

Statement of the Federation of State Medical Boards of the United States

**Drug Enforcement Agency
Hearing on Electronic Prescriptions for Controlled Substances**

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Introduction

Good morning, I am Lisa Robin, Vice President of Government Relations, Policy, and Education of the Federation of State Medical Boards and I am pleased to be here to comment on behalf of state medical boards. The Federation is a non-profit organization comprised of 70 medical licensing and disciplinary boards of the United States and its territories. We were established in 1912 and are located in Dallas, Texas. As a collective voice for state medical boards, the Federation advocates for state medical boards as independent state agencies with sufficient statutory authority to regulate the practice of medicine. In addition to providing a variety of services, including the United States Medical Licensing Examination, post-licensure assessment, databank and credentials verification, the Federation is a resource for research, policy analysis and development, education, and information.

Our mission is to improve the quality, safety, and integrity of health care by promoting high standards for physician licensure and practice and assisting state medical boards in protecting the public. We have public policy addressing issues pertinent to medical regulation that our member boards use as a basis for their policy development, including such topics as the Use of Controlled Substances for the Treatment of Pain, Office-based Opioid Addiction Treatment, physician impairment, boundary issues, and scope of practice.

In addition to policy development, we monitor state and federal legislative initiatives, work collaboratively with federal and state regulatory agencies, and provide legislative assistance to and on behalf of our member medical boards.

FSMB and telecommunications

The Federation of State Medical Boards has been actively involved as a national leader on the use of telecommunications and the Internet in the practice of medicine for a number of years. In 1996, the Federation published *A Model Act to Regulate the Practice of Medicine Across State Lines*. In 2002, it published *Model Guidelines for the Appropriate Use of the Internet in Medical Practice*, one of the first national standards established for Internet medical practice.

Safeguards

State medical boards regularly handle cases involving inappropriate prescribing and other prescribing violations in physician practice. In 2005 state medical boards reported more than 6100 disciplinary actions. Of those, 424 were prescription related violations. It is the Federation's hope that as new electronic prescription systems are implemented there will be a significant reduction in prescription violations. If proper safeguards are implemented, electronic prescribing systems can serve as a deterrent to those wishing to abuse the current paper system, reduce medication errors, facilitate access to care, and enhance convenience for patients. Feedback from our state medical boards indicate support for a system whereby information is exchanged directly from registrant to registrant that is implementable, secure and feasible.

Because the proposed system will be applicable to both legend drug and controlled substances, it is imperative that there be parity of standards and that the system be sufficient to prevent the diversion of controlled substances. Accordingly, a stricter standard must be applied to accommodate the specific state and federal requirements related to the prescribing of controlled substances. Additionally, having dual systems – one for non-controlled and one for controlled substances – could diminish access to and quality of pain care by making the prescribing of opioid analgesics an overly burdensome process.

In accordance with FSMB policy, electronic communications, including prescriptions, should be secure within existing technology and specific as to (1) the reliability of authentications (2) privacy (3) health-care personnel authorized to submit and process prescriptions (4) required patient information to be included on the prescription, and (5) archival and retrieval of information. Sufficient security measures must be in place and documented to assure confidentiality and integrity of patient-identifiable information.

1. Privacy- Integrity of the system

Feedback from state medical boards indicate some level of concern regarding patient privacy. Accordingly, boards ask that that any system created for electronic prescribing must be designed so as to protect the privacy of the patient-specific information. Therefore, security is a priority so that all patient information is securely maintained and patient information protected from unauthorized access. States vary as to requirements for the prescribing controlled substances. If there is discrepancy between the federal and state privacy requirements, FSMB supports the application of the stricter standard in order to best protect patient privacy.

2. Health-care personnel who will process prescription

Any electronic prescribing system must protect the integrity of the prescription and insure the chain of custody is well-documented. It is imperative that the system assure the identity of the prescriber (specifically, the physician or his or her designated health professional). The system must be sufficiently secure to prevent non-authorized personnel from issuing the electronic prescription. In example, the state of New Jersey recently implemented an Electronic Transmitted Prescriptions Law that states:

- “a pharmacist must not fill an electronic prescription transmitted by anyone other than a practitioner authorized to prescribe medications, or the prescribing practitioner’s authorized agent. If the electronic prescription is transmitted by the practitioner’s authorized agent the transmission shall include the full name and title of the agent”

3. Required patient information to be included in the prescription

All electronic prescriptions should contain at least the same patient information required by state law of written prescriptions. State prescriptions laws should not be superseded by less stringent federal standards. Electronic prescriptions should contain all of the same elements as their written counterparts.

4. Archival and retrieval

Physicians must maintain adequate record keeping of electronic prescriptions. A copy of the electronic prescription must be in the patient’s medical record. In case of an investigation of a practitioner, it is imperative that medical investigators have access to precise records in order to gather sufficient information regarding the diagnosis and appropriate treatment for which the medication was prescribed. Accordingly, any system for the

electronic submission of a prescription must document the chain of custody preserving a record of the prescription and the medication dispensed.

In order to protect against diversion, the system should be interoperable with any state prescription monitoring program.

I appreciate the opportunity to be able to speak to you today on behalf of the state medical boards. As we move forward in the 21st century telecommunication and the internet will continue to become a vital and resource-effective tool in providing medical care. On behalf of our member state medical boards, we support these innovations as long as proper safeguards are implemented to make sure that quality of care is not diminished and that patient privacy is not compromised.

Thank you and I look forward to answering any questions you might have for me during question and answer.