

Alabama State Board of Pharmacy

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Published to promote voluntary compliance of pharmacy and drug law.

Notice

During the 2001 renewal process, it has come to the attention of the Alabama State Board of Pharmacy that there are numerous technicians who were previously registered with the Board, but failed to renew their registrations in 2000 and continued to work in pharmacies. In fact, some were not registered with the Board at all but worked as pharmacy technicians.

Code of Alabama 1975, Title 34 Chapter 23, Practice of Pharmacy Act 205 §34-23-131. Supervision – Registration, reads in part:

2.(a) A pharmacy technician shall not perform pharmacy functions or be present in the prescription department of a pharmacy unless he or she is under the direct supervision of a licensed pharmacist. **A pharmacy technician shall not perform pharmacy functions or be present in the prescription department of a pharmacy unless he or she is registered by the Board.**

Furthermore, Rule 680-X-2-.12. Supervising Pharmacist (4)(I), reads in part:

The **supervising pharmacist** shall insure compliance with the provisions of the Pharmacy Practice Act, Rules of the Alabama State Board of Pharmacy and the Controlled Substance Act.

The Board urges all technicians, pharmacists, and those who hold a pharmacy permit to make sure that only duly licensed pharmacists or technicians who are registered with the Board perform any pharmacy function and only those previously mentioned may be present in the pharmacy department.

Please be advised that effective January 1, 2002, in addition to penalties assessed against technicians who do not hold a current registration, the Board will also hold the supervising pharmacist and the permit holder responsible and subject to **disciplinary** action.

Rule Changes Under Development

On March 28, 2001, the Board heard testimony on the following new rule that should be implemented in the very near future.

680-X-2-.28 Temporary Absences of Pharmacists During Break and Meal Periods

- (1) This rule is to allow pharmacists to have breaks and meal periods without unreasonably impairing the ability of a pharmacy to remain open.
- (2) In any pharmacy that is staffed by a single pharmacist, the pharmacist may leave the pharmacy area or department, temporarily,

for breaks and meal periods without closing the pharmacy and removing interns/externs and technicians from the pharmacy, if the pharmacist reasonably believes that the security of the controlled substances will be maintained in his or her absence.

- (a) If, in the professional judgment of the pharmacist, the pharmacist determines that the pharmacy should be closed during his or her absence, then the pharmacist shall close the pharmacy area or department and remove all interns/externs and technicians from the pharmacy during his or her absence.
- (3) During the pharmacist's temporary absence, no prescription medication may be provided to a patient or to a patient's agent unless the prescription medication is a refill medication that the pharmacist has checked, released for furnishing to the patient, and was determined not to require the consultation of a pharmacist.
- (4) During such times that the pharmacist is temporarily absent from the pharmacy area or department, the interns/externs and technicians may continue to perform the non-discretionary duties authorized to them by any applicable law or rule. However, any duty performed by an intern/extern or technician shall be reviewed by a pharmacist upon his or her return to the pharmacy.
- (5) The temporary absence authorized by this rule shall be limited to thirty (30) minutes. The pharmacist shall remain within the facility during the break period and be available to handle all emergency situations.
- (6) The pharmacy shall have written policies and procedures regarding the operations of the pharmacy area or department during the temporary absence of the pharmacist for breaks and meal periods. The policies and procedures shall include the authorized duties of interns/externs and technicians, the pharmacist's responsibility for maintaining the security of the pharmacy. The policies and procedures shall be open to inspection by the Board or its designee at all times during business hours.

The Board also heard testimony for revisions on existing Rule 680-X-2-.14 The Role of Technicians in Pharmacies in Alabama.

What follows is a brief description of the major changes considered by the Board:

In order to be registered as a pharmacy technician in this state, an applicant shall have attained the age of seventeen (17). All tech-

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nicians will be required to obtain three (3) hours of continuing education annually, one hour of which must be "live." A registered pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes will not be eligible to register as a technician.

When a technician registration lapses, the registration may be reinstated only upon payment of the \$10 for each lapsed year and all lapsed fees for each lapsed year provided the lapsed time of registration shall not exceed five years.

No Damages from Refusal to Dispense

A Connecticut pharmacist was recently sued by a patient who had been refused a medication, and who contended that harm had resulted to her from the refusal. The pharmacy had refused to dispense refills of prescriptions for Premarin and Provera. Apparently, the patient owed the pharmacy money and the refusal to dispense was based on the patient's having failed to pay previous bills. The refusal to refill resulted in the patient being denied the medication for one day, following which the patient secured the medication from another pharmacy.

The court held that the patient had failed to prove her damages by a preponderance of the evidence. In fact, the patient had offered into evidence no testimony or report from either a physician or a psychologist indicating that the one day lapse of medication was deleterious to her health.

This result leaves open the possibility that had the patient been able to show damages, the pharmacist might have been held liable for refusal to dispense. While most patients, in most circumstances, will be able to "take their business elsewhere," this may not always be the case. In America's legal system, every individual is held responsible for the consequences of the things he or she does (or fails to do) and this includes, under some circumstances, being held responsible for refusing to dispense needed medication.

Several important points should be kept in mind when a refusal to dispense scenario unfolds in your practice:

- ◆ Refusals to dispense based on inability to pay or boorish behavior may be appropriate, but make sure to do what can be done to provide an alternative source of the medication to the patient. Always offer to transfer a prescription and to provide a list of alternative pharmacies.

- ◆ Be sure to distinguish clearly between your refusal of what you are able to do and your inability to do what you cannot. If you cannot compound an esoteric prescription, a physician's orders are unclear, or some other factor prevents you from dispensing a prescription, make sure the patient knows you are unable, not refusing, to do so.
- ◆ Refusals should never be based on bias or prejudice toward the patient or the prescriber.
- ◆ If a refusal to dispense is based on concern for the patient, be sure to document the nature of those concerns and provide in your documentation references to resources that support your conclusion about the patient's health.
- ◆ Avoid paternalistic refusals for a patient who understands the risk. Perhaps the risk of a prescribed medication is greater than you think the patient should accept, and perhaps you would not accept that risk if you were the patient. But you are not the patient. Informed patients should be permitted to make their own decisions about risk, and they should be dispensed medications (even risky ones) if they believe the risk is acceptable.

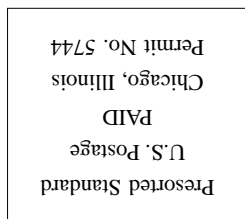
It is always a drastic step to refuse medication to a patient, and pharmacists usually take this step only under the most extreme of circumstances. There is no "play it safe" position in drug therapy. Dispensing and refusing to dispense are both legally hazardous. But pharmacists can take care with their refusals and, by being mindful of the principles above, reduce exposure to liability.

(Reproduced in part by the permission of David B. Brushwood, RPh, JD)

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