

Court case puts patient privacy in peril

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What happens to physician-patient confidentiality when any government agency can obtain a patient’s prescription records without a warrant? A case before a state supreme court threatens to keep these indiscriminant lines of investigation wide open.



Lewis v. Superior Court of Los Angeles County, a case before the Supreme Court of the State of California, calls into question whether or not the California Medical Board infringed upon patients’ constitutional right to privacy when it obtained prescription data without a showing of good cause. The board did so through the California Department of Justice (DOJ) database, which allows broad and indiscriminate disclosures to state, local and federal agencies—including law enforcement—and fails

to adequately protect patient privacy.



Ignoring privacy laws

In this case, the Medical Board acquired three years of prescribing history of all of a single physician's patients. In doing this, the Medical Board circumvented patients' right of privacy guaranteed by the California constitution. This right protects sensitive medical information from disclosure without probable cause or judicial review.

Yet the court of appeals concluded that government agencies did not violate patient privacy and that no further limitations should be established when it comes to data mining patient prescription records.

The Litigation Center of the AMA and State Medical Societies filed an amicus brief in the interest of "ensuring that prescription drug monitoring (PDMP) databases ... are governed by strong confidentiality safeguards" and "the disclosure of patient data ... to third-party government agencies [is] subject to clear and consistent regulations and procedures."

"There is good reason why federal and state laws treat prescription information with the same level of protection as any other health information," the brief states. "The DOJ has not offered an acceptable justification for ignoring the governing laws."

Why patient information needs protection

California's PDMP, the Controlled Substance Utilization Review and Evaluation System (CURES), is maintained and administered by the Office of the Attorney General in the California DOJ. It has become routine practice for Medical Board investigators to obtain years of prescription records from CURES to identify individual patients every time the Medical Board receives any type of complaint against a physician, even if that complaint does not concern prescribing practices. The AMA Litigation Center brief emphasized that PDMPs were designed to make tracking more fluid for physician work flows so they can ensure the best patient care; the databases are not intended for agency investigation.

The medical board acquired the prescribing records of the physician because of a single complaint from a single patient that the physician had seen only once. More importantly, the investigation had nothing to do with the physician's prescribing practices.

The brief points out that medical records should be protected because they can reveal potentially embarrassing and stigmatizing information about a patient. If patients do not feel that the information they share with their physician is protected, they may not share it at all, which could result in a misdiagnosis or the wrong course of treatment. In the worst case scenario, the patient may not seek medical care in the first place.

“While patient privacy will suffer, the ability of health care providers to provide effective and safe care also will be hampered due to serious damage to the relationship between providers and their patients,” the amicus brief said of the effect the decision would have on the physician-patient relationship.

A license to write prescriptions comes with tremendous responsibility. After assessing the needs of a patient, physicians also must closely monitor the use of prescriptions to ensure effective and safe use of controlled substances, the brief notes. This process profoundly depends on physician-patient confidentiality, candor and trust. A decision in *Lewis v. Superior Court* could potentially undermine this relationship.