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National Alliance for Model State Drug Laws

DUTY TO REPORT TO LAW ENFORCEMENT, OBLIGATION OF PHARMACISTS TO REFUSE TO FILL OR REFILL PRESCRIPTIONS, AND UNSOLICITED REPORTS FROM PRESCRIPTION MONITORING PROGRAMS

© 2011 Research is current as of November 9, 2011. In order to ensure that the information contained herein is as current as possible, research is conducted using both nationwide legal database software and individual state legislative websites as well as information derived from individual state prescription monitoring programs. Please contact Heather Gray at (703) 836-6100, ext. 114 or hgray@namSDL.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS. 215 Lincoln Ave. Suite 201, Santa Fe, NM 87501.

PART I:

Duty of Physicians and/or Pharmacists to Report to Law Enforcement – Prescription Monitoring Program (PMP) and Non-PMP Requirements

Perhaps one of the biggest concerns that physicians and pharmacists have regarding information received from their state prescription monitoring program is what responsibility does he or she have to report information learned from the PMP to law enforcement. In most cases, the answer to that question is that physicians and pharmacists have no duty to report that information to law enforcement and, in many cases, are forbidden by their state PMP laws from sharing any information received from the PMP database with persons other than other health care providers and/or the patient.

As of November 2011, Tennessee is the only state that requires a health care provider who has “actual knowledge” that a person has obtained or attempted to obtain controlled substances through deceit to report that information to law enforcement.¹ This statute does not apply to pharmacists and is not limited to information obtained from the state PMP. If the health care provider’s knowledge comes from accessing the PMP database, the health care provider can only give the law enforcement agency information from the database for the prior thirty days.² The law enforcement agency may then request complete or more detailed information from the database itself for purposes of a criminal investigation.³

On July 1, 2011, a revised statute went into effect in Tennessee which provides that a licensed practitioner or pharmacist who receives information from the database can disclose that information to a law enforcement agency.⁴ Prior to that time, practitioners and pharmacists could only disclose the information to the patient for purposes of treatment or to other dispensers for the sole purpose of verifying the accuracy of the information.

Virginia law may encompass PMP information in that it provides that a health care entity who believes in good faith that information contained in a patient’s health care record constitutes evidence that a crime occurred on its premises may disclose such health care records to law enforcement.⁵ This statute could include the situation where a patient has obtained or attempted to obtain controlled substances through doctor shopping and the health care provider gleans that information from reviewing the patient’s PMP report. Virginia law also requires a pharmacist

¹ Tenn. Code Ann. § 53-11-309

² *Id.*

³ *Id.*

⁴ Tenn. Code Ann. § 53-11-306

⁵ Va. Code Ann. § 32.1-127.1:03

who believes a prescription is a forgery to retain the prescription and advises that the pharmacist may turn the prescription over to law enforcement.⁶

Both Louisiana and Maine laws also allow practitioners to notify law enforcement officials if he or she has a good faith belief that a crime has been committed on the premises. In Louisiana, the practitioner may notify law enforcement when he or she believes that an individual has obtained or attempted to obtain a fraudulent prescription for controlled substances.⁷ The Maine law is broader in that a prescribing health care provider may notify law enforcement if he or she knows or has reasonable cause to believe that a person is committing or has committed an act of deception.⁸ Florida law requires a pharmacist to report to law enforcement within 24 hours any instance in which a person obtained or attempted to obtain a controlled substance through fraudulent means, and further provides that failure to do so is a misdemeanor.⁹ As with Virginia, these statutes may capture information obtained from a patient's PMP report.

Rhode Island pharmacists are required to report forgeries or attempted forgeries to law enforcement, but the regulation does not address reporting of information obtained from reviewing a patient's PMP report.¹⁰

Maine also has regulations applicable to physicians, dentists, nurses, osteopaths, and podiatrists which state that generally information gained in the context of a patient relationship is confidential; however, a practitioner has an obligation to deal with people who use the practitioner to perpetuate illegal acts, and that such acts may require the practitioner to report the patient to law enforcement.¹¹

Colorado law states that a pharmacist may disclose patient information to authorized law enforcement personnel consistent with federal privacy regulations.¹² North Carolina law provides that nothing in their PMP statutes prohibits a person from disclosing data received from the program to another person authorized to receive it, including law enforcement, so it would follow that a practitioner could notify law enforcement if he or she determined it was necessary to do so.¹³

Conversely, Georgia, Kentucky, Michigan, and North Dakota prohibit anyone who receives information from the state prescription monitoring program from disclosing that

⁶ 18 Va. Admin. Code § 110-20-270

⁷ La. Rev. Stat. Ann. § 40:971

⁸ Me. Rev. Stat. Ann. Tit. 17-A, § 1108

⁹ Fla. Stat. Ann. §465.015

¹⁰ 31-2-8 R.I. Code R. § 13.0

¹¹ See, 02-313-21 Me. Code R. § III; 02-373-21 Me. Code R. § III; 02-380-21 Me. Code R. § III; 02-383-21 Me. Code R. § III; and 02-396-21 Me. Code R. § III

¹² Colo. Code Regs. Tit. 3 § 719-1:1.00.00

¹³ N.C. Gen. Stat. Ann. § 90-113.74

information to anyone else without the patient's consent or a court order.¹⁴ Kentucky Revised Statutes Annotated §315.121 provides that it is unprofessional conduct for a pharmacist to divulge patient information to any unauthorized person without a patient's consent or a court order, but specifies that law enforcement officials engaged in a specific investigation involving a designated person are authorized to receive such information.¹⁵ From the phrasing of the statute, it appears likely that any such disclosure would have to come at the request of the law enforcement official rather than at the initiative of the pharmacist.

Kentucky law also provides that a pharmacist may seize and retain any prescription which he or she has a reasonable suspicion is forged, altered, or possessed in violation of law. Seizure and retention shall be for a reasonable period of time to allow the pharmacist to ascertain whether the prescription is actually forged, altered, or illegally possessed. If, after inquiry, the pharmacist believes that it is a forged, altered, or illegally possessed prescription, he or she shall report it to law enforcement and surrender the prescription upon request.¹⁶

Along the same lines as Ky. Rev. Stat. Ann. § 315.121, Ohio law provides that no person shall disclose information from the PMP except as may be necessary in the investigation or prosecution of a possible or alleged criminal offense.¹⁷ Whether this statute allows a physician or pharmacist to notify law enforcement of a possible criminal offense based on information received from the state PMP will be determined by how the statute is interpreted. It is most likely that, as in Kentucky, the disclosure would have to come at the request of law enforcement.

Still other states provide that any information obtained from the PMP database can only be shared with others for the purpose of providing medical or pharmaceutical care to the patient:

- Iowa Code Ann. §§ 124.553, 124.558 and Iowa Admin. Code R. 657-37.4(124) – information from the program shall not be released, shared with any agency or institution or made public except as provided in this division; pharmacists and practitioners may lawfully provide information from the program to another person for medical or pharmaceutical care purposes and practitioners may share information with another practitioner who is involved in the care of the patient
- Kan. Stat. Ann. §65-1693 – it is not a violation of the confidentiality provisions for a practitioner/dispenser to disclose or use information from the program if it is used or disclosed solely for purposes of care of the patient

¹⁴ See, Ga. Code Ann. § 16-13-60; Ky. Rev. Stat. Ann. § 218A.202; Mich. Comp. Laws Ann. § 333.7333a; and N.D. Admin. Code 61-04-04-01

¹⁵ Ky. Rev. Stat. Ann. § 315.121

¹⁶ Ky. Rev. Stat. Ann. § 217.214

¹⁷ Ohio Rev. Code Ann. §4729.86

- Va. Code Ann. § 54.1-2525 – a prescriber or dispenser may re-disclose information obtained from the program to another prescriber or dispenser who has prescribed or dispensed to the patient.

Maryland law is very straightforward – a person who receives data from the PMP may not disclose it to anyone else¹⁸, while Mississippi law seems contradictory. In Mississippi, it is unprofessional conduct for a pharmacist to unlawfully disclose PMP data, but it is also unprofessional conduct for a pharmacist to fail to report fraudulent prescription activity to the appropriate authorities.¹⁹

Law enforcement officials in Vermont are only entitled to receive PMP database information from state licensing agencies, and physicians and pharmacists may not disclose such information to anyone not authorized to receive it.²⁰ However, physicians and pharmacists may disclose non-PMP related information to law enforcement, the drug rehabilitation commissioner, or professional boards concerning the use of regulated drugs or misuse by other persons of regulated drugs and shall not be subject to any civil, criminal, or administrative liability or penalty for providing such information.²¹

In Delaware, pharmacists are permitted to withhold a suspected forged prescription for release to law enforcement if it is prudent to do so. If it is not prudent or possible to retain the suspected forged prescription, the pharmacist may make a copy for release to law enforcement. The rule states that “[r]eporting the incident to law enforcement supports the personal responsibility of the dispensing pharmacist to be constantly vigilant against forged or altered prescriptions.”²²

With regard to methamphetamine precursor databases, Missouri regulations provide that if a person attempts to purchase a methamphetamine precursor in excess of legal quantities, the pharmacist must decline the sale. If the pharmacist feels that it would place him or herself in danger of imminent physical harm to refuse the sale, the pharmacist may use the database safety override function provided that when jeopardy is no longer perceived, the dispenser shall immediately contact local law enforcement to report the purchase and record such contact in the log.²³

In Massachusetts, if a practitioner receives PMP database information unsolicited from the commissioner (which the commissioner may send to the practitioner if a patient is receiving controlled substances from more than one source and in quantities the commissioner determines

¹⁸ Md. Code Ann. § 21-2A-06

¹⁹ See, Miss. Code Regs. §§ 30-20-1:IX; 30-20-1:XXXIV; and 30-20-1:V

²⁰ Vt. Stat. Ann. Tit. 18, § 4284

²¹ Vt. Stat. Ann. Tit. 18, § 4218

²² Del. Code Regs. Tit. 24, § 2500-2

²³ Mo. Code Regs. Ann. Tit. 19, § 30-1.074

to be harmful or to otherwise prevent unlawful diversion), the practitioner is not required to take any action that he or she believes would be contrary to the patient's best interests.²⁴

Please note that this is not intended to be a complete list of all state laws or regulations regarding a physician's or pharmacist's duty to notify law enforcement of a patient's potential illegal conduct and does not address the effect, if any, of a state's doctor/patient or pharmacist/patient privilege on reporting potential illegal conduct to law enforcement. Any questions regarding the duty in your state should be referred to an attorney licensed to practice in your state.

PART II: Duty of PMP Administrators to Notify Law Enforcement – Unsolicited Reports of PMP Information

Of the 48 states with prescription monitoring programs, 38 allow the board, commissioner, or department responsible for operation of the PMP to send PMP data to prescribers, pharmacists, law enforcement, and/or licensing entities unsolicited. Eleven states – Arizona, Delaware, Indiana, Massachusetts, Mississippi, Nevada, New Jersey, New Mexico, Ohio, South Carolina, and Wyoming – require the board, commissioner, or department to review the information collected in the program and, if the operating entity has reason to believe an act of illegal or unprofessional conduct has occurred, notify the appropriate law enforcement or professional licensing entity and provide the PMP information to that entity for investigation.²⁵ Louisiana also requires that the operating entity review the PMP data and, if there is reasonable suspicion to believe that a breach of professional or occupational standards has occurred, the board shall notify the appropriate licensing entity and provide the information necessary for an investigation.²⁶ Maine law requires that the operating entity notify an individual's prescriber and dispenser and, if necessary, the professional licensing board, if PMP information surpasses established thresholds.²⁷

In Idaho, North Dakota, and South Dakota, disclosure of PMP information to law enforcement or the professional licensing entity is discretionary with the board, commissioner, or

²⁴ 105 Mass. Code Regs. 700.012

²⁵ See, Ariz. Rev. Stat. § 36-2604; Ariz. Admin. Code R4-23-503; Del. Code Ann. Tit. 16, § 4798; Ind. Code Ann. §§ 35-48-7-11.1 and 35-48-7-11.5; Mass. Gen. Laws Ann. Ch. 94C § 24A; Miss. Code Ann. § 73-21-127; Miss. Code Regs. 30-20-1:XLIII; Nev. Rev. Stat. Ann. § 453.1545; N.J. Stat. Ann. § 45:1-46; N.M. Code R. § 16.19.29 (includes the caveat that the operating entity must first receive a complaint); Ohio Rev. Code Ann. § 4729.81; S.C. Code Ann. § 44-53-1650; and Wyo. Stat. Ann. § 35-7-1060 (requires the operating entity to notify both law enforcement and the licensing board)

²⁶ La. Rev. Stat. Ann. § 40:1007

²⁷ Me. Rev. Stat. Ann. Tit. 22, § 7250

department.²⁸ It is also discretionary with the Florida program manager who may provide relevant information to law enforcement if the program manager has reason to believe that a person has withheld information from his or her practitioner in an attempt to obtain a controlled substance and the person has received a like substance from another practitioner within the previous 30 days. The program manager may also refer information to law enforcement if he or she has reason to believe a practitioner has assisted a person with obtaining a controlled substance through fraud or other illegal means.²⁹ It is also discretionary in Connecticut, whose statutes provide that the Commissioner of Public Health and Consumer Protection may exchange information with law enforcement.³⁰

Further, Illinois allows the department to release information on vendors or practitioners who are prescribing or dispensing large quantities of controlled substances outside their scope of practice to the licensing body, Attorney General, and law enforcement.³¹

Vermont authorizes the department to provide information to an occupational licensing or certification authority if the commissioner reasonably suspects fraudulent or illegal activity by a health care provider, and the licensing or certification entity may report that information to law enforcement.³² Similarly, North Carolina requires that the department inform the Attorney General's office of its findings if it discovers patterns of prescribing that are unusual, and the Attorney General is directed to review the information to determine if it should be referred to the SBI for an investigation.³³

Finally, Oklahoma allows the director to disclose investigative information to law enforcement in furtherance of criminal investigations or prosecutions, and to prescribers and pharmacists in furtherance of efforts to guard against diversion.³⁴

Below is a list that reflects which states generally allow unsolicited reporting and to whom:^{35 36}

²⁸ See, Idaho Code Ann. § 37-2730A; N.D. Cent. Code § 19-03.5-06; and S.D. Codified Laws § 34-20E-12

²⁹ Fla. Stat. Ann. §893.055

³⁰ Conn. Gen. Stat. Ann. §§ 21a-274 and 20-578

³¹ 720 Ill. Comp. Stat. Ann. § 570/318

³² Vt. Stat. Ann. Tit. 18, §4284 and 12-5-21 Vt. Code R. § 3

³³ N.C. Gen. Stat. Ann. § 90-113-74

³⁴ Okla. Stat. Ann. Tit. 63, § 2-309D

³⁵ In some cases, this information has been provided by surveys completed by the state PMP program for the Alliance of States with Prescription Monitoring Programs and has not been able to be confirmed as of the time of writing.

³⁶ See, Ariz. Rev. Stat. §§ 36-2602 and 36-2604; Ark. Code Ann. § 20-7-607; Ca. Health & Safety Code §§ 11165 and 11165.1; Conn. Gen. Stat. Ann. §§ 21a-274 and 20-578; Conn. Code Regs. 21a-254-5 and 21a-254-6; Del. Code Ann. Tit. 16, § 4798; Fla. Stat. Ann. § 893.055; Haw. Code Ann. §§ 329-1 and 329-103; Idaho Code §37-2730A; 720 Ill. Comp. Stat. Ann. § 570/314.5; Ind. Code Ann. §§ 35-48-7-4, 35-48-7-11.1 and 35-48-7-11.5; La. Rev. Stat. Ann. §§ 40:1006 and 40:1007; Me. Rev. Stat. Ann. Tit. 22, § 7250; Mass. Gen. Laws Ann. Ch. 94C, §§ 1 and 24A; Miss. Code Ann. § 73-21-127; Mont. Code Ann. § 37-7-1504; Nev. Rev. Stat. § 453.1545; N.J. Stat. Ann. § 45:1-46; N.M. Admin. Code 16.19.29; N.Y. Pub. Health Law § 3371; N.C. Gen. Stat. § 90-113.74; N.D. Cent. Code §§ 19-03.5-03 and 19-03.5-04. © 2011 Research is current as of November 9, 2011. In order to ensure that the information contained herein is as current as possible, research is conducted using both nationwide legal database software and individual state legislative websites as well as information derived from individual state prescription monitoring programs. Please contact Heather Gray at (703) 836-6100, ext. 114 or hgray@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS. 215 Lincoln Ave. Suite 201, Santa Fe, NM 87501.

- 1) To prescribers – AL, AK, AZ, AR, CA, CT, DE, FL, HI, ID, IL, IN, KS, LA, ME, MA, MS, MT, NV, NJ, NM, NY, NC, ND, OK, RI, SC, SD, TX, UT, VT, VA, WA, WI, WY^{37 38}
- 2) To pharmacists – AL, AK, AZ, AR, CA, CT, DE, FL, HI, ID, IN, KS, LA, ME, MA, MS, MT, NV, NJ, NM, NC, ND, OK, RI, SC, SD, TX, UT, VT, WA, WI, WY
- 3) To law enforcement – AK, AZ, CA, CT, DE, FL, HI, ID, IN, LA, MA, MS, NV, NJ, NM, NC, ND, OH, OK, PA, RI, SC, SD, TX, UT, WI, WY³⁹
- 4) To licensing entities – AK, AZ, DE, FL, ID, IN, KY, LA, ME, MA, MS, NV, NJ, NM, ND, OH, OK, RI, SC, SD, TX, VT, WA, WI, WY⁴⁰

PART III:

Obligation of Pharmacists to Decline to Fill or Refill Prescriptions

Another concern, specifically for pharmacists, is whether the pharmacist has an obligation to decline to fill or refill a prescription and, if so, in what situations. While more than half the states have statutes or regulations in place that either prohibit a pharmacist from dispensing in certain situations or allow the pharmacist the discretion on whether to fill or refill a prescription⁴¹, pharmacists in all states are bound by federal law. The United States Drug

03.5-06; Okla. Stat. Tit. 63, §§ 2-309B, 2-309D, and 2-309G; R.I. Code R. 31-2-1:3.0; S.C. Code Ann. § 44-53-1650; S.D. Codified Laws §§ 34-20E-7 and 34-20E-12; Utah Code Ann. § 58-37f-702; Utah Admin. Code R156-37; Vt. Stat. Ann. Tit. 18, § 4284; Vt. Code R. 12-5-21.3; Va. Code Ann. §54.1-2523.1; Wyo. Stat. Ann. § 35-7-1060; Wyo. Admin. Code AI PDSC Ch. 8, § 4

³⁷ Alabama sends unsolicited reports to prescribers and pharmacists using the NASPER legislation and federal grant requirements for guidance.

³⁸ Kansas has authority to send unsolicited reports based on a policy decision made by the Advisory Commission for the state PMP. Washington has authority to send unsolicited reports based on statutory interpretation.

³⁹ See, Ohio Rev. Code Ann. § 4729.81 and 18 Pa. Cons. Stat. Ann. § 9102

⁴⁰ See, Ky. Rev. Stat. Ann. § 218A.240

⁴¹ See, See, Cal. Bus. & Prof. Code § 733; Cal. Code Regs. Tit. 16, § 1761; 3 Colo. Code Regs. § 719-1:3.0.00; Del. Code Regs. Tit. 24, § 2500-2; Fla. Stat. Ann. §893.04; Ga. Code Ann. § 26-4-80; Ga. Comp. R. & Regs. R. 480-5-.03; Idaho Code § 54-1733; Idaho Code Regs. 27.01.01.457; 720 Ill. Comp. Stat. § 570/102; 225 Ill. Comp. Stat. § 85/30; Ind. Code Ann. §§ 25-26-13-16 and 16-42-19-20; Iowa Admin. Code r. 657-8.19(124,126,155A); Kan. Stat. Ann. § 65-1637; Ky. Rev. Stat. Ann. §§ 217.214 and 218A.288; La. Admin. Code Tit. 46, Pt. LIII, §§ 2515, 2745, and 2747; Me. Rev. Stat. Ann. Tit. 32, § 13795; Code Me. R. 02-392, Ch. 19 § 11; Md. Code Ann. Health Occ. § 12-501; Md. Regs. Code 10.34.10.08; Mass. Gen. Laws Ch. 94C, § 19; Mass. Regs. Code Tit. 247, § 9.01; Mich. Comp. Laws §§333.17751 and 333.7333; Miss. Code Regs. 30-20-1:XII; Mo. Code Regs. Ann. Tit. 19, § 30-1.074; Neb. Rev. Stat. § 38-2870; Nev. Admin. Code 639.753; N.J. Stat. Ann. § 45:14-66; N.J. Admin. Code 13:39-7.13; N.C. Admin. Code Tit. 21, § 46.1801; N.D. Admin. Code § 61-04-04-01; Ohio Admin. Code 4729-5-30; Okla. Admin. Code 317:30-5-70.1; Or. Admin. R. 855-019-0210; 49 Pa. Cons. Stat. Ann. § 27.18; S.D. Admin. R. 20:51:05:15; Tex. Health & Safety Code © 2011 Research is current as of November 9, 2011. In order to ensure that the information contained herein is as current as possible, research is conducted using both nationwide legal database software and individual state legislative websites as well as information derived from individual state prescription monitoring programs. Please contact Heather Gray at (703) 836-6100, ext. 114 or hgray@namsdl.org with any additional updates or information that may be relevant to this document. This document is intended for educational purposes only and does not constitute legal advice or opinion. Headquarters Office: THE NATIONAL ALLIANCE FOR MODEL STATE DRUG LAWS. 215 Lincoln Ave. Suite 201, Santa Fe, NM 87501.

Enforcement Administration, Office of Diversion Control, has published the “Pharmacist’s Manual: An Informational Outline of the Controlled Substances Act” which states as follows:

A pharmacist also needs to know there is a corresponding responsibility for the pharmacist who fills the prescription. An order purporting to be a prescription issued not in the usual course of professional treatment or in legitimate and authorized research is an invalid prescription within the meaning and intent of the CSA (21 U.S.C. § 829). The person knowingly filling such a purported prescription, as well as the person issuing it, shall be subject to the penalties provided for violations of the provisions of law relating to controlled substances.

A pharmacist is required to exercise sound professional judgment when making a determination about the legitimacy of a controlled substance prescription. Such a determination is made before the prescription is dispensed. The law does not require a pharmacist to dispense a prescription of doubtful, questionable, or suspicious origin. To the contrary, the pharmacist who deliberately ignores a questionable prescription when there is reason to believe it was not issued for a legitimate medical purpose may be prosecuted along with the issuing practitioner, for knowingly and intentionally distributing controlled substances. Such action is a felony offense, which may result in the loss of one’s business or professional license (see *United States v. Kershman*, 555 F.2d 198 [United States Court of Appeals, Eighth Circuit, 1977]).⁴²

Those states that specifically prohibit pharmacists from dispensing in certain situations include the following:

- Colorado – no licensee or registrant shall compound, dispense, deliver, or distribute any drug to any person in such quantity or in any situation where the licensee or registrant knows or reasonably should know said drug has no recognized utility or application⁴³
- Florida – pharmacist is prohibited from dispensing without first determining, in the exercise of his or her professional judgment, that the prescription order is valid⁴⁴
- Georgia – pharmacist shall not dispense a prescription which the pharmacist knows or should know is not valid⁴⁵

§§ 481.074 and 483.021; Tex. Occ. Code § 562.056; Utah Code Ann. § 58-17b-501; Vt. Code R. 20-4-1400:9.13 and 20-4-1400:20.2; 18 Va. Admin. Code § 110-20-270; Wash. Admin. Code § 246-869-010; and W. Va. Code St. R. § 15-2-7

⁴² http://www.deadiversion.usdoj.gov/pubs/manuals/pharm2/pharm_manual.pdf, p. 29

⁴³ 3 Colo. Code Regs. § 719-1:3.0.00

⁴⁴ Fla. Stat. Ann. § 893.04

⁴⁵ Ga. Code Ann. § 26-4-80

- Pharmacist prohibited from dispensing if, in his or her professional opinion, the prescription contains any error, omission, irregularity, or ambiguity, and if there is any doubt the prescription is not legitimate after conferring with the prescriber, pharmacist shall not dispense⁴⁶
- Idaho – no person shall fill a prescription if it shows evidence of alteration, erasure, or addition by any person other than the one writing it⁴⁷
- Louisiana – pharmacist shall not fill a prescription in the absence of a valid patient/practitioner relationship until he has obtained proof of the validity of the prescription
 - Pharmacist shall not dispense on invalid prescription⁴⁸
- Massachusetts – pharmacist is subject to penalties if he or she fills a prescription not issued in the usual course of professional treatment or for a legitimate or authorized research purpose⁴⁹
- Mississippi – pharmacist shall not dispense a prescription which the pharmacist knows or should know is not valid⁵⁰
- Ohio – pharmacist who knowingly dispenses on a prescription which was not issued in the usual course of a prescriber’s practice is subject to penalties⁵¹
- Oregon – pharmacist may not dispense on a prescription if, in their professional judgment, it was not issued with a valid practitioner/patient relationship⁵²
- Texas – pharmacist may not dispense unless under a valid prescription in the course of professional practice or unless made pursuant to a valid practitioner/patient relationship⁵³
- Utah – it is unlawful to dispense without a prescription or to anyone the pharmacist knows or should know is attempting to obtain drugs by fraud or misrepresentation⁵⁴
- West Virginia – pharmacist shall refuse to fill a prescription for a controlled substance if more than one prescription is contained on a prescription blank or if a non-controlled

⁴⁶ Ga. Comp. R. & Regs. R. 480-5-.03

⁴⁷ Idaho Code Regs. 27.01.01.457

⁴⁸ La. Admin. Code Tit. 46, Pt. LIII, §§ 2515, 2745, and 2747

⁴⁹ Mass. Gen. Laws Ch. 94C, § 19

⁵⁰ Miss. Code Regs. 30-20-1:XII

⁵¹ Ohio Admin. Code 4729-5-30

⁵² Or. Admin. R. 855-019-0210

⁵³ Tex. Health & Safety Code §§ 481.074 and 483.021; Tex. Occ. Code § 562.056

⁵⁴ Utah Code Ann. § 58-17b-501

substance is included on the prescription with a controlled substance and shall notify the prescriber that the prescription was not written according to rule⁵⁵.

In some cases, the above statutes and/or regulations may impose a duty on a pharmacist who is in possession of knowledge gained from his or her state prescription monitoring program to refuse to fill a prescription.

As noted in Part I, both Delaware and Kentucky law provide that a pharmacist may withhold a suspect prescription.⁵⁶ The Kentucky statutes have both discretionary and mandatory provisions. The pharmacist may seize and retain a prescription he or she believes is forged, altered, or possessed in violation of law. If the pharmacist does so, he or she must then make inquiry into the legitimacy of the prescription. If the pharmacist discovers that the prescription is forged, altered or possessed in violation of law, it is then mandatory for the pharmacist to report it to law enforcement and surrender the prescription upon request.⁵⁷

Nevada has a similar provision to Kentucky. A pharmacist in Nevada may decline to fill a prescription if he or she believes, in his or her professional judgment, that filling the prescription would be unlawful, would be potentially harmful to the health of the patient, the prescription is fraudulent, or the prescription is not for a legitimate medical purpose. If the pharmacist declines to fill the prescription, he or she is then mandated to contact the prescribing physician and resolve his or her concerns. If, after speaking with the prescribing physician, the pharmacist believes any of the four criteria to be present, he or she shall retain the prescription and not return it to the patient.⁵⁸

Then there are those states that leave the decision of whether to fill or refill a prescription to the discretion of the pharmacist:

- Illinois – pharmacists must use good faith in dispensing prescriptions including consideration of the frequency of prescriptions for the same drug by one practitioner for large numbers of patients, quantities beyond that normally prescribed, unusual dosages, and consistent prescribing of habit-forming drugs and decrees that failure to dispense in good faith is unprofessional conduct⁵⁹
- Kansas – pharmacist may, in his professional judgment, refuse to fill or refill a prescription if the pharmacist believes it should not be filled or refilled⁶⁰

⁵⁵ W. Va. Code St. R. § 15-2-7

⁵⁶ See, Del. Code Regs. Tit. 24, § 2500-2 and Ky. Rev. Stat. Ann. §§ 217.214 and 218A.288

⁵⁷ Ky. Rev. Stat. Ann. § 217.214

⁵⁸ Nev. Admin. Code 639.753

⁵⁹ 720 Ill. Comp. Stat. § 570/102; 225 Ill. Comp. Stat. § 85/30

⁶⁰ Kan. Stat. Ann. § 65-1637

- Maine – pharmacist may refuse to fill a prescription if unsatisfied as to the legitimacy or appropriateness of any prescription presented and may report such to law enforcement⁶¹
- Nebraska – pharmacist has the professional right to refuse to dispense⁶²
- New Jersey – pharmacist has the right to refuse to fill a prescription if, in his judgment, the prescription is outside the scope of practitioner’s practice, or if there is sufficient reason to question the validity of the prescription⁶³
- North Dakota – it is unprofessional conduct to refuse to dispense a prescription that might reasonably be expected to be dispensed, but such provision is not intended to hinder or impede the ability of the pharmacist to use his or her professional judgment⁶⁴
- Oklahoma – pharmacist may refuse to dispense any prescription which appears to be improperly executed or, in the professional judgment of the pharmacist, is unsafe as presented⁶⁵
- South Dakota – pharmacist shall exercise sound professional judgment with respect to the legitimacy of prescription orders⁶⁶
- Vermont – pharmacist shall exercise sound professional judgment regarding the accuracy, validity and authenticity of any prescription drug order communicated by electronic transmission; must use independent professional judgment which may, from time to time, place the pharmacist in the position where adherence to legal requirements may conflict with the expectations of prescribers, employers and others and may require the pharmacist to tell patients, prescribers, employers and others that legal obligations prevent him or her from taking a certain course of action or complying with the wishes of others⁶⁷
- Virginia – pharmacist may decline to fill a prescription for any reason; if the prescription is a forgery, pharmacist shall retain the prescription and may turn it over to law enforcement⁶⁸
- Washington – pharmacists have a duty to fill prescriptions unless it is potentially fraudulent⁶⁹.

⁶¹ Me. Rev. Stat. Ann. Tit. 32, § 13795; Code Me. R. 02-392, Ch. 19 § 11

⁶² Neb. Rev. Stat. § 38-2870

⁶³ N.J. Admin. Code 13:39-7.13

⁶⁴ N.D. Admin. Code § 61-04-04-01

⁶⁵ Okla. Admin. Code 317:30-5-70.1

⁶⁶ S.D. Admin. R. 20:51:05:15

⁶⁷ Vt. Code R. 20-4-1400:9.13 and 20-4-1400:20.2

⁶⁸ 18 Va. Admin. Code § 110-20-270

⁶⁹ Wash. Admin. Code § 246-869-010

Finally, there are those states that have both mandatory and discretionary statutes and/or regulations:

- California – pharmacist shall not dispense if a prescription contains any significant error, omission, irregularity, uncertainty or alteration⁷⁰
- California – licensee shall dispense prescription drug or device unless, based solely on licensee’s professional training and judgment, dispensing the drug would be contrary to law⁷¹
- Indiana – pharmacist may not knowingly fill an invalid prescription⁷²
- Indiana – pharmacist has a duty to honor all prescriptions unless, in his professional judgment, such prescription is contrary to law or would aid or abet a person’s addiction and is immune from civil liability for refusing to fill a prescription⁷³
- Iowa – pharmacist shall not dispense if he or she knows or should know that the prescription was issued based solely on an internet-based questionnaire or consultation or telephone consultation and without a valid pre-existing patient/practitioner relationship
- Iowa – pharmacist shall exercise professional judgment regarding the accuracy, validity and authenticity of any prescription drug order⁷⁴
- Maryland – pharmacist may not fill a prescription if he or she has reason to believe or should have reason to believe that a prescription was not issued for a legitimate medical purpose or in the usual course of the prescriber’s practice until the pharmacist has consulted with the prescriber and verified the legitimacy of the prescription⁷⁵
- Maryland – pharmacist may refuse to fill a prescription based on professional judgment, experience, and available reference materials and must notify the prescriber within 72 hours that the prescription or refill was refused⁷⁶
- Michigan – pharmacist may only dispense if he determines that the prescription is authentic and that the drug is appropriate and necessary for treatment⁷⁷
- Michigan – pharmacists must dispense prescriptions in good faith, including dispensing of a controlled substance upon a prescription which, in the professional judgment of the pharmacist, is lawful⁷⁸

⁷⁰ Cal. Code Regs. Tit. 16, § 1761

⁷¹ Cal. Bus. & Prof. Code § 733

⁷² Ind. Code Ann. §16-42-19-20

⁷³ Ind. Code Ann. § 25-26-13-16

⁷⁴ Iowa Admin. Code r. 657-8.19(124,126,155A)

⁷⁵ Md. Regs. Code 10.34.10.08

⁷⁶ Md. Code Ann. Health Occ. § 12-501

⁷⁷ Mich. Comp. Laws § 333.17751

⁷⁸ Mich. Comp. Laws § 333.7333

- North Carolina – pharmacist shall not fill a prescription if he knows or should know that the order was issued in the absence of a prior patient/practitioner relationship
- North Carolina – pharmacist may refuse to fill a prescription if, in his professional judgment, it would be harmful to the recipient, not in the patient’s best interest, or there is a question as to its validity⁷⁹
- Pennsylvania – pharmacist may not knowingly fill or refill a prescription if he knows or should know it is for use by a person other than the patient for whom it was written, or will otherwise be diverted, abused or misused
- Pennsylvania – pharmacist may decline to fill a prescription if he knows or has reason to know it is false, fraudulent or unlawful; may also decline if, in his professional judgment, it should not be filled or refilled in the interest of the patient’s safety⁸⁰.

As with the requirement to notify law enforcement, this is not intended to be an exhaustive list of state laws and regulations regarding the obligation to refuse to fill or refill a prescription. Dispensers should consult an attorney in their state if there are any questions or concerns about this information.

⁷⁹ N.C. Admin. Code Tit. 21, § 46.1801

⁸⁰ 49 Pa. Cons. Stat. Ann. § 27.18