

Controlled Substances Diversion and the Cascade of Legal Consequences

By Jay McCormack and
Annabel Rodriguez



Understanding what typically unfolds after an episode of diversion is imperative for medical practices and institutions. Drug diversion occurs when controlled substances are illegally distributed for non-medically authorized or necessary use. The detection of diversion can lead to any combination of administrative, civil, or federal and state criminal proceedings.

Requirements for Maintaining Controlled Substances

The Controlled Substances Act (CSA) outlines the requirements for administering, prescribing, dispensing, and keeping track of controlled substances. Every person who is registered to manufacture, distribute, dispense, import, or export controlled substances must maintain complete and accurate records. Drug Enforcement Administration (DEA) reg-

ulation 21 CFR 1301.76(b) outlines the steps medical providers must take when they detect diversion of controlled substances, including notifying the DEA Diversion Field Office in writing of the event within one business day of the discovery.

What to Expect during a DEA Investigation of Diversion

Notification and disclosure will typically trigger a DEA investigation, which can take many forms, including an onsite inspection of the medical provider's practice. During the inspection, DEA agents will meet with the provider and the individual in charge of handling controlled substances, tour the area of the facility where the controlled substances are kept, and physically count the controlled substances on hand at the facility to confirm accurate accounting.

During a physical inspection, the DEA will request to review records relevant to the storage, dispensing, and disposal of controlled substances, including but not limited to: (1) a list of employees with access to controlled substances; (2) all relevant licenses and certificates; (3) a facility floor plan; and (4) dispensing and distribution records. The type of records and requirements for storing controlled substances will differ depending on the type of controlled substance the provider is handling. The DEA will also review whether "effective controls and procedures" exist to guard against theft or diversion (e.g., secure storage, access

controls, alarm systems).

Common inspection findings include missing dispensing logs, missing required inventories, improper execution of forms, inaccurate spill logs, failure to reconcile inventories, untested alarms, failure to notify DEA of theft/loss, and incomplete records.

Administrative Remedies After DEA Review

When the DEA investigation confirms diversion of controlled substances, commonly the DEA will proceed with several administrative remedies for non-compliance, including letters of admonition, memoranda of agreement, orders to show cause (potential revocation/denial of license to prescribe), immediate suspension orders, and consent decrees. Facilities may also face non-prosecutorial or corrective action agreements that mandate robust remedial measures.

Civil Enforcement Landscape

Noncompliance with the CSA can also lead to civil liability. Recent cases in New Hampshire demonstrate that some of the common types of issues uncovered during diversion investigations include recordkeeping violations and physical security violations.

For example, on January 22, 2025, the US Attorney's Office for the District of New Hampshire (USAO DNH) announced a settlement with a veterinary hospital and owner in Tilton who agreed

placed it with melatonin.

While it is extremely rare, it is also possible that an institution itself could be the subject of a criminal charge if certain aggravating factors are present. For example, if diversion is pervasive across the institution, or if the institution was the subject of a prior CSA settlement or DEA enforcement, or if the diversion results in serious patient harm, prosecutors may consider criminal corporate charges where there is evidence that management was aware and took insufficient steps to mitigate the diversion.

Conclusion

Given that the detection of diversion is both a compliance event and a potential enforcement inflection point with many

to pay \$53,500 after a DEA inspection and audit found inaccurate and altered records, forged signatures, failures to inventory and secure drugs, significant shortages, and ineffective controls. The registrant left controlled substances unmonitored for long periods, compounding risk.

On July 3, 2024, a New Hampshire hospital agreed to pay \$300,000 to resolve allegations that it violated the CSA by failing to keep accurate records of controlled substances, including opioids. The DEA began investigating after a registered nurse anesthetist stole controlled substances almost every day she worked for a year. A DEA audit revealed inadequate controls and procedures to guard against theft and diversion.

Likewise, on June 21, 2023, a different New Hampshire hospital paid \$2 million to resolve allegations it violated the CSA by failing to keep accurate records of controlled substances, including fentanyl. That investigation began after a nurse was found to have stolen 23 bags of liquid fentanyl. A DEA audit revealed more than 17,000 missing controlled substance units, and various record keeping deficiencies.

Criminal Enforcement Landscape

Frequently, a DEA investigation into drug diversion leads to criminal charges against the diverting medical professional. One of the most egregious national

DIVERSION *continued on page 31*

possible legal avenues, measures to ensure a robust compliance environment to eliminate diversion are more important than ever. ♦

Jay McCormack is a partner in Verrill's White Collar Defense & Government Enforcement and Health Care & Life Sciences practices. He is a former federal prosecutor who specialized in fraud, and previously served as the Acting US Attorney for the District of New Hampshire. He can be reached at jmccormack@verrill-law.com. Annabel Rodriguez is an associate in Verrill's White Collar Defense & Government Enforcement and Health Care & Life Sciences practices. She can be reached at arodriguez@verrill-law.com.

■ DIVERSION *from page 29*

cases of diversion occurred here in New Hampshire more than a decade ago when a traveling nurse caused a Hepatitis C outbreak in numerous states, including New Hampshire, after he stole syringes of fentanyl intended for patients, injected himself, and filled the syringes with saline. The nurse was sentenced in federal court to 39 years' imprisonment.

Some recent federal criminal cases resulting from diversion include a nurse from a New Hampshire hospital who pleaded guilty on October 7, 2024, in federal court to tampering with consumer products after removing fentanyl from an ICU patient's IV bag and replacing it

with saline. In December 2023, the USAO DNH charged a nurse from another New Hampshire hospital in connection with diverting liquid fentanyl from a patient in the operating room and replacing it with saline.

Diversion can also lead to state charges. For example, on December 15, 2025, an emergency department nurse received a suspended sentence in state court after multiple convictions in connection with the diversion of controlled substances, including fentanyl, from the emergency department of a New Hampshire hospital. Similarly, on September 9, 2025, the New Hampshire Attorney General's Office announced the conviction of a New Hampshire nurse after she diverted prescription medication and re-