

**Statement of the  
Federation of State Medical Boards of the United States  
Committee on Government Reform  
United States House of Representatives**

**Presented by James N. Thompson, M.D.  
President and CEO**

**Internet Pharmacy Consumer Protection Act**

**March 18, 2004**

Good morning Mr. Chairman, and members of the Committee. I am Dr. Jim Thompson, President and CEO of the Federation of State Medical Boards of the United States or FSMB. The Federation is a national non-profit association established in 1912, which serves as a collective voice for 70-member state medical licensing and disciplinary boards. The Federation's primary mission is to improve the quality, safety, and integrity of health care by promoting high standards for physician licensure and practice, as well as supporting and assisting state medical boards in the protection of the public.

**Early Interest in Use of Internet for Practice of Medicine**

As I indicated at the hearing this Committee held in March 2003, the Federation 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 2000, it published guidelines for Internet prescribing. 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.

Those guidelines, which the Federation recommends be adopted by state medical boards, include a key provision:

“A documented patient evaluation, including history and physical evaluation adequate to establish diagnoses and identify underlying conditions and/or

contraindications to the treatment recommended/provided, must be obtained prior to providing treatment, including issuing prescriptions, electronically or otherwise.”

This has been the key interest of the Federation with respect to Internet pharmacies. There must be an appropriate relationship between the patient and the physician before a prescription is written and medication dispensed.

### **Internet Clearinghouse**

In addition to issuing these guidelines, the Federation has aggressively sought to identify Internet pharmacies that are dispensing drugs on the basis of prescriptions written by health care providers whose relationship with the patient does not appear to meet minimal standards. In September 2000, the Federation of State Medical Boards established The National Clearinghouse on Internet Prescribing, to collect and disseminate information on “rogue” Internet sites offering prescribing and dispensing services for prescription drugs to consumers.

The Clearinghouse is uniquely qualified to coordinate information between regulatory and enforcement entities because of its formal relationship with all state medical boards in the U.S. and its territories and its well-established lines of communication with state and federal regulatory agencies, including the Department of Justice, the Drug Enforcement Agency, the Food and Drug Administration, and the Federal Trade Commission, as well as the National Association of Boards of Pharmacies, the National Association of Drug Diversion Investigators , and the National Association of Attorney Generals, representatives of the pharmaceutical industry, and the media.

### **Results of Clearinghouse Activities**

**To date, approximately twelve physicians have been the subject of disciplinary sanctions based on Clearinghouse supplied information. The Clearinghouse has supplied information for more than 127 cases on the federal level and more than 200 cases on the state level. Additionally, information regarding Internet prescribing**

**has been shared with the Medical Council of New Zealand and the Ministry of Health in Germany.**

#### Enforcing the Law

The Federation strongly supports state-based regulation of the practice of medicine. With regard to Internet prescribing, state medical boards have the authority to discipline licensed physicians prescribing and dispensing medications inappropriately. Several boards have already taken actions against licensees, adopted rules/policies or introduced legislation to clarify this authority. In addition, state medical boards are communicating among themselves regarding physicians licensed in more than one state. These cooperative efforts have been effective in closing several Internet sites and causing a number of physicians to cease their affiliation with questionable operations.

#### **Need for Federal Legislation**

That said, I also indicated in my testimony last March that there were at least three issues that needed to be addressed through federal legislation in order to protect patients ordering prescriptions over the Internet. I am very pleased that H.R. 3880, the Internet Pharmacy Consumer Protection Act, addresses each of those issues.

First, I remarked that patients should know with whom they are dealing. They should know the name and location of the pharmacy that is dispensing the drug and the name of the physician who will be providing a medical consultation that will be the basis of a prescription. I noted that, almost without exception, a state would find that such physician had violated practice standards if he or she wrote a prescription on the basis of an online questionnaire without having any preexisting relationship with the patient. Therefore, disclosure will not only be beneficial to patients, but will allow state medical boards to identify individuals against whom they can take disciplinary action. H.R. 3880 specifically addresses the issue of disclosure by amending the Food Drug and Cosmetic Act with the addition of a new Section 503B(a).

Second, I stated that state attorneys general were not able to enjoin the operations of an Internet pharmacy that affect citizens in their particular states if that pharmacy is operated out of another state. Many of our member boards have indicated that they believe that a number of Internet sites that dispense drugs in an inappropriate manner could be shut down if the attorneys general had nationwide injunctive powers as well as the ability to pursue other civil remedies including damages, restitution or other compensation across state lines. H.R. 3880 addresses this issue by amending the statute mentioned above with the addition of a new Section 503B(c)

Third, I noted that while state medical boards have the authority to discipline physicians who are prescribing and dispensing drugs over the Internet inappropriately, and that many boards had taken such action, state medical boards cannot take actions against operators of Internet sites that dispense drugs. I also remarked that while state medical boards believe that the law and regulations governing the physicians in their state are clear as to what constitutes an appropriate physician-patient relationship for purposes of writing a prescription, some courts and prosecutors believed that certain state laws and regulations were ambiguous in this regard. I noted that, because of that ambiguity, prosecutors had not pursued certain legal actions.

Last year I offered to work with the Committee in trying to craft language that would define an appropriate physician-patient relationship for purposes of regulating Internet pharmacies, while preserving the rights and responsibilities of state medical boards. The language in H.R. 3880, adding a new Section 503B(b) to the Food, Drug and Cosmetic Act, strikes a reasonable balance in requiring and defining an appropriate physician-patient relationship for the narrow purpose of regulating Internet pharmacies, while recognizing the exclusive role of state medical boards in defining that relationship under other circumstances.

In conclusion, with H.R. 3880 satisfactorily addressing the issues I raised last year, the Federation of State Medical Boards believes that its enactment into law will provide significant protection for consumers who use the Internet to obtain pharmaceuticals.

Thank you for the opportunity to testify today. I will be glad to answer any questions.