Statutory Immunity/Protective Language for Failing to Access PMP Information

Alabama (on point)

ALA. CODE. § 20-2-214(2) (West 2005)

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 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 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.

(4) 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.

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

Idaho (subject to interpretation)

IDAHO CODE § 37-2730A(6)(c) (Michie 2005)

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 may report this information to the appropriate law enforcement agency, medicaid or medicare agency or licensing board. The board may provide the agency or 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) The board may, in its discretion, authorize release of information from the tracking program to patients, practitioners and pharmacists where release of such information may be of assistance in preventing or avoiding inappropriate use of controlled substances.

(4) Information obtained from the program is confidential and, except as otherwise provided by this section, must not be disclosed by the board or by any recipient of such information from the board, provided however, such information must be disclosed:

(a) Upon the request of a person about whom the information requested concerns or upon the request on his behalf by his attorney; or

(b) Upon the lawful order of a court of competent jurisdiction.

(5) 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.

(6) 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

(d) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

(7) 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.

Indiana (subject to interpretation)

IND. CODE ANN. § 35-48-7-9(b) (West 2005)

Controlled substance prescription monitoring program; costs

Sec. 9. (a) The health professions bureau or the central repository is responsible for the costs of the program, including the following costs:

(1) Telephone access charges, line charges, and switch charges for transmission of data by dispensers to the central repository.
(2) Purchase of modems and other hardware required for program participation.
(3) Software and software modifications to allow dispensers to participate in the program.

(b) A dispenser may not be penalized for failure to comply with the program if the health professions bureau or the central repository cannot secure adequate funding to implement the program and cover the costs under subsection (a).

Ohio (on point)

OHIO REV. CODE ANN. § 4729.79(D) (West 2005)

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.

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.

Oklahoma (on point)

OKLA. STAT. ANN. tit. 63, § 2-309.D (West 2005)

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.

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.