



Internet pharmacy and the unwitting accomplice

Jim¹ was facing a tough time. He had owned his own pharmacy for over ten years and he had seen tough times before, but he thought this could be the end of working for himself. The third party program that accounted for almost 40% of his prescription business had just informed him they were “renegotiating” his contract. Jim almost laughed when he read the letter informing him they were lowering his reimbursements.

There was, of course, no negotiation. This contract, like all of the others, was “take it or leave it.” He, and every other pharmacy in the state – including the big chains, had no choice. If a few of the pharmacies tried to band together to negotiate on somewhat even terms with the big third party company, they could be charged with violation of antitrust laws. “I thought the laws were supposed to protect the small guy from the big conglomerate.” Jim thought. Instead, today, the antitrust laws protect the conglomerate from independent drug store owners like Jim.

Just when all seemed darkest, Jim got a call from a man who called himself “an entrepreneur.” He introduced himself as Stark. Whether this was his real name, Jim did not know, but Stark got Jim’s attention when he asked if he would like to fill prescriptions at his regular mark up plus a \$25.00 “handling fee.” Stark then outlined “the deal.”

Stark had five Internet pharmacy sites. He needed a pharmacy to fill prescriptions generated by one of the

sites. Stark said the volume was a little low now, not more than 20 or 30 prescriptions a day, but he expected it to increase rapidly in the next few months. Stark was a little vague about the pharmacy that had been filling the prescriptions and when Jim pushed for an answer, Stark would only say the other guy “got religion.”

Stark then outlined the business model. The website would attract customers from across the country who wanted to get their prescription drugs through the mail. The customer (Stark never used the word patient) would fill out a questionnaire that the website would forward to a physician with whom Stark’s website had a contract. The doctor would review the questionnaire and the drug or drugs requested and would then fax a prescription for the drugs to Jim’s pharmacy.

Jim would fill the prescriptions and mail them through a courier service. Jim would be paid, including the \$25.00 handling fee for each prescription, by Stark’s website. Jim was a pharmacist, not a math major, but it didn’t take much to decide this could be profitable. Still, Jim was worried. “Is that legal?” he asked. Stark assured him it was.

There exists a new type of entrepreneur entering health care. Some of these entrepreneurs may actually care about the health of the patient. Many of them, however, seem to be only interested in profits. The results can be dangerous. The National Center on Addiction and Substance Abuse (CASA) reported that “dangerous and addictive controlled substances are

easily available over the Internet without prescription to individuals of any age.”² CASA looked at 141 Internet sites selling drugs including Percodan, Oxycontin, Valium, Ritalin and Xanax and found that 41% required NO prescription and 49% offered what they referred to as “on-line consultation.” Only 3% required the original prescription be mailed.

In the CASA study, 72% of one subgroup of Internet sites offering controlled substances either indicated the drugs were coming from outside of the United States, or gave no indication of where they were coming from. 28% indicated they were coming from pharmacies in the United States.

Pharmacies in the United States are being tempted to become a part of the Internet pharmacy business. Some of this business is, of course, legal and ethical, such as using the Internet to order refills of prescriptions. Other activities are more bothersome, and may border on illegal activity. While almost none of these bypass the legal requirement of a prescription, they often shortcut the system.

Under the Food, Drug and Cosmetic Act, certain drugs are classified as dangerous enough to require that they be used only under the direction and control of a prescriber licensed by state law.

Continued on next page



Kenneth R. Baker,
R.Ph., J.D.,
Pharmacists Mutual
Insurance Company

*Jim was
worried.
“Is that
legal?”*

¹ Jim is a fictional character, as is the “entrepreneur,” which appears in this story. All of the “facts” are invented for the purpose of setting the stage. What is real is that the gross margin in prescriptions has been driven so low that pharmacists are being forced to consider ventures they would not have thought of earlier.

² <http://www.casacolumbia.org>

WARNING!! - Blast or broadcast faxing

If you are advertising by sending a large number of faxes to potential customers – **consider stopping!**

The current “suit du jour” seems to be complaints filed against businesses for violations of the Telephone Consumer Protection Act (TCPA), Chapter 47, Section 227 of the United States Code.

This act places restrictions on the use of telephone equipment for solicitation. This act contains many regulations, exemptions and other provisions. Most legal complaints we see are being filed as a result of facsimiles being sent to businesses by the insured or by a vendor on behalf of the insured. The business alleges that our insured had no “established business relationship” with the party receiving the facsimile nor had that person’s prior express invitation or permission for the telephone solici-

tion.


These “unsolicited advertisements” give rise to claims for damages outlined in the TCPA that include actions to recover actual monetary loss from such a violation, or **\$500 for EACH such violation**, whichever is greater. This can be tripled if it is determined that the defendant willfully or knowingly violated the regulations of the TCPA. As an example, if 1,000 faxes were sent out which were deemed to be “unsolicited,” you may be liable for \$500,000 - \$1,500,000; possibly more if there are additional penalties imposed at the state level.

This is **notice** to you that coverage under your Pharmacists Mutual store policy, the BP-200, will be jeopardized if you send faxes knowing the law prohibits it. Page 35 of your policy states: **ADDITIONALEXCLUSIONS**

THAT APPLY ONLY TO PERSONAL INJURY AND/OR ADVERTISING INJURY

1. “We” do not pay for “personal injury” or “advertising injury” arising out of willful violation of an ordinance, statute, or regulation by an “insured” or with the “insured’s” consent.

Our best advice is to not engage in unsolicited internet or telephone advertising. If you do, make certain that you have an established business relationship with any person or entity, or their express invitation or permission, before using any telephone equipment to convey information and/or advertising.

Please contact Jack Williams in our Risk Management Dept. with any questions you might have. 800-247-5930, extension 7229. 

Internet pharmacy -- continued

The principle of the system of prescription-only drugs is based upon the belief that the prescriber is familiar with and has a personal relationship with the patient. A further safeguard built into the system is the restricted sales structure that exists; granting to pharmacists exclusive distribution rights.


A prescription sent to a pharmacy from a physician who has never seen the patient is, at the least, questionable pa-

tient care. The FDA and boards of pharmacy have closed many Internet pharmacy sites operating with this type of long distance prescribing. To overcome such legal obstacles, some Internet sites require the customer to declare the medication being ordered as “an emergency.” Others now say they will require patients to visit the site’s doctor at least once a year. Often an exam by a paramedic is required, which is then sent to the prescriber. Most of these arrangements appear to be designed to circumvent the laws rather than to protect the patient. Such arrangements are poor examples of medical practice.

Pharmacists Mutual Insurance Company has taken the position that on-line prescribing, except for prescriptions written by the patient’s personal prescriber, is a poor practice from an insurance and claims risk. As part of its underwriting criteria, Pharmacists Mutual will no longer write insurance for pharmacies practicing Internet pharmacy, i.e., where the prescription is written with less than

a full prescriber-patient relationship. While Pharmacists Mutual will not, at this time, require a VIPPS certification, it will adopt a policy mirroring VIPPS’ requirement that a pharmacy must, at a minimum, have policies and procedures designed to:

1. assure the integrity, legitimacy, and authenticity of the Prescription Drug Order.
2. prevent Prescription Drug Orders from being filled by multiple pharmacies.
3. assure that prescription medications are not prescribed or dispensed based upon telephonic, electronic, or on-line medical consultations without there being a pre-existing patient-prescriber relationship that has included an in-person physical examination.

We are taking this position as a prudent insurance company, but we also believe it is good pharmacy and that, in the long run, it will protect the interests of our insureds and the profession. 

Board of Directors:

Kirk M. Hayes, CPCU, Chairman, Algona, IA
Edward T. Berg, MBA, CPA, CPCU, Pres., Algona, IA
Gerald W. Deom, R.Ph., Radcliff, KY
Jonathan C. Grether, CPCU, CIC, ARe, AAM, Algona, IA
Michael F. James, R.Ph., Raleigh, NC
Sharlea M. Leatherwood, P.D., Gladstone, MO
Larry J. Mayhew, R.Ph., Phoenix, AZ
Randall C. Myers, R.Ph., Carey, OH
Jay L. Orr, R.Ph., Midwest City, OK
Matthew C. Osterhaus, R.Ph., Maquoketa, IA
Richard H. Williams, R.Ph., Lancaster, PA

Advisory Board:

Earl W. Bradley, R.Ph., Sugar Land, TX
G. Richard Keidel, R.Ph., Wayne, NE
James R. Rankin, Sr., P.D., Highland, IL

Camera cell phones – identity theft

Keep a watch out for people standing near you at retail stores, restaurants, grocery stores, etc., that have a cell phone in hand. With the new camera cell phones, they can take a picture of your credit card, which gives them your name, num-

ber, and expiration date. Identification theft is one of the fastest growing scams today, and this is just another example of the means that are being used. Be aware of your surroundings.

Do you have any questions or requests concerning

✓ **The contents of this newsletter?**

✓ **Safety Consultation Services?**

call 800-247-5930 ext. 7229

or e-mail jack.williams@phmic.com

Pharmacists
Mutual *Companies*

P.O. Box 370
Algona, IA 50511-0370

PRSRTSTD
U.S. Postage Paid
Mason City, Iowa
Permit No. 429

New training program available to Commercial Auto policyholders

The Pharmacists Mutual Risk Management Department is proud to announce our production and the availability of a **new Driver Training Program titled, "On the Job: On the Road."** This program is targeted at our commercial auto policyholder's primary types of drivers: delivery persons and off-premises, in-home health care providers.

The program addresses good general driving principles and specific topics that should concern these two types of drivers. The covered topics are the cause of many of the cases our claims examiners handle.

"On the Job: On the Road" consists of a VHS video tape presentation, a leader's guide, a short test, and the answer key to that test. The leader's guide is designed to make presentation by your own company's training personnel easy, with a minimum of preparation.

While the video is designed to be presented to groups of your drivers, the program is also available on CD-ROM. This is the same material covered in the VHS program but delivered in a format more suitable for individual training.

This medium should be useful for training new hires or that individual employed driver who has had a few incidents and needs a refresher course.

The program is available on request by contacting 800-247-5930 extension 7229, e-mailing your request to jack.williams@phmic.com, or writing to Risk Manager, Pharmacists Mutual Companies, P.O. Box 370, Algona, IA 50511-0370. It is available free as a value added service to any commercial auto policy client.

OSHA violations can be costly

OSHA doesn't come calling on pharmacies often, but when it does, it means business. A Bronx, New York pharmacy was recently hit with \$134,500 in proposed penalties for safety violations discovered in an OSHA inspection.

The infractions cited included locking a fire exit door. The investigation was provoked by a complaint about the blocked exit doors. This was considered a **"willful, serious, and repeat"** violation of a federal safety and health standard, and, as such, carries a **proposed penalty of \$70,000** – the maximum allowed under the Occupational Safety and Health Act.

Two "serious" violations were cited: for failure to maintain stairs in a clean and sanitary condition and for bypass-

ing the safety interlock on a cardboard compactor. The penalty for those two was a relatively small \$7,000.

Allegedly failing to post an exit sign on an exit door, failing to train employees on the use of fire extinguishers, and failure to maintain free and unobstructed access to fire extinguishers resulted in another **\$57,500 in penalties**. These penalties were high because the pharmacy had been instructed to correct the problems, and had failed to do so. That classifies those violations as **"repeat" violations** in OSHA's eyes. You can tell by the penalties, they take a very dim view of non-compliance or not cooperating with earlier recommendations.

Although today's OSHA would seldom target a pharmacy for a random

inspection, the threat of a complaint being filed always exists and OSHA will most often investigate a complaint if they have available manpower.

Look around your pharmacy, your card and gift store, your HME dealership, or your HHC offices for conditions like those cited above. **If you find them, correct them.** Not only to protect yourselves from OSHA fines, but, more importantly to improve the safety and health environment for your customers and employees.

If you have questions about conditions you find or other OSHA issues, call 800-247-5930 extension 7229 for a loss control consultation.

Editor eats crow!

I'm spittin' feathers! I regret to have to inform you that an article in the last issue of *Risk Management in Pharmacy* was not legitimate. The "Poor Planning" article about the mason's Work Comp claim turns out to be not a true story, but a fabricated one, and a rather old one at that. A few alert readers

pointed out that the story can be traced clear back to as early as the 1920's and is variously attributed to Buster Keaton or Laurel & Hardy, among others.

Sorry for the error. I'll try to research my sources more thoroughly in the future.

Pharmacists Mutual Companies: Pharmacists Mutual Ins. Co.; Pharmacists Life Ins. Co.; Pharmacists National[®] Ins. Corp.; Pro Advantage Services, Inc.; and PMC Quality Commitment, Inc.

Risk Management in Pharmacy is published by **Pharmacists Mutual Insurance Company**, P.O. Box 370, 808 Hwy. 18 West, Algona, IA 50511, ph. 515-295-2461.

This newsletter is distributed to policyholders of Pharmacists Mutual Insurance Co.

Editor: Jack Williams
Assistant Editor: Shelly Brown

All rights are reserved, no material may be reprinted without permission.

