



# MINNESOTA BOARD OF PHARMACY

*newsletter to promote pharmacy and drug law compliance*

## ***Disciplinary Actions***

Because of space limitations, information on disciplinary actions is no longer included in the *Minnesota Board of Pharmacy Newsletter*. A document that provides information about recent Board disciplinary actions can be found on the Board’s [website](#) under the “Resources/FAQs” menu item.

## ***Minnesota Syringe Access Initiative***

The Minnesota Syringe Access Initiative is a law that promotes pharmacy sales of sterile syringes to help reduce transmission of HIV, viral hepatitis, and other infections related to sharing syringes/needles. This law allows people to purchase up to 10 new syringes/needles without a prescription at pharmacies that voluntarily participate with this initiative in Minnesota. The law has been in effect since July 1, 1998.

Some key provisions of the legislation include the following:

- Pharmacies may voluntarily participate with the initiative
- Pharmacies may sell up to 10 syringes/needles at a time without a prescription
- Pharmacies are encouraged to supply information on HIV testing and prevention
- Participating pharmacies are encouraged (but not required) to participate in various syringe disposal activities

The Minnesota Department of Health (MDH) has a web page that lists all participating pharmacies so that folks who are looking to purchase syringes can search sites

### ***National Pharmacy Compliance News***

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by the appropriate county. If you would like to edit, add, or remove a pharmacy listing from the MDH website, please visit [www.health.state.mn.us/people/syringe/counties/index.html](http://www.health.state.mn.us/people/syringe/counties/index.html).

If you or any of your colleagues would like more information regarding the Syringe Access Initiative, please reach out to Anna Bosch, harm reduction program specialist at MDH, at [anna.r.bosch@state.mn.us](mailto:anna.r.bosch@state.mn.us).

## **Kickback Arrangements With Long-Term Care Facilities**

Pharmacies that provide services to long-term care facilities (LTCFs) are reminded that it is unprofessional conduct for a pharmacy or pharmacist to participate:

. . . in agreements or arrangements, with any person, corporation, partnership, association, firm, or others involving rebates, 'kickbacks,' fee-splitting, or special charges in exchange for professional pharmaceutical services, **including but not limited to the giving, selling, donating, or otherwise furnishing or transferring, or the offer to give, sell, donate, or otherwise furnish or transfer money, goods, or services free or below cost to any licensed health care facility or the owner, operator, or administrator of a licensed health care facility** as compensation or inducement for placement of business with that pharmacy or pharmacist. Minnesota Rules 6800.2250, Subpart 1.D (emphasis added).

The Board periodically receives complaints alleging that a pharmacy is providing goods or services to LTCFs without charging for them or charging an amount that is below the cost of the service or good. Below are examples of arrangements that are not allowed. (There may also be other services or goods, not mentioned here, that are being inappropriately provided by pharmacies to LTCFs.

Pharmacies are advised to consult with their legal counsel and/or with the Board when considering whether to provide anything else of value to facilities for free or below cost):

- Furnishing LTCFs with medication carts without charging the facility a fee for the use of the carts. The Board has heard that some pharmacies may believe it is permissible to own medication carts and "loan" the carts to facilities without charge. Doing so is **not allowed** and is a violation of the above-mentioned rule. The storage of drugs dispensed to a patient, and subsequently stored at the facility, is the responsibility of the facility, not the pharmacy. Consequently, the storage of dispensed prescriptions in a medication cart is not an extension of the dispensing process. Once dispensed and delivered to the facility, the drugs are no longer the property of the pharmacy.
- This does not apply to automated drug distribution system (ADDS) packaging devices that are allowed pursuant to Minnesota Statutes §151.58. The drugs loaded into an ADDS of this type are considered to be the property of the pharmacy, not the nursing home, until they are packaged and dispensed from the machine. The pharmacy is responsible for loading drugs into the ADDS and a pharmacist must be available remotely to supervise the operation of the device 24/7.

- This also does not apply to emergency kits or ADDS used for first and emergency doses. The drugs in those kits and devices are also considered to be the property of the pharmacy.
- Furnishing LTCFs with nursing home pharmacist consultant services for free or below cost. To comply with the rule, the nursing home should be charged at least a sufficient amount to cover the actual salary and benefits paid to the pharmacist for the total number of hours that the pharmacist is providing services to the nursing home.
- Furnishing computers or medication administration record systems for free or below cost.
- Bundling the cost of goods and services provided to the LTCF with the costs of prescriptions dispensed to residents of the facilities.

Per Minnesota Statutes and Rules, pharmacies **are** permitted to do the following. (Pharmacies should, however, consult with their legal counsel to determine if doing these things would be in violation of federal anti-kickback or other statutes and rules):

- Furnishing nursing homes with Drug Enforcement Administration-compliant drug disposal containers or devices, free of charge, and paying for the disposal of the drugs placed into those containers. Minnesota Statutes §151.37, Subdivision 6a, allows a pharmacy licensed under Minnesota Statutes §151.19 to “collect a legend drug from an ultimate user, or from a long-term care facility on behalf of an ultimate user who resides or resided at the long-term care facility, for the purpose of disposing of the legend drug as pharmaceutical waste.”

Please note, however, that a pharmacy is not permitted to allow LTCFs to physically return drugs to the pharmacy for disposal. LTCFs can only return drugs to the pharmacy pursuant to Minnesota Rules 6800.2700, Subpart 2, which allows for the return of drugs that can be re-dispensed (as long as certain conditions are met). Drugs that cannot be re-dispensed are considered pharmaceutical waste and must be disposed of in compliance with Minnesota Pollution and Control Agency statutes and rules, per Minnesota Statutes §151.37, Subdivision 6a.

In the past, the Board has issued warnings about such violations. The Board is empowered, however, to take disciplinary action for any violation of its statutes or rules and may, among other actions, impose civil penalties of up to \$10,000 per violation.

### ***Pharmacist Continuing Education***

Minnesota-licensed pharmacists are reminded that continuing education (CE) reporting is due no later than September 30 of every even-numbered year. There are now approximately two months left during which pharmacists can complete and report their CE for the period of October 1, 2020, to September 20, 2022. Upon completion of at least the required 30 hours of CE, pharmacists can visit the Board’s [website](#), choose “Login to My Account” from the “How do I” tab in the upper right-hand corner of the page menu, log in to the Board’s system, and certify the completion of their

CE. Alternatively, pharmacists can access a Certification of Completion of CE form on the Board's [website](#) by selecting "Forms" from the top navigation. Fill out and sign the form, then send it to the Board office. Note that pharmacists who first received their license from the Board after October 1, 2020, may need to complete less than 30 hours of CE. Those individuals need to complete an amount of CE that is prorated based on the number of months that they had an active license during the CE cycle. Those pharmacists can determine the number of hours that they need to complete by logging in to their account on the Online Services portion of the Board's [website](#).

### **COVID-19 Update**

During the coronavirus disease 2019 (COVID-19) Omicron variant surge, Board President Stuart Williams and former Executive Director Dr Cody Wiberg agreed to issue a document titled *Temporary blanket variances and enforcement discretion due to staffing shortages that appear to be related to the COVID-19 omicron variant*. Several of the blanket variances and some of the enforcement discretion that the full Board approved toward the beginning of the pandemic were reinstated – until the full Board could once again consider approving them at the January 2022 meeting. At that meeting, the full Board extended the blanket variances and enforcement discretion until the March 16, 2022 meeting. By that meeting date, the Omicron variant surge had substantially subsided. Consequently, the Board did not renew the temporary blanket variances and enforcement discretion. The Board still has a COVID-19 Frequently Asked Questions document on its [website](#) and will continue to monitor pandemic developments to determine if any additional actions need to be taken.

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