

## **Ask the Lawyer: Misuse of Rx Drugs a Prescription for Trouble**

Q:

If my urinalysis comes back positive and I have a doctor's prescription for painkillers, will I not get in trouble?

A:

Prescription drug use within the military has grown significantly in recent years, with many service members suffering from physical pain, mild traumatic brain injuries, limb losses and post traumatic stress disorder. According to the Army's 2010 Health Promotion, Risk Reduction, Suicide Prevention Report, fourteen percent of Soldiers were taking opiate medication by the 2010 fiscal year.

Traces of opiates, such as codeine and morphine, or synthetic opiates, such as oxycodone and oxymorphone, in urinalysis samples can trigger positive test results. When a sample is found to have a potential prescribed medicine, a medical review officer will review the case and determine whether there was an authorized or unauthorized use for the drug. A doctor's prescription in many cases can save Sailors from a criminal felony charge, but not always, especially when the prescription is long expired or the medicine is not taken as prescribed.

OPNAVINST 5350.4D prohibits Sailors from wrongfully possessing, distributing or being under the unauthorized influence of prescription drugs. It also requires them to inform commanders of any prescription medications they receive from non-military medical treatment facilities.

In the 2009 case, U.S. v. Kurtek, the U.S. Air Force Court of Criminal Appeals ruled that an Airman's use of a one-year-old prescription of hydrocodone initially prescribed for a sore throat to address his sleeping problems was wrongful. Likewise, in U.S. v. Robinette, the AFCCA found an Airman wrongfully used oxycodone and clonazepam even though he had a prescription for them by using them in a manner that was inconsistent with the prescription instructions. The Airman snorted the drugs, exceeded their recommended dosage and took them with alcohol.

Sailors who abuse prescription drugs could face a charge of wrongful use or possession of a controlled substance in violation of Article 112a of the Uniform Code of Military Justice

. When Schedule 1 through 3 controlled substances, such as oxycodone and codeine, are involved the maximum punishment under this article is a dishonorable discharge, forfeiture of all pay and allowances and five years confinement. Service members could also face a charge for failure to obey an order or regulation in violation of Article 92.

Sailors accused of wrongfully using prescription drugs should contact a military law attorney, who could challenge the government's claim the medicine was wrongfully used.

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