



California State Board of Pharmacy

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STATE AND CONSUMER SERVICES AGENCY

DEPARTMENT OF CONSUMER AFFAIRS
GRAY DAVIS, GOVERNOR

**STATE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
EDUCATION AND COMMUNICATION PUBLIC MEETING
MINUTES**

DATE: January 25, 2000
TIME: 3:30 p.m. - 5:00 p.m.
LOCATION: Mission Inn
3649 Mission Inn Avenue
Riverside, CA 92501

BOARD MEMBERS

PRESENT: Richard Mazzoni, President
Robert Elsner, Vice President
Thomas Nelson
Marilyn Shreve
Andrea Zinder
John Jones
Holly Strom
Caleb Zia

BOARD MEMBERS

ABSENT: Sandra Bauer
Darlene Fujimoto
Steven Litsey

STAFF

PRESENT: Patricia Harris, Executive Officer
Virginia Herold, Assistant Executive Officer
Robert Ratcliff, Supervising Inspector
Gilbert Castillo, Supervising Inspector
William Marcus, Deputy Attorney General
Lavone Powell, Department Legal Counsel
Paul Riches, Legislative Analyst
Brenda Barnard, Pharmacy Inspector

CALL TO ORDER

Chairperson Marilyn Shreve called the meeting to order at 3:30 p.m. on January 25, 2000.

USE OF TECHNOLOGY

William Marcus Deputy Attorney General reported on the current use of technology to protect patient privacy and confidentiality. He stated that the use of technology does not change the basic principals of the Confidentiality and Medical Information Act.

Domestic Internet pharmacies are largely covered by existing laws for non-resident pharmacies and California pharmacy if located in this state. International internet pharmacies are largely illegal, because of federal laws. Despite what people hear or read, the authority to import drugs and controlled substances into the United States for personal use is far more limited than sites on the internet would tell you. The drugs obtained over the internet internationally are generally limited to certain amounts of drugs that are not unduly hazardous, and which are not readily available in the United States. Ordinarily an individual must have a legal basis for the drug, which is usually a prescription from a US physician. The drugs must also be declared to Customs, which are governed by the laws of the DEA and FDA.

Multiple states are taking action, Illinois, Missouri, and Kansas are filing lawsuits over technology and internet activities. There are also state and federal task forces looking into these issues.

California has an express right to privacy, it is a fundamental right that is found in Article 1, Section 1 of our state constitution. In addition there are various statutory provisions having to do with our privacy in general and there are common law principles of privacy that are recognized going back to England. These are rights on which one may sue if one's rights are violated. With all of these laws, there is still not a pharmacist/patient privilege, so you have to look for protection of privacy and confidentiality elsewhere, and that would be in the statutes.

The key statute in California is the Confidentiality and Medical Information Act, which is found in the Civil Code starting at section 56. This act was amended substantially in 1999, by SB19, and now electronic information is specifically covered. The current version of this act has major potential penalties; there are more and stronger provisions including penalties and fines of up to \$250,000 per violation for certain kinds of violations of the act. The law now allows the pursuit of both a fine and disciplinary action for the same violation. There are also broader rights for an individual to sue now for nominal damages in the amount of \$1,000 that can be awarded even if an individual cannot prove any actual monetary damage.

Health care service plans are now required to have policy and, procedures to protect the security of medical information. Health care service providers are bared from requiring a waver or release of consent as a condition of receiving health care services, which would provide for the disclosure of information except as covered by the act.

Mr. Marcus stated that if an activity accessing or using patient information is taking place outside of a pharmacy premises, it is generally not legal. There are provisions in the pharmacy act that allow for a pharmacist who is connected with a pharmacy to engage in certain activities outside of a pharmacy. However, the internet contacts are not being made by a pharmacist or from a pharmacy. This also brings up issues of access to patient information, adequate security of the information, and proper sharing of information. Another aspect of internet care is the automatic dispensing of refills, which do not require the review of a pharmacist. This undermines the quality of the patient's right to quality pharmaceutical care.

The committee discussed medication compliance programs and the necessary use of tact on the behalf of the pharmacist when working with a patient to achieve medication compliance. Mr. Marcus responded that the best course of action would be to state the facts and ask the patient if he or she can comply. If the patient volunteers privileged information, then the pharmacist could use that information to guide the patient.

The committee discussed refill call centers where non-pharmacist employees call patients to remind them to fill their refills. This was determined to be illegal in California, unless the call center is licensed as a pharmacy and pharmacist would have to make the call himself or herself.

THE SCRIPT

The committee asked for suggestions for future articles for the board's newsletter. The following topics were suggested:

- Patient confidentiality
- SB 393
- Medi-Cal's frequently asked questions
- Questions frequently asked of board inspectors

It was also suggested that the board send out information to the medical schools on how to write a prescription. This could be a guideline booklet that could be passed out to every school each year.

There being not additional discussion, Chairperson Marilyn Shreve adjourned the meeting.