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OFFICIAL OPINION

C. Richard 'Rick' Allen
Director, Georgia Drugs and Narcotics Agency
254 Washington Street, SW – Suite G2000
Atlanta, Georgia 30334

Re: Registered nurses and licensed practical nurses do not have access to the GAPDMP database specifically as dispensers or as individuals authorized to dispense prescriptions for controlled substances, but may be able to access the GAPDMP database as delegates of physicians who have the authority to prescribe or dispense.

Dear Mr. Allen:

You have asked for my official opinion on which persons are authorized to access the Georgia Prescription Drug Monitoring Program (hereinafter "GAPDMP") database and, in particular, whether registered nurses and licensed practical nurses are authorized to do so in their own rights as dispensers or as persons authorized to dispense under Title 16 of the Official Code of Georgia. For the reasons outlined below, I conclude that registered nurses and licensed practical nurses cannot access the GAPDMP database as dispensers or as practitioners authorized to dispense under the Georgia Prescription Drug Monitoring Program, but they may be able to access the GAPDMP database as delegates of physicians who do have the authority to prescribe or dispense.

The GAPDMP was authorized by the General Assembly in 2011 by legislation set out in Part 2, Article 2, Chapter 13, Title 16 of the Official Code of Georgia Annotated as the Electronic Data Base of Prescription Information. In this legislation, the General Assembly directed:

Subject to funds as may be appropriated by the General Assembly or otherwise available for such purpose, the agency shall, in consultation with members of the Georgia Composite Medical Board, establish and maintain a program to electronically record into an electronic data base prescription information resulting from the dispensing of Schedule II, III, IV, or V controlled substances and to electronically review such prescription information that has been entered into such data base. The purpose of such program shall be to assist in the reduction of the abuse of controlled substances, to improve, enhance, and encourage a better quality of health care by promoting the proper use of

medications to treat pain and terminal illness, and to reduce duplicative prescribing and overprescribing of controlled substance practices.

O.C.G.A. § 16-13-57(a) (2011). Pursuant to this directive, the Georgia Drugs and Narcotics Agency established the Georgia Prescription Drug Monitoring Program, with an initiation date of July 26, 2013. In addition to authorizing this program, the legislation requires dispensers to submit specific information regarding each prescription dispensed for a Schedule II, III, IV, or V controlled substance for inclusion in the GAPDMP database. O.C.G.A. § 16-13-59 (Supp. 2016).

For purposes of the GAPDMP, “dispenser” is defined as

a person licensed under the laws of this state, or any other state or territory of the United States, to dispense or deliver a Schedule II, III, IV, or V controlled substance to the ultimate user in this state *but shall not include*:

(A) A pharmacy licensed as a hospital pharmacy by the Georgia State Board of Pharmacy pursuant to Code Section 26-4-110;

(B) An institutional pharmacy that serves only a health care facility, including, but not limited to, a nursing home, an intermediate care home, a personal care home, or a hospice program, which provides patient care and which pharmacy dispenses such substances to be administered and used by a patient on the premises of the facility;

(C) *A practitioner or other authorized person who administers such a substance; or*

(D) A pharmacy operated by, on behalf of, or under contract with the Department of Corrections for the sole and exclusive purpose of providing services in a secure environment to prisoners within a penal institution, penitentiary, prison, detention center, or other secure correctional institution. This shall include correctional institutions operated by private entities in this state which house inmates under the Department of Corrections.

O.C.G.A. § 16-13-21(10) (Supp. 2016) (emphasis added). This definition appears to contemplate that only those persons who are licensed to practice pharmacy outside of an institutional setting, i.e., non-institutional pharmacists, qualify as dispensers for purposes of the GAPDMP. *See generally* Title 26, Chapter 4 of the Official Code of Georgia Annotated. Three of the four exclusions from the above definition are institutional pharmacies. In the fourth exclusion, practitioners who administer controlled substances are expressly excluded as dispensers. Thus, registered nurses and licensed practical nurses, even to the extent that they administer medications in their duties, are not dispensers for purposes of the GAPDMP.

In addition, O.C.G.A. § 16-13-60(c) (Supp. 2016)¹ limits the persons who may access the GAPDMP database to those authorized to prescribe or dispense controlled substances and to their delegates under limited conditions. It is certainly clear and commonly understood that registered nurses² and licensed practical nurses do not have authority to prescribe controlled substances. *See generally* Title 43, Chapter 26 of the Official Code of Georgia Annotated. More specifically, the General Assembly has definitively identified those who are authorized to dispense prescriptions for controlled substances. It has provided that only pharmacists or pharmacy interns acting under the immediate and direct personal supervision of licensed pharmacists or registered physicians, veterinarians, or podiatrists may dispense prescriptions for controlled substances. O.C.G.A. § 16-13-41(g) (2011).³ Registered nurses and licensed practical nurses are not individuals authorized to dispense prescriptions for controlled substances and therefore may not access the GAPDMP database as persons authorized to dispense prescriptions for controlled substances.

As noted above, however, O.C.G.A. § 16-13-60(c) (Supp. 2016) allows delegates of those practitioners authorized to prescribe or dispense to access the GAPDMP database. Under the language of that provision, in order to qualify as delegates:

(A) Such delegates are members of the prescriber or dispenser's staff and retrieve and review information and reports strictly for purposes of determining misuse, abuse, or underutilization of prescribed medication;

(B) Such delegates are licensed, registered, or certified by the state regulatory board governing the delegating prescriber or dispenser, and the delegating prescriber or dispenser shall be held responsible for the use of the information and data by their delegates; and

¹ Because the General Assembly did not specify a different effective date in Act No. 354, 2016 Ga. Laws 202, the effective date of the legislation is July 1, 2016. *See* O.C.G.A. § 1-3-4.

² As used here, "registered nurses" means "registered professional nurse[s]" as that term is defined in O.C.G.A. § 43-26-3(9). This designation is not intended to apply to an "advanced practice registered nurse," as that term is defined in O.C.G.A. § 43-26-3(1.1), who is authorized to prescribe certain controlled substances pursuant to the provisions of O.C.G.A. § 43-34-25 and who is considered a "prescriber" under the definition of O.C.G.A. § 16-13-21 (23.1). When so authorized, an advanced practice registered nurse is eligible to access the GAPDMP as a prescriber.

³ O.C.G.A. § 16-13-41(g) provides that

[n]o person shall fill or dispense a prescription for a controlled substance except a person who is licensed by this state as a pharmacist or a pharmacy intern acting under the immediate and direct personal supervision of a licensed pharmacist in a pharmacy licensed by the State Board of Pharmacy, provided that this subsection shall not prohibit a registered physician, dentist, veterinarian, or podiatrist authorized by this state to dispense controlled substances as provided in this article

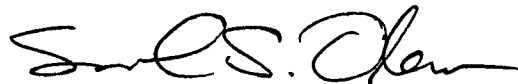
(C) All information and reports retrieved and reviewed by delegates shall be maintained in a secure and confidential manner in accordance with the requirements of subsection (f) of this Code section[.]

O.C.G.A. § 16-13-60(c)(1) (Supp. 2016). Thus, individuals authorized to prescribe or dispense may delegate their authority to access the GAPDMP database to members of their staff, so long as the delegates are licensed, registered, or certified by the state regulatory board governing the delegating prescriber or dispenser. Although physicians are principally governed by the Georgia Composite Medical Board, under O.C.G.A. § 16-13-35(g)(2) (2011), physicians are automatically registered with the Georgia Board of Pharmacy for purposes of the Georgia Controlled Substances Act. Likewise, an employee, agent, or representative of a physician, acting in the usual course of his or her employment or occupation and not on his or her own account, is also automatically deemed registered with the Georgia Board of Pharmacy for purposes of the Act. O.C.G.A. § 16-13-35(g)(3) (2011). Under these provisions, a registered professional nurse or licensed practical nurse who is a member of a physician's staff is deemed registered for purposes of GAPDMP, and therefore may access the database as a delegate of the physician if it is in accordance with his or her duties as a member of the physician's staff.

Therefore, it is my official opinion that registered nurses and licensed practical nurses do not have access to the GAPDMP database specifically as dispensers or as individuals authorized to dispense a prescription for controlled substances, but may be able to access the GAPDMP database as delegates of physicians who have the authority to prescribe or dispense such prescriptions.

Issued this 28th day of October, 2016.

Sincerely,



SAMUEL S. OLENS
Attorney General

Prepared by:



MAXIMILLIAN J. CHANGUS
Assistant Attorney General