

## Immunity for Failing to Access & Requirements to Access PMP Data

### ALABAMA

ALA. CODE § 20-2-214 (2008)

#### **§ 20-2-214. Limited access to database permitted for certain persons or entities.**

The following persons or entities shall be permitted access to the information in the controlled substances database, subject to the limitations indicated below:

(1) Authorized representatives of the certifying boards, provided, however, that access shall be limited to inquiries concerning the licensees of the certifying board.

(2) A licensed practitioner approved by the department who has authority to prescribe, dispense, or administer controlled substances, provided, however, that such access shall be limited to information concerning an assistant to physician with a Qualified Alabama Controlled Substances Registration Certificate over whom the practitioner exercises physician supervision and a current or prospective patient of the practitioner. **Practitioners shall have no requirement or obligation to access or check the information in the controlled substances database prior to prescribing, dispensing, or administering medications or as part of their professional practice.**

(3) A licensed assistant to physician approved by the department who is authorized to prescribe, administer, or dispense pursuant to a Qualified Alabama Controlled Substances Registration Certificate; provided, however, that such access shall be limited to information concerning a current or prospective patient of the assistant to physician.

(4) A licensed pharmacist approved by the department, provided, however, that such access is limited to information related to the patient or prescribing practitioner designated on a controlled substance prescription that a pharmacist has been asked to fill. **Pharmacists shall have no requirement or obligation to access or check the information in the controlled substances database prior to dispensing or administering medications or as part of their professional practices.**

(5) State and local law enforcement authorities as authorized under Section 20-2-91, and federal law enforcement authorities authorized to access prescription information upon application to the department accompanied by an affidavit stating probable cause for the use of the requested information.

(6) Employees of the department and consultants engaged by the department for operational and review purposes.

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### ALASKA

ALASKA STAT. § 17.30.200 (2008)

#### **§ 17.30.200. Controlled substance prescription database.**

(a) The controlled substance prescription database is established in the Board of Pharmacy. The purpose of the database is to contain data as described in this section regarding every prescription for a schedule IA, IIA, IIIA, IVA, or VA controlled substance under state law or a schedule I, II, III, IV, or V controlled substance under federal law dispensed in the state to a person other than those administered to a patient at a health care facility. The Department of Commerce, Community, and Economic Development shall assist the board and provide necessary staff and equipment to implement this section.

(b) The pharmacist-in-charge of each licensed or registered pharmacy, regarding each schedule IA, IIA, IIIA, IVA, or VA controlled substance under state law or a schedule I, II, III, IV, or V controlled substance under federal law dispensed by a pharmacist under the supervision of the pharmacist-in-charge, and each practitioner who directly dispenses a schedule IA, IIA, IIIA, IVA, or VA controlled substance under state law or a schedule I, II, III, IV, or V controlled substance under federal law other than those administered to a patient at a health care facility, shall submit to the board, by a procedure and in a format established by the board, the following information for inclusion in the database:

- (1) the name of the prescribing practitioner and the practitioner's federal Drug Enforcement Administration registration number or other appropriate identifier;
- (2) the date of the prescription;
- (3) the date the prescription was filled and the method of payment; this paragraph does not authorize the board to include individual credit card or other account numbers in the database;
- (4) the name, address, and date of birth of the person for whom the prescription was written;
- (5) the name and national drug code of the controlled substance;
- (6) the quantity and strength of the controlled substance dispensed;

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- (7) the name of the drug outlet dispensing the controlled substance; and
- (8) the name of the pharmacist or practitioner dispensing the controlled substance and other appropriate identifying information.
- (c) The board shall maintain the database in an electronic file or by other means established by the board to facilitate use of the database for identification of
- (1) prescribing practices and patterns of prescribing and dispensing controlled substances;
  - (2) practitioners who prescribe controlled substances in an unprofessional or unlawful manner;
  - (3) individuals who receive prescriptions for controlled substances from licensed practitioners and who subsequently obtain dispensed controlled substances from a drug outlet in quantities or with a frequency inconsistent with generally recognized standards of dosage for that controlled substance; and
  - (4) individuals who present forged or otherwise false or altered prescriptions for controlled substances to a pharmacy.
- (d) The database and the information contained within the database are confidential, are not public records, and are not subject to public disclosure. The board shall undertake to ensure the security and confidentiality of the database and the information contained within the database. The board may allow access to the database only to the following persons, and in accordance with the limitations provided and regulations of the board:
- (1) personnel of the board regarding inquiries concerning licensees or registrants of the board or personnel of another board or agency concerning a practitioner under a search warrant, subpoena, or order issued by an administrative law judge or a court;
  - (2) authorized board personnel or contractors as required for operational and review purposes;
  - (3) a licensed practitioner having authority to prescribe controlled substances, to the extent the information relates specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing a controlled substance;

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(4) a licensed or registered pharmacist having authority to dispense controlled substances, to the extent the information relates specifically to a current patient to whom the pharmacist is dispensing or considering dispensing a controlled substance;

(5) federal, state, and local law enforcement authorities may receive printouts of information contained in the database under a search warrant, subpoena, or order issued by a court establishing probable cause for the access and use of the information; and

(6) an individual who is the recipient of a controlled substance prescription entered into the database may receive information contained in the database concerning the individual on providing evidence satisfactory to the board that the individual requesting the information is in fact the person about whom the data entry was made and on payment of a fee set by the board under AS 37.10.050 that does not exceed \$10.

(e) The failure of a pharmacist-in-charge, pharmacist, or practitioner to submit information to the database as required under this section is grounds for the board to take disciplinary action against the license or registration of the pharmacy or pharmacist or for another licensing board to take disciplinary action against a practitioner.

(f) The board may enter into agreements with (1) dispensers in this state that are not regulated by the state to submit information to and access information in the database, and (2) practitioners in this state to access information in the database, subject to this section and the regulations of the board. The board shall prohibit a dispenser that is not regulated by the state from accessing the database if the dispenser has accessed information in the database contrary to the limitations of this section, discloses information in the database contrary to the limitations of this section, or allows unauthorized persons access to the database.

(g) The board shall promptly notify the president of the senate and the speaker of the house of representatives if, at any time after the effective date of this Act, the federal government fails to pay all or part of the costs of the controlled substance prescription database.

(h) An individual who has submitted information to the database in accordance with this section may not be held civilly liable for having submitted the information. **Nothing in this section requires or obligates a dispenser or practitioner to access or check the database before dispensing, prescribing, or administering a medication, or providing medical care to a person. Dispensers or practitioners may not be held civilly liable for damages for accessing**

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### **or failing to access the information in the database.**

(i) A person who has reason to believe that prescription information from the database has been illegally or improperly accessed shall notify an appropriate law enforcement agency.

(j) The board shall notify any person whose prescription information from the database is illegally or improperly accessed.

(k) In the regulations adopted under this section, the board shall provide

(1) that prescription information in the database shall be purged from the database after two years have elapsed from the date the prescription was dispensed;

(2) a method for an individual to challenge information in the database about the individual that the person believes is incorrect or was incorrectly entered by a dispenser.

(l) A person

(1) with authority to access the database under (d) of this section who knowingly

(A) accesses information in the database beyond the scope of the person's authority commits a class A misdemeanor;

(B) accesses information in the database and recklessly discloses that information to a person not entitled to access or to receive the information commits a class C felony;

(C) allows another person who is not authorized to access the database to access the database commits a class C felony;

(2) without authority to access the database under (d) of this section who knowingly accesses the database or knowingly receives information that the person is not authorized to receive under (d) of this section from another person commits a class C felony.

(m) To assist in fulfilling the program responsibilities, performance measures shall be reported to the legislature annually. Performance measures may include outcomes detailed in the federal prescription drug monitoring program grant regarding efforts to

(1) reduce the rate of inappropriate use of prescription drugs by reporting education efforts conducted by the Board of Pharmacy;

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- (2) reduce the quantity of pharmaceutical controlled substances obtained by individuals attempting to engage in fraud and deceit;
  - (3) increase coordination among prescription drug monitoring program partners; and
  - (4) involve stakeholders in the planning process.
- (n) In this section,
- (1) "board" means the Board of Pharmacy;
  - (2) "database" means the controlled substance prescription database established in this section;
  - (3) "knowingly" has the meaning given in AS 11.81.900;
  - (4) "pharmacist-in-charge" has the meaning given in AS 08.80.480.

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ARIZONA

ARIZ. REV. STAT. ANN. § 36-2609 (2008)

### **§ 36-2609. Use of information; civil immunity**

A. An individual or entity that complies with the reporting requirements of § 36-2608 is not subject to civil liability or other civil relief for reporting the information to the board.

**B. Unless a court of competent jurisdiction makes a finding of malice or criminal intent, the board, any other state agency or any person or entity in proper possession of information pursuant to this article is not subject to civil liability or other legal or equitable relief for any of the following acts or omissions:**

1. Furnishing information pursuant to this article.
- 2. Receiving, using or relying on, or not using or relying on, information received pursuant to this article.**
3. Information that was not furnished to the board.
4. Information that was factually incorrect or that was released by the board to the wrong person or entity.

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FLORIDA

S.B. 462, 111<sup>th</sup> Leg., Reg. Sess. (Fl. 2009)

Section 1. Section 893.055, Florida Statutes, is created to read:

893.055 Prescription drug monitoring program.-

(1) As used in this section, the term:

**(a) 'Patient advisory report' or 'advisory report' means information provided by the department in writing, or as determined by the department, to a prescriber, dispenser, pharmacy, or patient concerning the dispensing of controlled substances. All advisory reports are for informational purposes only and impose no obligations of any nature or any legal duty on a prescriber, dispenser, pharmacy, or patient. ...**

...

(12) A prescriber or dispenser may have access to the information under this section which relates to a patient of that prescriber or dispenser as needed for the purpose of reviewing the patient's controlled drug prescription history. **A prescriber or dispenser acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information from the prescription drug monitoring program. This subsection does not create a private cause of action, and a person may not recover damages against a prescriber or dispenser authorized to access information under this subsection for accessing or failing to access such information.**



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IDAHO

IDAHO CODE ANN. § 37-2730A (2008)

## § 37-2730A. Prescription tracking program

(1) The board shall maintain a program to track the prescriptions for controlled substances that are filed with the board under section 37-2726, Idaho Code, for the purpose of assisting in identifying illegal activity related to the dispensing of controlled substances and for the purpose of assisting the board in providing information to patients, practitioners and pharmacists to assist in avoiding inappropriate use of controlled substances. The tracking program and any data created thereby shall be administered by the board.

(2) The board shall use the information obtained through the tracking program in identifying activity it reasonably suspects may be in violation of this chapter or medical assistance law. The board shall report this information to the individuals and persons set forth in section 37-2726(2), Idaho Code. The board may provide the appropriate law enforcement agency, medicaid or medicare agency or licensing board with the relevant information in the board's possession, including information obtained from the tracking program, for further investigation, or other appropriate law enforcement or administrative enforcement use.

(3) Information, which does not identify individual patients, practitioners or dispensing pharmacists or pharmacies, may be released by the board for educational, research or public information purposes.

**(4) Unless there is shown malice or criminal intent or gross negligence or reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, the state of Idaho, the board, any other state agency, or any person, or entity in proper possession of information as herein provided shall not be subject to any liability or action for money damages or other legal or equitable relief by reason of any of the following:**

(a) The furnishing of information under the conditions herein provided;

(b) The receiving and use of, or reliance on, such information;

**(c) The fact that any such information was not furnished; or**

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- (d) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.
- (5) The board may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

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## ILLINOIS

720 ILL. COMP. STAT. ANN. 570/318 (West 2008)

### **570/318. Confidentiality of information**

§ 318. Confidentiality of information.

- (a) Information received by the central repository under Section 316 and 321 is confidential.
- (b) The Department must carry out a program to protect the confidentiality of the information described in subsection (a). The Department may disclose the information to another person only under subsection (c), (d), or (f) and may charge a fee not to exceed the actual cost of furnishing the information.
- (c) The Department may disclose confidential information described in subsection (a) to any person who is engaged in receiving, processing, or storing the information.
- (d) The Department may release confidential information described in subsection (a) to the following persons:
  - (1) A governing body that licenses practitioners and is engaged in an investigation, an adjudication, or a prosecution of a violation under any State or federal law that involves a controlled substance.
  - (2) An investigator for the Consumer Protection Division of the office of the Attorney General, a prosecuting attorney, the Attorney General, a deputy Attorney General, or an investigator from the office of the Attorney General, who is engaged in any of the following activities involving controlled substances:
    - (A) an investigation;
    - (B) an adjudication; or
    - (C) a prosecution of a violation under any State or federal law that involves a controlled substance.
  - (3) A law enforcement officer who is:

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(A) authorized by the Department of State Police or the office of a county sheriff or State's Attorney or municipal police department of Illinois to receive information of the type requested for the purpose of investigations involving controlled substances; or

(B) approved by the Department to receive information of the type requested for the purpose of investigations involving controlled substances; and

(C) engaged in the investigation or prosecution of a violation under any State or federal law that involves a controlled substance.

(e) Before the Department releases confidential information under subsection (d), the applicant must demonstrate in writing to the Department that:

(1) the applicant has reason to believe that a violation under any State or federal law that involves a controlled substance has occurred; and

(2) the requested information is reasonably related to the investigation, adjudication, or prosecution of the violation described in subdivision (1).

(f) The Department may receive and release prescription record information to:

(1) a governing body that licenses practitioners;

(2) an investigator for the Consumer Protection Division of the office of the Attorney General, a prosecuting attorney, the Attorney General, a deputy Attorney General, or an investigator from the office of the Attorney General;

(3) any Illinois law enforcement officer who is:

(A) authorized to receive the type of information released; and

(B) approved by the Department to receive the type of information released; or

(4) prescription monitoring entities in other states per the provisions outlined in subsection (g) and (h) below; confidential prescription record information collected under Sections 316 and 321 that identifies vendors or practitioners, or both, who are prescribing or dispensing large quantities of Schedule II, III, IV, or V controlled substances outside the scope of their practice, pharmacy, or business, as determined by the Advisory Committee created by Section 320.

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(g) The information described in subsection (f) may not be released until it has been reviewed by an employee of the Department who is licensed as a prescriber or a dispenser and until that employee has certified that further investigation is warranted. However, failure to comply with this subsection (g) does not invalidate the use of any evidence that is otherwise admissible in a proceeding described in subsection (h).

(h) An investigator or a law enforcement officer receiving confidential information under subsection (c), (d), or (f) may disclose the information to a law enforcement officer or an attorney for the office of the Attorney General for use as evidence in the following:

- (1) A proceeding under any State or federal law that involves a controlled substance.
- (2) A criminal proceeding or a proceeding in juvenile court that involves a controlled substance.

(i) The Department may compile statistical reports from the information described in subsection (a). The reports must not include information that identifies, by name, license or address, any practitioner, dispenser, ultimate user, or other person administering a controlled substance.

(j) Based upon federal, initial and maintenance funding, a prescriber and dispenser inquiry system shall be developed to assist the medical community in its goal of effective clinical practice and to prevent patients from diverting or abusing medications.

(1) An inquirer shall have read-only access to a stand-alone database which shall contain records for the previous 6 months.

(2) Dispensers may, upon positive and secure identification, make an inquiry on a patient or customer solely for a medical purpose as delineated within the federal HIPAA law.

(3) The Department shall provide a one-to-one secure link and encrypted software necessary to establish the link between an inquirer and the Department. Technical assistance shall also be provided.

(4) Written inquiries are acceptable but must include the fee and the requestor's Drug Enforcement Administration license number and submitted upon the requestor's business stationary.

(5) No data shall be stored in the database beyond 24 months.

(6) Tracking analysis shall be established and used per administrative rule.

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**(7) Nothing in this Act or Illinois law shall be construed to require a prescriber or dispenser to make use of this inquiry system.**

(8) If there is an adverse outcome because of a prescriber or dispenser making an inquiry, which is initiated in good faith, the prescriber or dispenser shall be held harmless from any civil liability.

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## INDIANA

IND. CODE ANN. § 35-48-7-11.1 (West 2008)

### **35-48-7-11.1 INSPECT program; confidentiality**

Sec. 11.1. (a) This section applies after June 30, 2007.

(b) Information received by the INSPECT program under section 8.1 of this chapter is confidential.

(c) The advisory committee shall carry out a program to protect the confidentiality of the information described in subsection (b). The advisory committee may disclose the information to another person only under subsection (d), (e), or (h).

(d) The advisory committee may disclose confidential information described in subsection (b) to any person who is authorized to engage in receiving, processing, or storing the information.

(e) Except as provided in subsections (f) and (g), the advisory committee may release confidential information described in subsection (b) to the following persons:

(1) A member of the board, the advisory committee, or another governing body that licenses practitioners and is engaged in an investigation, an adjudication, or a prosecution of a violation under any state or federal law that involves a controlled substance.

(2) An investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general, who is engaged in:

(A) an investigation;

(B) an adjudication; or

(C) a prosecution;

of a violation under any state or federal law that involves a controlled substance.

(3) A law enforcement officer who is an employee of:

(A) a local, state, or federal law enforcement agency; or

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(B) an entity that regulates controlled substances or enforces controlled substances rules or laws in another state;

that is certified to receive information from the INSPECT program.

(4) A practitioner or practitioner's agent certified to receive information from the INSPECT program.

(5) A controlled substance monitoring program in another state with which Indiana has established an interoperability agreement.

(f) Information provided to an individual under:

(1) subsection (e)(3) is limited to information:

(A) concerning an individual or proceeding involving the unlawful diversion or misuse of a schedule II, III, IV, or V controlled substance; and

(B) that will assist in an investigation or proceeding; and

(2) subsection (e)(4) may be released only for the purpose of:

(A) providing medical or pharmaceutical treatment; or

(B) evaluating the need for providing medical or pharmaceutical treatment to a patient.

(g) Before the advisory committee releases confidential information under subsection (e), the applicant must be approved by the INSPECT program in a manner prescribed by the advisory committee.

(h) The advisory committee may release to:

(1) a member of the board, the advisory committee, or another governing body that licenses practitioners;

(2) an investigator for the consumer protection division of the office of the attorney general, a prosecuting attorney, the attorney general, a deputy attorney general, or an investigator from the office of the attorney general; or



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(3) a law enforcement officer who is:

(A) authorized by the state police department to receive the type of information released; and

(B) approved by the advisory committee to receive the type of information released;

confidential information generated from computer records that identifies practitioners who are prescribing or dispensing large quantities of a controlled substance.

(i) The information described in subsection (h) may not be released until it has been reviewed by:

(1) a member of the advisory committee who is licensed in the same profession as the prescribing or dispensing practitioner identified by the data; or

(2) the advisory committee's designee;

and until that member or the designee has certified that further investigation is warranted. However, failure to comply with this subsection does not invalidate the use of any evidence that is otherwise admissible in a proceeding described in subsection (j).

(j) An investigator or a law enforcement officer receiving confidential information under subsection (d), (e), or (h) may disclose the information to a law enforcement officer or an attorney for the office of the attorney general for use as evidence in the following:

(1) A proceeding under IC 16-42-20.

(2) A proceeding under any state or federal law that involves a controlled substance.

(3) A criminal proceeding or a proceeding in juvenile court that involves a controlled substance.

(k) The advisory committee may compile statistical reports from the information described in subsection (b). The reports must not include information that identifies any practitioner, ultimate user, or other person administering a controlled substance. Statistical reports compiled under this subsection are public records.

**(l) This section may not be construed to require a practitioner to obtain information about a patient from the data base.**

**(m) A practitioner is immune from civil liability for an injury, death, or loss to a person solely due to a practitioner seeking or not seeking information from the INSPECT**

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**program. The civil immunity described in this subsection does not extend to a practitioner if the practitioner receives information directly from the INSPECT program and then negligently misuses this information. This subsection does not apply to an act or omission that is a result of gross negligence or intentional misconduct.**

(n) The advisory committee may review the records of the INSPECT program. If the advisory committee determines that a violation of the law may have occurred, the advisory committee shall notify the appropriate law enforcement agency or the relevant government body responsible for the licensure, regulation, or discipline of practitioners authorized by law to prescribe controlled substances.

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# Immunity for Failing to Access & Requirements to Access PMP Data

IOWA

IOWA CODE ANN. § 124.553 (West 2008)

## **124.553. Information access**

1. The board may provide information from the program to the following:

a. (1) A pharmacist or prescribing practitioner who requests the information and certifies in a form specified by the board that it is for the purpose of providing medical or pharmaceutical care to a patient of the pharmacist or prescribing practitioner. Neither a pharmacist nor a prescribing practitioner may delegate program information access to another individual.

(2) Notwithstanding subparagraph (1), a prescribing practitioner may delegate program information access to another licensed health care professional only in emergency situations where the patient would be placed in greater jeopardy if the prescribing practitioner was required to access the information personally.

b. An individual who requests the individual's own program information in accordance with the procedure established in rules of the board and advisory council adopted under section 124.554.

c. Pursuant to an order, subpoena, or other means of legal compulsion for access to or release of program information that is issued based upon a determination of probable cause in the course of a specific investigation of a specific individual.

2. The board shall maintain a record of each person that requests information from the program. Pursuant to rules adopted by the board and advisory council under section 124.554, the board may use the records to document and report statistical information.

3. Information contained in the program and any information obtained from it, and information contained in the records of requests for information from the program, is privileged and strictly confidential information. Such information is a confidential public record pursuant to section 22.7, and is not subject to discovery, subpoena, or other means of legal compulsion for release except as provided in this division. Information from the program shall not be released, shared with an agency or institution, or made public except as provided in this division.

4. Information collected for the program shall be retained in the program for four years from the date of dispensing. The information shall then be destroyed.

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5. A pharmacist or other dispenser making a report to the program reasonably and in good faith pursuant to this division is immune from any liability, civil, criminal, or administrative, which might otherwise be incurred or imposed as a result of the report.

**6. Nothing in this section shall require a pharmacist or prescribing practitioner to obtain information about a patient from the program. A pharmacist or prescribing practitioner does not have a duty and shall not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or prescribing practitioner did or did not seek or obtain or use information from the program. A pharmacist or prescribing practitioner acting reasonably and in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving or using information from the program.**

7. The board shall not charge a fee to a pharmacy, pharmacist, or prescribing practitioner for the establishment, maintenance, or administration of the program, including costs for forms required to submit information to or access information from the program, except that the board may charge a fee to an individual who requests the individual's own program information. A fee charged pursuant to this subsection shall not exceed the actual cost of providing the requested information and shall be considered a repayment receipt as defined in section 8.2.

Iowa Admin. Code 657-37.1(124) (2009)

### **657-37.1(124) Purpose.**

These rules establish a prescription monitoring program that compiles a central database of reportable prescriptions dispensed to patients in Iowa. **An authorized health care practitioner may, but is not required to, access prescription monitoring program (PMP) information regarding the practitioner's patient to assist in determining appropriate treatment options and to improve the quality of patient care.** The PMP is intended to provide a health care practitioner with a resource for information regarding a patient's use of controlled substances. This database will assist the practitioner in identifying any potential diversion, misuse, or abuse of controlled substances without impeding the appropriate medical use of controlled substances.

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KANSAS

KAN. STAT. ANN. § 65-1688 (2008)

### **65-1688 Same; act does not create civil liability or duty**

**No person authorized to prescribe or dispense scheduled substances and drugs of concern shall be liable to any person in a civil action for damages or other relief for injury, death or loss to person or property on the basis that such person authorized to prescribe or dispense scheduled substances and drugs of concern did or did not seek or obtain information from the prescription monitoring program prior to prescribing or dispensing scheduled substances and drug of concern to a patient. Nothing in this act shall be construed to create a duty or otherwise require a person authorized to prescribe or dispense scheduled substances and drug of concern to obtain information about a patient from the prescription monitoring program prior to prescribing or dispensing scheduled substances and drug of concern to such patient.**

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### MINNESOTA

MINN. STAT. ANN. § 152.126 (West 2008) (as amended by 2008 S.F. 2941)

#### **152.126. Schedule II and III controlled substances prescription electronic reporting system**

Subdivision 1. Definitions. For purposes of this section, the terms defined in this subdivision have the meanings given.

- (a) “Board” means the Minnesota State Board of Pharmacy established under chapter 151.
- (b) “Controlled substances” means those substances listed in section 152.02, subdivisions 3 to 5, and those substances defined by the board pursuant to section 152.02, subdivisions 7, 8, and 12.
- (c) “Dispense” or “dispensing” has the meaning given in section 151.01, subdivision 30. Dispensing does not include the direct administering of a controlled substance to a patient by a licensed health care professional.
- (d) “Dispenser” means a person authorized by law to dispense a controlled substance, pursuant to a valid prescription. For the purposes of this section, a dispenser does not include a licensed hospital pharmacy that distributes controlled substances for inpatient hospital care or a veterinarian who is dispensing prescriptions under section 156.18.
- (e) “Prescriber” means a licensed health care professional who is authorized to prescribe a controlled substance under section 152.12, subdivision 1.
- (f) “Prescription” has the meaning given in section 151.01, subdivision 16.

Subd. 1a. Treatment of intractable pain. This section is not intended to limit or interfere with the legitimate prescribing of controlled substances for pain. No prescriber shall be subject to disciplinary action by a health-related licensing board for prescribing a controlled substance according to the provisions of section 152.125.

Subd. 2. Prescription electronic reporting system. (a) The board shall establish by January 1, 2010, an electronic system for reporting the information required under subdivision 4 for all controlled substances dispensed within the state.

(b) The board may contract with a vendor for the purpose of obtaining technical assistance in the design, implementation, operation, and maintenance of the electronic reporting system.

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Subd. 3. Prescription Electronic Reporting Advisory Committee. (a) The board shall convene an advisory committee. The committee must include at least one representative of:

- (1) the Department of Health;
- (2) the Department of Human Services;
- (3) each health-related licensing board that licenses prescribers;
- (4) a professional medical association, which may include an association of pain management and chemical dependency specialists;
- (5) a professional pharmacy association;
- (6) a professional nursing association;
- (7) a professional dental association;
- (8) a consumer privacy or security advocate; and
- (9) a consumer or patient rights organization.

(b) The advisory committee shall advise the board on the development and operation of the electronic reporting system, including, but not limited to:

- (1) technical standards for electronic prescription drug reporting;
- (2) proper analysis and interpretation of prescription monitoring data; and
- (3) an evaluation process for the program.

(c) The Board of Pharmacy, after consultation with the advisory committee, shall present recommendations and draft legislation on the issues addressed by the advisory committee under paragraph (b), to the legislature by December 15, 2007.

Subd. 4. Reporting requirements; notice. (a) Each dispenser must submit the following data to the board or its designated vendor, subject to the notice required under paragraph (d):

- (1) name of the prescriber;

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- (2) national provider identifier of the prescriber;
- (3) name of the dispenser;
- (4) national provider identifier of the dispenser;
- (5) prescription number;
- (6) name of the patient for whom the prescription was written;
- (7) address of the patient for whom the prescription was written;
- (8) date of birth of the patient for whom the prescription was written;
- (9) date the prescription was written;
- (10) date the prescription was filled;
- (11) name and strength of the controlled substance;
- (12) quantity of controlled substance prescribed;
- (13) quantity of controlled substance dispensed; and
- (14) number of days supply.

(b) The dispenser must submit the required information by a procedure and in a format established by the board. The board may allow dispensers to omit data listed in this subdivision or may require the submission of data not listed in this subdivision provided the omission or submission is necessary for the purpose of complying with the electronic reporting or data transmission standards of the American Society for Automation in Pharmacy, the National Council on Prescription Drug Programs, or other relevant national standard-setting body.

(c) A dispenser is not required to submit this data for those controlled substance prescriptions dispensed for:

- (1) individuals residing in licensed skilled nursing or intermediate care facilities;
- (2) individuals receiving assisted living services under chapter 144G or through a medical assistance home and community-based waiver;

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- (3) individuals receiving medication intravenously;
- (4) individuals receiving hospice and other palliative or end-of-life care; and
- (5) individuals receiving services from a home care provider regulated under chapter 144A.

(d) A dispenser must not submit data under this subdivision unless a conspicuous notice of the reporting requirements of this section is given to the patient for whom the prescription was written.

Subd. 5. Use of data by board. (a) The board shall develop and maintain a database of the data reported under subdivision 4. The board shall maintain data that could identify an individual prescriber or dispenser in encrypted form. The database may be used by permissible users identified under subdivision 6 for the identification of:

(1) individuals receiving prescriptions for controlled substances from prescribers who subsequently obtain controlled substances from dispensers in quantities or with a frequency inconsistent with generally recognized standards of use for those controlled substances, including standards accepted by national and international pain management associations; and

(2) individuals presenting forged or otherwise false or altered prescriptions for controlled substances to dispensers.

(b) No permissible user identified under subdivision 6 may access the database for the sole purpose of identifying prescribers of controlled substances for unusual or excessive prescribing patterns without a valid search warrant or court order.

(c) No personnel of a state or federal occupational licensing board or agency may access the database for the purpose of obtaining information to be used to initiate or substantiate a disciplinary action against a prescriber.

(d) Data reported under subdivision 4 shall be retained by the board in the database for a 12-month period, and shall be removed from the database 12 months from the date the data was received.

Subd. 6. Access to reporting system data. (a) Except as indicated in this subdivision, the data submitted to the board under subdivision 4 is private data on individuals as defined in section 13.02, subdivision 12, and not subject to public disclosure.

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(b) Except as specified in subdivision 5, the following persons shall be considered permissible users and may access the data submitted under subdivision 4 in the same or similar manner, and for the same or similar purposes, as those persons who are authorized to access similar private data on individuals under federal and state law:

(1) a prescriber, to the extent the information relates specifically to a current patient, to whom the prescriber is prescribing or considering prescribing any controlled substance;

(2) a dispenser, to the extent the information relates specifically to a current patient to whom that dispenser is dispensing or considering dispensing any controlled substance;

(3) an individual who is the recipient of a controlled substance prescription for which data was submitted under subdivision 4, or a guardian of the individual, parent or guardian of a minor, or health care agent of the individual acting under a health care directive under chapter 145C;

(4) personnel of the board specifically assigned to conduct a bona fide investigation of a specific licensee;

(5) personnel of the board engaged in the collection of controlled substance prescription information as part of the assigned duties and responsibilities under this section;

(6) authorized personnel of a vendor under contract with the board who are engaged in the design, implementation, operation, and maintenance of the electronic reporting system as part of the assigned duties and responsibilities of their employment, provided that access to data is limited to the minimum amount necessary to carry out such duties and responsibilities;

(7) federal, state, and local law enforcement authorities acting pursuant to a valid search warrant; and

(8) personnel of the medical assistance program assigned to use the data collected under this section to identify recipients whose usage of controlled substances may warrant restriction to a single primary care physician, a single outpatient pharmacy, or a single hospital.

For purposes of clause (3), access by an individual includes persons in the definition of an individual under section 13.02.

(c) Any permissible user identified in paragraph (b), who directly accesses the data electronically, shall implement and maintain a comprehensive information security program that contains administrative, technical, and physical safeguards that are appropriate to the user's size and complexity, and the sensitivity of the personal information obtained. The permissible user

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shall identify reasonably foreseeable internal and external risks to the security, confidentiality, and integrity of personal information that could result in the unauthorized disclosure, misuse, or other compromise of the information and assess the sufficiency of any safeguards in place to control the risks.

(d) The board shall not release data submitted under this section unless it is provided with evidence, satisfactory to the board, that the person requesting the information is entitled to receive the data.

(e) The board shall not release the name of a prescriber without the written consent of the prescriber or a valid search warrant or court order. The board shall provide a mechanism for a prescriber to submit to the board a signed consent authorizing the release of the prescriber's name when data containing the prescriber's name is requested.

(f) The board shall maintain a log of all persons who access the data and shall ensure that any permissible user complies with paragraph (c) prior to attaining direct access to the data.

(g) Section 13.05, subdivision 6, shall apply to any contract the board enters into pursuant to subdivision 2. A vendor shall not use data collected under this section for any purpose not specified in this section.

Subd. 7. Disciplinary action. (a) A dispenser who knowingly fails to submit data to the board as required under this section is subject to disciplinary action by the appropriate health-related licensing board.

(b) A prescriber or dispenser authorized to access the data who knowingly discloses the data in violation of state or federal laws relating to the privacy of health care data shall be subject to disciplinary action by the appropriate health-related licensing board, and appropriate civil penalties.

Subd. 8. Evaluation and reporting. (a) The board shall evaluate the prescription electronic reporting system to determine if the system is negatively impacting appropriate prescribing practices of controlled substances. The board may contract with a vendor to design and conduct the evaluation.

(b) The board shall submit the evaluation of the system to the legislature by January 15, 2011.

**Subd. 9. Immunity from liability; no requirement to obtain information. (a) A pharmacist, prescriber, or other dispenser making a report to the program in good faith under this section is immune from any civil, criminal, or administrative liability, which might**

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**otherwise be incurred or imposed as a result of the report, or on the basis that the pharmacist or prescriber did or did not seek or obtain or use information from the program.**

**(b) Nothing in this section shall require a pharmacist, prescriber, or other dispenser to obtain information about a patient from the program, and the pharmacist, prescriber, or other dispenser, if acting in good faith, is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting, receiving, or using information from the program.**

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### NEVADA

NEV. REV. STAT. ANN. § 639.23507 (West 2007)

*Please note that this Nevada provision requires practitioners to review patient data before issuing a prescription if the practitioner has a reasonable belief that the patient may be seeking the controlled substance for any reason other than treatment of an existing medical condition – all other provisions referenced in this document provide immunity for practitioners who do not access patient data before issuing prescriptions.*

#### **639.23507. Patient utilization report required before writing prescription for controlled substance**

**A practitioner shall, before he writes a prescription for a controlled substance listed in schedule II, III or IV for a patient, obtain a patient utilization report regarding the patient for the preceding 12 months from the computerized program established by the Board and the Investigation Division of the Department of Public Safety pursuant to NRS 453.1545 if the practitioner has a reasonable belief that the patient may be seeking the controlled substance, in whole or in part, for any reason other than the treatment of an existing medical condition and:**

- 1. The patient is a new patient of the practitioner; or**
- 2. The patient has not received any prescription for a controlled substance from the practitioner in the preceding 12 months.**

**The practitioner shall review the patient utilization report to assess whether the prescription for the controlled substance is medically necessary.**

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NORTH DAKOTA

N.D. CENT. CODE § 19-03.5-05 (2007)

## § 19-03.5-05. Immunity

**Nothing in this chapter requires a prescriber or dispenser to obtain information about a patient from the central repository prior to prescribing or dispensing a controlled substance. A prescriber, dispenser, or other health care practitioner may not be held liable in damages to any person in any civil action on the basis that the prescriber, dispenser, or other health care practitioner did or did not seek to obtain information from the central repository.** Unless there is shown a lack of good faith, the board, any other state agency, a prescriber, dispenser, or any other individual in proper possession of information provided under this chapter may not be subject to any civil liability by reason of:

1. The furnishing of information under the conditions provided in this chapter;
2. The receipt and use of, or reliance on, such information;
3. The fact that any such information was not furnished; or
4. The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

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OHIO

OHIO REV. CODE ANN. § 4729.79 (West 2008)

### **4729.79 Disclosure of database information; disclosure of requests for database information**

(A) If the state board of pharmacy establishes and maintains a drug database pursuant to section 4729.75 of the Revised Code, the board may provide information from the database in accordance with the following:

(1) On receipt of a request from a designated representative of a government entity responsible for the licensure, regulation, or discipline of licensed health care professionals authorized to prescribe drugs, the board may provide to the representative information from the database relating to the professional who is the subject of an active investigation being conducted by the government entity.

(2) On receipt of a request from a federal officer, or a state or local officer of this or any other state, whose duties include enforcing laws relating to drugs, the board may provide to the officer information from the database relating to the person who is the subject of an active investigation being conducted by the officer's employing government entity.

(3) Pursuant to a subpoena issued by a grand jury, the board may provide to the grand jury information from the database relating to the person who is the subject of an investigation being conducted by the grand jury.

(4) On receipt of a request from a pharmacist or prescriber, the board may provide to the requestor information from the database relating to a current patient of the requestor, if the requestor certifies in a form specified by the board that it is for the purpose of providing medical or pharmaceutical treatment to the patient who is the subject of the request.

(5) On receipt of a request from an individual seeking the individual's own database information in accordance with the procedure established in rules adopted under section 4729.83 of the Revised Code, the board may provide to the individual the individual's own database information.

(B) The state board of pharmacy shall maintain a record of each individual or entity that requests information from the database pursuant to this section. In accordance with rules adopted under section 4729.83 of the Revised Code, the board may use the records to document and report statistics and law enforcement outcomes.

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The board may provide records of an individual's requests for database information to the following:

(1) A designated representative of a government entity that is responsible for the licensure, regulation, or discipline of licensed health care professionals authorized to prescribe drugs who is involved in an active investigation being conducted by the government entity of the individual who submitted the requests for database information;

(2) A federal officer, or a state or local officer of this or any other state, whose duties include enforcing laws relating to drugs and who is involved in an active investigation being conducted by the officer's employing government entity of the individual who submitted the requests for database information.

(C) Information contained in the database and any information obtained from it is not a public record. Information contained in the records of requests for information from the database is not a public record. Information that does not identify a person may be released in summary, statistical, or aggregate form.

**(D) Nothing in this section requires a pharmacist or prescriber to obtain information about a patient from the database. A pharmacist or prescriber shall not be held liable in damages to any person in any civil action for injury, death, or loss to person or property on the basis that the pharmacist or prescriber did or did not seek or obtain information from the database.**



## Immunity for Failing to Access & Requirements to Access PMP Data

OKLAHOMA

OKLA. STAT. ANN. tit. 63, § 2-309D (West 2008)

### **§ 2-309D. Central repository information--Confidentiality--Access-- Disclosure-- Penalties—Liability**

A. The information collected at the central repository pursuant to the Anti-Drug Diversion Act shall be confidential and shall not be open to the public. Access to the information shall be limited to:

1. Peace officers certified pursuant to Section 3311 of Title 70 of the Oklahoma Statutes who are employed as investigative agents of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control;

2. The United States Drug Enforcement Administration Diversion Group Supervisor;

3. The executive director or chief investigator, as designated by each board, of the following state boards:

a. Board of Podiatric Medical Examiners,

b. Board of Dentistry,

c. Board of Pharmacy,

d. State Board of Medical Licensure and Supervision,

e. State Board of Osteopathic Examiners, and

f. State Board of Veterinary Medical Examiners;

provided, however, that the executive director or chief investigator of each of these boards shall be limited to access to information relevant to licensees of the employing board of such executive director or chief investigator; and

4. A multicounty grand jury properly convened pursuant to the Multicounty Grand Jury Act, Sections 350 through 363 of Title 22 of the Oklahoma Statutes.

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B. This section shall not prevent the disclosure, at the discretion of the Director of the Oklahoma Bureau of Narcotics and Dangerous Drugs Control, of investigative information to peace officers and investigative agents of federal, state, county or municipal law enforcement agencies, district attorneys and the Attorney General in furtherance of criminal investigations or prosecutions within their respective jurisdictions, and to registrants in furtherance of efforts to guard against the diversion of controlled dangerous substances.

C. Any unauthorized disclosure of any information collected at the central repository provided by the Anti-Drug Diversion Act shall be a misdemeanor. Violation of the provisions of this section shall be deemed willful neglect of duty and shall be grounds for removal from office.

**D. Notwithstanding the provisions of subsection B, registrants shall have no requirement or obligation to access or check the information in the central repository prior to dispensing or administering medications or as part of their professional practices. Registrants shall not be liable to any person for any claim of damages as a result of accessing or failing to access the information in the central repository and no lawsuit may be predicated thereon. Nothing herein shall be construed to relieve a registrant from any duty to monitor and report the sales of certain products pursuant to subsection E of Section 2- 309C of this title.**

# Immunity for Failing to Access & Requirements to Access PMP Data

## OREGON

S.B. 355, 75<sup>th</sup> Leg., Reg. Sess. (Or. 2009)

### SECTION 4.

(1)(a) Except as provided under subsection (2) of this section, prescription monitoring information submitted under section 3 of this 2009 Act to the prescription monitoring program established in section 2 of this 2009 Act:

(A) Is protected health information under ORS 192.518 to 192.529.

(B) Is not subject to disclosure pursuant to ORS 192.410 to 192.505.

(b) Except as provided under subsection (2)(a)(D) of this section, prescription monitoring information submitted under section 3 of this 2009 Act to the prescription monitoring program may not be used to evaluate a practitioner's professional practice.

(2)(a) If a disclosure of prescription monitoring information complies with the federal Health Insurance Portability and Accountability Act of 1996 (P.L. 104- 191) and regulations adopted under it, including 45 C.F.R. parts 160 and 164, federal alcohol and drug treatment confidentiality laws and regulations adopted under those laws, including 42 C.F.R. part 2, and state health and mental health confidentiality laws, including ORS 179.505, 192.517 and 192.518 to 192.529, the Department of Human Services shall disclose the information:

(A) To a practitioner or pharmacist who certifies that the requested information is for the purpose of evaluating the need for or providing medical or pharmaceutical treatment for a patient to whom the practitioner or pharmacist anticipates providing, is providing or has provided care.

(B) To designated representatives of the department or any vendor or contractor with whom the department has contracted to establish or maintain the electronic system of the prescription monitoring program.

(C) Pursuant to a valid court order based on probable cause and issued at the request of a federal, state or local law enforcement agency engaged in an authorized drug-related investigation involving a person to whom the requested information pertains.

(D) To a health professional regulatory board that certifies in writing that the requested information is necessary for an investigation related to licensure, renewal or disciplinary action involving the applicant, licensee or registrant to whom the requested information pertains.

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(E) To a prescription monitoring program of another state if the confidentiality, security and privacy standards of the requesting state are determined by the department to be equivalent to those of the department.

(b) The department may disclose information from the prescription monitoring program that does not identify a patient, practitioner or drug outlet:

(A) For educational, research or public health purposes; and

(B) To officials of the department who are conducting special epidemiologic morbidity and mortality studies in accordance with ORS 432.060 and rules adopted under ORS 431.110.

(c) The department shall disclose information relating to a patient maintained in the electronic system operated pursuant to the prescription monitoring program established under section 2 of this 2009 Act to that patient at no cost to the patient within 10 business days after the department receives a request from the patient for the information.

(d)(A) A patient may request the department to correct any information about the patient that is erroneous. The department shall grant or deny a request to correct information within 10 business days after the department receives the request.

(B) If the department denies a patient's request to correct information under this paragraph, or fails to grant a patient's request to correct information under this paragraph within 10 business days after the department receives the request, the

patient may appeal the denial or failure to grant the request. Upon receipt of an appeal under this subparagraph, the department shall conduct a contested case hearing as provided in ORS chapter 183. Notwithstanding ORS 183.450, in the contested case hearing, the department has the burden of establishing that the information included in the prescription monitoring program is correct.

(e) The information in the prescription monitoring program may not be used for any commercial purpose.

(f) In accordance with ORS 192.518 to 192.529 and federal privacy regulations, any person authorized to prescribe or dispense a prescription drug and who is entitled to access a patient's prescription monitoring information may discuss or release the information to other health care providers involved with the patient's care, in order to provide safe and appropriate care coordination.

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(3)(a) The department shall maintain records of the information disclosed through the prescription monitoring program including, but not limited to:

(A) The identity of each person who requests or receives information from the program and the organization, if any, the person represents;

(B) The information released to each person or organization; and

(C) The date and time the information was requested and the date and time the information was provided.

(b) Records maintained as required by this subsection may be reviewed by the Prescription Monitoring Program Advisory Commission.

(4) Information in the prescription monitoring program that identifies an individual patient must be removed no later than three years from the date the information is entered into the program.

(5) The department shall notify the Attorney General and each affected individual of an improper disclosure of information from the prescription monitoring program.

(6)(a) If the department or a person or entity required to report or authorized to receive or release controlled substance prescription information under this section violates section 3, 4 or 5 of this 2009 Act, a person injured by the violation may bring a civil action against the department, person or entity and may recover damages in the amount of \$1,000 or actual damages, whichever is greater.

(b) Notwithstanding paragraph (a) of this subsection, the department and a person or entity required to report or authorized to receive or release controlled substance prescription information under this section are immune from civil liability for violations of section 3, 4 or 5 of this 2009 Act unless the department, person or entity acts with malice, criminal intent, gross negligence, recklessness or willful intent.

**(7) Nothing in sections 2 to 11 of this 2009 Act requires a practitioner or pharmacist who prescribes or dispenses a prescription drug to obtain information about a patient from the prescription monitoring program. A practitioner or pharmacist who prescribes or dispenses a prescription drug may not be held liable for damages in any civil action on the basis that the practitioner or pharmacist did or did not request or obtain information from the prescription monitoring program.**

## Immunity for Failing to Access & Requirements to Access PMP Data

### SOUTH CAROLINA

S.C. CODE ANN. § 44-53-1680 (2007)

#### **§ 44-53-1680. Violations and penalties.**

(A) A dispenser who knowingly fails to submit prescription monitoring information to drug control as required by this article, or who knowingly submits incorrect prescription information, is guilty of a misdemeanor, and upon conviction, must be fined not more than two thousand dollars or imprisoned not more than two years, or both.

(B) A person or persons authorized to have prescription monitoring information pursuant to this article who knowingly discloses this information in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

(C) A person or persons authorized to have prescription monitoring information pursuant to this article who uses this information in a manner or for a purpose in violation of this article is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned not more than ten years, or both.

**(D) Nothing in this chapter requires a pharmacist or practitioner to obtain information about a patient from the prescription monitoring program. A pharmacist or practitioner does not have a duty and must not be held liable in damages to any person in any civil or derivative criminal or administrative action for injury, death, or loss to person or property on the basis that the pharmacist or practitioner did or did not seek or obtain information from the prescription monitoring program.** A pharmacist or practitioner acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for requesting or receiving information from the prescription monitoring program.

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### WYOMING

WY. Bd. Of Pharmacy, Rules and Regs., ch. 8, § 3 (2008)

#### Section 3. Solicited Patient Profiles.

a. Occupational licensing boards may request licensee profiles from the board provided the following are met:

- i. All requests must be on a form provided by the board and include the name and license number of the licensee;
- ii. The purpose of the request, the date range requested, and the specific reasons for this request;
- iii. The signature of the authorized agent and mailing address for the occupational licensing board;
- iv. The request shall be mailed or faxed to the board's office; and
- v. No licensee profile will be generated by the board until the request is received, and no licensee profile will be sent to an occupational licensing board unless those requirements identified in W.S. §35-7-1060 (c)(ii) have been met. All profiles generated by the board will be mailed to the occupational licensing board, and marked "confidential, to be opened by addressee only".

#### **b. Pharmacists and practitioners are under no obligation to, but may request patient profiles from the board provided the following conditions are met:**

- i. All requests must be submitted on a form provided by the board and must be mailed or faxed to the board's office;
- ii. All requests must be signed by the pharmacist or practitioner requesting the information and include the business name/address of the pharmacist or practitioner;
- iii. All requests shall include the patient's name, date of birth, purpose of the request, and the date range for the profile;
- iv. A statement indicating a pharmacist/patient or practitioner/patient relationship exists; and
- v. All profiles generated by the board shall be faxed or mailed to the pharmacist or practitioner at their business address, and if mailed marked "confidential, to be opened by addressee only".

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- c. Patients, their authorized agent, or in the case of a minor, the minor's parent or guardian may request a copy of the patient's profile from the board's office provided the following are met:
- i. All requests shall be made in person at the board's office. The patient requesting the profile or an authorized agent of the patient or parent's or guardians of minors requesting a profile must have proof of identification acceptable to the board;
  - ii. Any person making a request for a profile shall complete a form provided by the board. Any profile generated by the board will be available at the board's office, the same day of the request.

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