

KAMALA D. HARRIS
Attorney General

State of California
DEPARTMENT OF JUSTICE



600 WEST BROADWAY, SUITE 1800
SAN DIEGO, CA 92101

P.O. BOX 85266
SAN DIEGO, CA 92186-5266

Public: (619) 645-2001
Telephone: (619) 645-2996
Facsimile: (619) 645-2061
E-Mail: Desiree.Kellogg@doj.ca.gov

March 28, 2016

Virginia K. Herold
Executive Officer
California State Board of Pharmacy
1625 North Market Blvd., Suite N-219
Sacramento, CA 95834

Re: **ISSUING PHARMACY PERMITS TO TRUSTS**
California State Board of Pharmacy

Dear Ms. Herold:

I am writing to provide you with an analysis regarding the issuance of pharmacy permits to trusts.¹ As you are well aware, the law requires the Board to prevent pharmacies from being owned by the wrong types of persons, including convicted criminals and potentially self-interested prescribers.

Staff have recently raised concerns regarding trusts on two fronts: (1) Whether this form of ownership provides opportunities for hidden and/or undisclosed ownership shares; and (2) Whether the Pharmacy Law contemplates ownership of or beneficial interests in pharmacy licenses held by trusts. As to the former, there are certainly legitimate reasons to hold ownership in trust. However, there are also ways in which trust ownership can be manipulated to prevent full or accurate tracking of ownership shares or beneficial interests.

Trusts appear to be the vehicle of choice for hiding assets for the following reasons:

(i) Unlike business entities which are legal persons, common-law trusts are mere contractual relationships between settlors (who place property into trust), beneficiaries (for whom the trust is operated), and trustees (who hold legal title to the property). Because they are not entities or persons, they usually do not have to register with any state authority. When business entities register with state authorities, they are subject to reporting requirements. Trusts do not operate in this manner.

(ii) It is well established that common law trusts cannot be sued. (*Presta v. Tepper* (2009) 179 Cal.App.4th 909, 915; *Powers v. Ashton* (1975) 45 Cal.App.3d 783, 787.) If

¹ I remind you that what follows are solely my own opinion(s), my best effort(s) to provide legal assistance to you and/or to the Board. This is not an official "opinion" of the Attorney General.

you want to sue for actions done by the property in trust, you have to sue the trustee. If you want to sue a trustee, you have to find him, her, or it. If the trustee is located in a foreign jurisdiction, United States courts may have no jurisdiction over the trustee. Even if the trustee is merely in another state, California courts may have trouble reaching him or her.

(iii) It is much easier for trusts to operate offshore in jurisdictions that have extensive privacy protections such as the Cayman Islands. Persons in these offshore jurisdictions are unlikely to be subject to California laws, and would not respond to subpoenas from California courts, let alone California agencies.

(iv) Trusts are not required to follow any “corporate formalities” (e.g., annual meetings, registration with the secretary of state) the way most corporate entities are.

(v) True ownership and control of property held in trust is often governed by complex documents and discretionary relationships. For example, a trust may have hundreds of nominal beneficiaries according to the trust document, though as a practical matter, the trustee holds property (and takes instructions from) one or two of the beneficiaries. A corporate entity is generally not allowed to have such discretionary relationships among its owners. Who has control of the property held by a trust is a highly fact specific determination.

Thus, the lack of oversight by government agencies and corresponding reporting obligations and complex structure make it much easier to hide ownership in trusts than business entities.

According to the plain language² of the applicable statutes, trusts are not authorized to conduct pharmacies in California. Namely, Business and Professions Code section 4110, subd. (a), provides that “no person shall conduct a pharmacy in the State of California unless he or she has obtained a license from the board.” Business and Professions Code section 4035 defines “person”³ to “include[] firm, association, partnership, corporation, limited liability company, state governmental agency, or political subdivision.”

A trust is not included within the definition of “person” in section 4035. The Legislative History reveals that in 1951, “business trust” was included within the definition of “person” in

² California courts will give effect to the legislative intent of a statute, holding that the first and most important “source” for ascertaining the intent of a statute is its plain language. “[C]ourts are bound to give effect to statutes according to the usual, ordinary import of the language employed in framing them...it should first turn to the words of the statute to determine the intent of the Legislature... If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history.” (See, e.g., *California Teachers Assn. v. San Diego Community College Dist.* (1981) 28 Cal.3d 692, 698; *Dept. of Alcoholic Bev. Control v. Alcoholic Bev. Control Appeals Bd.* (2003) 109 Cal.App.4th 1687, 1695-96; see *Arnett v. Dal Cielo* (1996) 14 Cal.4th 4, 22 [“Courts should give meaning to every word . . . if possible, and should avoid a construction making any word surplusage.”].)

³ The definition of “person” in section 4035 governs the construction of the term, “person” in Business and Professions Code section 4110, subd. (a). (Bus. & Prof. § 4015).

Virginia K. Herold

March 28, 2016

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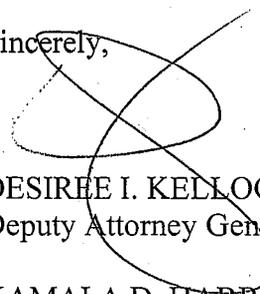
the predecessor statute to section 4035 but subsequently removed in 1953 and not added when the statute was reenacted in 1955, possibly omitting trusts intentionally from the definition.

Indeed, under California law, a common-law trust⁴ is not a legal “person” or entity; rather, it is a fiduciary relationship. (*Presta v. Tepper, supra*, 179 Cal.App.4th at 914 (a “trust is not an entity separate from its trustees. In contrast to a corporation which is a ‘...distinct legal entity separate from its shareholder and from its officers’ and deemed a person within many legal constructs, a ...trust is not a person but rather a ‘fiduciary relationship with respect to property’ [citations omitted].”))

Although many trusts are established for legitimate reasons, the Board needs the tools to assess whether a trust has been established for legitimate reasons or to hide ownership, in order to effectively fulfill its administrative mandate of preventing ownership of pharmacies by the wrong types of individuals. Therefore, if the Board decides to continue issuing pharmacy permits to trusts, we recommend that Business and Professions Code section 4201 and California Code of Regulations, title 16, section 1709 be amended to require trusts to disclose the identity of all trustees, beneficiaries and grantors of a trust and to deem trustees, beneficiaries and grantors to hold a “beneficial interest” in the assets of the trust, triggering disclosure whenever there is a change in *any* amount of beneficial interest.

I hope this analysis will be helpful to you and to the Board. As always, please feel free to contact me with questions.

Sincerely,



DESIREE I. KELLOGG
Deputy Attorney General

For KAMALA D. HARRIS
Attorney General

Cc: Linda K. Schneider (via email)

Joshua A. Room (via email)

Matthew C. Heyn (via email)

DIK:naa

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⁴ Only specific types of trusts such as Real Estate Investment Trusts (REITS) and Registered Business Trusts are considered legal persons.



NATIONAL ASSOCIATION OF
CHAIN DRUG STORES

March 23, 2016

Virginia Herold, Executive Officer
California State Board of Pharmacy Licensing Committee
1625 N. Market Blvd., N219
Sacramento, CA 95834

Re: Trusts as Owners or "Persons Beneficially Interested" In Licensed Pharmacies

Dear Ms. Herold:

I write to express the concern of the National Association of Chain Drug Stores (NACDS) regarding proposed limits on the ability of trusts to own or hold beneficial interests in licensed pharmacies. NACDS understands that the Licensing Committee will consider this issue in a meeting on March 30, 2016. We ask the Licensing Committee to maintain California's longstanding practice of allowing trusts to own or hold interests in pharmacies. A narrow interpretation of the applicable statute would harm patient care by unnecessarily restricting pharmacy operations in California.

NACDS represents traditional drug stores, supermarkets and mass merchants with pharmacies. Chains operate more than 40,000 pharmacies. NACDS chain member companies include regional chains, with a minimum of four stores, as well as national companies. Chain pharmacies employ more than 3.2 million individuals, including 179,000 pharmacists. They fill over 2.9 billion prescriptions yearly, and help patients use medicines correctly and safely, while offering innovative services that improve patient health and healthcare affordability. NACDS members also include more than 850 supplier partners and over 60 international members representing 22 countries.

NACDS wholeheartedly supports the legal and factual analysis set forth in the letter to you from Christine Cassetta of Quarles & Brady LLP dated March 21, 2016. As that letter explains, the statutory definition of "person" includes a "firm," and a trust is clearly a type of "firm." *See* Ca. Bus. & Prof. Code § 4035; Black's Law Dictionary (definitions of "firm" and "company"). Therefore, a trust is a "person" that may own or hold an interest in a pharmacy.

A narrow interpretation of the statutory definition of "person" would be contrary to the Board of Pharmacy's longstanding practices. We understand that the Board has historically granted pharmacy licenses when trusts hold interests in pharmacies. The Board's own newsletter has suggested that a license may be granted where a trust owns a pharmacy. *See* California Board of Pharmacy, *The Script* (Jan 2008), available at http://www.pharmacy.ca.gov/meetings/agendas/2009/09_jun_lic_mat.pdf. Similarly, the Board has a longstanding practice of approving licenses for pharmacies owned by individuals, despite the fact that individuals are not listed as a type of "person" in the

statute. *See* Community Pharmacy Permit Application, Section B (pharmacy license for “Individual Owner who is not incorporated”), available at http://www.pharmacy.ca.gov/forms/phy_app_pkt.pdf. Likewise, the statutory definition of “person” does not expressly include Native American tribes, yet the Board has a longstanding practice of granting licenses to pharmacies owned by Native American tribes. *See id.*, Section G (pharmacy license “for Native American tribe owned pharmacy”). A narrow interpretation of “person” would result in wholesale restructuring of the Board’s approach to pharmacy licensure.

A narrow interpretation of “person” would also be contrary to the interests of pharmacy patients. We understand that trusts may often hold interests in pharmacies. Individuals, Native American tribes and others not specifically enumerated in the statutory definition of “person” also own or hold interests in pharmacies. Access to pharmacy care would be severely restricted if the Board of Pharmacy begins denying or revoking the licenses of such pharmacies. Rather than deny or revoke all of these pharmacy licenses, we ask the Licensing Committee to recognize that the term “firm” as used in the definition of “person” is a broad category that encompasses a wide range of business entities, including trusts.

Limiting the ability of trusts to hold interests in pharmacies would disrupt the operations of multi-state pharmacies that are partially or entirely owned by trusts. This is particularly true of publicly traded companies, which the Board of Pharmacy recognizes may have a shareholder that is a “trust company.” *See* Requirements For Filing A Community Pharmacy Application, p. 4, available at http://www.pharmacy.ca.gov/forms/phy_app_pkt.pdf. The same is true for non-publicly traded companies that have trusts as shareholders. Multi-state pharmacy chains owned in whole or in part by trusts should not have to face the choice of either radically restructuring their ownership or being shut out of the California market. Such an onerous burden on interstate commerce would be inappropriate. Smaller pharmacy companies would also be harmed. As the Board’s newsletter pointed out, pharmacies can be held in trusts as a proper estate planning mechanism, to help ensure that proper operation of pharmacies may continue from one generation to the next. A pharmacy’s license should not be revoked just because a pharmacy owner uses a trust to maintain a family business.

There is no convincing rationale for preventing trusts from owning or holding interests in pharmacies. There is simply no reason to believe that trusts are somehow less trustworthy or less deserving of a pharmacy license than the individuals, Native American tribes, LLCs, corporations and other “persons” that are routinely granted pharmacy licenses. Without a legitimate basis and logical explanation for denying trusts a role in pharmacy ownership, it would be arbitrary and capricious for the Board of Pharmacy to reverse its longstanding practice of broadly interpreting the statutory definition of “person” to include trusts and other “firms.”

In conclusion, NACDS respectfully requests that the Licensing Committee decline to adopt any change to the Board's longstanding practice of allowing trusts to hold interests in licensed pharmacies. We appreciate the opportunity to comment on this important issue. If you have any questions or would like additional information, please contact me at (703) 837-4231 or at dbell@NACDS.org.

Sincerely,

A handwritten signature in black ink that reads "Don L. Bell, II". The signature is written in a cursive, slightly slanted style.

Don L. Bell, II
Senior Vice President and General Counsel



Renaissance One
Two North Central Avenue
Phoenix, Arizona 85004-2391
602.229.5200
Fax 602.229.5690
www.quarles.com

Attorneys at Law in
Chicago
Indianapolis
Madison
Milwaukee
Naples
Phoenix
Scottsdale
Tampa
Tucson
Washington, D.C.

Writer's Direct Dial: 602.229.5258
E-Mail: christine.cassetta@quarles.com

March 21, 2016

VIA E-MAIL TRANSMISSION ONLY

virginia.herold@dca.ca.gov

California State Board of Pharmacy
Licensing Committee
c/o Virginia Herold, Executive Officer
1625 N. Market Blvd., N219
Sacramento, CA 95834

Re: Trusts as a Shareholder or Member "Person Beneficially Interested" in a Pharmacy

Dear California State Board of Pharmacy Licensing Committee:

We will be attending the March 30, 2016 Licensing Committee (Committee) meeting to participate in the Committee's consideration of trusts as a "person beneficially interested" in a pharmacy. We respectfully request that you consider this letter at or before the March 30, 2016 meeting.

We became aware of this issue at the beginning of March when we were informed that a decision had been made that trusts could not own a pharmacy because a trust is not included in the definition of "person" in Ca. Bus. & Prof. Code § 4035. Although these two pharmacies were ultimately granted their permits, we were informed that the position that a trust could not be a person beneficially interested in a pharmacy because a trust was not a "person" would be submitted to the Licensing Committee for their review and consideration. If the Licensing Committee agreed that a trust could not be a shareholder or member of a person beneficially interested in a pharmacy, any application that so identified a trust would be denied.

It is unclear why this position has been adopted and how a long-standing Board practice and interpretation has been changed, particularly when there is no statutory amendment to any relevant provision, no rule adoption, no court opinion, and no Board action that requires this change. This change was also made prior to any Board meeting to discuss this change and no opportunity for public comment. Rather, this proposed change appears to be an internal change of opinion regarding what "person" means. We are aware of many currently licensed entities that have a trust as a shareholder or member of a person beneficially interested and we are certain

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that there are many thousands more. This position is a major departure from prior Board practice. This departure is evidenced by a 2008 Board newsletter that discusses and acknowledges that trusts may be owners (beneficially interested) in a pharmacy. This discussion was under the heading "Answers to Estate Planning Questions Related to Pharmacies" and instructed that a change of ownership was to be filed when the ownership of a pharmacy was to be placed in a trust after the death of a sole-surviving parent. If a trust was prohibited from being a shareholder or member of a person beneficially interested in a pharmacy, we are certain that the newsletter would not have instructed that a change of ownership be filed. Rather it would have indicated that a trust could not be a person beneficially interested in a pharmacy and instructed that the ownership of the pharmacy not be placed in trust.

(http://www.pharmacy.ca.gov/publications/08_jan_script.pdf). (See attached.)

This proposed limitation will have far-reaching and unintended consequences. Any existing California pharmacy, no matter how long it has been in operation, no matter the size of its patient population and no matter the risk nature of the patient population, would have to shut down if, somewhere among the persons beneficially interested in the pharmacy, a member or shareholder is a trust. This seriously jeopardizes patient safety and limits patient choice of pharmacies.

A trust is a frequently used estate planning tool that is designed to protect the interests of those who will benefit from the assets of the trust and is a common mechanism to avoid probate and protect an individual's life-long efforts. A trust also reduces tax liability to the survivors. If owners of a pharmacy have instituted an estate plan that utilizes a trust in accord with the laws of California or their state of residence, they should not be forced to change their plan and hold their asset in a manner that is not in their best interest. This change of position regarding the ability of a trust to be a shareholder or member of a person beneficially interested in a pharmacy is unnecessarily disruptive and will cause serious estate planning issues for those who are protecting their asset by holding it in trust.

Analysis of Relevant Statutes

The newly stated position is that a trust cannot be a "person beneficially interested" in a pharmacy because "trust" is not included in the definition of "person." This position is incorrect for two reasons. First, this position incorrectly applies the statutory definitions by failing to recognize that a trust may be a "person" under the statute and that, by separate definition, a "person beneficially interested" in a pharmacy may include a trust. Second, this position fails to recognize that while the statute provides for a pharmacy license to be issued to the person who operates the pharmacy, it separately provides for information to be provided as to the persons beneficially interested in the entity operating the pharmacy.

The definition of "person" reads as follows: "Person includes firm, association, partnership, corporation, limited liability company, state governmental agency, or political subdivision." Ca. Bus. & Prof. Code § 4035. ***This definition has remained unchanged since its adoption in 1996.*** Note that the definition does *not* include "individual". As such, if the position is that a trust

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cannot be a person beneficially interested in a pharmacy because it is not included in the definition of "person," there would similarly be no authority under California law for the Board to issue a license to an individual owner of a pharmacy. We know that this is not true and the Board issues licenses to persons who own their pharmacies as individuals.

In addition, the term "person" includes a trust because "person" includes "firm" and "firm" is defined to include "trust". The applicable pharmacy provisions do not define "firm". As such, we look outside of the provisions to the general definition of "firm". Black's Law Dictionary defines "firm" as follows:

"firm *n.* (18c) 1. The title under which one or more persons conduct business jointly. 2. The association by which persons are united for business purposes. • Traditionally, this term has referred to a partnership, as opposed to a company. ***But today it frequently refers to a company.***" (emphasis added). A "company" is then defined as follows: "company (13c) 1. A corporation — or, less commonly, an association, partnership, or union — that carries on a commercial or industrial enterprise. 2. A corporation, partnership, association, joint-stock company, ***trust***, fund, or organized group of persons, whether incorporated or not, and (in an official capacity) any receiver, trustee in bankruptcy, or similar official, or liquidating agent, for any of the foregoing. Investment Company Act § 2(a)(8) (15 USCA § 80a-2(a)(8)). — Abbr. co.; com." (emphasis added).

"Firm" includes a trust and trust is, therefore, a "person".

Further, a "person beneficially interested" is specifically defined in California law a shareholder, manager, or member of an LLC or a shareholder, officer or director of a corporation. There is nothing in this definition that precludes a trust from being a shareholder, manager, or member of an entity. Even if we accept that the definition of "person" controls, a "trust" is a "firm" as used in this definition.

The position regarding trusts is also not supported by the entirety of the applicable statutory and regulatory scheme. Specifically, a "pharmacy" is a "premises licensed by the board in which the profession of pharmacy is practiced. . . ." Cal. Bus & Prof. Code § 4037. California law provides that "no person shall conduct a pharmacy in the State of California unless he or she [note the use of "he or she" even though the definition of "person" does not include individuals] has obtained a license from the Board." *Id.* at § 4110(a). California regulations provide that a permit must show the name and address of the pharmacy and *the form of ownership*. See Cal. Code Regs. tit. 16, § 1709. All California pharmacy permits that we have ever seen have the name of the pharmacy and the form of ownership of the entity that actually runs the pharmacy, not each and every entity that is beneficially interested in pharmacy. As such, the permit is issued to the entity that actually ***owns and operates*** the pharmacy. For most pharmacies, this is usually a limited liability company or corporation, both of which are included in the definition of "person".

The entity that operates the pharmacy is the applicant and ultimate license holder, and *not* the person or persons beneficially interested therein is clear from Cal. Bus. & Prof. Code § 4201 (a) and (f). Subsection (a) refers to the "applicant" *and* to the "person beneficially interested" in the applicant. This recognizes that the person beneficially interest in the pharmacy is *not* the applicant. "Person beneficially interested" is separately and specifically defined in section 4201. For an LLC it includes each officer, member or manager. For a corporation it includes officers, directors and shareholders. Section 4201 recognizes that there is an applicant for the permit - the pharmacy entity - *and* that the Board requires information from those persons beneficially interested in the pharmacy. It does not say that the applicant (the entity to whom the permit is issued) *is* the person or persons beneficially interested in the pharmacy. If so, again, each and every entity in the chain of those beneficially interested would be on the permit and named in any action against the pharmacy. We know that this is not the case. The requirement of section 4201 is to list those persons beneficially interested and they are not the same as the applicant and the ultimate permit holder.

While we maintain that revealing this information for the applicant entity is all that is required by statute and there is no need to go further "up the chain", even applying this language all the way "up the chain" of persons beneficially interested in an applicant, there is no prohibition on the ultimate shareholders, members or managers of a disclosed entity being a trust. The trust will be listed as required on the application as either a member or manager of a limited liability company or a shareholder of a corporation and the relevant information regarding the trust will be provided. This identification stops the chain just as it would if it listed individuals as shareholders of a corporate entity at the top of the chain of persons beneficially interested or if it indicated that the corporation was publicly traded.

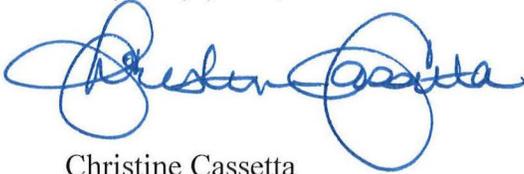
Finally, subsection (f) of section 4201 says that the pharmacy license *authorizes the holder to conduct pharmacy*. This subsection, and subsection (a) support that the permit is issued to the applicant, be it a limited liability company or a corporation. Even if one was to accept the proposed definition of "person," a limited liability company and a corporation are absolutely qualified to hold the permit.

We respectfully request that the Licensing Committee decline to adopt any change to the Board's long-standing practice of allowing trusts to be members or managers of limited liability companies or shareholders of a corporation. There is no policy reason for this proposed change in position and this position is not consistent with applicable California law or the Board's long-standing interpretation of the applicable law. Any decision to disallow trust ownership of pharmacies will have a far reaching and negative impact on pharmacies both inside and outside of California and will cause serious disruptions in patient care.

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Please contact me at (602) 229-5258 or at christine.cassetta@quarles.com if you have any questions. I will also be present at the March 30 meeting to present our position and to answer any questions that you may have.

Very truly yours,

A handwritten signature in blue ink, appearing to read "Christine Cassetta". The signature is fluid and cursive, with the first name "Christine" and last name "Cassetta" clearly distinguishable.

Christine Cassetta

Encl.



BE AWARE & TAKE CARE:
Talk to your pharmacist!

The Script

CALIFORNIA BOARD OF PHARMACY JANUARY 2008

SB 472: Standardization of Labeling Requirements of Prescription Drugs

Senate Bill 472, recently signed by Governor Schwarzenegger, requires the Board of Pharmacy to establish parameters that will standardize prescription container labels into a patient-centered format. The Board will do this over a phased-in, three-year project. The first year, the Board will hold a series of public meetings throughout California, gathering information and input from consumers and the health professions for adopting regulations to standardize prescription labels. In the second year, the Board will adopt regulations to standardize prescription labels. In year three, all pharmacies dispensing drugs to California patients must convert their labels to this new format by January 1, 2011.

The Board feels very strongly that creating a standardized prescription label that is patient-centered will increase patient compliance when taking medications and improve medication outcomes and patient safety.

The Board successfully advocated amendments to strengthen this bill to create legislation that addresses some of the findings in the Senate Concurrent Resolution 49 Report. The SCR report was the result of a panel that studied the causes

of medication errors and recommended changes to reduce errors associated with the delivery of prescription and over-the-counter medication to consumers and promote better patient medication outcomes. The panel included representatives from a school of pharmacy, the California Pharmacists Association, the California Association of Health Plans,

the Pharmaceutical Research and Manufacturers of America, the California Medical Association, the Assembly Democratic Caucus, the Assembly Republican Caucus, and a consumer.

This bill mandates that the Board develop regulations standardizing the prescription label

by first holding a series of public meetings to elicit comments and suggestions about how to standardize the prescription label and make it patient-centered. Taking into account that these meetings will occur throughout 2008 and that the Board will promulgate regulations at the conclusion of these public meetings, the Board ideally will complete the rulemaking process in 2009. The legislation requires that the standardized labels be in place no later than January 1, 2011, giving the profession time to comply with the new requirements.

President Powers appointed the following Board members to the subcommittee who will work on this project: Ken Schell, Chair, Bill Powers, Rob Swart, Ruth Conroy and Susan Ravnan. Meetings will be held statewide in locations that are easily accessible to the public, i.e. community centers, senior centers, etc. Notices of these meetings will be placed on the Board's Web site.

Good Drugs Inc. Refill: (555) 555-5555
000 West Ave
Sacramento, CA 95834
Rx# 000 1234567 Dr: Smith, J

DOE, JANE
IBUPROFEN 800MG TABLETS
For: MOTRIN Qty: 100 TABS

Take 1 tablet orally every 8 hours when needed for pain

Refills Left: 3 Please call 24 hours in advance
Mfg: PHARMFARM Discard After: 12/09

By January 1, 2011 such non-standardized prescription labels will be a thing of the past.

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Answers to Estate Planning Questions Related to Pharmacy

Pharmacy inheritance questions may arise occasionally, and the following is offered as an example.

Smith's Pharmacy has been family owned for 40 years and is currently owned by the surviving wife, Mary, who is 83 years old. The family wants to assure that they can maintain control of the pharmacy when Mary dies. The family does not intend to sell the pharmacy, nor do they wish to acquire partners. Two sons, John (a licensed pharmacist) and Tom, currently operate the pharmacy and will continue to maintain control.

Q. If no further estate planning is done, upon Mary's death all her shares of Smith's Pharmacy, Inc. will pass to the Smith Family Trust, with beneficiaries John and Tom. Will the Board of Pharmacy conclude that a transfer of ownership has occurred?

A. Yes. The Smith Family Trust is a new entity in the Board's records. This change needs to be reported as soon as possible when the change occurs, because the Trust is not able to operate the pharmacy as the new owner until the new owner is approved (California Code of Regulations section 1709[c]). It may be possible to obtain a temporary permit for the new owner. Again, this must be done before the pharmacy continues operation.

Q. Additional estate planning may include the gifting of fractional shares and possibly the sale of additional shares to family members. At what point, if any, will the Board of Pharmacy conclude that a transfer of

ownership has occurred? The pharmacy wants to avoid any possibility of losing the current pharmacy permit, thereby causing a disruption of billing with Medi-Cal.

A. In all likelihood, small changes in ownership may be covered as a change of permit where the ownership changes less than 10 percent. Any new owners added on would also trigger a change of permit notification (CCR section 1709[b]), until a change of 50 percent in ownership occurs, at which point a change of ownership application must be submitted.

Specifically:

California Code of Regulations section 1709(a) requires that any changes in a pharmacy's owner(s) must be reported to the Board within 30 days. Section 1709(b) states: "Any transfer, in a single transaction or in a series of transactions, of 10 percent or more of the beneficial interest in a business entity licensed by the board to a person or entity who did not hold a beneficial interest at the time the original permit was issued, shall require written notification to the board within 30 days." Section 1709(c) states: "The following shall constitute a transfer of permit and require application for a change of ownership: any transfer of a beneficial interest in a business entity licensed by the board, in a single transaction or in a series of transactions, to any person or entity, which transfer results in the transferee's holding 50% or more of the beneficial interest in that license."

DEA regulation authorizes issuance of multiple prescriptions for Schedule II controlled substances

The Drug Enforcement Administration finalized a Notice of Proposed Rulemaking that, effective December 19, 2007, allows practitioners to provide individual patients with multiple prescriptions for the same Schedule II controlled substance. The prescriptions must be filled sequentially, and have the combined effect of allowing a patient to receive over time up to a 90-day supply of that controlled substance (21 Code of Federal Regulations Part 1306).

Prescribers can now issue multiple orders for the same Schedule II controlled substance on the same date, with the second, third, etc., prescription marked "Do not fill before _____," as long as the total amount of the prescriptions does not exceed a 90-day supply. For example: A physician might issue an order for OxyContin 80mg, #30, take one every 12 hours, and issue up to five more prescriptions, all dated January 1. The second prescription would be marked, "Do not fill before January 15," the third "Do not fill before February 1," the fourth "Do not fill before February 15," and the fifth "Do not fill before March 1."

However, the new rule does not limit the amount of any single prescription or for what period of time a single order may be written. A prescriber can still legally (under both federal and California law) issue an order such as: OxyContin 80mg #240, take one every 12 hours—a 120 day supply. It's only when the prescriber employs the serial Schedule II process that the supply is limited to 90 days.