



Jan. 27, 2011

Rep. Ann Pugh  
Chair, House Human Services Committee

Dear Rep. Pugh:

I write to express the ACLU's concerns about a lack of information made available to doctors and others regarding the confidentiality of individuals' prescription drug information in the Vermont Prescription Monitoring System (VPMS), and of efforts apparently underway to give Vermont law enforcement greater access to the VPMS database.

Our concern about doctors' knowledge of the confidentiality of VPMS data is based on comments made by a hospital emergency room doctor during a VPMS advisory committee meeting Nov 15, 2010. The doctor was describing how he acts on information he obtains from the VPMS database. He said that the information tells him that the vast majority of people he sees -- at least nine out of 10 -- have legitimate prescription drug needs. Of the other patients, he admitted he has suspicions. I asked if he had ever contacted law enforcement based on information he had learned from the VPMS database. His answer was, "Personally, probably not. Cops come by every once in awhile to do a presentation. If we got a clear message that if you ran across folks we think were abusers, that we should call the cops -- we'd do it." I noted that the law establishing the VPMS specifically forbids police access to the data except under limited circumstances. The doctor was not aware of that provision.

The discussion suggested to me that the Health Department outreach to doctors has not been effective in explaining that the VPMS system is a system for medical, not law enforcement, purposes and that doctors may not share VPMS information with police.

I'm sure you remember that a strong premise was developed in your committee in 2006 when the VPMS enabling statutes were approved. The system was to be off-limits to police investigators, absent a warrant. Acknowledgement was made that police currently have direct access to prescription drug records in pharmacies. Notwithstanding that access, the committee felt that if government were to aggregate all Vermont pharmacy records in a single online database that could be accessed from anywhere, patients' privacy must be protected with an iron prohibition against warrantless police access. The only exceptions were to be if the professional licensing boards that oversee physicians and pharmacists needed data for their investigations, or if the commissioner of health deemed that VPMS data showed the existence of a "serious and imminent threat to a person or the public" -- and he personally contacted the commissioner of public safety personally with this information.

I have since learned that greater Health Department outreach to doctors to explain the law may not be sufficient to maintain the privacy of VPMS records. The issue of expanding VPMS access to law enforcement officials was recently raised in a hearing before the Senate Judiciary Committee. The context was statistics presented by the Health Department showing high rates of prescription drug abuse in Vermont. The ACLU has no reason to dispute the statistics. But we continue to feel strongly that should law enforcement want access to VPMS data for criminal investigations, they should do what they must do for all other criminal investigations -- obtain a warrant from a court before they seize possible evidence of a crime. Both the Fourth Amendment to the U.S. Constitution and Article 11 of the Vermont Constitution require such warrants.

Law enforcement's desire to tap into the VPMS system raises issues the ACLU has seen in other areas where extensive databases of Vermonters' personal information are being built. While such databases may offer great benefits, they also pose great risks if the information starts to be diverted for purposes other than those laid out when the systems were established. And sadly, the perception alone that the privacy of a system has been compromised is enough to cause people not to agree to the storage and sharing of their information. A huge hurdle to the creation of Vermont's e-medical records system would arise if law enforcement were suddenly able to tap into the VPMS system -- a system built on the same premise of medical purpose and patient privacy as the state's e-medical records system is being built. People would become wary that police may someday also want access to their e-medical records, without obtaining a warrant. That negative perception could lead many to opt-out of the e-medical records system, diminishing the benefits the state, health providers, and patients hope to achieve through such a system.

I am sorry I will be out-of-state on Friday when the committee will be discussing this issue. I would stress to the committee that it is vitally important that the integrity of the VPMS as a health, not a law enforcement, system be protected.

Sincerely,

Allen Gilbert  
Executive director