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Pharmacists License Defense Case Scenario with Risk Management Strategies

Case Study: Fraud; administration errors

Total Incurred: Over \$10,000

(Monetary amounts represent only the legal expenses paid on behalf of the insured pharmacist.)

Summary

Over the course of a three-year period, the State Board of Pharmacy received at least four complaints from other state licensing agencies alleging that the insured's pharmacy had shipped prescribed medications into their jurisdictions without having the proper pharmacy license. Further, these states alleged that it was unlawful to ship prescription drugs into their jurisdictions when the prescription issued by the prescribing practitioner resulted from an online questionnaire.

At the start of the state pharmacy board's investigation into these allegations, a state board inspector completed an online medical questionnaire on a website that was named in the complaints. The investigator submitted an online order for thirty (30), 50 mg Tramadol tablets. The investigator never met with, nor talked to, a prescribing practitioner. About four days later, the investigator received a shipment containing the thirty (30), 50 mg Tramadol tablets, matching the prescription medication that the investigator had ordered through the online medical questionnaire and website. The package indicated that it had been shipped from the insured's pharmacy.

Two days later, the investigator interviewed the insured pharmacist at the pharmacy. During the interview, the pharmacist acknowledged that he originally intended for his pharmacy to dispense prescriptions for local long-term care and assisted living facilities, however, he had been unable to obtain any contracts with such facilities. Therefore, he entered into a business relationship with several online prescription processing companies and began filling prescriptions. The insured acknowledged that these companies contracted with various prescribing practitioners who reviewed each patient's online questionnaires and then issued prescriptions for requested medications, but he did not know whether the prescribing practitioners were licensed to practice in the state where the pharmacy was located. Additionally, even though the pharmacy was only licensed to operate as a retail pharmacy in the state where the pharmacy was located, the pharmacist also acknowledged that his pharmacy would dispense and ship medications to other states once the pharmacy received a prescription from one of the prescription processing companies.

A regulatory board complaint can be filed against a pharmacist by a patient, colleague, employer, and/or regulatory agency. Complaints are subsequently investigated by the board, leading to results ranging from no action against the pharmacist to surrender or revocation of the pharmacist's license to practice. This case study involves an insured, licensed pharmacist who owned a pharmacy that was licensed as a retail pharmacy.



While the investigator interviewed the pharmacist, he observed a non-licensed pharmacy employee retrieve electronic prescriptions from a prescription processing company's website. The employee logged into a secure portal of the website, where she retrieved and printed out prescriptions and prescription labels that had allegedly been approved and transmitted by the contracted prescriber and the prescription processing company. At the same time, the pharmacist's wife accessed a restricted area of the pharmacy by inputting an access code into the electronic door lock. The wife entered through an open door leading directly into the pharmacy area, where she stayed for about ten minutes while the pharmacist and the investigator talked in a back office of the pharmacy. The pharmacist later admitted that he had given the code to the electronic door to his wife, who was also non-licensed.

Risk Management Comments

The State Board of Pharmacy opined that the pharmacy should have been licensed as a closed-door pharmacy, as opposed to a retail pharmacy, as it did not operate as a retail pharmacy. Furthermore, as the pharmacist-in-charge, the insured had submitted a pharmacy self-inspection report to the state declaring that the "facility is not affiliated with and does not

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dispense prescription medications for internet pharmacy sites or third-party processors.” This made it difficult to defend the pharmacist’s actions.

Additionally, the agreements that the pharmacist, as owner and operator of the pharmacy, entered into with the prescription processing companies required that the pharmacist hold all licenses or permits required to dispense medications to residents of the state(s) where medications were being delivered, and that the pharmacist would comply with all applicable state laws and regulations.

➤ Risk Management Comments

The State Board of Pharmacy put the pharmacist on probation for five years. During this probation period, he was prohibited from working as a pharmacist-in-charge at any pharmacy and he was required to notify any employer of his restricted status and the terms of his probation. The pharmacist was also required to complete continuing education on ethics and pharmacy law and pay a fine of \$6,000.

➤ Risk Control Recommendations

- **Be aware of and follow all relevant statutes and regulations** regarding prescriptions provided for patients via telemedicine/telehealth.
- **Clarify any ambiguity or concerns with the prescription and the prescriber.** Do not fill or dispense any prescription you are uncomfortable with or for which you have concerns.

- **Potential telemedicine/telehealth partners should be evaluated** in terms of clinical, technical, and cultural affinity.
- **Business associate agreements with telemedicine/telehealth partners should be reviewed by legal counsel**, and should articulate responsibilities for originating and partner sites.
- **Implement a standardized process for credentialing pharmacy staff.** Credentialing should be performed on initial hiring and annually.
- **At least annually, have pharmacy staff complete an educational program**, including education on topics such as ways to avoid errors with High –Alert Medications, narrow therapeutics index medications, and other error-prone medications or devices.

Guide to Sample Risk Management Plan

Risk Management is an integral part of a healthcare professional’s standard business practice. Risk Management activities include identifying and evaluating risks, followed by implementing the most advantageous methods of reducing or eliminating these risks – a good Risk Management Plan will help you perform these steps quickly and easily!

Visit www.hpso.com/risktemplate to access the Risk Management plan created by HPSO and CNA. We encourage you to use this as a guide to develop your own risk management plan to meet the specific needs of your healthcare practice.



*CNA HealthPro 2013 Pharmacist Liability, CNA Insurance Company, March 2013. To read the complete study along with risk management recommendations, visit www.hpso.com/pharmclaimreport2013.

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