

# **Overuse of Opioids in California** *Findings, Analysis, and Response*

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*February 14, 2013*  
*Board of Directors – Open Meeting*

# Evidence-Based Medicine & Comparative Effectiveness Research on Opioids

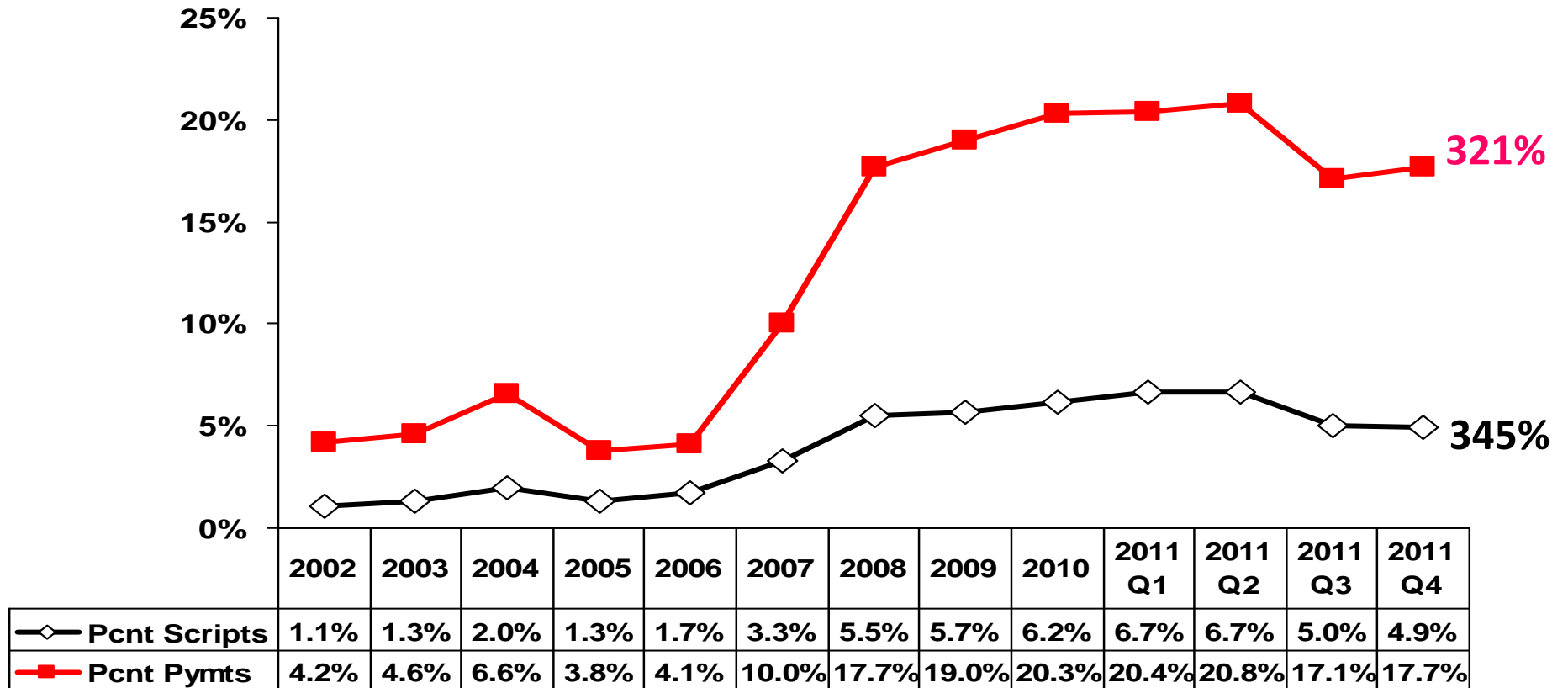
## ACOEM Insights on Schedule-II Opioids:

- Opioid use is the most important factor impeding recovery of function in patients referred to pain clinics
- Opioids do not consistently and reliably relieve pain and can decrease quality of life and functional status
- The use of opioids during the sub-acute and chronic phases of an injury, especially in the absence of an objectively identifiable pain generator, cannot be recommended

Source: Genovese, Harris, Korevaar 2007  
Permission Granted by CWCI 2013

# Pharmaceutical Utilization & Cost

## Schedule-II Opioid Drugs<sup>1</sup>

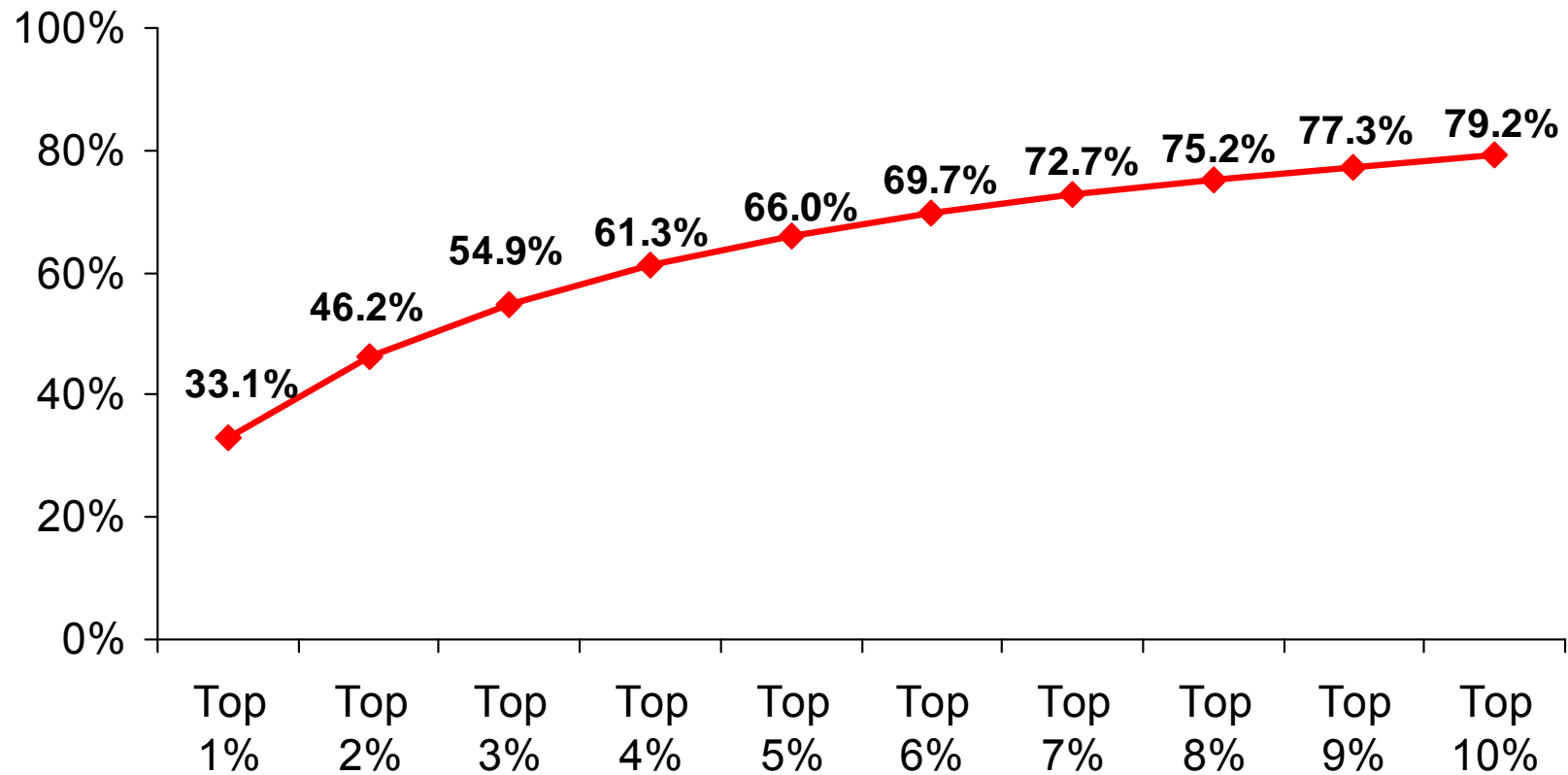


<sup>1</sup> Calculations are on a calendar year basis  
Permission granted by CWCI 2013

# Analysis of Prescribing Patterns Schedule II Opioids

## Cumulative Percentage of Schedule II Prescriptions

Top 10% of S-II Prescribing Physicians



Permission Granted by CWCI 2013

# Analysis of Prescribing Patterns Schedule II Opioids

## Top Injury Categories w/ Schedule II Opioids

<b>Diagnostic Category</b>	<b>Percent of S-II Opioid Claims</b>	<b>Percent of S-II Opioid Scripts</b>	<b>Percent of S-II Opioid Payments</b>
Medical Back w/o Spinal Cord Involvement	35.7%	47.1%	50.2%
Spine Disorders w/ Spinal Cord or Root Involvement	11.3%	15.1%	16.1%
Cranial & Peripheral Nerve Disorder	5.0%	6.8%	6.5%
Degen, Infect & Metabol Joint Disorder	9.3%	6.1%	5.4%
Other Injuries, Poisonings & Toxic Effects	5.5%	5.9%	6.8%
Ruptured Tendon, Tendonitis, Myositis & Bursitis	6.0%	3.6%	2.7%
Sprain of Shoulder, Arm, Knee or Lower Leg	6.8%	3.2%	2.8%
Wound, FX of Shoulder, Arm, Knee or Lower Leg	6.3%	2.7%	1.6%
Other Mental Disturbance	1.2%	1.7%	1.5%
Other Diagnoses of Musculoskeletal System	1.5%	1.4%	1.1%

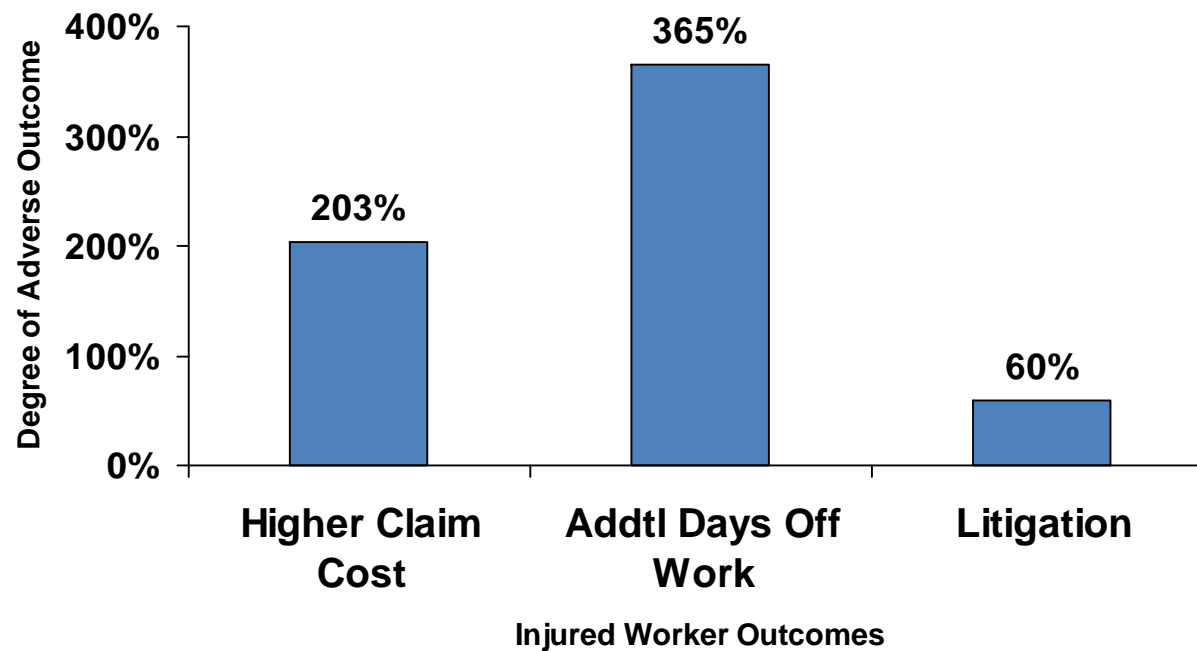
### Outside EBM Guidelines

- **51% of Claims**
- **60% of Prescriptions**
- **62% of Payments**

Permission Granted by CWCI 2013

## Impact of High Level Use of Opioids on Injured Workers

Compared to low level use, minor back injuries with high levels of opioid use



CWCI, July 2008  
 Permission Granted by CWCI 2013

# Impact of Inappropriate Use of S-II Opioids

## ❑ Injured Worker

→ *Reduced quality of care, delay/reduction in physical & functional recovery, secondary complications, addiction, death*

## ❑ Employers

→ *Reduced productivity, delay in return to workplace, increased claim life & costs, increased premium*

## ❑ Insurers

→ *Increased claim life & costs, unpredictable reserves, increased litigation, potential death claims*

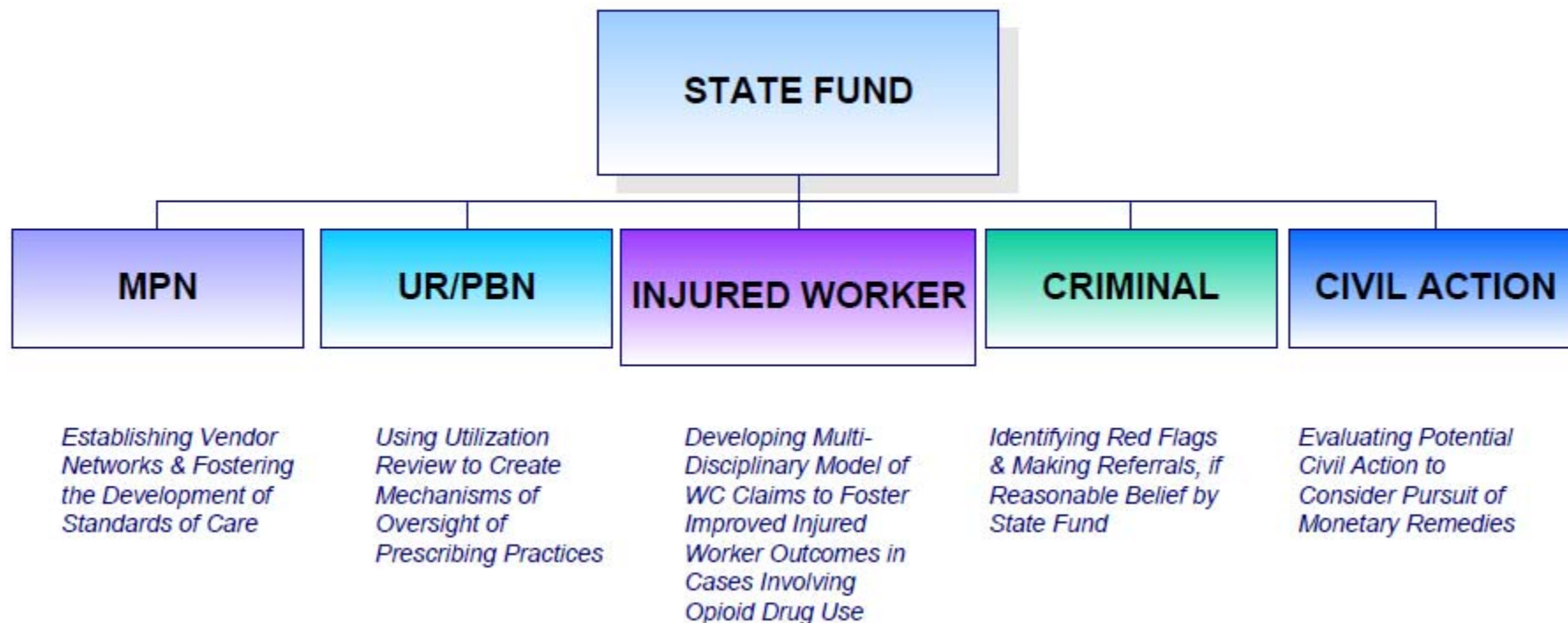
## ❑ Workers' Compensation Appeals Board

→ *Increased strain on Board resources due to increased attorney involvement, litigation, and liens*

## ❑ California Economy

→ *Strain on fairly priced WC system impacts ability for California to compete for business*

# An Integrated Approach Medical Care





## Preventing S-II Opioid Abuse

**Deliver superior outcomes for injured employees and the employers we serve**

- Quality care
- Return to normal life
- Controlled claims costs
- Fight against fraud/abuse
- Efficient service



- MPN contract and expectations on SII drugs based on Evidence-Based Medicine and Occupational Disability Guides
- MPN channeling and transfer of care
- Timely and appropriate medical treatment decisions
- Early triage with injured employee
- PBN educational outreach to injured employees
- Drug testing

# Managing S-II Opioid Abuse

**Deliver superior outcomes for injured employees and the employers we serve**

- Quality care
- Return to normal life
- Controlled claims costs
- Fight against fraud/abuse
- Efficient service



- PBN oversight and trigger on high dosage or length of prescription
- Peer-to-peer counseling on SII drugs
- MPN performance management
- High quality pain management programs
- Industry oversight (CURES)

# CURES: Global Management Solution

## Prescription Monitoring Program (PMP or PDMP)

- *44 states have legislation, 34 have operational programs*
- *California's program was 1st (1939) and at risk of losing funding 7/1/13*

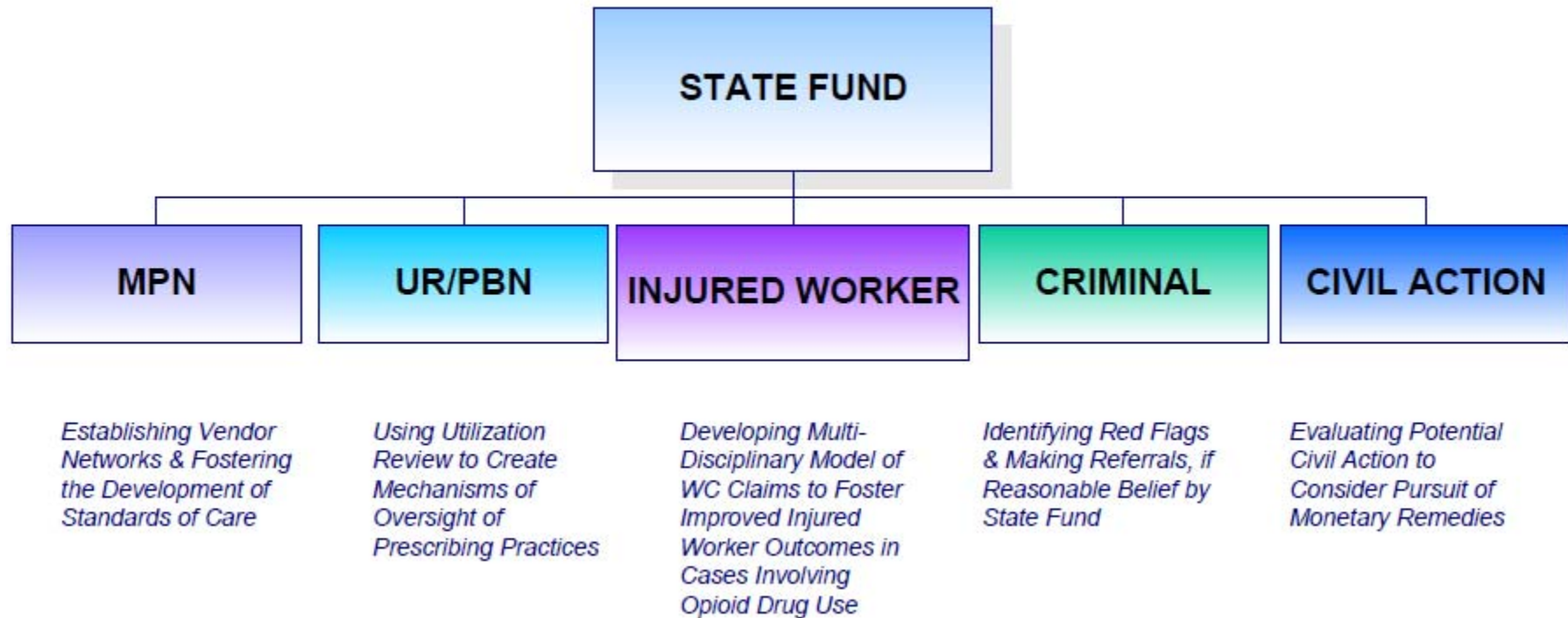
## Controlled Substance Utilization Review and Evaluation System (CURES)

- *Receives over 5 million records each month from 6700 licensed pharmacies*
- *Needs to be a more robust system*
- *Vision is for doctors to know all prescribed drugs for patient and*
- *Avoid doctor shopping and*
- *Law enforcement tool*

## Update

- *AG Harris sponsored legislation authored by Senator DeSaulnier*

# An Integrated Approach Criminal & Civil Actions



# Improperly Prescribing Opioids may be a Crime

- Federal Crimes – 35+ potential charges**  
→ *Drug trafficking, RICO conspiracy and racketeering...manslaughter or murder*
- State Crimes – 25+ potential charges**  
→ *False prescriptions; Excessive prescribing or treatment*  
→ *Furnishing dangerous drugs without examination... manslaughter or murder*
- Penalties – Prison, Fines, Loss of License**

*or*

## May Lead to Civil Action

- Federal**  
→ *Civil RICO*  
→ *Improperly Filed Claims*
- State**  
→ *False or Fraudulent Insurance Claims*  
→ *Fraudulent or Negligent Deceit*  
→ *WC – Unlawful Acts*  
→ *Conspiracy with Unlicensed Persons*

**(See Exhibit 1)**

## Improperly Prescribing Opioids may be a Crime

- ❑ **Oct 2011** – Orange County physician arrested on federal charges related to selling scripts without adequate examination or legitimate medical purpose
- ❑ **Jan 2012** – Santa Barbara physician arrested on federal drug trafficking charges for unlawfully prescribing painkillers
- ❑ **Mar 2012** – Los Angeles physician charged with 2nd degree murder and unlawful prescribing for 3 overdose deaths
- ❑ **May 2012** – Los Gatos pain management physician charged with conspiracy to sell controlled substances by excessively prescribing oxycodone to patients (including known addicts) that resold drugs
- ❑ **Jul 2012** – Glendora physician charged with selling scripts and prescribing excessive amounts of drugs including oxycodone
- ❑ **Oct 2012** – Los Gatos physician charged with trading Oxy scripts for cash and methamphetamine

# Medical Reality & Issues in Opioids Abuse

- Patient plateau (60+ days)
- Psych-social issues & cognitive therapy
  - *Doctor performs or refers*
  - *Payer/UR denies*
- Compensation for coaching time vs. time to write an Rx
- Pain relief at 'End of Life' translated into pain relief for 'Any Injury'
- Transfer of care issues
- Functional restoration is grim

## Our Goal



Superior Outcomes for  
Injured Employees and the  
Employers we serve



# Exhibits



**Background on Opioids**  
Board of Directors Meeting  
February 15, 2013

Opioids are defined generally as synthetic versions of opium, used to treat moderate and severe pain.

Opioid narcotics are generally classified by the DEA as controlled substances under Schedule II of the Controlled Substances Act of 1970, meaning they are considered dangerous, have a high potential for abuse, and may lead to severe psychological or physical dependence. (Schedule II controlled substances normally can be dispensed only on written prescription, issued for a legitimate medical purpose, by an individual practitioner acting in the usual course of professional practice. This requirement is reflected in both state and federal law, and is enforced by civil and criminal penalties.)

Recent studies indicate a dramatic increase in abuse, diversion, and accidental deaths associated with the use of prescription opioids.

Schedule II opioid analgesics (i.e., pain relievers) include the following generic drugs:

- hydrocodone
- hydromorphone (brand names: *Dilaudid, Exalgo*)
- oxycodone (brand names: *OxyContin, Roxicodone*)
- morphine
- oxymorphone (brand name: *Opana*)
- methadone
- fentanyl (brand names: *Actiq, Fentora, Duragesic*)

**OVER-PRESCRIBING AND/OR DIVERSION OF SCHEDULE II OPIOIDS:  
AVAILABLE FEDERAL & STATE CRIMINAL CHARGES; GROUNDS FOR PROFESSIONAL DISCIPLINE  
PREPARED BY STATE COMPENSATION INSURANCE FUND LEGAL DEPARTMENT  
July 31, 2011**

***I. Federal Criminal Statutes:***

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
Title 18, U.S. Code §1347 - Health Care Fraud	-Knowing & willful scheme to defraud a Health Care Benefit Program, as defined -Misrepresentation or concealment of material facts -Intent to defraud -Scheme involved delivery or, or payment for, Health Care benefits, items, or services	-Prescription & all related records -Pharmacy medication profile (16 CCR 1707.1) -Medical file -Patient chart notes -UR file -Treatment guidelines -Depositions -Medical literature -Expert testimony -Bills/Correspondence -Any pharmacy management agreements		
Title 18, U.S. Code §1035(a) - False Statements relating to health care matters	-Matter involves a Health Care Benefit Program -Knowing & willful -Materially false statement or writing; concealment	-All Prescription records -Medical file -UR file -Depositions -Medical literature	5 years (18 U.S.C. 3282)	1035(b) incorporates by reference the broad definition of "health care benefit program" set forth at 18 U.S.C. 24(b).
Title 18, U.S. Code §669(a) - Theft	-Knowing & willful embezzlement or conversion of funds or assets of a Health Care Benefit Program	-All prescription records -Medical file -UR file -Bills -Correspondence	5 years (18 U.S.C. 3282)	669(b) incorporates by reference the broad definition of "health care benefit program" set forth at 18 U.S.C. 24(b).

**I. Federal Criminal Statutes:**

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
Title 21, U.S. Code §331(k), 353(b)(1) - Misbranding	-Prescription drug knowingly dispensed without a valid prescription -Intent to mislead -No good faith	-All prescription records -Medical file -UR file -Correspondence -Treatment guidelines -Medical literature -Depositions	5 years (18 U.S.C. 3282)	To be valid, prescription must comply with 21 C.F.R. 1306.04 (rx issued for a legitimate medical purpose, in the usual course of professional practice). “Dispense” is defined at 21 U.S.C. 802(10)
Title 21, U.S. Code §841(a)(1) - Unlawful prescriptions	-Distributed or dispensed a controlled substance -Knowing & intentional -No legitimate medical purpose, outside usual course of professional practice	-All prescription records -Medical file -UR file -Treatment guidelines -Depositions -Bills	5 years (18 U.S.C. 3282)	This section tracks 21 C.F.R. 1306.04, setting forth the standard for a valid prescription.
Title 18, U.S. Code §1341 - Mail fraud	-Scheme or plan to defraud -False pretenses -Knowledge of falsity -Materiality -Intent to defraud -Use of the mails	-All prescription records -Medical file -UR file -Bills -Correspondence -Depositions	5 yrs (18 U.S.C. 3282); 10 yrs if offense affects a financial institution (18 U.S.C. 3293)	A separate prong of the mail fraud offense relates to denial of victim’s intangible right of “honest services” by means of bribery or kickbacks.
Title 18, U.S. Code §1343 - Wire fraud	-Scheme or plan to defraud -Use of wires to further the scheme -Material false statement -Specific intent to defraud	-All prescription records -Medical file -Bills -Any e-mails -Any phone memos -Any fax messages	5 yrs (18 U.S.C. 3282); 10 yrs if offense affects a financial institution (18 U.S.C. 3293)	May also involve denial of honest services; “Wires” includes, e.g., phones, internet, etc.; the transmission must cross state lines at some point to support federal jurisdiction.
Title 21, U.S. Code §843(b) - Communications facility	-Knowing & intentional use of a “communications facility” (as defined) to facilitate a narcotics offense	-All prescription records -Medical file -Bills -Correspondence -Phone, fax, e-mail	5 years (18 U.S.C. 3282)	“Communications facility” is broadly defined to include mail, phone, wire, radio, and “all other means of communication” -Each “use” is a separate crime

**I. Federal Criminal Statutes:**

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
Title 18, U.S. Code §1962(a) - RICO, prohibited activities	-Income from a pattern of racketeering activity -Invested in an enterprise -Enterprise affects interstate commerce	-All prescription records -Medical file -Bills -Correspondence -Phone, fax, e-mail	5 years (18 U.S.C. 3282)	-“Racketeering” includes mail & wire fraud, and certain controlled substance crimes -“Pattern” requires two acts of racketeering
Title 18, U.S. Code §1962(b) - RICO, prohibited activities	-Acquired or maintained interest in an enterprise -Pattern of racketeering -Enterprise affects interstate commerce	-All prescription records -Medical file -Bills -Correspondence -Phone, fax, e-mail	5 years (18 U.S.C. 3282)	“Enterprise” includes any individual, partnership, corp., association, or other legal entity, or any group of individuals associated in fact
Title 18, U.S. Code §1962(c) - RICO, prohibited activities	-Employed by or associated with enterprise -Pattern of racketeering -Enterprise affected interstate commerce	-All prescription records -Medical file -Bills -Correspondence -Phone, fax, e-mail	5 years (18 U.S.C. 3282)	
Title 18, U.S. Code §1962(d) - RICO conspiracy	-2 or more persons in knowing agreement to attempt or accomplish unlawful scheme or plan -Specific intent	-All prescription records -Medical file -Bills -Correspondence -Phone, fax, e-mail	5 years (18 U.S.C. 3282)	The prohibited scheme or plan is one to engage in a pattern of racketeering activity, as defined. Participation must be knowing & intentional.
Title 21, U.S. Code §854 - Investment of illicit drug profits	-Income from drug crime -Invested in enterprise -Enterprise affects interstate commerce	-All prescription records -Medical file -Bills -Correspondence	5 years (18 U.S.C. 3282)	No reported decisions, but the language mirrors RICO, 18 U.S.C. 1962(c), so elements are likely the same.
Title 21, U.S. Code §856(a)(1) - Drug involved premises	-Defendant knowingly maintained a place for the purpose of distributing a controlled substance	-All prescription records -Medical file -Bills, correspondence -Depositions -Investigative reports	5 years (18 U.S.C. 3282)	“Maintaining” a place may be established by a showing that defendant directed activities there.
Title 18, U.S. Code §1518 - Obstruction, health care investigations	-Knowingly prevented, obstructed, mislead, or delayed sending info to a criminal investigator re: a federal health care crime	-Prescription records, etc. (Other evidence will likely be developed by law enforcement from independent sources.)	5 years (18 U.S.C. 3282)	“Investigator” means a U.S. agent; crimes include §§669, 1035, 1347, & 1518 itself. Includes attempt to obstruct. Requires knowledge & intent.

**I. Federal Criminal Statutes:**

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
Title 21, U.S. Code §843(a)(4)(A) - False records	-Furnished false or fraudulent material info -On a required record -Knowledge & intent	-All prescription records -Bills/Correspondence -Dispensing Logs -Patient medication profile	5 years (18 U.S.C. 3282)	Prohibits falsification or omission on record required to be kept under Controlled Substances Act.
Title 21, U.S. Code §848(a) – Criminal enterprise, controlled substance	-Underlying offense -Part of series (3 plus) -5 or more persons -Defendant as organizer -Substantial income	-All prescription records -Medical file -Bills -Correspondence -Management agreements	5 years (18 U.S.C. 3282)	“Underlying offense” means a controlled substance violation; the offense must be part of a series of 3 or more related offenses.
Title 18, U.S. Code §1001 - Statements or entries, matters within federal jurisdiction	-False statement or concealment in a matter within federal jurisdiction -Action was willful -Statement was material	-All prescription records -Medical file -Patient charts -Pharmacy log books -Bills	5 years (18 U.S.C. 3282)	To satisfy jurisdictional requirement, the false statement must relate to a matter under the authority of a federal agency (e.g., a federal benefits program, or a DEA records inspection).
Title 18, U.S. Code §1033 - Crimes affecting insurance	-Business of insurance or related insurance transaction -Knowingly false entry of a material fact -Intent to deceive	-All prescription records -Medical file -Patient charts -Pharmacy logs -Bills	10 years (18 U.S.C. 3293)	The “business of insurance” at issue must affect interstate commerce, as defined. Note this statute is little used, with few reported decisions.
Title 18, U.S. Code §2 - Principals	-Punishes as a principal any who aid, abet, counsel, command, induce or procure the commission of a federal offense	-All prescription records -Medical file -Bills -Depositions -Correspondence	Likely 5 years (18 U.S.C. 3282), depending on the principal crime	

**I. Federal Criminal Statutes:**

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
Title 21, U.S. Code §846 – Controlled substances, attempt & conspiracy	For attempt: -Intent to deliver -Knowledge -“Substantial step”  For conspiracy: -Two or more agreed -Knowledge -Criminal purpose	-All prescription records -Medical file -UR file -Bills -Depositions -Correspondence	5 years (18 U.S.C. 3282)	No need to allege or prove an overt act in furtherance of the conspiracy. (Contrast the general conspiracy statute, 18 U.S.C. 371, which requires both conspiracy and act be alleged.)
Title 18, U.S.Code §1349 - Attempt, conspiracy	-Applies the same penalties as prescribed for the substantive offense of Health Care Fraud under 18 U.S.C. 1347 (see above)	-All prescription records -Medical file -UR file -Bills -Depositions -Correspondence	5 years (18 U.S.C. 3282)	
18 U.S.C. §286 – Conspiracy to defraud the United States with respect to claims	-Conspiracy to obtain payment of a claim against the United States -Claim was false or fraudulent -Knowledge of falsity -Knowledge of conspiracy, intent to join -Voluntary participation in the conspiracy		5 years after commission of the offense – 18 USC 3282	
18 U.S.C. §287 – False, fictitious or fraudulent claims against the United States	-Presentment of claim upon or against the U.S. -Defendant knew such claim was false		5 years after commission of the offense – 18 USC 3282	‘Claim’ for purposes of §287 must involve a demand for money or transfer of property or attempt to cause the government to pay out money.

**I. Federal Criminal Statutes:**

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
18 U.S.C. §495 – Contracts, deeds, and powers of attorney (false writings)	-Defendant falsely made a specific writing for the purpose of obtaining money from the U.S. Or: -Defendant transmitted or presented a falsely made writing to the U.S. -Knew it was false -Transmitted, etc., in support of a claim -Intent to defraud -Writing was material to U.S. action on the claim		5 years after commission of the offense – 18 USC 3282	May apply to fraudulent billings under Medicare or Medicaid.
18 U.S.C. §641 – Public money, property or records	-Defendant knowingly embezzled, stole, or converted money or property -Belonging to the U.S. -Amount over \$1,000 (for felony charge)		5 years after commission of the offense – 18 USC 3282	May apply to fraudulent billing under Medicare or other federally funded program.
18 U.S.C. §1002 – Possession of false papers to defraud the United States	-Possession of a false writing or document -For purpose of enabling another to obtain any sum of money from the United States -Knowledge -Intent to defraud the U.S.		5 years after commission of the offense – 18 USC 3282	Often charged in tandem with 18 U.S.C. 1001 (false statements, writings, or documents; concealment, in any matter within the jurisdiction of the United States).
18 U.S.C. §1003 – Demands against the United States	-Knowing & fraudulent demand or endeavor to have paid any debt due from the United States by use of false, forged, or counterfeit documents		5 years after commission of the offense – 18 USC 3282	



**I. Federal Criminal Statutes:**

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
18 U.S.C. §1952 – Interstate & foreign travel in aid of racketeering enterprise	-Interstate or foreign travel or use of mails -Intent to distribute proceeds of unlawful activity, or to promote, facilitate, or carry on such activity		5 years after commission of the offense – 18 USC 3282	
18 U.S.C. §1956 – Laundering of monetary instruments	-Knowing & intentional transportation or transfer of proceeds of specified crimes -Financial transaction affecting interstate commerce, involving the movement of funds		5 years after commission of the offense – 18 USC 3282	
18 U.S.C. §1957 – Monetary transactions, property derived from unlawful activity	-Monetary transaction involving criminally derived property -Value greater than \$10,000 -By or through a financial institution		5 years after commission of the offense – 18 USC 3282	
42 U.S.C. §1320a-7 – Exclusion from participation in Medicare & Medicaid	-Conviction of a state or federal offense related to Medicare or any state health care program, or related to controlled substances, is grounds for mandatory exclusion from any federal health care program			HHS may also exclude an individual or entity convicted of an offense relating to fraud or misconduct in connection with a health care program operated or financed by any federal, state, or local government, or who is determined to be furnishing items or services substantially in excess of patient needs.

**I. Federal Criminal Statutes:**

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
42 U.S.C. §1320a-7b(a) – False statements	-Made or caused to be made a statement of material fact in an application for payment under a federal health care program -The statement was false -Knowledge of falsity -Willfully made		5 years after commission of the offense – 18 USC 3282	Applies also to knowing intentional concealment of event affecting right to payment under a federal health care program.
42 U.S.C. §1320a-7b(b) – Kickbacks	-Defendant knowingly & willfully solicited, received, offered, or paid remuneration (kickback) -to induce the referral of an individual for the furnishing or sale of any item or service -for which payment may be made in whole or in part under a federal health care program		5 years after commission of the offense – 18 USC 3282	

**Acknowledgement**

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**Disclaimer**

Although the information contained in this document is believed to be correct, it does not constitute legal advice. Readers should consult qualified counsel for assistance.

**OVER-PRESCRIBING AND/OR DIVERSION OF SCHEDULE II OPIOIDS:  
AVAILABLE FEDERAL & STATE CRIMINAL CHARGES; GROUNDS FOR PROFESSIONAL DISCIPLINE  
PREPARED BY STATE COMPENSATION INSURANCE FUND LEGAL DEPARTMENT  
July 31, 2011**

***II. California State Criminal Statutes & Professional Discipline***

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
Penal Code §550 – False or fraudulent claims or statements	-Knowingly make or cause to be made any false/fraudulent claim for a health care benefit -Specific intent to defraud	-All prescription records -Medical file -UR file -Bills -Depositions -Correspondence	4 years after completion or discovery of the offense, whichever is later - Pen.C. 801.5, 803(c)	Defendant culpable for direct action, and also for aiding & abetting, soliciting, or conspiring with any other person to commit the offense.
Penal Code §487 – Grand Theft	-False representation -Knowing or reckless -Specific intent -Material reliance	-All prescription records -Medical file -UR file -Bills	4 years after completion or discovery of the offense, whichever is later – PC 801.5, 803(c)	“Theft” includes fraud (PC 484). The false pretense can be implied; need not be explicit.
Insurance Code §1871.4 – False or fraudulent statements in support of a compensation claim	-Oral/written statement -Knowingly false -Material -Specific intent	-All prescription records -Medical file -UR file -Bills/correspondence	4 years after completion or discovery of the offense, whichever is later – PC 801.5, 803(c)	Requires specific intent to obtain workers’ comp benefits; unlawful to assist, abet, or conspire.
Penal Code §471.5 – Falsification of medical records	-Creating any false med record, with fraudulent intent, is a misdemeanor	-All prescription records -Medical file -UR file	1 year after commission of the offense	Also bars altering or modifying med records with fraudulent intent.
Health & Safety Code §11153 – Controlled substance prescriptions	-Prescription -Knowingly issued -Not for a legitimate medical purpose -Not in usual course of professional practice -Not in good faith	-All prescription records -Medical file -UR file -Bills -Depositions -Correspondence -Medical literature	3 years after commission of the offense – PC 801	“Legitimate medical purpose” means prescription in such quantity & duration as is reasonably necessary; good faith is a defense (H & S 11210).

## II. California State Criminal Statutes & Professional Discipline

Charge	Elements	Documentation	Limitations	Comments
Health & Safety Code §11173 – Prescriptions, prohibited acts	-11173(b) prohibits false statements in any prescription, order, report, or record req'd by Uniform Controlled Substances Act	-All prescription records -Medical file -UR file -Bills -Depositions -Correspondence	3 years after commission of the offense – PC 801. (Note felony limitations period will apply even if felony charge reduced to a misdemeanor.)	Violation of 11173 with respect to a controlled substance is punishable by state prison, or by county jail up to 1 year (i.e., a “wobbler”)
Health & Safety Code §11374 – Misdemeanor offenses, Uniform Controlled Substances Act	-Punishes as a misdemeanor any violation of the Uniform Controlled Substances Act	-All prescription records -Medical file -UR file -Bills -Correspondence	1 year after commission of the offense (PC 802)	The Act includes H & S §§11152, 11157, & 11171, prohibiting false or non-compliant prescriptions (see below)
Health & Safety Code §11152 – Prohibited non-compliance, Uniform Controlled Substances Act	-No person shall write, issue, fill, compound, or dispense a prescription that does not conform to this division (i.e., Div. 10, the Uniform Controlled Substances Act).	-All prescription records -Medical file -UR file -Bills -Correspondence -Depositions -Investigative reports -Medical literature	See H & S 11374	
Health & Safety Code §11157 – False prescriptions, Uniform Controlled Substances Act	-Prohibits issuing a prescription that is “false or fictitious in any respect”	-All prescription records -Medical file -UR file -Correspondence -Depositions	See H & S 11374	
Health & Safety Code §11171 – Prohibited prescriptions, Uniform Controlled Substances Act	-Prohibits prescribing or furnishing a controlled substance “except under conditions and in the manner” provided by the Uniform Controlled Substances Act.	-All Prescription records -Medical file -UR file -Bills -Correspondence -Patient chart notes -medication profile	See H & S 11374	H & S 11210 sets forth the basic standard that a physician shall only prescribe on a good faith belief that the treatment is required.

## II. California State Criminal Statutes & Professional Discipline

Charge	Elements	Documentation	Limitations	Comments
Business & Professions Code §725 – Excessive prescribing or treatment	-Repeated acts of clearly excessive prescribing, furnishing, dispensing of drugs is unprofessional conduct -Violation is a misdemeanor offense	-All prescription records -Medical file -Bills -Correspondence -Patient chart notes -Medication profile -Treatment guidelines	Criminal: 1 year after the offense (PC 802) Disciplinary: 3 years after discovery by the Med Bd, or 7 years after the act, whichever is first (B & P 2230.5)	As determined by the standard of the community of licensees. Existence of a “medical basis” for the drugs is a defense.
Business & Professions Code §2314(a) – Violations	-Any violation of Div. 2, Ch. 5, Art. 12 of the Bus. & Prof. Code is a misdemeanor offense.		1 year after commission of the offense (PC 802)	Art. 12 includes §§2234, 2242, & 2238, which prohibit unlawful prescribing (see below); punishment set forth at §2315(a).
Business & Professions Code §2315(a) – Punishment	-Misdemeanor violations of Div. 2, Ch. 5, are punishable by fine and/or imprisonment		See B & P 2314(a), above.	Max fine is \$1200; max imprisonment is 180 days.
Business & Professions Code §2234 – Unprofessional conduct	-Violation of Div. 2, Ch. 5, Bus. & Prof. Code, or the commission of any act involving dishonesty or corruption, is unprofessional conduct		3 years after discovery by Med Bd, or 7 yrs after the act, whichever is first (B & P 2230.5). For criminal limitations period, see B & P 2314(a), above.	Also applies to attempts, assisting, abetting, and conspiring; direct and indirect violations; the dishonest act must substantially relate to professional duties.
Business & Professions Code §2238 – Violation of any drug statute or regulation	-Violation of any federal or state statute or regulation regulating dangerous drugs or controlled substances is unprofessional conduct		3 years after discovery by the Med Bd, or 7 years after the act, whichever is first (B & P 2230.5). For criminal limitations, see B & P 2314(a), above.	Incorporates entire body of federal & state drug law, making any drug violation punishable as a misdemeanor under B & P 2314(a).

## II. California State Criminal Statutes & Professional Discipline

Charge	Elements	Documentation	Limitations	Comments
Business & Professions Code §2242 – Furnishing dangerous drugs without examination	-Prescribing, dispensing, furnishing drugs without appropriate prior exam & medical indication is unprofessional conduct	-All prescription records -Medical file -UR file -Patient chart notes -Depositions	Earlier of 3 years after discovery by Med Bd, or 7 years after act (B & P 2230.5). See 2314(a) for criminal limitations.	Applies specifically to “dangerous drugs” as defined at B & P 4022, meaning generally all prescription drugs.
Business & Professions Code §2236 – Conviction of offense related to qualifications, functions, or duties of physician	-Conviction of any offense substantially related to qualifications, functions, or duties of a physician is unprofessional conduct	-Court records	3 years after discovery by Med Bd, or 7 years after the act, whichever is first (B & P 2230.5). See 2314(a) for criminal limitations.	This is also part of Div. 2, Ch. 5, Art. 12, so violation is theoretically punishable as a crime under B & P 2314(a).
Business & Professions Code §2237 – Drug related conviction	-Conviction for violating any federal or state drug law or regulation is unprofessional conduct	-Court records	Earlier of 3 years after discovery by Med Bd, or 7 years after act (B & P 2230.5). See 2314(a) for criminal limitations.	Uses language similar to B & P 2238 (above), thus incorporating entire body of federal & state drug law; part of Art. 12.
Business & Professions Code §2261 – False representations	-Knowingly making or signing any doc related to practice of medicine which falsely represents facts is unprofessional conduct	-All prescription records -Medical file -Patient chart notes -UR file -Bills -Correspondence -Depositions	3 years after discovery by Med Bd, or 7 years after the act, whichever is first (B & P 2230.5). See B & P 2314(a) for criminal limitations period.	Also part of Div. 2, Ch. 5, Art. 12, so punishable as a crime under B & P 2314(a); the document can be either directly or indirectly related to the practice of medicine.
Business & Professions Code §2262 – Alteration of medical records	-Creating any false medical record (or altering or modifying such a record), with fraudulent intent, is unprofessional conduct	-All prescription records -Medical file -Patient chart notes -UR file -Bills -Correspondence	Earlier of 3 years after discovery by Med Bd, or 7 years after act (B & P 2230.5). See B & P 2314(a) for criminal limitations period.	Also part of Div. 2, Ch. 5, Art. 12, punishable as a crime under B & P 2314(a).

## II. California State Criminal Statutes & Professional Discipline

Charge	Elements	Documentation	Limitations	Comments
Business & Professions Code §810 – Grounds for disciplinary action	<ul style="list-style-type: none"> <li>-Any false or fraudulent insurance claim</li> <li>-Any writing in support of such a claim, knowingly prepared, made or subscribed, with intent to present or use same (or to allow to be presented or used) in support of a false or fraudulent claim</li> <li>-Any act prohibited by Ins.C. 1871.4 or PC 550</li> <li>-Any felony conviction involving fraud related to work comp benefits</li> </ul>	<ul style="list-style-type: none"> <li>-All prescription records</li> <li>-Medical file</li> <li>-Patient chart notes</li> <li>-UR file</li> <li>-Bills</li> <li>-Correspondence</li> <li>-Depositions</li> <li>-Dispensing logs</li> <li>-Phone memos</li> <li>-E-mails</li> <li>-Faxes</li> </ul>	For disciplinary action only: 3 years after discovery by the Med Bd, or 7 years after commission of the act, whichever is first (B & P 2230.5).	Each of the stated elements constitutes unprofessional conduct, and is grounds for discipline. Under 810(c), multiple workers' comp fraud convictions arising from separate prosecutions is cause for automatic suspension, and for revocation of license. 810(a) prohibits knowingly presenting or causing to be presented a false or fraudulent claim.
Penal Code §72 – Presenting false claims	<ul style="list-style-type: none"> <li>-False or fraudulent claim, bill, account, voucher, or writing</li> <li>-Presented for allowance or for payment, to any state board or officer authorized to allow or to pay same if genuine</li> <li>-Intent to defraud</li> </ul>		4 years after completion of the offense, or discovery of the commission of the offense, whichever is later – PC 801.5, 803(c)	Defines “officer” to include an insurance carrier authorized to act as an agent for a state board or officer. Note that <b>State Fund</b> is the adjusting agent for uninsured state boards, departments & agencies.
Penal Code §186.10 – Money laundering	<ul style="list-style-type: none"> <li>-Transaction involving a monetary instrument</li> <li>-Total value over \$5,000</li> <li>-Specific intent to promote or carry on criminal activity, or knowledge that the instrument is derived from criminal proceeds</li> </ul>		4 years after completion of the offense, or discovery of the commission of the offense, whichever is later – PC 801.5, 803(c)	

## II. California State Criminal Statutes & Professional Discipline

Charge	Elements	Documentation	Limitations	Comments
Business & Professions Code §650(a) – Consideration for referral of patients	-Offer, delivery, receipt or acceptance of any consideration -By a physician -As compensation or inducement for referral		3 years after commission of the offense – PC 801	See also Ins.C. 750 (prohibiting fee splitting by any person engaged in the practice of “processing, presenting, or negotiating” claims), and LC 3215 (workers’ comp referrals)
Health & Safety Code §11379 – Sale or furnishing of controlled substances	-Defendant knowingly sold, furnished, administered, or transported a controlled substance -No valid prescription		3 years after commission of the offense – PC 801	Physicians are not exempt, and may be prosecuted for unlawful distribution under 11379. Good faith is a defense.
Welfare & Institutions Code §14107(b) – Fraudulent Claims, Medi-Cal	-Knowing presentment of false or fraudulent claim for payment under Medi-Cal. -Specific intent to defraud		4 years after completion of the offense, or discovery of the commission of the offense, whichever is later – PC 801.5, 803(c)	
Welfare & Institutions Code §14107.2 – Bribes, rebates or kickbacks	-Defendant solicited, received, offered or paid remuneration for referral of Medi-Cal beneficiary for services or goods payable in whole or part under that program.		3 years after commission of the offense – PC 801	“Kickback” defined as a rebate or anything of value or advantage, present or prospective, or any promise to give any rebate, with corrupt intent to influence.

### Acknowledgement

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### Disclaimer

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### III. POTENTIAL CIVIL CAUSES OF ACTION:

July 31, 2011

#### **Potential Federal Civil Causes of Action:**

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
18 U.S.C. §1964 – Civil RICO	-Conduct -Enterprise -Pattern of racketeering activity (predicate acts) -Injury		4 years after plaintiff knows or should have known of the injury	Provides for treble damages for injuries to plaintiff's business or property by reason of violation of 18 USC 1962, the criminal RICO statute.
31 U.S.C. §3729 et seq. – False Claims Act	-False statements, or fraudulent course of conduct -Knowledge & intent -Materiality -Caused U.S. to pay out money, or to forfeit monies due		6 years after date of violation, or 3 years after date material facts are known, or should have been known, and no more than 10 years after date of violation – 31 USC 3731(b)	
42 U.S.C. §1320a-7a(a) – Civil penalties, improperly filed claims	Provides for civil penalties for a variety of fraudulent acts, including false or fraudulent claims, kickbacks, and excessive treatment. Elements vary depending on the violation.		6 years after date claim was presented, request for payment made, or occurrence took place – 42 USC 1320a-7a(c)(1)	

#### **Potential California Civil Causes of Action:**

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
B & P §17200, et seq – Unfair Competition	-Injunctive relief and restitution available for any act of 'unfair competition', defined as any unlawful, unfair, or fraudulent business act or practice		4 years after cause of action accrued – B & P 17208	Enforceable via civil action by A.G., D.A., county counsel, city attorney, or person who has suffered 'injury in fact' <i>and</i> has lost money or property as a result of the unfair competition.

Charge	Elements	Documentation	Limitations	Comments
Civil Code §1709 – Fraudulent deceit	-Willful deceit -Intent to induce change in plaintiff's position to plaintiff's injury or risk		3 years – CCP 338(d)	Defendant liable for any damage suffered by the plaintiff as a result of the deceit. (May be barred by WCAB exclusivity.)
Civil Code §1710 – Negligent deceit	-'Deceit' under Civ.C. 1709 includes the assertion, as a fact, of that which is not true, by one with no reasonable grounds for believing it to be true		3 years – CCP 338(d)	Under Civ.C. 1709, defendant liable for any damage suffered as a result of the deceit. (Workers' compensation exclusivity rule may bar action.)
Govt. Code §12651 – California False Claims Act	-Provides for treble damages, civil penalties, and costs based on knowingly false or fraudulent claims for payment, false material records or statements, or conspiracy. -Enforceable by A.G., D.A., or qui tam plaintiff		3 years from A.G.'s date of discovery; no more than 10 years after the violation – Govt.C. 12654(a)	Damages, penalties, and costs recovered are payable to the state, or to the political subdivision damaged. May apply to Medi-Cal fraud. <b>Note: This section does not apply to workers' compensation claims under Div. 4 of the Labor Code.</b>
Insurance Code §1871.7 – False or fraudulent insurance claims, civil actions	-Prohibits capping -Provides civil penalties for violation of PC 550 (knowingly false or fraudulent claims, statements, or writings with intent to defraud) or 549 (solicitation or referral to commit fraud)		3 years after discovery of facts constituting grounds for the action; no longer than 8 years after commission of the violation – IC 1871.7(l)	Creates a qui tam action, which can be brought by a DA or CDI, an insurer, or any interested person; violations need only be proven by a preponderance of the evidence.

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
Labor Code §3820(b) – Workers’ Compensation, unlawful acts	-Civil penalties for presenting knowingly false or fraudulent material statements; paying or accepting consideration for referrals; assisting or abetting unlawful acts		1 year after commission of the underlying violation – CCP 340(b)	Penalties shall be assessed & recovered in a civil action brought in the name of the people by any DA; penalties shall be paid to the Workers’ Comp Fraud Account.

***Additional Potential California Professional Disciplinary Violations:***

<b>Charge</b>	<b>Elements</b>	<b>Documentation</b>	<b>Limitations</b>	<b>Comments</b>
Business & Professions Code §2305 - Disciplinary action by another state, or by a federal agency	Revocation, suspension or restriction of practice by another state, or by a federal agency, is unprofessional conduct		3 years after Med Board discovers the act, and no later than 7 years after commission of the act – B & P 2230.5(a)	Applies where the other state or federal discipline would have been grounds for discipline in California
Business & Professions Code §125 – Conspiracy with unlicensed persons	-Conspiracy with unlicensed person to violate any provision of B & P Code is a crime -Partnering with unlicensed person, with Intent to assist in a violation, is a crime		Criminal offense: 1 year after commission – PC 802(a); Disciplinary action: 3 years after Med Board discovers the act, and no later than 7 years after commission of the act – B & P 2230.5(a)	Violation of B & P §125 is a misdemeanor offense.

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