Drug Enforcement Agency Wants Access to your Medical Records On Demand

June 14, 2016 â€“Unless you live in Missouri, if you are taking an opioid drug prescribed by your doctor, your state is watching you. Thatâ€™s because every state in the country â€“ with the exception of Missouri â€“ has prescription drug monitori program. And those programs donâ€™t just track opioids. Depending upon the state, the drugs tracked include things like antidepressants, drugs for conditions like ADD and hormonal therapies. And the DEA wants access to all of that information without the need for a search warrant.

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The purpose of state run prescription drug monitoring programs (PDMPs) is to allow stated to make sure that doctors arenâ€™t overprescribing certain medicines. Things like hormonal therapies are of interest because they can be abused as steroids. And in the case of opioids, these are drugs that are addictive and which can kill you if you abuse them.

PDMPs also allow the states to spot patients who doctor-shop for drugs. These are patients that may seek out several doctors to prescribe drugs for a single condition. Patients addicted to opioids often do this.

Until 2012 the DEA frequently used administrative subpoenaâ€™s to gain access to state-run PDMPs. But then the State of Oregon sued to prevent DEA access without a search warrant. And in 2014, Oregon won on the merits of their case. Since then, at least within the 9th Federal Circuit, the DEA has been required to produce a search warrant before snooping around. In his ruling over the case, Judge Ancer L. Haggerty said that it was difficult for him to conceive of information that was â€œmore deserving of Fourth Amendment protection.â€•

But if you think that was the end of it, you would be sadly mistaken. The DEA and the Obama administration werenâ€™t happy with the ruling and have been involved in an appeal of the lower court decision ever since. The case is now before the 9th Circuit Court of Appeals.

While the federal governmentâ€™s goal is to eventually network all of the state-run databases â€“ making a multi-state search o them very easy, it isnâ€™t hard to see why this might not be in the best interest of patients. That data sharing is already happening in 32 states and there have already been cases at the state level where law enforcement agencies have abused the use of PDMPs. These databases also provide a big target to hackers. Any hacker who can gain access to any single stateâ€™s database would be able to find patients with the supplies of drugs. Those patients could find themselves targeted for burglaries to steal their drug supplies, and by fraudsters who would like nothing better than to target already desperate people for financial crimes.

Furthermore, unfettered access to this information by the government could easily lead to mission-creep â€“ meaning that the government would find additional uses for the data stored in PDMPs. A good example of this might be using the data to target patients on antidepressants who are also gun owners for confiscation of their firearms. That sounds just great until you realize that antidepressants arenâ€™t just prescribed for depression. They are also used to treat conditions such as ADD, ADHD, migraine headaches, etcâ€¦ Many common conditions that have nothing to do with depression. A little information in the hands of an incompetent bureaucrat could easily do much more harm than good.

At this point, 19 states require a search warrant for law enforcement access to their PDMPs. But it isnâ€™t clear that these states will be able to enforce those requirements with the federal government. There is a push in congress to link all state PDMPs nationwide. And when congress gets involved, they commonly usurp state laws.

Weâ€™ll keep you posted as the case moves forward and as congress debates the issue.
byJim Malmberg
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