

# Online Prescribing: How one doctor got caught

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In Arizona physician who approved drug orders for an Internet pharmacy believed he was providing patients with "a good service." The state medical board disagreed.

Last fall, Arizona's medical board found general surgeon Darryl J. Mohr guilty of "unprofessional conduct" for approving online orders for Viagra and other drugs without examining or having direct contact with the buyers. In addition to ending Mohr's thriving online practice, the case reveals a growing gap between Internet and traditional medicine, and the inadequacy of current methods for monitoring and regulating online drug sales (see "[The growing problem of online pharmacies](#)").

Mohr had practiced in the Phoenix area until 1986, when a hospital restricted his surgical privileges after an undisclosed surgical incident. Arizona's Board of Medical Examiners (BOMEX) also investigated, and in 1991 Mohr agreed to stop performing surgery. He spent from 1986 to 1998 working in ERs and walk-in clinics, and doing workers' compensation exams in Arizona, Ohio, and Texas.

In 1998 Mohr was approached by Express Today, an Internet pharmacy based in Chandler, AZ, that sold Viagra as well as Celebrex, Propecia, and Xenical to online buyers around the country (but not in Arizona). In addition to the cost of the drugs, the company charged each customer a \$50 "physician consultation" fee.

Express Today hired Mohr to review questionnaires filled out by these customers, and to approve their drug orders. He started out working part time, but the job soon became full time as business boomed.

In October 1999, Mohr approved a Viagra prescription for someone who turned out to be an FDA agent investigating online prescribing. The agent filed a complaint with BOMEX, which conducted a preliminary investigation. BOMEX then held a hearing at which its board members questioned Mohr about the nature of his online practice.

## An independent contractor

Mohr described himself as an independent contractor who simply reviewed drug orders and approved prescriptions, but didn't dispense drugs himself. When one board member asked whether his Internet practice involved any direct patient contact, he replied, "In a traditional sense, No."

Mohr declined to reveal what he was paid for his services, insisting that that information wasn't relevant to the complaint against him. Asked who kept records of the office's sales and drug inventory, Mohr replied, "That's the company's responsibility, not mine."

Express Today's procedure for ordering drugs online worked like this: After filling out a questionnaire, customers could initially order a certain number of pills (up to a 30-day supply for Viagra, for instance), paying by credit card. For refills, customers had to answer additional questions about side effects. If they wanted more information, they could call Mohr directly using the number provided on the Web site. Asked how many customers actually did so, he estimated "less than one-half of 1 percent."

At first, Mohr claimed that he reviewed about 30 to 50 orders a day for Express Today. But later he agreed that the number might be as much as 1,000 a week. Given that huge volume, and the limited information on the patient questionnaire, several board members expressed doubts about the rigor of Mohr's reviews. In response, the surgeon said he typically spent "a couple of minutes" going over each questionnaire before approving the order.

## **Doubts about online reviews**

While Mohr did much of his work at Express Today's offices, business became so brisk that he often spent his evenings reviewing orders on his home computer. When pressed by the board, Mohr admitted that he didn't actually review all the questionnaires. In fact, except for occasional "spot checks" on "clean" orders, he reviewed only those that raised questions about possible contraindications.

Asked how often he rejected online requests, Mohr said he couldn't give an exact answer because he didn't keep such records. "One day you might reject none," he said. "The next day you might reject two or three."

Richard H. Carmona, a trauma surgeon on the board, asked what medical records Mohr kept for the patients whose orders he approved. Mohr replied that unless someone telephoned him with specific questions after receiving the drugs, the record consisted only of the filled-out questionnaire. When he admitted that fewer than 1 percent of the customers actually did call, Carmona wondered how he would know if a patient had a problem after taking the medication.

"How would you know that in an office practice?" Mohr countered. "If he doesn't come back, you can't know that he's got a problem."

That was too much for Carmona: "If you're telling me that 99 percent of your patients go away and are cured, and you don't hear from them because they have no problems, I want to get on your list. This is pretty miraculous."

The board was particularly troubled by the fact that all of the orders Mohr approved came from out-of-state customers. A representative from the state attorney general's office asked Mohr whether he was aware that, in effect, he was practicing medicine in those states without a license. Mohr responded that such restrictions applied to "traditional" medicine, not to Internet medicine.

He made the same distinction in response to several other concerns expressed by board members. For example, when one asked whether he felt that his reviews of the questionnaires established a doctor-patient relationship, Mohr replied, "For Internet medicine, Yes."

In his defense, Mohr pointed out that he had created the patient questionnaires based on protocols from the drugs' manufacturers. For Viagra, for instance, the form asked about allergies, medical problems such as CHF, and other medications such as nitrates the patient might be taking.

The questionnaires were "extensive and complete," he claimed, enough to give him "a very good idea" of the patient's medical history and to determine whether the drug would be safe and appropriate. "If there are any medical contraindications, [the request] gets denied."

## **Concerns about online honesty**

Asked how he could be sure that patients filled out the forms honestly and accurately, Mohr insisted that the questionnaire enabled him to judge patients' truthfulness. Besides, he countered, "If a patient were to come into my office, they could give me any story that they wanted, just as they can over the Internet."

Carmona asked, "How do you ascertain that the patient is legitimate vs somebody . . . that just wants to get medication from you and sell it on the street?"

"The same way as if he walked into my office in a face-to-face meeting," Mohr replied.

Board Chairman Ram R. Krishna, an orthopedic surgeon, pointed out that while a teenager seeking Viagra could easily lie about his age on an online questionnaire, that wouldn't work in an office visit.

Another doctor asked how Mohr could be sure that the online patient he prescribed drugs for hadn't just ordered a similar dose via another Web site. He admitted he couldn't, but argued that the same risk applied to patients getting prescriptions during office visits.

Several board members wondered how Mohr could confirm a patient's self-diagnosis of sexual dysfunction without a physical exam, or rule out possible physical causes of erectile dysfunction such as arteriosclerosis or diabetes. Mohr insisted that the questionnaire would pick up such conditions.

But one physician on the board suggested that patients might not be aware that they had those conditions, and that a physician could discover them only by conducting a physical exam. Mohr disagreed. "How many patients walk into your office and tell you they have erectile dysfunction?" he asked. "Most men have difficulty talking to their doctors about [it]. The confidentiality of being able to order that safe medication over the Internet is much more appealing to most men than it would be to go into a doctor's office and go through an extensive workup."

One board member questioned the safety of prescribing Celebrex for patients over the Internet without a physical exam to confirm a diagnosis of arthritis. "I am not an internal physician," Mohr replied.

Besides, he noted, most of those patients had already been diagnosed by their own physicians, and had already gotten prescriptions from them for the drug. They were buying it online, he argued, simply because it cost less than it did at their local pharmacies. However, when he was asked whether he attempted to confirm such prior prescriptions, he admitted that he didn't.

By the end of the hearing, Mohr was still insisting that he saw nothing wrong with prescribing drugs for online patients whom he never examined. As he said, "I believe that I am doing a good service for something that the patient wants."

William J. Waldo, a general surgeon, asked, "Do you think that traditional medicine and Internet medicine are equivalent in quality?"

Mohr replied, "No, just different. I don't think you can categorize one as better than the other."

The Arizona board obviously disagreed. Last fall, it formally reprimanded Mohr for "unprofessional conduct" that might be "harmful or dangerous" to public health. In a consent agreement reached last fall, Mohr agreed to pay a fine of \$5,000, to complete 40 hours of CME in pharmacology, and to stop prescribing over the Internet. He also agreed not to prescribe in any state in which he does not hold a license.

Mohr's lawyer, Adam Palmer, thinks the board treated his client unfairly. "Lots of doctors order drugs by phone for patients and friends without examining them," he argues. And he feels there's nothing wrong with prescribing drugs over the Internet: "None of Mohr's customers ever complained. They liked the service he provided, and they wanted it. Besides, there was no law against what he was doing at the time."

There is now. Prompted by Mohr's case and two others in which the board sanctioned physicians for online prescribing, the Arizona legislature passed a law last year that expands the definition of unprofessional conduct. While the new law doesn't specifically mention the Internet, it applies to any doctor who prescribes drugs—whether online, over the telephone, or via telemedicine—without a pre-existing doctor-patient relationship or without conducting a physical exam.

## **The growing problem of online pharmacies**

Attracted by easy money, doctors are prescribing drugs over the Internet for patients they've never met. They could be exposing themselves to professional discipline and malpractice suits.

Darryl J. Mohr is no longer practicing medicine in Arizona. But Express Today, the Internet pharmacy he prescribed for, is still operating online. Mohr's case (see "[How one doctor got caught](#)") points up the numerous professional and legal risks faced by physicians who prescribe online. And it's an issue that's becoming more prominent. Estimates from various sources put the current number of pharmacy Web sites at over 400, although the exact number is unclear because of the speed with which sites spring up, change names, or disappear.

Some of these sites are legitimate pharmacies that require a prescription from the patient's own doctor, and employ registered pharmacists to answer customers' questions. But most sites offer simpler service and few restrictions: As one boasts: "No prescription? No doctor? No problem."

Many online pharmacies recruit doctors who are unemployed, semiretired, or trying to supplement declining practice incomes. These companies typically pay \$5,000 to \$10,000 a month for part-time work reviewing questionnaires and approving prescriptions. Doctors who work full time may earn much more, often based on a percentage of the \$50 to \$80 fees the companies typically charge for a "physician consultation."

## **An absence of safeguards leads to regulation efforts**

To assure patient safety—and avoid liability—many sites automatically reject an order if a buyer's questionnaire suggests that the drug may be medically inappropriate, such as Viagra for someone with a heart condition. But, on other sites, the process appears far more haphazard. For example, a newspaper reporter in Seattle who claimed normal weight was able to order a prescription weight loss drug. A woman who said she had asthma—not arthritis—got a prescription for Celebrex. A TV reporter ordered and got Viagra for her 6-month-old son, using his actual height, weight, and birth date. Another investigator received the same drug after giving vital data for his cat.

Even on sites that do cull through questionnaires and reject inappropriate buyers, the system remains ripe for abuse. These rejected buyers can easily get around any barriers simply by resubmitting their orders and omitting or revising the troubling information. Most online pharmacies make no effort to confirm the accuracy of the questionnaires. So an anorexic can claim to weigh 300 pounds in order to order a diet drug; a wimpy teenager can swear he's 21 to obtain muscle-building drugs.

While there's not much evidence yet of adverse events related to Internet drug sales, there is some. In 1999, for instance, a 52-year-old Illinois man with a history of chest pain died of a heart attack after taking Viagra he'd bought from an online pharmacy.

No government officials are suggesting that there's anything wrong with online prescriptions per se. In fact, the majority of states explicitly allow doctors to send electronic prescriptions to in-state and out-of-state pharmacies. But those laws were meant to cover physicians writing prescriptions for their own patients. Internet pharmacies are a different story.

Congress is now considering a proposed Internet Pharmacy Consumer Protection Act, and more than a dozen states have passed or introduced legislation clarifying standards for online prescriptions. While these new laws may not specifically mention the Internet, they spell out the requirements that apply to any prescription, whether it's handled in the office, by phone, or online.

Ohio's new law, for example, requires that doctors who prescribe medicine to patients in Ohio be licensed in the state, and it prohibits prescriptions written without recent direct contact with the patient. "Whether it's the Internet, the telephone, or smoke signals," says Tom Dilling, executive director of Ohio's state medical board, "the expected standard of care is that you see a patient and establish what's needed through a physical exam."

Most state medical boards already have the power to discipline doctors who prescribe without a pre-existing relationship with the patient, without conducting a physical exam, or without a license in the state where the patient resides. Enforcing these conditions for online prescribing is difficult, however, since few Internet pharmacies disclose the identity or location of their prescribing physicians.

Federal and state agencies have already begun clamping down on Internet pharmacies and physicians. Medical boards in more than a dozen states have punished physicians for prescribing drugs online. The FDA has already taken more than 250 "enforcement actions" (ranging from warnings to court injunctions) against Internet pharmacy sites, and attorneys general in at least six states have filed charges against such sites and their physicians. New Jersey, for instance, has prosecuted more than a dozen Internet pharmacies, charging that they violated the state's consumer fraud laws, and that their "virtual doctor visits" conducted by out-of-state physicians do not meet state regulatory standards.

In addition to such efforts, the Federal Trade Commission has urged Congress to require Internet pharmacy sites to disclose the identities of their prescribing physicians—including name, address, and phone number—as well as the states in which those doctors are licensed to practice.

## **Various groups try to establish professional guidelines**

The AMA has issued specific guidelines for Internet medicine. According to the organization, physician-patient encounters that occur online "should not be subject to a lower level of protection" than those in traditional office settings. And physicians who prescribe online fall "well below a minimum standard of medical care" if they fail to obtain the patient's medical history, conduct a physical exam to confirm a specific medical problem and diagnosis, discuss possible side effects, disclose treatment alternatives, or arrange for follow-up care to assess treatment outcome.

The AMA believes that patient questionnaires used by most sites don't do enough to prevent inappropriate medication. AMA trustee Herman I. Abromowitz, a family physician in Dayton, OH, comments: "I have not yet seen a questionnaire that replaces patient-physician contact. There's no eye-to-eye contact and no personal interaction. Patients may not

understand the questionnaire or remember everything that they're taking when they answer it." Such errors, he argues, "could endanger a patient's life."

Guidelines adopted by the Federation of State Medical Boards say that any physician who prescribes medications "based solely on an electronic medical questionnaire clearly fails to meet an acceptable standard of care" and is engaging in "unprofessional conduct." The guidelines are similar to the AMA's, but, in addition, the FSMB says the physician must maintain a medical record available to patients and other health care professionals.

The FSMB does allow for some exceptions to these guidelines: if the prescribing physician has a pre-existing relationship with the patient or consults with another physician who does, if the order is simply a refill for an existing prescription, if there's an emergency, or if the prescribing doctor is covering for a colleague and has access to the patient's records.

To help enforce its guidelines, the FSMB recommends that state medical boards require physicians to list any Web-based professional activities on their license applications and to provide identifying information on any Web sites for which they prescribe.

Another professional organization that's gotten into the act is the National Association of Boards of Pharmacy. It has established a voluntary program called Verified Internet Pharmacy Practice Sites (VIPPS), which certifies Web sites that comply with current state licensing and regulatory requirements. Only 16 sites had received certification at the time we went to press. Such sites typically process prescriptions the same way brick-and-mortar drugstores do, verifying them with the patient's own doctor. They also offer patients the opportunity to talk with registered pharmacists.

## **The risk of professional liability looms**

Physicians who prescribe drugs for online pharmacies may also be exposing themselves to malpractice suits. After all, if a state medical board can charge them with "unprofessional conduct," a plaintiff's lawyer could easily use the board's action to support a malpractice claim if the patient has an adverse reaction.

Not all malpractice policies will cover a doctor sued for online prescribing, particularly if the patient is from a state where the doctor isn't licensed. Some Internet pharmacies offer malpractice coverage for their prescribing physicians. How much protection that provides, however, has yet to be measured.

"Many doctors are unaware of all the liability risks in cybermedicine," says Randi Kopf, a health care lawyer in Rockville, MD. "First, they may not meet the standard of care if they prescribe drugs without doing a physical exam or establishing a doctor-patient relationship. Then there's a question of informed consent if they don't communicate directly with the patient. If they're prescribing for patients in other states, that's another problem. Finally, there's a scope-of-practice issue if the doctor is prescribing a drug for a condition that's outside his specialty, like a dermatologist prescribing Viagra."

Internet pharmacies may not care about their prescribing doctors' specialties as long as they have a current license. But malpractice carriers, plaintiff's lawyers, juries, and state medical boards will care.

"The medical boards are well within their rights to act against physicians who prescribe drugs without patient contact," says Robert Falk, a health law specialist in Washington, DC. "I think this is one of those few areas in health law where common sense is a good rule of thumb. Any physician who's willing to prescribe a drug without ever seeing a patient should know he's doing something questionable."

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