



**TO: Members of the Senate Judiciary Committee**  
**FROM: Allen Gilbert, ACLU-VT executive director**  
**SUBJECT: Police access to state prescription drug database**  
**DATE: March 17, 2011**

I write to express the ACLU's concerns about interest in giving Vermont law enforcement greater access to the state Health Department's Vermont Prescription Monitoring System (VPMS) database. Successive news articles in the *Sunday Rutland Herald and Times Argus*, and a related editorial, have reported on police officers' frustration that they are not able to tap directly into the VPMS database to obtain information on individual patients or doctors.

Police actually have as much access to information in the database as they want. They only need to obtain a search warrant from a court for the information they're seeking. Instead, police are asking that the usual protections of the Fourth Amendment be suspended.

The VPMS was authorized in 2006 by the legislature after protracted debate. The worry that held back approval was exactly what police are now seeking -- warrantless access to the database. In lengthy hearings before the Senate Judiciary and House Human Services committees, the Health Department explained -- and the Department of Public Safety agreed -- that the VPMS was to be a medical, not a law enforcement, database.

Acknowledgement was made that police currently have direct access to prescription drug records in pharmacies. Notwithstanding that access, it was felt that if government were to aggregate all Vermont pharmacy records into a single online database, 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 s/he personally contacted the commissioner of public safety personally with this information.

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 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 that the state, health providers, and patients hope to achieve through such a system.