



Prescription Pain Medications: A Fatal Cure for Injured Workers

HOW EMPLOYERS CAN PROTECT INJURED WORKERS
WHILE DECREASING THEIR LIABILITY

making our world safer®



About the Council

Founded in 1913 and chartered by Congress, the National Safety Council (nsc.org) is a nonprofit organization whose mission is to save lives by preventing injuries and deaths at work, in homes and communities, and on the road through leadership, research, education and advocacy. NSC advances this mission by partnering with businesses, government agencies, elected officials and the public in areas where we can make the most impact – distracted driving, teen driving, workplace safety, prescription drug overdoses and Safe Communities.

Injured workers are frequently prescribed opioid pain medications. In 2011, more than 25% of workers’ compensation prescription drug claim costs were for opioid pain medications.¹ Despite the increased use of opioid pain medications to treat injured workers, evidence indicates that the increased use of these drugs does not result in better treatment outcomes.

A Washington State Department of Labor and Industries study found that receiving more than a one week supply of opioids soon after an injury doubles a worker’s risk of disability one year later.² In addition, opioid pain medication use can lead to more serious harm to injured workers – addiction, overdose and death.

The increasing toll of opioid pain medication use is well-documented. In 2013, more than 43,900 people died of drug overdoses, of which 16,235 were tied to prescription opioids alone or in combination with other prescription medications or alcohol.³ Overdose deaths from prescription opioids now exceed deaths from both heroin and cocaine combined.⁴

Admissions for opioid treatment in emergency rooms and rehabilitation centers also have increased substantially in recent years. In 2011, 1.4 million emergency department visits were related to the misuse or abuse of prescription medicines — an increase of 114% since 2004.⁵

A number of factors increase the risk of an opioid overdose, particularly for injured workers at high risk:

- **Taking high doses of opioid pain medications or for an extended period of the time**
- **Taking multiple forms of opioids or mixing them with alcohol, sleeping pills, anti-depressants or anti-anxiety medications**
- **Sleep apnea, heart failure, obesity, chronic obstructive pulmonary disease (COPD) or respiratory conditions**

Depression, sleep apnea, obesity or COPD are likely to occur among injured workers. Indeed, a number of studies have documented the prevalence of depression following occupational injury. In one study, at one year post injury, a worker was nearly 2 times more likely to be depressed than one who had no injury.⁶ More than one-third of U.S. adults are obese.⁷ Twenty-six percent of adults 30 - 70 years of age are estimated to have mild to severe sleep apnea.⁸ More than twelve million people suffer from COPD.⁹

As injured workers are frequently prescribed prescription pain medications and many have the risk factors for opioid-related overdose, it is no surprise that injured workers have died of opioid-related overdoses. Recent court decisions have determined that opioid-related addiction and death among injured workers are compensable or eligible for payment by employer workers’ compensation programs.

This workplace focused report will:

- ▶ **Review when opioid-related overdose is compensable in workers’ compensation cases**
- ▶ **Inform you about promising workers’ compensation practices that can protect your injured workers from the potential harms arising from opioid pain medication use**

Rex Butler is well-versed in the demands of safety and environmental compliance. As a safety professional at a utility company, he has dealt with a variety of safety issues. However, his professional training and experience did not prepare him for the unexpected tragedy that occurred outside his workplace. Butler’s 33-year-old brother, Bill, died of an unintentional overdose of methadone on July 12, 2006. A machinist dealing with severe lower back pain for most of his life, Bill had been preparing for surgery to relieve the unremitting pain.

“He had been taking hydrocodone for pain relief but developed a tolerance for it,” explains Butler. “His doctor then prescribed methadone. What Bill didn’t understand is that methadone accumulates slowly and remains in the body for a longer period of time than hydrocodone.” Bill took too large of a methadone dose from which he never woke up, leaving behind a wife, two sons, a large extended family and many friends. Tragically, he joined more than 16,000 Americans who die every year from a prescription pain medication overdose.

“My brother was injured at work, but he overdosed at home. So obviously, this isn’t a concern isolated to the workplace. It is an issue that could impact anyone, regardless of income, age or circumstance. I never want to see another person fall victim to addiction, overdose or lack of knowledge when it comes to prescription pain medication,” emphasizes Butler, who has a family. His personal tragedy has energized him to do what he can to awaken people to the hazards of misusing prescription drugs. “Organizations need to get information out to their employees and help employees understand the gravity of prescription pain medication use,” Butler says. “It’s a life or death situation.”



I never want to see another person fall victim to addiction, overdose or lack of knowledge when it comes to prescription medicine.

— REX BUTLER



A Review of Recent Court Decisions involving overdose

Recent court decisions have determined that in certain circumstances, overdoses suffered by injured workers from opioid pain medications prescribed for occupational injuries are compensable by the workers' compensation insurer. Employers and their workers' compensation insurance carrier have been ordered to pay for detoxification and medical-assisted treatment services as well as death benefits to surviving family.

Central to these court decisions are two key questions:

- 1 When pain medication is prescribed for an employee's on-the-job injury, and that employee later dies from an overdose of that medicine, is the death compensable by workers' compensation?
- 2 How can employers protect injured workers and mitigate the potential for compensable costs arising from opioid addiction or overdose?

Westlaw and Google were searched for court cases using the terms "overdose, occupational, accidental, industrial, death and compensation" and excluding the terms "child and malpractice." The search identified seventeen state appellate or Supreme Court case decisions reported between the dates of January 1, 2008, and March 31, 2015. Upon review, two cases were determined to be personal injury and not workers' compensation cases.

COURT CASES IDENTIFIED IN WHICH AN INJURED WORKER DIED OF AN OPIOID-RELATED DRUG OVERDOSE:

Ohio	2009	Parker v. Honda of Am. Mfg., Inc.
Tennessee	2009	Lisa Shelton v. Central Mutual Insurance Company
Arizona	2010	Meritage Homes v. Industrial Commission of Arizona
Washington	2011	Department of Labor and Industries v. Brian I. Shirley, DEC'D
Pennsylvania	2011	J.D. Landscaping v. Workers' Compensation Appeals Board
Tennessee	2011	Kilburn v. Granite State Insurance Company et al.
New York	2011	Anthony Fay v. Crystal Run Health Care LLP et al
Texas	2012	Commerce & Industry Insurance Company v. Ferguson-Stewart, et al.
Connecticut	2012	Sapko v. State of Connecticut
New York	2012	Kathleen Rice v. West 37th Group, LLC et al.
Arizona	2013	Yuma Regional Medical Center v. Industrial Commission of Arizona
California	2013	South Coast Framing, INC., et al. v. Workers' Compensation Appeals Board et al.
Mississippi	2014	Amanda Cleveland DEC'D v. Heritage Properties, INC
Arkansas	2014	James E. Loar, Jr DEC'D v. Cooper Tire & Rubber Co. et al.
Nebraska	2015	Bernard Michie v. Anderson Builders, INC

These cases demonstrate that it is not a regional issue but a national problem meriting employer and workers' compensation program action. This paper examines in detail six of these State Appellate and Supreme Court workers' compensation decisions.

The courts relied on several key legal concepts. The first concept, **proximate cause** means any legally recognizable set of facts which, in natural or probable sequence, produced the individual's injury.

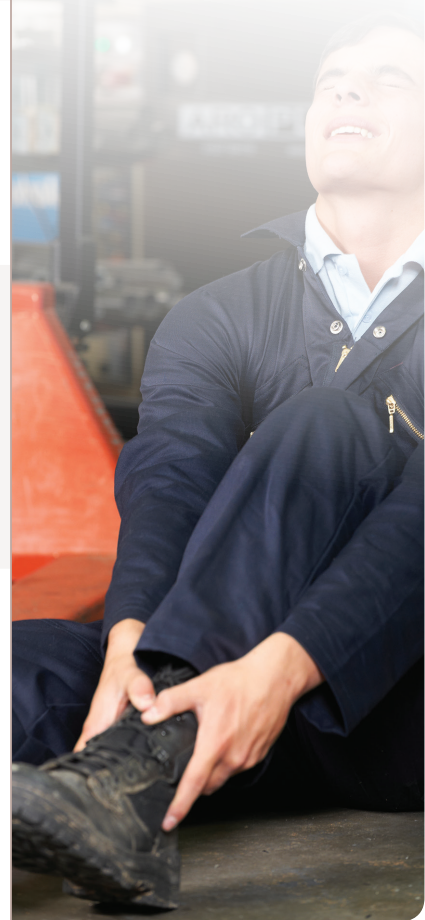
For example, Anna slipped on spilled water in the cafeteria of her workplace injuring her shoulder. The injured shoulder is the legally recognized injury. The spilled water is the proximate cause of the injury. If water had not been spilled, Rhonda would not have slipped and been injured.

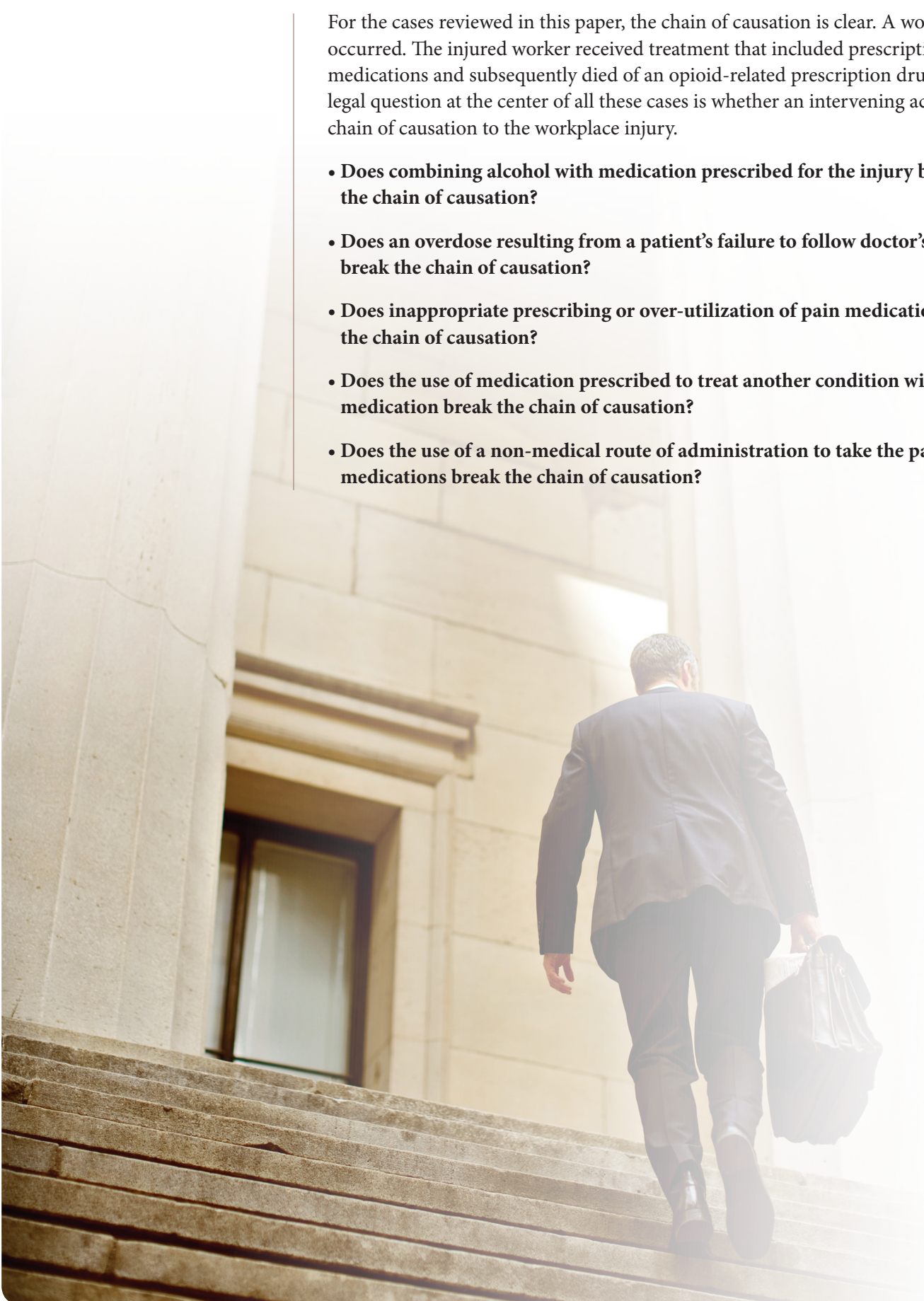
The second concept, the **chain of causation** determines whether any harm or injury occurring subsequent to the original injury is connected to the original accidental injury.

For example, Vince hurts his back on the job. Several months later Vince has back surgery and dies from a stroke caused by a blood clot a few hours after the operation. Vince's death would be compensable and benefits provided to his family. Under the chain of causation, if John had not suffered the workplace back injury, he would not have needed the surgery that triggered the fatal stroke.

Case law has also documented instances when another event or action of the injured worker can be considered an **independent intervening act**. An intervening act is also sometimes known as a **superseding cause**. An intervening act is one that breaks the chain of causation to the original workplace injury. Liability for the injury stops at the point of the intervening act.

For example, Rhonda trips at work, breaking her ankle. Rhonda successfully completes medical treatment for her ankle. Three months later, Rhonda is a passenger in a non-work related car crash that re-injures her previously broken ankle, requiring surgery. The car crash would be considered an independent intervening act that breaks the chain of causation to the original workplace injury. Rhonda's broken foot would have continued to heal if not for the car crash that was unrelated to her work.





For the cases reviewed in this paper, the chain of causation is clear. A workplace injury occurred. The injured worker received treatment that included prescription pain medications and subsequently died of an opioid-related prescription drug overdose. The legal question at the center of all these cases is whether an intervening action broke the chain of causation to the workplace injury.

- **Does combining alcohol with medication prescribed for the injury break the chain of causation?**
- **Does an overdose resulting from a patient's failure to follow doctor's instructions break the chain of causation?**
- **Does inappropriate prescribing or over-utilization of pain medication break the chain of causation?**
- **Does the use of medication prescribed to treat another condition with pain medication break the chain of causation?**
- **Does the use of a non-medical route of administration to take the pain medications break the chain of causation?**

Court Case: Combining alcohol and prescription pain medication

Brian Shirley suffered a workplace injury in 2004. He died in 2007 after he drank alcohol while taking multiple prescription medications to treat pain resulting from his industrial injury.

The day before he died, Shirley went to work as usual. That evening, he helped his neighbor chop wood and then returned home and went to bed. He did not wake up the next morning.

The medical experts agreed the immediate cause of death was the combination of alcohol and several prescription drugs including oxycodone, an opioid pain medication. However, none of the drug levels in Shirley's blood were highly elevated. Neither the drugs nor alcohol alone would have killed Shirley. Taking alcohol and opioid pain medications together can cause an additive effect that can depress the respiratory system causing suffocation.

The Washington Department of Labor and Industries appealed a Superior Court order awarding survivor benefits to Shirley's widow. The Department argued that Shirley's simultaneous use of alcohol and prescription medications was an intervening activity that broke the chain of causation between his workplace injury and his death.

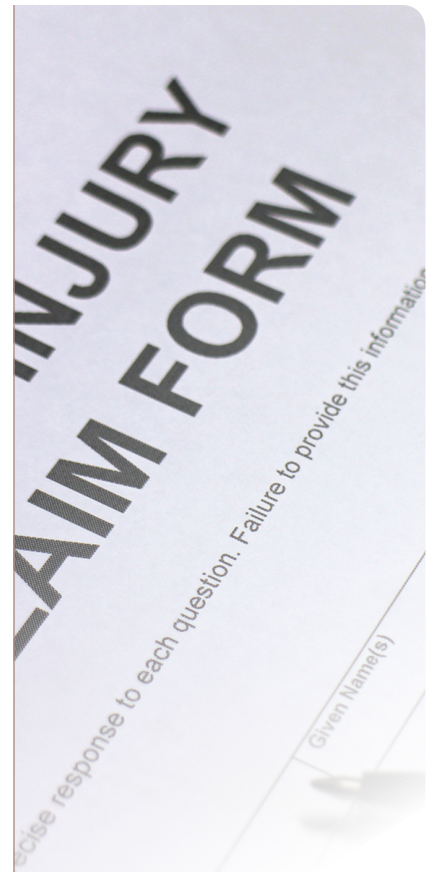
The court ruled that Shirley's use of alcohol combined with multiple prescription medications did not break the chain of causation. Because the medications prescribed to treat pain resulting from Shirley's industrial injury were a proximate cause of his death, the Court of Appeals affirmed the decision awarding survivor benefits to his family.¹⁰

Court Case: Taking too much pain medication

Bruce Mason Stewart injured his shoulder and neck in May 2004. Stewart's treating physician diagnosed him with a left shoulder contusion and prescribed hydrocodone, as part of Stewart's treatment plan. Stewart was instructed to take one pill containing 7.5 milligrams of hydrocodone every eight hours.

On October 3, 2004, Stewart died from an overdose of hydrocodone. A toxicology report indicated that the hydrocodone taken exceeded the dose prescribed. His widow, Kimberly Ferguson-Stewart, sought death benefits. However, the Division of Workers' Compensation determined that Stewart failed to comply with his physician's instructions and that this failure resulted in Stewart's death. Accordingly, the Division concluded that Stewart's death did not result from the compensable injury he sustained in 2004 and was not entitled to death benefits.

Ferguson-Stewart then petitioned for judicial review. After a trial, a jury concluded that Stewart's death resulted from the treatment for his 2004 compensable injury, and therefore, Ferguson-Stewart was entitled to death benefits. The Texas Supreme Court affirmed the trial court award of death benefits. The Court based its decision on the testimony of decedent's wife that the reason that her husband unintentionally ingested an overdose of hydrocodone was due to side effects of the painkiller use, i.e. decedent became confused and disoriented causing him to take an excessive amount of the drug. Therefore, decedent did not intentionally ingest an overdose of his prescribed medication.¹¹



Court Case: Seeking death benefits for pain medication overdose

Charles Kilburn suffered neck and back injuries in a work-related motor vehicle crash in November 2008. As part of his treatment, Kilburn was prescribed fifteen milligrams of oxycodone four times a day.

Kilburn died in January 2010 of an overdose of oxycodone. Before his death, Kilburn had filed an action for workers' compensation benefits. His widow, Judy Kilburn, filed a motion to amend the complaint to allege that her husband's death was the direct and natural result of his work injury and to seek an award of workers' compensation death benefits.

Kilburn's employer opposed the motion. The trial court denied the motion on July 25, 2010 to seek death benefits. The trial court stated that "Kilburn's negligent overdose of prescription pain medications breaks the chain of causation because it is an independent, intervening cause." The Tennessee Supreme Court reversed the trial court's denial of the widow's request to amend the complaint. The court remanded the case back to the trial court to allow the widow to amend her complaint and for further proceedings. This case remains pending before the trial court.¹²

Court Case: Overutilization of pain medication

The Commonwealth Court of Pennsylvania ruled that the daughter of James Heffernan, a worker who died in 2007 from an overdose of drugs prescribed for a work injury, is entitled to death benefits.

Heffernan, who injured his lower back in 2002, received opioid pain medications as part of his treatment. In 2007, he was found unresponsive and died. The forensic pathologist's report stated that decedent died from drug intoxication due to an overdose of Fentanyl prescribed for his work injury.

A previous utilization review showed that a doctor's treatment provided to Heffernan, including prescriptions for docusate, fentanyl, oxycodone, Fentora, Lyrica and Sonata, were neither reasonable nor necessary.

The employer argued that Heffernan's death stemmed from an unintentional overdose of prescription pain medications that were neither reasonable nor necessary treatment. However, the appellate court ruled that the utilization review determination addressed only reasonableness and necessity. The report was irrelevant in determining whether Mr. Heffernan's death was causally related to his work injury. The Court stated that the issue of causation is separate and distinct from the reasonableness and necessity of medical treatment and upheld the award of worker's compensation benefits to the decedent's daughter.¹³





Court Case: A dangerous combination of drugs

Anthony Sapko, a correctional officer, injured his back in 2006 and was prescribed oxycodone for pain. In 1999, prior to his workplace injuries, Sapko had been diagnosed with major depression and continued to receive treatment until the time of his death. The week prior to his August 16, 2006, death, Sapko went to his psychiatrist complaining of racing thoughts and was prescribed Seroquel. The Connecticut Supreme Court found that the decedent's psychiatric condition was unrelated to the workplace injuries.

Sapko died from an overdose of oxycodone and Seroquel. The toxicologist testified that the oxycodone was twenty times higher than the therapeutic dose and the Seroquel five times higher. However, the toxicologist testified that the overdose of oxycodone alone would not have caused Sapko's death without the presence of Seroquel.

The Workers' Compensation Board ruled that the Seroquel used to treat the Sapko's depression was a superseding cause of death and unrelated to his workplace injuries.

The Supreme Court of Connecticut upheld the Board's decision that the workplace injuries were not the proximate cause of death but that the Seroquel used as part of his psychiatric treatment was a superseding cause breaking the chain of causation to the workplace injury.¹⁴

Court Case: Intravenous drug use

In 1988, John Parker suffered a severe back injury while employed. He received workers' compensation for the injury, undergoing several surgical procedures. Parker was prescribed and began using OxyContin in March 1999 to better treat his pain. He became addicted and, in 2004, Parker sought treatment for his dependency on cocaine and OxyContin. In 2005, he sought additional treatment as his addiction had grown.

Parker died in March 2006 after injecting OxyContin. Both cocaine and OxyContin were discovered on the syringe. The coroner concluded Parker died from a lethal concentration of OxyContin, which he had melted down and injected intravenously. Gayleen Parker applied for and was denied workers' compensation widow's benefits.

The employer argued that Parker's death was a result of his abuse of prescription medication and illegal drugs. It further argued that the acts of melting OxyContin, injecting it into his blood stream, and using illegal drugs was an intervening cause that broke the chain of causation between his work injury and his death. The family countered that the Parker's use of OxyContin was caused by his work-injury-induced addiction. The Ohio Court of Appeals affirmed the trial court's denial of worker's compensation. The Court noted that the Ohio workers' compensation statute specifically prohibits the payment of compensation when an employee dies as the result of self-inflicted injuries as in this case.¹⁵

Implications for employers

State laws vary as to their workers' compensation laws as well as their rules of evidence, which can lead to varying decisions. In the majority of these cases, the courts agreed that when injured workers fatally overdose on medications prescribed to treat pain related to a compensable workplace injury, these deaths are compensable by the workers' compensation program. Further, these overdose deaths may be compensable even in situations when the medication is not taken as prescribed, taken with alcohol or inappropriately prescribed.

Protecting injured workers

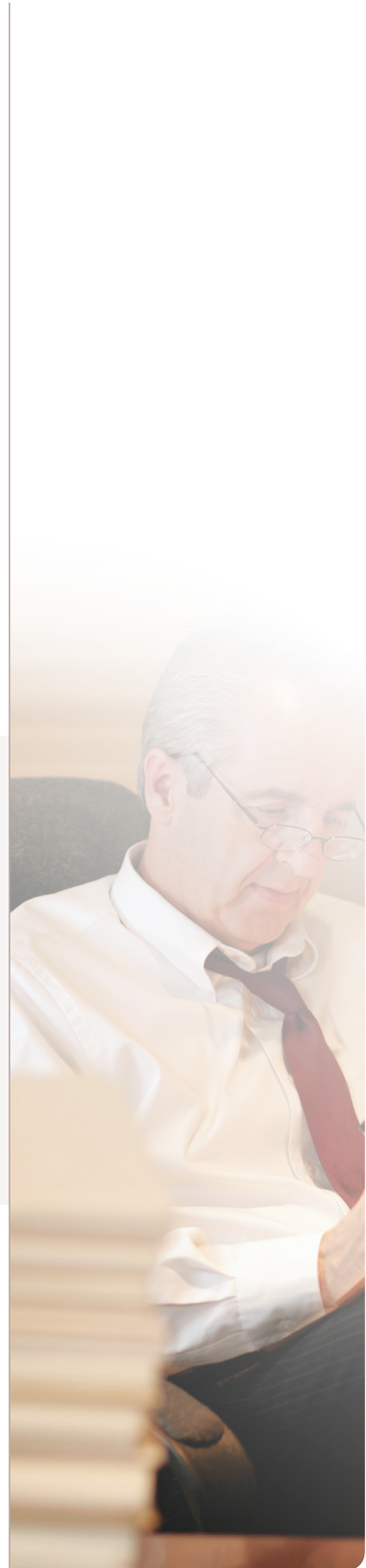
Employers and workers' compensation insurance providers can be proactive to reduce their risk and mitigate any potential compensable costs including those from legal action arising from opioid pain medication use in workers' compensation claims.

Require workers' compensation and network providers use opioid prescribing guidelines

issued by the American College of Occupational and Environmental Medicine (ACOEM). Opioid prescribing guidelines offer physicians guidance on how to more safely prescribe opioid pain medications. Guidelines establish opioid prescribing thresholds and recommend a number of precautions for the prescribing medical provider when doses exceed these amounts. Select ACOEM precautions include:

- INFORMED CONSENT
- THOROUGH PATIENT HISTORY WITH A MORE DETAILED SCREENING IF TREATMENT CONTINUES FOR MORE THAN TWO WEEKS
- URINE DRUG MONITORING
- CHECKING THE STATE PRESCRIPTION MONITORING DATABASE
- AVOIDING CO-PRESCRIBING BENZODIAZEPINES WITH OPIOID PAIN MEDICATIONS
- DISCONTINUING TREATMENT WITH OPIOIDS WHEN PATIENTS REACH MEANINGFUL FUNCTIONAL RECOVERY

ACOEM recommends a maximum dose limit equal to a 50 Morphine Equivalent Daily Dose (MEDD) as higher daily doses greatly increase overdose risk. Higher doses should only be prescribed with documented improvement in functional benefit and recommended precautions.¹⁶ Kilburn was taking fifteen mg of oxycodone four times a day or a 90 MEDD.



Use caution and require prior approval for the use of methadone to treat chronic noncancer pain. Bill Butler died after taking too large a dose of methadone. Several studies indicate that methadone prescribed for pain contributes to as many as one-third of opioid-related fatalities.¹⁷ The risks associated with methadone to treat pain are great and outweigh the potential pain relief and cost-saving benefits. Workers' compensation programs should not designate methadone as a primary choice for pain treatment in drug formularies. Medical experts recommend methadone use for pain treatment should be reserved for cancer pain and end of life treatment.¹⁸ Methadone continues to be a recommended treatment for opioid-related substance use disorders where it is prescribed and dispensed in a highly controlled environment by experts in methadone use. This use of methadone is much safer than when used for pain.

Screen injured workers for depression, mental health conditions and current or prior substance use. Sapko died after being prescribed a new medication for depression while being treated for his workplace injury. A thorough screening for pre-existing depression or other mental health problems, current or prior substance abuse, is recommended as part of the ACOEM prescribing guidelines.¹⁹ Benzodiazepine medications often prescribed to treat depression and anxiety can lead to a fatal overdose when combined with opioid pain medications.

Depression also increases the risk of addiction to opioid pain medications. Screening for depression and other mental health conditions at the initiation of new workers' compensation claims can identify potential risk. When these conditions are identified, non-opioid alternatives for pain treatment should be considered. A number of companies have begun to co-treat depression and other conditions with the occupational injury to better manage the care and reduce risk to the injured worker.

Require all pharmaceuticals be purchased and managed by your pharmacy benefit manager (PBM). PBMs have begun to institute drug formularies and system flags to identify dangerous prescribing combinations and suspicious prescribing patterns that may indicate misuse or inappropriate prescribing. Drug formularies can require medical review and approval before payment for opioid pain medication prescriptions is authorized. Several state workers' compensation programs, most notably Texas, have implemented formularies requiring prior approval for opioid pain medications.²⁰

PBM flags can be used to trigger invention by occupational health, a third-party claims manager or insurance provider. Interventions may include provider consultation and education and patient review and restriction programs if allowed by state law. In the Hefferman case, the utilization review determination identified inappropriate prescribing prior to his overdose death. Use of a PBM, drug formulary or active claim management may allow earlier intervention mitigating the risk of overdose.

Require network providers to utilize state prescription drug monitoring programs to be fully informed about all drugs prescribed by other medical providers. The use of the state prescription monitoring program (PDMP) database helps medical providers identify situations when patients may have been prescribed medications from other doctors that may inadvertently cause a dangerous drug interaction such as with Sapko or visits to multiple prescribers, an indication of prescription drug misuse or abuse.



Educate all workers about the hazards associated with prescription pain medication use, especially injured workers. Key educational messages include:

- ▶ **The risks of opioid pain medication use, especially for workers with sleep apnea, COPD or other respiratory problems**
- ▶ **Hazards associated with using together multiple forms of opioid pain medications such as short-acting and long-acting drugs together**
- ▶ **Dangers of using alcohol and sleep aids with opioid pain medications**
- ▶ **Addiction and drug overdose**

Many workers do not understand the unique risks and dangers posed by opioid pain medications. In three cases, known overdose risk factors, combining opioids with alcohol and simultaneously taking multiple types of opioid pain medications were identified in the investigation of their deaths. More workers need to be educated about the risks of opioid pain medications including addiction and death.

Conclusion

The widespread use of opioids in the general population, but more specifically among injured workers, puts more injured workers at risk for addiction and fatal overdose. Courts have ruled that in many circumstances addiction and death arising from opioids prescribed to injured workers is compensable.

Employers and workers' compensation carriers have a moral and fiduciary obligation to protect injured workers from compensable harm by:

- ▶ **Educating workers to the risks of opioid pain medications**
- ▶ **Managing opioid use with pharmacy benefit program controls including drug formularies**
- ▶ **Ensuring that medical providers adhere to evidence-based prescribing guidelines and use state prescription monitoring programs**
- ▶ **Obtaining a thorough patient history including mental health and substance use assessments at initiation of workers' compensation cases**

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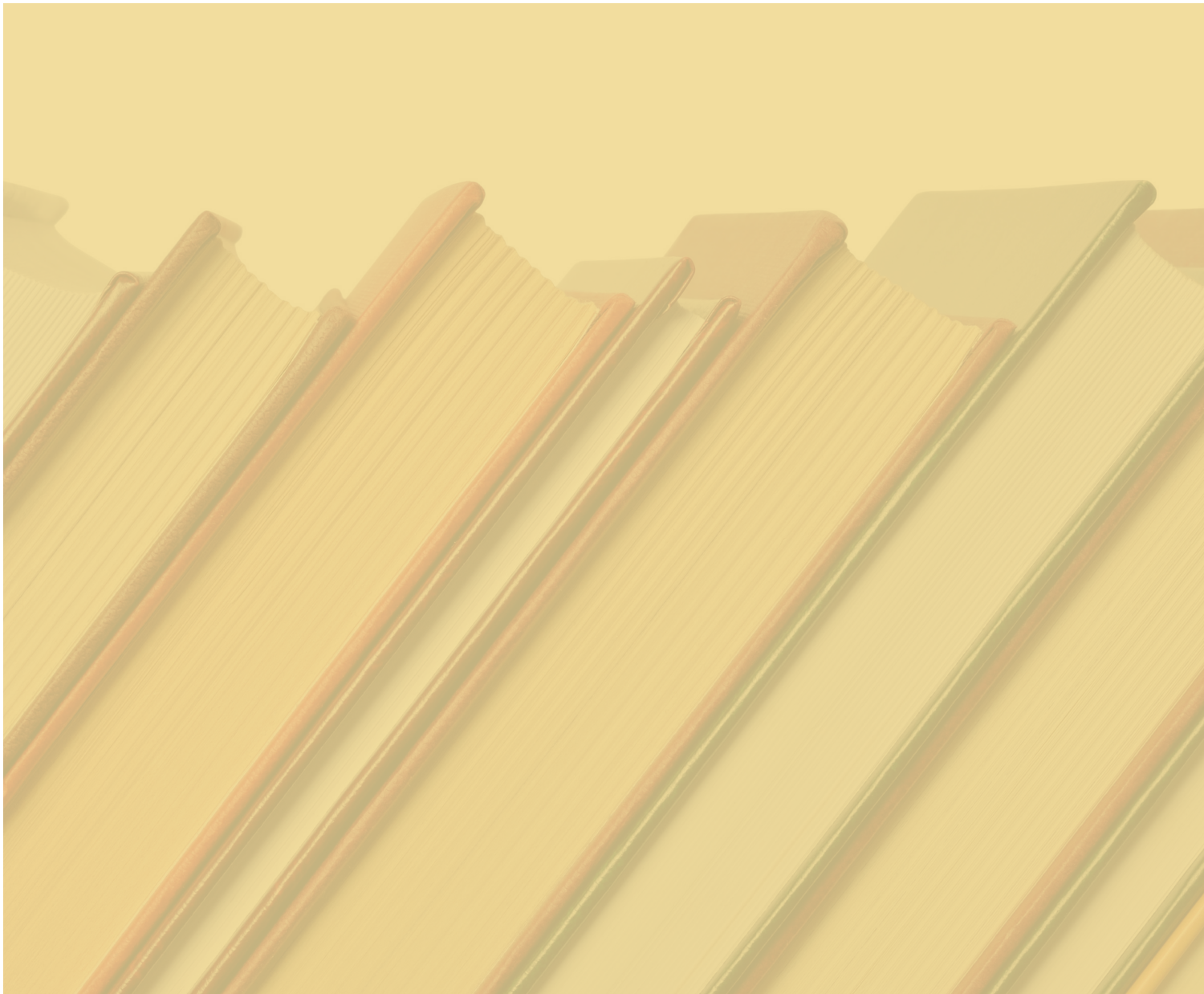
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National Safety Council
1121 SPRING LAKE DRIVE
ITASCA, IL 60143-3201
(800) 621-7619
nsc.org