appendix A, Collective Charts – 2014 Prescribing Cases. Such prosecution resulted in the closure with public discipline of 34 cases in 2014. Fifteen cases resulted in the revocation or surrender of a practitioner's license.¹ Three practitioners

¹ Of the fifteen revocations/ surrenders, four involved a physician, ten involved advanced practice nurses and one involved a physician assistant.

were suspended, and seven were placed on probation.² Six medical doctors, one dentist and one physician assistant were publicly reprimanded. Nine additional cases have been closed with a Letter of Warning or no action. Sometimes, after a case arrives in OGC and the Respondent (i.e., the accused practitioner) is contacted, the Respondent presents additional information that is sufficient to refute the allegations against him/her. Other times, further investigation, including review by an expert, determines that there is insufficient evidence to pursue a contested case before the respective board. Letters of warning are distributed when the allegations against the practitioner raise concern, but there is insufficient evidence to pursue a contested case.

Conclusion

The Department is working hard to protect the people of Tennessee from the effects of prescription drug abuse. Appropriate measures have been taken to impose stricter regulations on practitioners who prescribe controlled substances in an effort to reduce the number of patients being adversely affected by inappropriate prescribing or overprescribing.

Appendix A. – 2014 Prescribing Cases

Cases Opened in the Office of General Counsel

<i>New Cases Received</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>YTD</i>
D.D.S.	0	0	0	1	0	0	0	0	0	1	0	0	2
M.D.	3	4	2	3	1	2	2	3	0	3	1	0	24
P.A.	1	0	0	1	0	0	0	0	0	0	0	1	3
A.P.N./R.N.	2	5	0	2	0	1	5	0	3	0	1	3	22
D.O.	1	0	0	1	0	1	0	0	0	0	1	0	4
D.P.M.	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL:	7	9	2	7	1	4	7	3	3	3	3	4	53

² Two medical doctors and one nurse were suspended. Four medical doctors, two advanced practice nurses and one physician assistant were placed on probation.

Case Closures in the Office of General Counsel

<i>Cases Closed - by Respondent</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>YTD</i>
Closed - No Action	1	0	0	0	0	0	2	0	1	0	0	0	4
Closed - Warning	2	0	0	1	0	1	0	0	0	1	0	0	5
Closed - Reprimand	2	0	3	0	1	0	2	0	0	0	1	0	9
Closed - Probation	1	1	0	0	2	0	1	0	1	0	2	0	8
Closed - Suspension	1	0	0	0	1	0	0	1	0	0	0	0	3
Closed - Lic. Surrendered	1	1	0	0	1	0	0	0	0	1	0	1	5
Closed - Revocation	1	1	0	0	3	0	1	2	0	0	1	0	9
Closed - Other	0	0	1	0	0	0	0	0	0	0	0	0	1
Total Closed Cases	9	3	4	1	8	1	6	3	2	2	4	1	44

By Specific Board

Dental

<i>Cases Closed - by Respondent</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>YTD</i>
Closed - No Action	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Warning	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Reprimand	1	0	0	0	0	0	0	0	0	0	0	0	1
Closed - Probation	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Suspension	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Lic. Surrendered	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Revocation	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Closed Cases	1	0	0	0	0	0	0	0	0	0	0	0	1

Board of Medical Examiners

<i>Cases Closed - by Respondent</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>YTD</i>
Closed - No Action	1	0	0	0	0	0	1	0	1	0	0	0	3
Closed - Warning	2	0	0	1	0	1	0	0	0	1	0	0	5
Closed - Reprimand	0	0	3	0	1	0	2	0	0	0	1	0	7
Closed - Probation	1	0	0	0	0	0	1	0	1	0	1	0	4
Closed - Suspension	1	0	0	0	1	0	0	0	0	0	0	0	2
Closed - Lic. Surrendered	1	0	0	0	0	0	0	0	0	0	0	0	1
Closed - Revocation	1	0	0	0	1	0	1	0	0	0	0	0	3
Closed - Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Closed Cases	7	0	3	1	3	1	5	0	2	1	2	0	25

Board of Medical Examiners Committee on Physician Assistants

<i>Cases Closed - by Respondent</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>YTD</i>
Closed - No Action	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Warning	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Reprimand	1	0	0	0	0	0	0	0	0	0	0	0	1
Closed - Probation	0	0	0	0	0	0	0	0	0	0	1	0	1
Closed - Suspension	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Lic. Surrendered	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Revocation	0	0	0	0	0	0	0	0	0	0	1	0	1
Closed - Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Closed Cases	1	0	0	0	0	0	0	0	0	0	2	0	3

Nursing

<i>Cases Closed - by Respondent</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>YTD</i>
Closed - No Action	0	0	0	0	0	0	1	0	0	0	0	0	1
Closed - Warning	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Reprimand	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Probation	0	1	0	0	2	0	0	0	0	0	0	0	3
Closed - Suspension	0	0	0	0	0	0	0	1	0	0	0	0	1
Closed - Lic. Surrendered	0	1	0	0	1	0	0	0	0	1	0	1	4
Closed - Revocation	0	1	0	0	2	0	0	2	0	0	0	0	5
Closed - Other	0	0	1	0	0	0	0	0	0	0	0	0	1
Total Closed Cases	0	3	1	0	5	0	1	3	0	1	0	1	15

Board of Osteopathic
Examination

<i>Cases Closed - by Respondent</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>YTD</i>
Closed - No Action	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Warning	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Reprimand	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Probation	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Suspension	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Lic. Surrendered	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Revocation	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Closed Cases	0	0	0	0	0	0	0	0	0	0	0	0	0

**Board of Podiatric
Medical Examiners**

<i>Cases Closed - by Respondent</i>	<i>Jan</i>	<i>Feb</i>	<i>Mar</i>	<i>Apr</i>	<i>May</i>	<i>Jun</i>	<i>Jul</i>	<i>Aug</i>	<i>Sep</i>	<i>Oct</i>	<i>Nov</i>	<i>Dec</i>	<i>YTD</i>
Closed - No Action	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Warning	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Reprimand	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Probation	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Suspension	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Lic. Surrendered	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Revocation	0	0	0	0	0	0	0	0	0	0	0	0	0
Closed - Other	0	0	0	0	0	0	0	0	0	0	0	0	0
Total Closed Cases	0	0	0	0	0	0	0	0	0	0	0	0	0