

## Response to ACLU Questions

Background provided to Oregon State Pharmacy Association and Oregon Pain Commission by Oregon Board of Pharmacy

November, 2009 Statement on ACLU Oregon's web site:  
"Oregon Wants to Monitor Your Use of Legal Prescription Medications"

### **1. "... the database will treat *all Oregonians* as potential drug addicts".**

In reality, the current proposed database is specifically designed so that it will not recognize or identify any Oregonian unless: a) a doctor inquires about his own patient's drug utilization, b) a pharmacist inquires about a patient for whom he or she has, or is being asked to, dispense a prescription controlled substance, c) blatant doctor shopping or pharmacy hopping is evident in internal program audits or, d) a law enforcement official presents a court order issued for cause in the course of a drug related investigation of that specific named individual. It is the intention of this program to make specific limited patient information (specific to their particular patient) available to practitioners and pharmacists who are involved in prescribing or dispensing controlled substance prescriptions.

An example PMP program reveals an estimated 90% of reports are generated for prescribers, 8% for pharmacists and 2% for law enforcement or regulatory boards. Access to these reports is strictly limited by credentialing processes, encryption of pass-codes, multiple levels of security and strict criteria and processes to grant access.

### **2. The Board of Pharmacy wants to collect this personal information but refuses to recognize the need for security safeguards.**

In reality, this is not simply a Board of Pharmacy program. The board does recognize a very serious need for security safeguards in the event the proposal becomes law and has discussed plans for safeguarding personal information with doctors, legislators and other interested parties on multiple occasions. Patient information in the system remains in the system only temporarily before being destroyed. Any information that identifies an individual patient must be patient de-identified no later than three years from the date the information was reported. Therefore the system temporarily houses a copy of dispensing information that was generated by individual pharmacies at the time of dispensing. This data exists and is stored currently in extensive pharmacy records systems within individual pharmacy computer systems today.

### **3. The Board of Pharmacy has ignored the need for adequate funding.**

In reality, this is not a Board of Pharmacy proposal. However, the need for adequate funding has not been ignored. On the contrary, the drafters of the current proposal continue to pursue every possible funding source. The Board of Pharmacy has received a federal grant, the Harold Rogers Prescription Monitoring Program Grant, in the amount

of \$350,000, which was established specifically for planning and implementing this type of program. The board has in fact proposed a variety of funding options and is very aware of the need for adequate permanent funding. In reality, the Oregon Legislature will make decisions on funding if it intends to create a program.

#### **4. Other states use “real time” transmission . . .”**

In reality, no state uses “real time” transmission. Emerging technology might make real time transmission possible in the future, but it is not in use today. Most PMP programs receive transmissions of information from pharmacies at weekly intervals. The most important factor is not “real time” transmission of data from the pharmacy. Information that is a week old will show the trends in dispensing activities that are necessary for a practitioner to evaluate his or her patient’s utilization. It is most important that practitioners and pharmacists have access to drug utilization information for clinical evaluation on a 24 hour, seven day per week (“24/7”) basis.

#### **5. The proposal protects the State and all medical providers regardless of whether they intentionally or negligently release your personal information.**

In reality, the current proposal protects practitioners, pharmacists or other persons authorized to receive information from civil liability for using the information “in good faith”. NO protection exists for anyone deliberately misusing information from the system. In addition, the proposal authorizes the board (with advice from the advisory commission) to adopt rules for “. . . assessing civil penalties for failing to report or for wrongful disclosure of data;”

#### **6. “. . . There are inadequate safeguards in the proposal to stop local state and federal law enforcement agencies from accessing this information and going on fishing expeditions”.**

In reality, under the current proposal, a law enforcement official will not have access to query the database or be able to “go fishing” for information. The only way for a law enforcement official to receive information from the system is to; 1) be involved in a drug related investigation of a specific named individual, 2) present a court order (more difficult to obtain than a subpoena) issued for cause in the course of a drug related investigation of that specifically named individual, and 3) request specific information from a trained program staff member.