

Pharmacists Services and the “Internet Pharmacy”

Submitted to the

OFFICE OF THE SURGEON GENERAL

Task Force on Drug Importation

Tuesday, April 27 2004

Pharmacists Services and the “Internet Pharmacy”

*“a prescription is a drug product plus the
pharmacist professional service”*

Foreword

The Quebec Order of Pharmacists is pleased to have the opportunity to present his point of view and course of action on this important matter that is the so-called “Internet pharmacy or Cyberpharmacy”. We thank the Health and Human Services Secretary, Tommy G. Thompson, for the invitation.

Preliminary distinction

Within the Canadian system, the drug itself (research, development, publicity, wholesale distribution, price control and so-on) falls under the federal jurisdiction. The pharmacist professional activity (pharmacy practice) falls under the provincial jurisdiction.

Quebec Order of Pharmacists

The Quebec Order of Pharmacists is the province of Quebec licensing body. Membership is mandatory to practice pharmacy and we represent six thousand two hundred (6200) pharmacists. Our main responsibility is the public protection through the regulation and control of the pharmacy practice in the province.

Quebec Pharmacy Law

The Quebec Pharmacy Law is unique in North America in the sense that only a pharmacist (all by himself or in association with other pharmacists) can own a retail pharmacy. For this presentation we will remind you of a few articles of the Pharmacy Act¹ that are of primary importance for the matter under scrutiny, they are:

Pharmacy Act

Definition of “prescription”;

- (j) “prescription”: an authorization to supply a medication,
- (i) given by a person authorized to prescribe medication by a law of Québec;
 - (ii) given by a person authorized to prescribe medication by a law of another province or of a territory in Canada to the extent that such person would be authorized to prescribe such medication by a law of Québec if he were practising in Québec;

Pharmacy practice.

17. The practice of pharmacy consists in determining and ensuring the proper use of medications, particularly to identify and prevent pharmacotherapeutic problems, and in preparing, storing and delivering medications in order to maintain or restore health.

Reserved activities.

The following activities in the practice of pharmacy are reserved to pharmacists:

- 1) issuing a pharmaceutical opinion;
- 2) preparing medications;
- 3) selling medications, in accordance with the regulation under section 37.1;
- 4) supervising medication therapy;
- 5) initiating or adjusting medication therapy, according to a prescription, making use, where applicable, of appropriate laboratory analyses;
- 6) prescribing and personally dispensing emergency oral contraception medication, provided a training certificate has been issued to the pharmacist by the Order pursuant to a regulation under paragraph o of section 94 of the Professional Code (chapter C-26).

Prescriptions.

21. A pharmacist must fill a prescription according to its integral terms.

Medication with same generic name.

He may, however, provided that he notifies the client and mentions his substitution in the register, substitute for the prescribed medication a medication whose generic name is the same, unless indication to the contrary is made in writing by the person writing the prescription.

Revealing composition of medication.

23. At the request of the Bureau, a pharmacist must reveal to it the composition of any medication he supplies and provide it with any sample of such medication for purposes of analysis.

Prohibited interests in undertaking.

24. No pharmacist may substitute for a prescribed medication a medication manufactured by an undertaking in which he has a direct or indirect interest.

Own name.

25. No person may practise the profession of pharmacy under a name other than his own.

Name.

Nevertheless, pharmacists shall be allowed to practise their profession under the name of one or two or more of the partners.

Owners of pharmacies.

27. Subject to sections 28 to 30, only a pharmacist, a partnership of pharmacists or a joint-stock company all of the shares of which are held by one or more pharmacists and all of the directors of which are pharmacists may be owner of a pharmacy and buy and sell medications as owner of a pharmacy.

ILLEGAL PRACTICE OF PHARMACY

Acts restricted to pharmacists.

35. Subject to section 18 and to the rights and privileges expressly granted by law to other professionals, no person may engage in any of the activities described in the second paragraph of section 17 unless he is a pharmacist.

Code of ethics of pharmacists

3.01.05. A pharmacist must try to establish a relationship of mutual trust between the patient and himself. He must, therefore:

- (a) refrain from practising his profession in an impersonal manner;
- (b) give advice in a manner that respects the standards and personal convictions of his patient if informed of them by the latter.

Availability and diligence

3.03.01. A pharmacist must display reasonable availability and diligence in the practice of his profession.

Liability

3.04.01. A pharmacist must, in practice of his profession, fully commit his personal civil liability. He is thus prohibited from inserting in a contract of professional services any clause directly or indirectly excluding, in whole or in part, such liability.

Prescription dispensing

Under the Quebec Pharmacy Law a pharmacist can fill up a prescription drug if, and only if, he received a prescription from an authorized prescriber (let’s say a physician) in the province of Quebec or in another province. Consequently this means that a Quebec pharmacist cannot fill up a prescription drug under a prescription that is signed by a US physician, unless this physician is also authorized to practice in Quebec or Canada.

About Internet

Every one knows that Internet is a powerful communication tool and network. Development and expansion are still going on and only our imagination can help to figure out where all this will leads us in the future. But Internet is still and will remain a communication tool. We do not like the expression “Internet Pharmacy”. It would be more appropriate to utilized “Pharmacy using Internet or Pharmacy through Internet”. Let’s remind here that Fax machine and Delivery are other tools of communication. Hence we never experienced a wide spread use of an expression such as “Fax Pharmacy”. Internet communication as a tool can be use by pharmacists, according to our standards of practice. But the bottom line is that the prescription should be a legal one in the first place. And a prescription under the signature of an American physician is not a legal prescription that can be fill by a pharmacist in the province of Quebec. As well we do suggest that this interpretation should be the same across Canada.

Internet limit and challenge

One of the limits is that an illegal prescription does not become a legal one because it transits through the Internet. The challenge then is to regulate and enforce that regulation especially across the border.

Quebec Order of Pharmacists course of action

When it comes to cross-border use of Internet, the Quebec Order of Pharmacists has followed three different pathways that are disciplinary action, penal law suit for illegal practice of pharmacy and public information and awareness. We will briefly address each one.

Disciplinary action

Disciplinary action deals with our own members. Regular professional activities surveillance, public information or special inquiries may provide indication, that a specific situation needs a closer look, and should be referred to the disciplinary committee. With regard to Internet we have had a few members that were sanctioned for participating, with non-pharmacist, in such activities.

Penal law suit for illegal practice of pharmacy

This addresses situations where a non-pharmacist, an individual or a company, sells drug through an Internet site operated within the province of Quebec. We do bring these individuals or companies in court for illegal practice of pharmacy. It is a time consuming and costly process. In addition it is not very efficient. When they are found guilty and fine companies vanished to restart their skim all over again under a different name. For the Quebec Order of Pharmacists it is not possible to sustain the many needed activities all by himself. We simply do not have the important financial resources needed to conduct all inquiries we will like to do. But more importantly we do need the support (technically and financially) and collaboration of all jurisdictions that are implicated in that law enforcement. A very example of that is the drugs transportation itself. The Quebec Order of Pharmacists cannot control what transit through the Canada-USA border.

Public information and awareness

As often as we have the opportunity we answer questions from the media about our action and philosophy with regards to the so-called “Internet Pharmacy”. Our key messages are dedicated to the general population, to pharmacists and to other jurisdictions as well. They cover various aspects including:

1) Public protection, professional liability and insurance coverage

The public is losing its legal umbrella protection when it deals with a pharmacist across the border for prescription drugs. The border acts as a curtain that makes very hard (virtually impossible) to sue a pharmacist in case of error or professional misconduct. Thus a pharmacist is “losing his liability”. In addition insurance protection does not cover illegal activities and pharmacists as well as physicians had been informed about that.

2) Canadian-made drug quality not the important issue

The Canadian-made drugs are manufactured under a set of quality standards similar to those in use in USA. The Quebec Order of Pharmacists shares the idea that the Canadian manufacturing quality assurance program is working well. The public must be reassured about it and should be confident in Canadian-made drugs legally on the market.

3) Counterfeit drug a real threat

However, counterfeit drug represent a real threat since we do not know anything about their manufacturing and country of origin. But we do know that significant quantities and varieties are in circulation. Then a real preoccupation arises because we are in presence of an illegal activity that might take place in connection with another type of illegal activity. On the one hand we are in presence of an illegal dealing of drugs and on the other hand we are in presence of an illegal filling of prescription. Thus it is of prime importance to make the public aware of these two levels of illegality that might or not interact. A licensing body such the Quebec Order of Pharmacists as the duty to enforce professional law and regulation in order to prevent one part that is the illegal filing of prescription. This is exactly what we try to achieve.

4) Reminder: distinction between a drug and a prescription

On a regular basis media are referring to the so-called “Internet pharmacy” as a problem of drug exportation. When I answers questions form journalists I always stress the distinction between drug and prescription. In fact, a prescription is a drug product plus a pharmacist’s service. In other word a drug plus an added value. What physically crossed the border following a wed transaction is the prescription.

5) Loophole that facilitates the “illegal prescription export process”

What the custom officers let go through the border is a person carrying a personal provision of medication for up to 90 days. This basic distinction carries a through meaning when it comes to identify the organism responsible for enforcement of the legislation. A loophole might have been created by a loose control at the border. Unless the authority strongly act on that the problem may expand to more than Canada-USA border. The 90 days exception is worth to have but should not be interpreted as allowing every thing.

6) Pharmacy practice control and licensing

Every aspect of the drug dispensing process by a pharmacist, in the province of Quebec, falls under the control of the Quebec Order of Pharmacists. The legality should be examined and interpreted in light of the law and regulation in place. Three points are relevant to the present issue. The first is, that for a prescription to be valid should be issued (or signed) by an authorized prescriber. The second is that only a pharmacist can fill a prescription. The third is that only a pharmacist can own a pharmacy. The future might leads us to the free circulation of the professional within various jurisdiction but we are not there at present time. So when it comes to prescription drug use and to pharmacist services we should all explain the rational of our respective legislation. Optimal drug use needs comprehensive pharmaceutical care.

7) Negative impacts

The main negative impact is a lack of continuity and personal communication between patients and pharmacists. Beside that we have raised several other important issues surrounding the “Cross-border-Internet-Pharmacy”

- a) In a period of pharmacist’s shortage we do think it increases the pressure on pharmacists demand in Canada.
- b) As previously mentioned it helps to create conditions that facilitate the counterfeit drug market.
- c) Drug shortage may be experience since companies are increasing their control on sales.
- d) Economical impacts may weakened Canadian drug industry and research activities taking place in Canada.
- e) Drug recall process can as well be weekend since “Internet pharmacy” increases the risk of loosing track of a specific batch.

8) Societal challenge for the future

Besides economic impacts I am deeply concerned by some statements coming from Canadian as well as south of the border public figures. Telling to American citizen to buy their prescription drugs from Internet site operating from Canada is one example of that. Or supporting Canadian pharmacists who collaborate to dispense American prescriptions through those “illegal networks” is another example. In fact these public statement are going in the same direction and produce the same damaging effect. Indirectly they are calling for civil disobedience. If we do let things going on the way it is expanding at the moment, tomorrow we will face not only a Canadian-USA border problem but we will see drug imported from various other countries. Our pharmacy practice standards are at stake.

In conclusion I like to say that licensing bodies in Canada as well as in United States need support and public commitment from public authorities in order to help them to prevent illegal pharmacy practice to take place. In Quebec for instance we do work very hard to maintain the actual pharmacy ownership system that limits to pharmacists the right to own a pharmacy. This legal provision is the very one that allows the Quebec Order of Pharmacists to effectively acts against the so-called “Internet-pharmacy”.

*Jean-Yves Julien, B.Sc., M.Sc.
President*

ⁱ Attachment: Quebec Pharmacy Act and Code of Ethic