

Legal Implications of Using Prescription Drugs in the Backcountry

Frances Turner Mock
frances.mock@smithmoorelaw.com
(336) 378-5442

Potential legal consequences

CIVIL

- Negligence
- Battery (offensive touching without consent)

CRIMINAL (varies by state)

- Battery
- Dispensing prescription drugs without a license
- Practicing medicine without a license (diagnosing and treating a medical condition beyond what trained/licensed to do)

What to consider when implementing a policy using prescription drugs

- Relevant state law (criminal law, regulations from agencies--i.e. medical licensing boards, boards of pharmacy, office of emergency medical services, etc.)
- Protocols (WMA, WMI, SOLO, etc.)
- Other programs' policies
 - OB/NOLS
 - Same geographical area
 - Similar programs/operations
- Contraindications (altitude, cold, etc.)
- Worst case scenario for each drug

Potential protections for your guides/instructors and your organization

- Liability release form (usually can cover negligence but not gross negligence)
- Consent (written release authorizing medical treatment and verbal consent at time of dispensing—helps address battery)
- Insurance (verify no exclusion for violations of law or intentional acts)
- Policy/training for guides
 - Inform guides of any potential criminal charges, potential consequences, and fact that organization can not protect them from criminal liability
 - Train guides on when and how to use drugs, side effects, and contraindications
 - Contact or attempt to contact doctor before administering prescription drugs (because usually need authorization for specific individual receiving medication)
- Staff/advising Doctor
 - Formulate written protocols
 - Train guides
 - Procure drugs in organization's name, not in any individual's name
 - Be available for emergencies
 - Confirm whether organization's or doctor's insurance will cover any lawsuits