

# The Sacramento Bee

The Sacramento Bee

February 11, 2003

## State fines six doctors for online prescriptions

Author: Dorsey Griffith

Bee Medical Writer

Edition: METRO FINAL

Section: MAIN NEWS

Page: A1

Article Text:

In an unprecedented move that could affect medical practice nationwide, the Medical Board of California has levied millions in fines against six out-of-state doctors for prescribing drugs to state residents over the Internet.

The board said Monday that the doctors violated state law in prescribing drugs such as Viagra over the Internet, and fined them \$48 million, or \$25,000 a prescription.

The doctors targeted in the sting were Michael Brunsman of Arizona; Martin P. Feldman of Rhode Island; Harry Hoff, Carlos Gustavo Levy and Jose Crespín of Florida; and David Livingston of Tennessee.

The fines are intended to warn physicians around the country that California will not tolerate the Internet prescription of drugs without the establishment of a legitimate doctor-patient relationship.

But they also highlight the limitations of states in regulating the activities of physicians doing business in states in which they are not licensed. An attorney representing two of the doctors said he will take the California citations as far as the U.S. Supreme Court, if necessary.

"It's wonderful the state of California is doing something dramatic, because something dramatic needs to be done," said Bruce McIntyre, chief administrative officer at the Rhode Island Board of Medical Licensure and Discipline. "But whether this will be something that a court will uphold is another matter."

Dave Thornton, chief of enforcement for the Medical Board, acknowledged "this is new territory," and that there is no guarantee the state will ultimately collect the fines.

"We have done our part by issuing the citations, and we'll let the system take over to see if we collect the money," he said.

The state is employing a 2001 law allowing the fines against doctors who write prescriptions without first performing a "good-faith" examination.

That, said Thornton, is generally one in which the doctor has done a face-to-face examination.

Thornton said if the doctors want to contest the fines, they must ask for a hearing before a California administrative law judge, who would decide the case and issue a fine. If they fail to pay the fines, he said, the state will contact the medical boards in the doctors' respective states, which can penalize them for failing to respond to the citations.

The state in January revoked the medical license of Colton physician Jon Steven Opsahl after he violated a restraining order by continuing to prescribe drugs over the Internet.

The doctors named in the recent citations prescribed drugs such as Viagra, intended for sexual dysfunction; Propecia, for baldness; Celebrex, for arthritis; and for weight loss, Xenical, Meridia and Phentermine, which is a controlled substance.

In most cases, Thornton said, patients filled out a questionnaire online and submitted it with a credit card number to receive the medication by mail.

"You don't know whether the patient is a male, female, how old they are or anything else," he said. "It's a dangerous practice."

Several of the physicians cited have had run-ins with the medical boards in their own states, records show.

Feldman, who was fined \$3.9 million by the state of California, was a surgeon in Rhode Island before he began prescribing drugs through the Internet, McIntyre said.

"He had a totally unblemished career, retired and wanted to stay busy," he said of Feldman. "He was under the erroneous belief that this would be sanctioned, and he is finding out the hard way that it's not."

The doctor was ordered to stop the practice under the Rhode Island medical board's policy stipulating that prescribing drugs without taking a patient history or doing a physical exam falls below the minimum standards of practice, he said.

Arizona obstetrician-gynecologist Brunsmann, fined \$1.8 million by California, also was investigated in his own state, records show. In 2000, he was reprimanded and fined \$5,000 for Internet prescribing, a case that sparked enactment of a law in Arizona enhancing the definition of unprofessional conduct to include prescribing without first performing a physical exam.

Attorney Adam Palmer represents Brunsmann and Tennessee physician Livingston, who is being fined \$1.5 million. The doctor was disciplined in 2001 in his own state for prescribing drugs through the Internet.

Palmer said he believes his clients have done nothing illegal, and vowed to fight the fines in court if needed.

"It will affect everyone nationwide if we have to appeal it all the way to the Supreme Court," he said. "There are no rules precluding selling to anybody throughout the country or the world, as long as these doctors are licensed in their own states and they don't go into other states and prescribe."

He added that patients, who like the anonymity of prescribing online, aren't complaining.

Because physician discipline is handled by the individual states in which doctors are licensed, how states address Internet prescribing practices varies. Efforts to establish national Internet prescribing laws have failed.

Dale L. Austin, chief operating officer for the Federation of State Medical Boards, acknowledged that collecting fines from out-of-state doctors could be challenging. But he added that at the very least, there is general agreement among boards about the practice.

"To a board, you would find that they don't believe it is safe or that it meets the standard of care for a physician to prescribe to someone they don't know," he said. "Under the broad rubric of unprofessional conduct, every board can take action."

Levy - who was fined more than \$39 million, the highest individual fine levied against the six doctors - declined to comment. The Bee couldn't reach Hoff, who was fined \$1.2 million, or Crespin, who was fined \$1.1 million.