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Oregon State Board of Pharmacy

Published to promote voluntary compliance of pharmacy and drug law.

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Correction

In the next-to-last paragraph on page six of the February 2003 *Newsletter*, there was a misprint. The *Newsletter* text read, "Only pharmacists designated as Pharmacist-in-Charge may be in possession of keys or access codes. . . ." when it was supposed to read, "Only pharmacists designated **by** the Pharmacist-in-Charge. . . ." The National Association of Boards of Pharmacy® apologizes for any confusion in this matter.

No. 343: Board of Pharmacy Inspectors and HIPAA

Pharmacies that participate in online billing and other electronic transactions are subject to the requirements of the Health Insurance Portability and Accountability Act (HIPAA), which went into effect April 14, 2003. The purpose of HIPAA is to protect confidential patient health care records and information, to allow patients to know who has accessed their health care records and information, and to hold accountable covered entities that improperly disclose such information.

The Oregon State Board of Pharmacy is responsible for health oversight and regulation of the practice of pharmacy in the State of Oregon. As such, the Board is authorized by law to conduct audits, inspections, investigations, and other activities necessary for the purpose of protecting the public interest through its regulatory processes. Licensees and registrants will continue to be asked to produce protected patient health care information to Board of Pharmacy inspectors as a part of audits, inspections, and investigations.

Consistent with the HIPAA Privacy Rules, 45 Code of Federal Regulations §164.512(d), the Board and its inspectors are authorized to review, use, or disclose protected patient health care information as a Health Oversight Agency for the purpose of conducting audits, inspections, investigations, and other necessary activities authorized by law. The information requested by inspectors will constitute the minimum necessary information for the Board to continue with its health oversight activity.

Licensees and registrants of the Board are not required to obtain patient permission prior to releasing records and information to Board inspectors. It appears, however, that HIPAA may require the accounting of disclosures made to inspectors. The purpose of the accounting requirement is to allow patients to learn the non-health care purposes for which their protected health care records and information have been disclosed.

HIPAA regulations are designed to allow for flexibility in the accounting standards used. That flexibility ranges from the marking or flagging of each and every prescription, record, or printout

reviewed by an inspector to the placing of the name of the Board of Pharmacy on a standard general checklist of non-health care entities who may have reviewed a patient's protected health care records. The Board is working with federal agencies and national organizations to determine the minimum standard of accounting necessary under HIPAA to properly account for disclosures made to the Board and its inspectors.

The Board's inspectors will have in their possession a document describing their authority under HIPAA. If desired, when the inspector asks to review protected health care information, pharmacists may ask the inspector for a copy of the document, *Authority to Review, Use or Disclose Individually Identifiable Health Information as a Health Oversight Agency*.

No. 344: Drug Diversion Cases on the Rise

Dispensing errors continue to top the list of types of complaints received by the Board of Pharmacy. However, over the past year there has been a dramatic increase in the number of employee theft and diversion cases as well as cases of pharmacy employee drug impairment on the job. Inspectors have become alarmed at the creativity with which chemically dependent licensees are acquiring their drugs of choice.

In the past year there have been 20 cases involving licensee diversion and/or impairment, of which 14 involved pharmacists and six involved pharmacy technicians. Action by the Board included, depending upon the circumstances of each case, referral to the Pharmacists Recovery Network (PRN) program, probation with conditions, and revocation of the pharmacist's license. Action by the Board against technicians included denial of an initial application or refusal to renew a registration.

Most commonly, diversion cases have involved controlled substances, but sometimes licensees divert other legend medications as well. One pharmacist allegedly stole non-controlled legend drugs worth over \$150,000. This pharmacist worked as a "floater" and ordered medication to be drop-shipped to the pharmacy at which this individual was assigned to work the following day. Upon arrival in the morning, the drugs were taken from the shipment and diverted from the pharmacy. Other pharmacists have diverted non-controlled substances for their own use or for use by family members with or without a prescription.

While some diverted drugs directly from the pharmacy shelf to their pocket, others developed more creative methods of obtaining their drug of choice. One pharmacist would hide stock bottles inside mailing envelopes and act as if he/she was mailing a filled prescription to a customer. Each day, the pharmacist would leave the pharmacy, envelope in hand, and take it home, bypassing the

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mailbox. This individual thieved approximately \$10,000 worth of controlled substances before the scam was detected.

Two pharmacists created prescriptions that appeared to be telephoned prescriptions to cover the drugs they were stealing, while another photocopied prescription blanks from a physician's office, forged the prescriber's signature, and filled over 140 prescriptions for controlled substances for customers that did not exist. Although the pharmacists attempted to hide the diversion by the use of fraudulent prescriptions, inspectors were able to uncover the scams.

One of the most interesting methods involved a pharmacist who allegedly diverted over \$40,000 worth of Schedule II narcotics. This pharmacist not only stole from the pharmacy where he/she currently worked, but also from the pharmacy where he/she had previously worked. During time off, the individual would visit friends in the pharmacy where the individual used to work and take drugs to replace the stock taken from the current employer. The "friends" had no idea the individual was swiping drugs while "visiting" and altering the inventory on their computer while they were not looking.

As the Board's inspectors have investigated increasing numbers of diversion cases, it has become apparent that employers need to review their pharmacy's security systems and procedures. The following are suggestions that may help decrease the risk of employee theft:

- ◆ Limit access to the pharmacy.
- ◆ Install security cameras.
- ◆ Isolate and lock up the controlled substances.
- ◆ Institute a perpetual CII inventory with routine reconciliations.
- ◆ Institute a random drug screening policy.
- ◆ Perform complete background checks including license verification on your employees.

While it is probably not possible to completely eliminate theft, appropriate measures can be taken that will foil or discourage all but the most ingenious of thieves.

Most unfortunately, in the past nine months Board inspectors and local police have been required to escort three impaired pharmacists from the pharmacy to eliminate a public health threat. Thanks to concerned customers, and in one case a concerned employee, the Board was notified and immediately intervened. Symptoms to look for if you have concerns about a pharmacy employee include: dilated or constricted pupils, drowsiness, dizziness, blurred vision, slurred speech, irritability, repeated tardiness,

long breaks, unexplained absences, and breath that smells of alcohol. If you, or someone you work with, has a problem with alcohol and/or drugs, please contact Ed Schneider with PRN at 503/804-1186. This is a confidential way to get help for yourself or someone you know. If you witness someone you suspect is impaired or intoxicated on the job in the pharmacy, please contact the Board office immediately so the person can be removed from the pharmacy.

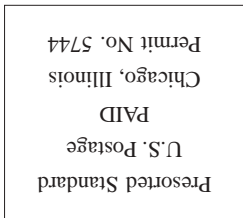
No. 345 Pharmacy Technician Discipline

The Board has the authority to deny the initial registration or the renewal of registration of a technician for certain causes. In the past year, the Board has voted to deny the initial technician registration applications of five individuals. All five were not truthful on their applications and did not disclose prior criminal history. Additionally, the Board has refused to renew the registrations of 11 technicians. Six stole controlled substances from the pharmacy; three failed to pay the fee required with the registration form and the subsequent bank charges and collection fee; one technician failed to report a felony conviction; and one technician performed the duties of a pharmacist and entered the pharmacy without a pharmacist present. The pharmacy technician renewal cycle begins in September, which means these technicians continue to possess active registrations until their registration expires. Because of this, it is important that employers check with the Board prior to hiring employees as technicians to see if they have any history with the Board. A **written** request may be submitted via fax at 503/731-4067 or via e-mail on the Board's Web site at www.pharmacy.state.or.us.

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