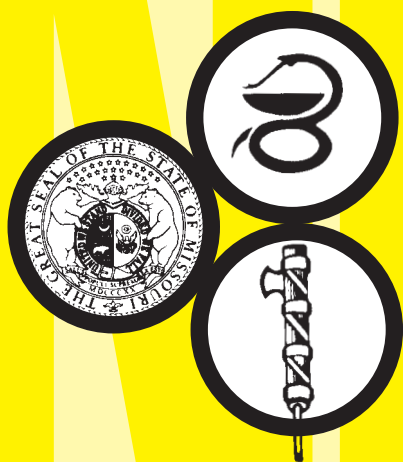


February 2004



Missouri Board of Pharmacy

Published to promote voluntary compliance of pharmacy and drug law.

PO Box 625, Jefferson City, MO 65102

Letter to Pharmacists of Missouri from Board of Pharmacy Members

Dear Licensee:

Today, boards of pharmacy across the country are facing new and complex challenges. Many of these challenges come from individuals or entities that attempt to enter the prescription drug market illegally. More and more time and resources are being spent on investigating and prosecuting both unlicensed and dangerous practices of pharmacy or drug distribution (wholesaling). This can take place in a number of ways. Examples include Internet and unauthorized mail-order sites, foreign drug sites, unlicensed brokers and wholesalers, and unlicensed storefront businesses. Dangerous practices observed include diversion of drug inventories, bulk compounding and wholesaling of unapproved drugs, counterfeiting, selling drugs to consumers without a bona fide prescription, sale of drugs from foreign pharmacy operations, and fraud on consumers. Last year, the Missouri Board of Pharmacy sponsored legislation that would modernize areas of the Missouri Practice Act concerning public health and safety issues.

To craft last year's legislation, the Board reviewed other state laws from across the country and found that the Pharmacy Practice Act is lacking in a number of strategic areas that allow other state boards of pharmacy to take quicker and more decisive actions when necessary.

This year, the Board will reintroduce legislation that will reflect what the final negotiated language contained within legislation pending at the end of last session. In a few cases, misinformation about the intent and substance of Board-sponsored legislation has appeared, thus necessitating this letter.

The following information is provided in order to highlight the most important portions of last year's bill and to summarize the reasons for pursuing changes:

- ◆ Amend the disciplinary section of law in order to allow the Board to temporarily restrict or suspend a license due to actions that "constitute a clear and present danger to the public health and safety," pending action of the courts. The Board would be required to file a complaint within five business days of its action in order for a preliminary review by a state hearing commission in order to sustain or lift the sanction. A super majority of five Board members (out of seven) would be required to authorize such action and the burden would continue to be on the Board to prove that the dangerous or unlicensed practices were significant enough to continue sanctions levied by the Board.
- ◆ Any person or entity found practicing or attempting to practice without first securing appropriate licensure could be fined by the Board. Fines or civil penalties could be enforced by the Board through the courts. Any person or entity wishing to appeal the decision and fine could do so through a defined ap-

peals process involving the courts. The main issue involves the continuous barrage of cases involving unlicensed activity at both the retail and wholesale levels, which would include examples such as activities by Internet and out-of-state pharmacies and drug distributors. This measure would assist in deterring such activities.

- ◆ The president of the Board would be empowered to administer oaths and issue subpoenas. Two main restrictions apply to this authority. First, the subpoena authority is limited to documents and records. Second, it is limited to issuing subpoenas to unlicensed persons or entities for their records and does not affect licensed pharmacists or pharmacies. This is important given the rise in unlicensed activity with which the Board is attempting to cope. The ability to gather evidence is sometimes going to be dependent on the ability to gather documents in order to prove a case in the courts. The language in this section of the bill has no impact on licensed pharmacists or licensed pharmacies.
- ◆ Persons cooperating with the Board would be given immunity from civil prosecution. Some pharmacists, physicians, and pharmacy owners have been hesitant to provide information to the Board concerning a violation of the law because of concern over civil lawsuits filed by other private parties. This section would protect those providing information to the Board as long as it was done in good faith and not out of malice.
- ◆ Embargo authority over misbranded or adulterated drugs would be provided for in the same manner as is provided to Food and Drug Administration over manufacturers and other state boards of pharmacy. The language for this section was taken directly from other board of pharmacy practice acts and allows for court review of any actions taken by the Board.
- ◆ A new section would allow the Board to recoup costs associated with litigating a disciplinary action case before the state hearing commission that results in discipline. In this case, itemized costs associated with litigating and prosecuting such a case could be sought from the licensee. As in the other sections of this legislation, an independent fact-finder (state hearing commission) would ensure that any costs awarded were reasonable and would have the authority to approve or disapprove the Board's request. This would help defray costs away from the general population of pharmacists and pharmacies and place it within those persons or entities that have clearly violated the Pharmacy Practice Act and/or state and federal drug laws.

As Board members, six of which are pharmacists, we feel strongly that these areas targeted within the legislation are necessary if the Board is to be able to fulfill its mandate to protect the public health and safety. The marketplace, technology, and health care system are in constant change in this country and provide great

Continued on page 4

Continued from page 1

opportunities to enhance patient access and care, but can also cause serious problems due to unscrupulous individuals or companies.

As Board members, we believe that a clear majority of pharmacists are concerned about these issues and the ramifications of not acting as a profession to move forward when and where necessary in order to maintain consumer confidence and trust in the products and services that the profession provides. If, as Board members, we are right, and you share this concern, we hope that you will contact your legislator and support this initiative to improve the ability of the state to protect consumer interests. You may review a draft of the legislation by visiting the Board's Web site at www.pr.mo.gov and selecting the "Regulated Professions" icon. Select "Pharmacists, Pharmacies," and then select **proposed legislation**.

Sincerely,

Elaina Wolzak, RPh
Pamela Marshall, RPh
Barbara Dunning, RPh
Anita Parran

Doug Lang, RPh
Gary Sobocinski, RPh.
Timothy Koch, RPh

Licensing Actions

Pharmacists

Louie A. Ferro, Jr., #40018, Independence, MO – November 15, 2003. Revoked, cannot reapply for seven (7) years from November 15, 2003. September of 2002, pled guilty in Jackson County Circuit Court to 22 counts of making a false statement to receive health care payment. Section 338.065.

Bruce S. Greenwald, #40550, St Louis, MO – November 10, 2003. Revoked, cannot reapply for seven (7) years from November 10, 2003. Dispensing controlled substances without a valid prescription and intentionally falsified prescription and other pharmacy records. Audit discrepancies. Section 338.055.2(5)(13)(15), RSMo Supp. 2001.

Donald Scott Martin, #41602, Kansas City, MO – November 15, 2003. Suspended for one (1) month, until December 14, 2003, followed by five (5) years probation. Violation of previous Missouri discipline, misappropriated controlled substances from employer for personal use. Section 338.055.2(1), (5), (13), (15), and (17), RSMo Supp. 2002.

Pamela L. Stoddart, #41867, Platte Woods, MO – October 22, 2003. Suspended for one month, until November 21, 2003, followed by five (5) years probation. Misappropriated controlled substances from employer for personal use, impaired pharmacist, disciplinary action in another state. Section 338.055.2(1), (5), (8), (13), (15), and (17), RSMo Supp. 2001.

Pharmacies

RxNetwork of South Florida, LLC, #2001029032, Davie, FL – October 16, 2003. Probation for three (3) years, until October 15, 2006. Disciplinary action in another state. Section 338.055.2(8), RSMo Supp. 2002.

Walgreens #03017, #5564, Jefferson City, MO – November 10, 2003. Probation for three (3) years, until November 9, 2006. Failure to track and take corrective actions concerning numerous dispensing errors committed by a pharmacist. Section 338.055.2(5), (6), (13) and Section 338.285, RSMo; and 4 CSR 220-2.010(1)(N).

Drug Distributors

Albers Medical Distributors, Inc., #900306, Kansas City, MO – October 10, 2003. Suspension for 30 days, until November 8, 2003, followed by five years probation. Repeated purchasing from unlicensed drug distributors, unverifiable/false pedigrees, and purchase of adulterated drugs from unlicensed source. Section 338.055.2(5), (6), (10), and (15), RSMo Supp. 2002.

McGuff Company, Inc., #2003004343, Santa Ana, CA – December 16, 2003. Restricted license issued on probation for one year, until December 15, 2004. Sold drugs to a Missouri physician after Cease and Desist Warning letter had been issued and before temporary license was issued. Section 338.055.1 and .2(6) and (10), RSMo.

Mobile Med Care, Inc., #2003000168, Chillicothe, MO – December 16, 2003. Restricted license issued on probation for three years, until December 15, 2006. Unlicensed practice of drug distribution. Section 338.055.1 and .2(6) and (10), RSMo.

Page 4 – February 2004

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