

The State; Out-of-State Doctors Fined by California; Board levies \$48 million in penalties for online prescribing. A lawyer for two physicians disputes jurisdiction.

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The Medical Board of California has fined six out-of-state physicians a total of more than \$48 million for prescribing medications over the Internet without an examination. The penalties are believed to be the most severe by any state for online prescribing.

The fines, announced this week, stem from an undercover investigation by the licensing agency that targeted Web sites offering online consultations and prescriptions.

The action is highly unusual because it focuses on physicians who practice outside of California, although the doctors' home states cooperated with California authorities.

Board spokeswoman Candis Cohen said her agency went forward because the safety of California patients was at stake.

"Prescribing drugs in cyberspace is dangerous," she said. "It's a way for physicians to make a fast buck, but it is prescribing without the two legally required elements: a good-faith examination of the patient and a clear medical indication" that the drugs are warranted.

The bulk of the sanctions were levied against Carlos Gustavo Levy, a Florida physician who was fined \$39.1 million for allegedly issuing 1,567 improper prescriptions to Californians. Also fined were doctors Michael Brunsman of Arizona; Martin Feldman of Rhode Island; Harry Hoff of Manitoba, Canada; Jose Crespín of Florida; and David Livingston of Tennessee.

The doctors, who did not work together, are accused of writing a total of 1,952 prescriptions for medications including Viagra, Propecia (for hair growth), phentermine (for weight loss) and Zyban (for smoking cessation). It was not clear Tuesday when the prescriptions were written.

An attorney for Brunsman and Livingston said his clients would challenge the fines. The other four doctors could not be reached. The board's aggressive action is intended to send a warning to the swelling ranks of Internet prescribers and marks a dramatic departure from California's relatively low-key approach to this problem in the past. It was only a few weeks ago that California revoked its first medical license -- that of a Colton doctor -- for improper online prescribing.

In the last two or three years, 27 of 68 medical boards nationwide have sanctioned doctors -- using everything from warnings to license revocations -- for such prescribing.

"California is clearly not unique in its actions, but \$48 million puts it way out in front of the pack," said James Thompson, chief executive of the Federation of State Medical Boards. "My sense is this will be a wake-up call to any physician considering using the Internet for practice."

Adam Palmer, a Phoenix attorney who represents Brunsman and Livingston, said his clients fall outside the purview of the state medical board. The two doctors have requested informal hearings to discuss the matter with

board representatives. They have the right to formal hearings before an administrative law judge, and ultimately to challenge the discipline in court.

"These doctors never came into California," Palmer said. "They never opened up a shop in California. They never issued a prescription in California. All their work was performed in these states where they were licensed to practice medicine. We think California law doesn't apply."

Palmer referred to the fined physicians as "pioneers" in medicine, who are practicing without clearly established rules. "They've been punished without any guidelines set forth in writing How do you know if you're speeding if there's no speed limit posted?"

In fact, Palmer said, as soon as Brunsmann and Livingston were disciplined in their own states in 2001, they stopped prescribing online.

Even some medical board officials in other states are skeptical of one state's right to cite another state's doctors.

"Sure, we would be concerned about people being injured by taking drugs from an out-of-state doctor, but we don't have regulatory authority over that," said Jill Wiggins of the Texas State Board of Medical Examiners.

Michael Asimow, a professor emeritus at UCLA law school, predicted that California would prevail in court.

"There's no doubt that the medical board is pushing the envelope here, but I think they're doing the right thing," he said. "If you prescribe medicine for patients in California, I think you're practicing medicine in California."

California Medical Board Internet investigator Paul Nasca said Tuesday that the reality of today's technology forces regulators to look beyond their own borders.

The medical board prefers to look into doctors locally, but if the Internet trail leads to another state, investigators follow, he said. "The problem we have is that often the doctor's in one state, the pharmacy in another and the patient in yet another state," Nasca said.

California recently signaled that it also is taking a harder look at Internet prescribers within the state. Last month, the medical board revoked the license of Colton doctor Jon Steven Opsahl for prescribing over the Internet without an exam.