

## Rx drug law faces legal hurdle

By **BOB AUDETTE**, Reformer Staff

Friday, August 1 BRATTLEBORO -- A law regulating the way private companies collect and distribute prescription data in Vermont is being contested in federal court in Brattleboro this week.

Act 80 is intended to protect the privacy of prescribers and help keep medical costs down. What is being contested in court is a clause in the act that forbids the use of collected data for the purposes of targeting advertising and marketing toward specific doctors.

"The goals of marketing programs are often in conflict with the goals of the state," according to the act. "Marketing programs are designed to increase sales, income and profit. Frequently, progress toward these goals comes at the expense of cost-containment activities and possibly the health of individual patients."

The state was concerned that "The one-sided nature of the marketing leads to doctors prescribing drugs based on incomplete and biased information, particularly for prescribers that lack the time to perform substantive research assessing whether the messages they are receiving from pharmaceutical representatives are full and accurate."

For example, argued the state, generics are often cheaper than name-brand drugs, but pharmaceutical companies don't want doctors prescribing cheaper medications. Much of the increase in health care costs can be attributed to marketing efforts that shift a doctor's focus "from existing, effective, and lower cost (often generic) therapies to new and more

expensive treatments, which often have little or no increased therapeutic value."

Data mining of health care information allows pharmaceutical companies to track the prescribing habits of nearly every physician in Vermont and then link those habits to specific physicians and their identities.

The Vermont Medical Society, an organization representing two-thirds of Vermont doctors, passed a resolution stating "the use of physician prescription information by sales representatives is an intrusion into the way physicians practice medicine."

But for the **Washington Legal Foundation**, which filed a friend of the court brief on behalf of IMS Health Inc., Verispan LLC, and Source Healthcare Analytics, three companies that collect and distribute health information on a nationwide basis, the act violates their First Amendment rights.

The WLF was founded in 1977 to "defend and promote the principles of freedom and justice ... advocating free-enterprise principles, responsible government, property rights, a strong national security and defense, and balanced civil and criminal justice system."

"(Act 80) has prevented medical data companies from collecting and distributing information about what drugs are being prescribed by Vermont doctors, even though the companies ensure that no information about individual patients is ever included in their data," stated the Washington Legal Foundation in its brief.

Similar laws in Maine and New Hampshire have already been struck down as unconstitutional.

"The information that Vermont is trying to ban plays

a vital healthcare role; it is used to monitor the safety of medications, implement drug recalls, and rapidly communicate information to doctors about innovative new treatments," said WLF chief Counsel Richard Samp.

"Act 80 will harm patient health because patients who need new drugs will be denied those drugs when they could be tremendously helpful," said Peter Hutt in federal court. Hutt, who worked for the Food and Drug Administration for five years as chief counsel, now works for a Washington, D.C., law firm that represents pharmaceutical manufacturers.

"The big issue is whether or not drug companies and information sellers have a right to the information about the prescribing practices of doctors," said Richard Davis, a health care consultant in Brattleboro and contributor to the *Reformer*. "The IMS and Pharma argument is based on constitutional free speech issues. They claim that not allowing to have the information is the same as restricting free speech."

The court will continue to hear arguments today.

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