

# PMP ACTS/REGULATIONS AND OTHER STATE STATUTES/REGULATIONS

## GENERAL THEMES

- Seven (7) states have statutes, regulations or enacted bills that require a prescriber to access or check the PMP in specified circumstances:

Colorado

Delaware

Louisiana

Nevada

Ohio

Oklahoma

West Virginia

- Three (3) states have statutes, regulations or enacted bills that recommend or encourage prescribers or dispensers to access or check the PMP:

Arkansas

Colorado

Maine

- Eighteen (18) states, as a general rule, explicitly say in their PMP acts that neither prescribers nor pharmacists are required or obligated to access the PMP database.

▶ Notable Exceptions:

1. New Jersey's language stating that prescribers and dispenser need not check the database applies only beyond that which may be required as part of the practitioner or pharmacist's professional practice.
2. Oklahoma's law requires a registrant who dispenses, administers, or prescribes methadone to check the patient's prescription profile with the central repository.
3. West Virginia's regulations require that practitioners access the database to confirm that a patient who is in an opioid or methadone treatment program is not seeking prescription medications from multiple sources.

● **Approximately ½ of the 48 state PMP laws include language that would provide immunity from civil liability for accessing/requesting, not accessing, using or not using PMP data.**

Alaska  
Arizona  
Delaware  
Florida  
Georgia  
Idaho  
Illinois  
Indiana  
Iowa  
Kansas  
Maryland  
Minnesota  
Montana  
North Dakota  
Ohio  
Oklahoma  
Oregon  
South Dakota  
Tennessee  
Vermont  
Washington  
West Virginia  
Wyoming

# CASE LAW/COURT OPINIONS

## SANCHEZ VS. WALMART, ET. AL

- **Third party liability**

- **Two types of negligence alleged:**

- 1. Common Law Negligence**

- ◆ Pharmacies owed duty of care to unidentified third parties who might be injured by a pharmacy customer driving under influence of controlled prescription drugs.

- ◆ Pharmacies negligent because they continued to fill the driver's prescriptions after receiving letter by NV Controlled Substance Prescription Task Force.

- 2. Negligence Per Se (violation of a statute)**

- ◆ NV statutes on dispensation of prescription drugs and maintenance of customers' record were enacted to protect the public.

- ◆ Pharmacies were negligent in violating NV statutes.

# NV SUPREME COURT RATIONALE

## COMMON LAW NEGLIGENCE CAUSE OF ACTION

- Common law negligence – 4 elements

1. Duty of care
2. Breach of duty
3. Breach was proximate cause of injury/harm
4. Damages

- Duty of care could exist because of:

1. A special relationship
2. A public policy duty created by NV PMP statute

- NV Supreme Court ruling – No special relationship:

1. Plaintiffs had no direction relationship to defendants
2. Plaintiffs were unidentified members of public

●NV Supreme Court ruling – No public policy duty created by NV PMP statute

1. Board of Pharmacy/Investigation Div. only ones allowed to share information in PMP database. Prescribers/pharmacies expressly prohibited from disclosing information.

2. Nothing in PMP law required pharmacies to take action to protect public after receiving Task Force letter.

3. Legislative intent was that NV PMP law was for purpose of enhancing recordkeeping.

## NV SUPREME COURT RATIONALE

### NEGLIGENCE PER SE ACTION

- Statutes and regulations Plaintiffs relied on did not create a duty of care to third parties.
- Statutes and regulations were not intended to protect the general public or against any injury Plaintiffs as third parties might have sustained.

# HOOKS SUPERX, INC. V. MCLAUGHLIN

- Liability to patient/customer

- IN Supreme Court ruling:

1. Pharmacist had duty of care to patient/customer

2. Pharmacist had duty to cease filling prescription pending explicit direction from prescriber when pharmacist refilling prescription at an unreasonably faster rate than prescribed.

- IN Supreme Court rationale:

1. Pharmacists already had statutory authority to refuse to refill prescriptions to avoid aiding or abetting a drug addiction.

2. IN PMP could provide pharmacists with prior history of patient's prescriptions.

3. Skilled pharmacists, aided by the PMP, could determine when a prescription was being refilled at an unreasonably faster rate than the rate prescribed.