



National Legislative Association
on Prescription Drug Prices

State Legislators from Across Country Join Vermonters to Defend Law Protecting Medical Information from Marketing Uses

June 23, 2008

NATIONAL LEGISLATIVE ASSOCIATION ON PRESCRIPTION DRUG PRICES (NLARx) JOINS DEFENSE OF VERMONT PRESCRIPTION DRUG LAW

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A copy of the brief will be posted shortly on the NLARx website and [here](#).

Washington, D.C. (June 23, 2008) - Vermont's law restricting the sale of prescription drug information that identifies prescribers and patients for commercial marketing purposes does not restrict free speech and serves substantial governmental interests, according to a brief to be filed today by an American University Washington College of Law professor on behalf of NLARx and other consumer and public policy organizations including AARP and Community Catalyst.

According to Professor Sean Flynn:

"This case turns on a key distinction between commercial speech and consumer surveillance. Only the former is protected by the First Amendment. The commercial speech doctrine serves consumer interests in being fully informed of products and services on the market by providing limited protection to advertisements and other speech to consumers proposing a commercial transaction. Pharmaceutical companies engage in commercial speech when they advertise their products through media and in-person sales calls to doctors. The commercial speech doctrine does not extend protection to use of information by private firms that does not communicate with potential buyers."

Rep. Treat stated: "States around the country are taking action to address the undue influence of drug industry marketing on the practice of medicine and the effect of this activity on public health, the integrity of the medical profession, and prescription drug costs. Vermont's law is a model for other states, because it addresses not only the practice of datamining, but also establishes an independent prescriber education program and regulates conflicts of interests."

In 2007, Vermont joined state legislators in New Hampshire and Maine in banning certain uses of prescription information to target marketing to doctors and other prescribers. According to Rep. Treat, the federal government has been slow to address issues of drug industry marketing and influence on the medical profession, and the states are in largely uncharted territory. Each state has since been sued by the pharmaceutical industry claiming that industry drug marketers have a First Amendment protected right to access and use prescription records to target marketing to doctors.

Information from prescription records is used by pharmaceutical companies to track prescribing choices and use that information to tailor commercial messages and target gifts and enticements to prescribers to use favored

medicines. The most favored prescribers can earn hundreds of thousands of dollars a year in "educational," "consulting" and other fees from pharmaceutical companies. Such marketing has had dramatic influences on the prescribing choices of physicians

The NLARx friend of the court brief points out that the plaintiffs -- large health data organizations and PhRMA, the drug industry trade group -- are not communicating with potential buyers when they monitor the prescribing practices of physicians, and therefore this practice is not accorded protection under the First Amendment.

"Indeed, the First Amendment calculus weighs strongly on the other side - of protecting the autonomy right of individuals to decide when to speak and to whom," said Professor Flynn. "Vermont's law provides a mechanism for prescribers to choose whether to share their prescribing information with pharmaceutical marketers and therefore serves rather than limits important First Amendment interests."

Flynn's brief demonstrates that there are overwhelming societal justifications for Vermont's regulation. According to Professor Flynn, "When governments require the disclosure of personally identifying information, such as that required on prescription records, privacy interests demand that governments ensure that the information is safeguarded from unwarranted disclosure. In addition, an abundance of social science evidence demonstrates that undue influence of pharmaceutical marketing over the prescribing choices of physicians and other health professionals compromises a central value of our health system - that medical decisions be based on evidence, not on personal relationships, marketing influence or the hope for pecuniary reward."

Permitting pharmaceutical marketers to track prescribing choices and use that information to tailor commercial messages and target gifts and enticements exaggerates undue influence of pharmaceutical companies in our health system that raises health care costs, promotes irrational drug selection, threatens professional integrity, compromises patient privacy and increases the prevalence of harassing marketing practices. According to Flynn, "States have an overriding interest in combating these social ills."

About the National Legislative Association on Prescription Drug Prices:

NLARX is a non-partisan, non-profit organization of state legislators from across the country working to lower prescription drug costs and improve access to affordable medicines. Members include legislators from New York, Maryland, Pennsylvania, Texas, Alaska, Arizona, Colorado, Oklahoma, Hawaii, South Carolina, the District of Columbia and all the New England states. For more information and to sign up for our bi-weekly newsletter, visit our website at www.reducedrugprices.org.

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