

By the Committee on Health, Aging and Long-Term Care; and
Senators Sebesta, Lee and Sullivan

317-2119A-99

1 A bill to be entitled
2 An act relating to pharmacy practice; providing
3 a short title; amending s. 465.003, F.S.;
4 defining the term "data communication device";
5 amending s. 465.016, F.S.; providing that using
6 or releasing a patient's records except as
7 authorized by chapter 455 or chapter 465, F.S.,
8 constitutes a ground for disciplinary action
9 against a pharmacist, for which there are
10 penalties; amending s. 465.017, F.S.; providing
11 additional persons to whom and entities to
12 which records relating to the filling of
13 prescriptions and the dispensing of medicinal
14 drugs that are maintained by a pharmacy may be
15 furnished; specifying authorized uses of
16 patient records by pharmacy owners; providing
17 restrictions on such records when transmitted
18 through a data communication device; amending
19 s. 465.015, F.S.; providing penalties for
20 unauthorized use of pharmacy records when
21 transmitted through a data communication
22 device; conforming cross-references; amending
23 ss. 465.014, 465.0196, 468.812, 499.003, F.S.;
24 conforming cross-references; providing an
25 effective date.

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27 Be It Enacted by the Legislature of the State of Florida:

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29 Section 1. This act may be cited as the "Pharmacy
30 Patient Privacy Act of 1999."

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1 Section 2. Present subsections (4) through (14) of
2 section 465.003, Florida Statutes, are renumbered as
3 subsections (5) through (15), respectively, and a new
4 subsection (4) is added to that section to read:

5 465.003 Definitions.--As used in this chapter, the
6 term:

7 (4) "Data communication device" means an electronic
8 device that receives electronic information from one source
9 and transmits or routes it to another, including, but not
10 limited to, any such bridge, router, switch, or gateway.

11 Section 3. Paragraph (q) is added to subsection (1) of
12 section 465.016, Florida Statutes, to read:

13 465.016 Disciplinary actions.--

14 (1) The following acts shall be grounds for
15 disciplinary action set forth in this section:

16 (q) Using or releasing a patient's records except as
17 authorized by this chapter and chapter 455.

18 Section 4. Subsection (2) of section 465.017, Florida
19 Statutes, is amended to read:

20 465.017 Authority to inspect.--

21 (2) Except as permitted by this chapter, and chapters
22 406, 409, 455, 499, and 893, records maintained by ~~in~~ a
23 pharmacy relating to the filling of prescriptions and the
24 dispensing of medicinal drugs shall not be furnished, except
25 upon the written authorization of the patient,to any person
26 other than to the patient for whom the drugs were dispensed,
27 ~~or her or his legal representative, or to the department~~
28 ~~pursuant to existing law,~~or, in the event that the patient is
29 incapacitated or unable to request such ~~said~~ records, her or
30 his spouse; to the department pursuant to law; to health care
31 practitioners and pharmacists consulting with or dispensing to

1 the patient; or to insurance carriers or other payors
2 authorized by the patient to receive such records. For
3 purposes of this section, the pharmacy permitholder shall be
4 considered the custodian of records maintained in a pharmacy.
5 The pharmacy owner may use such records internally in the
6 aggregate without patient identification data, regardless of
7 where such records are held, for purposes reasonably related
8 to the business and practice of only that pharmacy ~~except upon~~
9 ~~the written authorization of such patient.~~ Such records may
10 be furnished in any civil or criminal proceeding, upon the
11 issuance of a subpoena from a court of competent jurisdiction
12 and proper notice to the patient or her or his legal
13 representative by the party seeking such records. Such
14 records or any part thereof, if transmitted through a data
15 communication device not under the control or ownership of a
16 pharmacy or affiliated company or not directly between a
17 pharmacy and a treating practitioner, may not be accessed,
18 used, or maintained by the operator or owner of the data
19 communication device unless specifically authorized by this
20 section. It is the intent of this subsection to allow the use
21 and sharing of such records to improve patient care, provided
22 the pharmacist acts in the best interests of her or his
23 patient. Nothing in this subsection may be construed to
24 authorize or expand solicitation or marketing to patients or
25 potential patients in any manner not otherwise specifically
26 authorized by law.

27 Section 5. Section 465.014, Florida Statutes, is
28 amended to read:

29 465.014 Pharmacy technician.--No person other than a
30 licensed pharmacist or pharmacy intern may engage in the
31 practice of the profession of pharmacy, except that a licensed

1 pharmacist may delegate to nonlicensed pharmacy technicians
2 those duties, tasks, and functions which do not fall within
3 the purview of s. 465.003~~(13)~~~~(12)~~. All such delegated acts
4 shall be performed under the direct supervision of a licensed
5 pharmacist who shall be responsible for all such acts
6 performed by persons under his or her supervision. A pharmacy
7 technician, under the supervision of a pharmacist, may
8 initiate or receive communications with a practitioner or his
9 or her agent, on behalf of a patient, regarding refill
10 authorization requests. No licensed pharmacist shall
11 supervise more than one pharmacy technician unless otherwise
12 permitted by the guidelines adopted by the board. The board
13 shall establish guidelines to be followed by licensees or
14 permittees in determining the circumstances under which a
15 licensed pharmacist may supervise more than one but not more
16 than three pharmacy technicians.

17 Section 6. Paragraph (c) of subsection (2) of section
18 465.015, Florida Statutes, is amended, present subsection (4)
19 of that section is redesignated as subsection (5) and amended,
20 and a new subsection (4) is added to that section, to read:

21 465.015 Violations and penalties.--

22 (2) It is unlawful for any person:

23 (c) To sell or dispense drugs as defined in s.
24 465.003~~(8)~~~~(7)~~without first being furnished with a
25 prescription.

26 (4) It is unlawful for records maintained by a
27 pharmacy relating to the filling of prescriptions and the
28 dispensing of medicinal drugs, if transmitted through a
29 data-communication device not under the control or ownership
30 of a pharmacy or affiliated company or not transmitted
31 directly between a pharmacy and a treating practitioner, to be

1 accessed, used, or maintained by the operator or owner of the
2 data-communication device unless specifically authorized by s.
3 465.017.

4 (5)~~(4)~~ Any person who violates any provision of
5 subsection (1), or subsection (3), or subsection (4) is guilty
6 of a misdemeanor of the first degree, punishable as provided
7 in s. 775.082 or s. 775.083. Any person who violates any
8 provision of subsection (2) is guilty of a felony of the third
9 degree, punishable as provided in s. 775.082, s. 775.083, or
10 s. 775.084. In any warrant, information, or indictment, it
11 shall not be necessary to negative any exceptions, and the
12 burden of any exception shall be upon the defendant.

13 Section 7. Section 465.0196, Florida Statutes, is
14 amended to read:

15 465.0196 Special pharmacy permits.--Any person
16 desiring a permit to operate a pharmacy which does not fall
17 within the definitions set forth in s. 465.003~~(11)~~~~(10)~~(a)1.,
18 2., and 3. shall apply to the department for a special
19 pharmacy permit. If the board certifies that the application
20 complies with the applicable laws and rules of the board
21 governing the practice of the profession of pharmacy, the
22 department shall issue the permit. No permit shall be issued
23 unless a licensed pharmacist is designated to undertake the
24 professional supervision of the compounding and dispensing of
25 all drugs dispensed by the pharmacy. The licensed pharmacist
26 shall be responsible for maintaining all drug records and for
27 providing for the security of the area in the facility in
28 which the compounding, storing, and dispensing of medicinal
29 drugs occurs. The permittee shall notify the department
30 within 10 days of any change of the licensed pharmacist
31 responsible for such duties.

1 Section 8. Subsection (3) of section 468.812, Florida
2 Statutes, is amended to read:

3 468.812 Exemptions from licensure.--

4 (3) The provisions of this act relating to orthotics
5 or pedorthics do not apply to any licensed pharmacist or to
6 any person acting under the supervision of a licensed
7 pharmacist. The practice of orthotics or pedorthics by a
8 pharmacist or any of the pharmacist's employees acting under
9 the supervision of a pharmacist shall be construed to be
10 within the meaning of the term "practice of the profession of
11 pharmacy" as set forth in s. 465.003(13)(~~12~~), and shall be
12 subject to regulation in the same manner as any other pharmacy
13 practice. The Board of Pharmacy shall develop rules regarding
14 the practice of orthotics and pedorthics by a pharmacist. Any
15 pharmacist or person under the supervision of a pharmacist
16 engaged in the practice of orthotics or pedorthics shall not
17 be precluded from continuing that practice pending adoption of
18 these rules.

19 Section 9. Subsection (19) of section 499.003, Florida
20 Statutes, is amended to read:

21 499.003 Definitions of terms used in ss.

22 499.001-499.081.--As used in ss. 499.001-499.081, the term:

23 (19) "Legend drug," "prescription drug," or "medicinal
24 drug" means any drug, including, but not limited to, finished
25 dosage forms, or active ingredients subject to, defined by, or
26 described by s. 503(b) of the Federal Food, Drug, and Cosmetic
27 Act or s. 465.003(8)(~~7~~), s. 499.007(12), or s. 499.0122(1)(b)
28 or (c).

29 Section 10. This act shall take effect July 1, 1999.
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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 1016

The bill clarifies that the pharmacy permitholder shall be considered the custodian of records maintained in a pharmacy. The bill provides a criminal penalty for the unauthorized use of pharmacy records when transmitted through a data communication device by any person who operates or owns a data communication device and who accesses, uses, or maintains pharmacy records in violation of the provisions of the bill.