

Court Precedent in California

The Court of Appeal of the State of California, First Appellate District, Division Two, ruled recently on a matter involving Christian Ellis Hageseth, M.D. Dr. Hageseth prescribed medication to a consumer in California via the Internet, and the consumer later committed suicide. Dr. Hageseth claimed that the court did not have jurisdiction over his activities since he was never present physically in the state during the commission of the criminal offense with which he was charged, and did not act through an agent ever present in the state.

The court ruled that Dr. Hageseth is subject to the criminal jurisdiction of respondent court even though no jurisdictional statute specifically extends the extraterritorial jurisdiction of California courts for the particular crime with which he is charged. They concluded that it makes no difference that the charged conduct took place in cyberspace rather than real space. The criminal complaint of practicing medicine without a license is now expected to move forward. Full text of this ruling may be obtained at <http://www.courtinfo.ca.gov/opinions/documents/A115390.PDF>.

CASA White Paper Issued

The National Center on Addiction and Substance Abuse at Columbia University (CASA) updated the "You've Got Drugs!" report it has issued for the past several years with volume IV: *Prescription Drug Pushers on the Internet*, in May 2007.

The CASA report this year showed a 70 percent increase over 2006 in the number of websites identified that advertise or sell controlled prescription drugs. They

noted a 135 percent increase in websites advertising these drugs and a seven percent increase in websites offering to sell them.

The report and information on CASA can be found at <http://www.casacolumbia.org/absolutenm/templates/home.aspx>.

Legislative Activity

Legislative activity is increasing on the federal and state level this year. Several bills that address aspects of Internet medical practice are currently pending before Congress, including H.R. 380, S.B. 242, S.B. 596, S.B. 980, and S.B. 1082. A hearing was held by the Senate Judiciary Committee on S.B. 980 on May 16, and the FSMB submitted written testimony in support of this legislation. Other testimony was provided by:

- Francine Haight, whose son Ryan overdosed and died in 2001 after taking prescription drugs obtained from an Internet pharmacy.
- Joseph Rannazzisi, the Deputy Assistant Administrator of the Office of Diversion Control of the Drug Enforcement Administration.
- Joseph A. Califano, Jr., the Chairman and President of CASA.
- Professor Philip Heymann, Professor of Law at Harvard Law School, regarding the "Keep Internet Neighborhoods Safe" proposal promulgated by a workgroup of state and federal regulatory and law enforcement authorities.

- A. Thomas McLellan, Ph.D., Chief Executive Officer of the Treatment Research Institute at the University of Pennsylvania.

The full text of the FSMB testimony is available at http://www.fsmb.org/grpol_testimony.html. The full testimony from the rest of the committee hearing is available at <http://judiciary.senate.gov/hearing.cfm?id=2755>.

Kentucky enacted legislation (S.B. 88) in April to define a good faith prior examination and requires a prescribing practitioner to physically examine and take a medical history from a patient prior to issuing a prescription for a controlled substance. In-person includes telehealth examinations as authorized by law. The bill further states that no person shall knowingly obtain or attempt to obtain a prescription for a controlled substance without having formed a valid practitioner-patient relationship with the practitioner. A person who violates this statute is guilty of a class D felony for the first offense and a class C felony for a subsequent offense.

News of Interest

- IMS Health Canada reported in April, 2007, that Canadian Internet pharmacy sales to the United States plummeted nearly 50 percent in 2006, compared to 2005. IMS Senior Industry Expert, Ian Therriault, says the change is due to a higher exchange rate, the new U.S. Medicare prescription plan and negative media coverage about counterfeit and foreign drugs (*Canadian Medical Association Journal*, April 24, 2007).
- Pending legislation in Minnesota to regulate the practice of medicine via the Internet is being pushed by relatives of Justin Pearson, who died after obtaining drugs via the Internet to feed an addiction to prescription medicine. Mr. Pearson was 24 years old at the time of his death, and

his addiction came about after he was prescribed Vicodin following a weight-lifting injury in 2005 (Associated Press, April 15, 2007).

- The Food and Drug Administration issued an online counterfeit drug warning in May 2007 after 24 related websites were found to be possibly distributing counterfeit medications. The full text of the warning can be seen at <http://www.fda.gov/bbs/topics/NEWS/2007/NEW01623.html>.
- An Internet pharmacy operating in Duluth, Minn., agreed to pay \$300,000 to settle civil charges of filling prescriptions that did not comply with federal regulations. This settlement resolves a civil lawsuit filed by the U.S. Attorney for the Western District of Wisconsin against Falk's Woodland Pharmacy, Inc. (*Business Journal of Milwaukee*, April 27, 2007)
- A pharmacy operated by the Penobscot Indian Nation in Maine was fined for violating state and federal regulations. PIN Rx was fined \$500,000, and two pharmacists working for the pharmacy were fined \$300,000 and \$5,000, respectively, with the first pharmacist having his license revoked and the second pharmacist having her license suspended for a month. PIN Rx reportedly filled Internet prescriptions for at least 180,000 prescriptions or more than \$3 million worth of drugs. A death in South Carolina is being investigated where a pill bottle from PIN Rx was found. (*Bangor Daily News*, May 16, 2007, Associated Press, May 2, 2007)
- New Jersey regulators shut down an Internet pharmacy in April, charging that it filled bogus prescriptions and misled consumers by telling

them it was legal to purchase low-cost prescriptions from Canada. The pharmacy, Medications-4Less, has been in business since 2002. (Associated Press, April 12, 2007)

- Western States Pharmacy, based in Colorado, was fined \$2,500 and relinquished its license following allegations that it filled orders for medications based on prescriptions issued via the Internet in January 2007. Full text of the order can be viewed on the Board of Pharmacy website at <http://www.dora.state.co.us/pharmacy/>.

Disciplinary Actions

The following is a partial list of recent disciplinary actions taken against physicians who prescribed medicine via the Internet.

- Iowa Board of Medical Examiners—Larry D. Sutton, M.D., voluntarily surrendered his license to practice medicine on June 7, 2007.
- New Jersey State Board of Medical Examiners—Phillip Mach, M.D., voluntarily surrendered his license to practice medicine, deemed a revocation by the Board, on March 9, 2007.

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