

**PRESCRIPTION DRUG MONITORING PROGRAM
4052 BALD CYPRESS WAY, BIN #C-16
TALLAHASSEE, FLORIDA 32399-3254
(850) 245-4797**



RULE WORKSHOP

Public Agenda Materials

August 27, 2013

**4052 Bald Cypress Way
Room 301
Tallahassee, FL 32399
1:00 PM to 5:00 PM**

Rebecca R. Poston, BPharm, MHL, Program Manager

Section 120.525(2), *Florida Statutes*, requires this agenda, along with any meeting materials available in electronic form excluding confidential and exempt information, shall be published on our web site.

**Rick Scott
Governor**

**John H. Armstrong, MD, FACS
State Surgeon General & Secretary**

Notice of Meeting/Workshop Hearing

DEPARTMENT OF HEALTH Prescription Drug Monitoring Program

RULE NO.: RULE TITLE:

[64K-1.003](#): Accessing Database

[64K-1.004](#): Management and Operation of Database

[64K-1.005](#): Privacy of Information

The Florida Department of Health announces a workshop to which all persons are invited.

DATE AND TIME: August 27, 2013, 1:00 p.m. - 5:00 p.m.

PLACE: Florida Department of Health, 4052 Bald Cypress Way, Room 301, Tallahassee, Florida 32399.

GENERAL SUBJECT MATTER TO BE CONSIDERED: Rule Development for 64K-1.003, Accessing Database; 64K-1.004, Management and Operation of Database; and 64K-1.005, Privacy of Information.

The Department will develop rules establishing procedures for acquiring both direct and indirect access to the database, procedures for revoking access to the database, standards for the denial of requests for direct and indirect access to the database, as well as any other measures related to access, database operation or database management identified during the rulemaking process as promoting the privacy of confidential prescription information after statutorily authorized release from the database.

A copy of the agenda will be made available August 20, 2013 at <http://www.e-forcse.com/RuleDevelopment.html>, by email to e-forcse@doh.state.fl.us or by calling (850)245-4797.

Pursuant to the provisions of the Americans with Disabilities Act, any person requiring special accommodations to participate in this workshop/meeting is asked to advise the agency at least 5 days before the workshop/meeting by contacting: Rebecca Poston, Program Manager, Prescription Drug Monitoring Program, 4052 Bald Cypress Way, Bin #C-16, Tallahassee, Florida 32399 or email address: Rebecca.Poston@doh.state.fl.us. If you are hearing or speech impaired, please contact the agency using the Florida Relay Service, (800)955-8771 (TDD) or (800)955-8770 (Voice).

For more information, you may contact: Rebecca Poston, Program Manager, Prescription Drug Monitoring Program, 4052 Bald Cypress Way, Bin #C-16, Tallahassee, Florida 32399 or email address: Rebecca.Poston@doh.state.fl.us.

Mission:
To protect, promote & improve the health
of all people in Florida through integrated
state, county & community efforts.



Rick Scott
Governor

John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

RULE WORKSHOP
Prescription Drug Monitoring Program
4052 Bald Cypress Way
Room 301
Tallahassee, FL 32399
August 27, 2013
1:00PM to 5:00PM

AGENDA

- I. Welcome and Opening Remarks- J. Martin Stubblefield, Deputy Secretary for Administration
- II. Workshop Instructions- Laura Reeves, Moderator
- III. Rule Discussion and Public Comments- Laura Reeves
 - Tab 1: 64K-1.003 Accessing the Database
 - Tab 2: 64K-1.004 Management and Operation of Database
 - Tab 3: 64K-1.005 Security of Information
 - Tab 4: Statement of Regulatory Cost
 - Tab 5: Reference Materials
 - 1. Section 893.055, Florida Statutes
 - 2. Section 893.0551, Florida Statutes
- IV. Closing Remarks- J. Martin Stubblefield, Deputy Secretary for Administration
- V. Adjourn

64K-1.003 Accessing Database.

(1) The following entities have direct access to the information contained in the Program database:

(a) A pharmacist, prescriber, or dispenser if the information relates to a patient of that pharmacy, prescriber, or dispenser for purposes of reviewing the patient's controlled substance prescription history. Those entities who are authorized to prescribe or dispense controlled substances, Schedules II-IV, and are licensed in the State of Florida may access the database through the secure web portal to request and receive information electronically, or may submit a written request to the Program manager if information must be received by an alternate means.

The "Training Guide for Florida Practitioners and Pharmacists" DH XXXX, effective November 2012, which is incorporated by reference and located at

[http://www.hidinc.com/assets/files/flpdms/FL%20PDMP Training%20Guide%20for%20Practitioners%20and%20Pharmacists.pdf](http://www.hidinc.com/assets/files/flpdms/FL%20PDMP%20Training%20Guide%20for%20Practitioners%20and%20Pharmacists.pdf) is available for review prior to registration and outlines the process for requesting and receiving prescription information.

(b) The Program manager and designated Program support staff acting at the direction of or as authorized by the Program manager for purposes of management of the Program database.

(2) The following entities do not have direct access to the information in the database, but may register to request access and receive controlled substance dispensing information from the Program manager or authorized support staff.

(a) The Department or the health care regulatory boards, the Attorney General or designee for Medicaid Fraud or a law enforcement agency identified in Section 893.005(7)(c)1-3, F.S., under the following conditions: when involved in a specific controlled substance investigation involving a designated person for one or more prescribed controlled substances.

1. Each agency head or designee of a law enforcement agency shall identify to the Program manager key personnel to act as an administrator who is authorized by the agency to verify and credential key personnel responsible for requesting and receiving controlled substance information. Law enforcement administrator appointments are made by submitting a "Law Enforcement Agency E-FORCSE Administrator Appointment Form", DH XXXX, effective September 2011, which is incorporated by reference and located at http://www.e-forcse.com/docs/LE_Admin_Appointment_Form_%20Final_Distributed.pdf to the Program manager or support staff. Each agency may appoint one administrator.

2. Prior to the release of prescription information, each administrator shall verify and credential key personnel authorized to request and receive controlled substance prescription information. Appointments are made by submitting a "Law Enforcement Officer Appointment Form," DH XXXX, effective September 2011, which is incorporated by reference and located at <http://XXXXXXX> to the Program manager for review and if approved, registration instructions are released by Program manager or support staff to credentialed key personnel. If not approved, the Program manager or support staff notifies the agency administrator via e-mail.

3. Key personnel responsible for requesting and receiving controlled substance prescription information must complete a department-approved training course on the handling of protected health information and compliance with the Health Insurance Portability and Accountability Act (HIPAA) before they are allowed to request and receive information from the database.

4. Each law enforcement agency shall reauthorize access to the Program manager or support staff on an annual basis or as key personnel changes occur.

5. The "Training Guide for Enforcement and Investigative Agencies v1.9" DH XXXX, effective November 2012, which is incorporated by reference and located at [http://www.hidinc.com/assets/files/flpdms/FL%20PDMP Training%20Guide%20for%20Enforcement%20and%20Investigative%20Agencies.pdf](http://www.hidinc.com/assets/files/flpdms/FL%20PDMP%20Training%20Guide%20for%20Enforcement%20and%20Investigative%20Agencies.pdf) is available for key personnel to review prior to registration and outlines the process for requesting and receiving prescription information during an active investigation.

~~(b) The Attorney General or designee for Medicaid Fraud cases involving prescribed controlled substances.~~

~~(b)(d)~~ A patient or the legal guardian or designated health care surrogate of an incapacitated patient as described in Section 893.0551, F.S., who, for the purpose of verifying the accuracy of the database information, contacts the

Prescription Drug Monitoring Program at 4052 Bald Cypress Way, Bin C-16, Tallahassee, FL 32399-3254 or by telephone at (850) 245-4797 to request form DH 2143 "Patient Information Request," effective December, 2010, which is incorporated by reference and located at <http://www.flrules.org/Gateway/reference.asp?No=Ref-00721>. To receive the requested information, the patient or other authorized person must make an appointment, appear in person at the Program office, and produce a valid government issued identification, which includes a photograph.

~~(e) A law enforcement agency during an active investigation regarding potential criminal activity, fraud, or theft relating to prescribed controlled substances.~~

~~(3) The Program manager or designated staff must ensure that the entity requesting access to information is permitted by law to receive access and must document steps taken to verify the request as authentic.~~

Disqualification process.

- (a) If the Program manager or Program support staff becomes aware of a prescriber's or dispenser's failure to comply with this section, the Program manager shall notify the licensing board or agency responsible for licensing the prescriber or dispenser. The licensing board shall treat the notification as a complaint against the licensee.
- (b) If the Program Manager or Program support staff becomes aware of the Department or the health care regulatory boards, the Attorney General or designee, or a law enforcement agency's failure to comply with this section, the PDMP shall notify the agency's administrator responsible for the credentialing of key personnel requesting the agency suspend the key personnel's use.
- (c) If the Program manager or Program support staff becomes aware protected health information has been improperly released, the Program manager shall notify the Florida Department of Law Enforcement and the U.S. Department of Health and Human Services of such release.

Rulemaking Authority, 893.055 FS. Law Implemented 893.055 FS. History--New 11-24-11.

64K-1.004 Management and Operation of Database.

(1) All entities that dispense controlled substances, Schedules II-IV, are required to report to the Program database. These entities include:

(a) Any pharmacy with a permit issued under Chapter 465, F.S., that dispenses controlled substances, whether located in or out of the State of Florida, including mail order or Internet pharmacies.

(b) Any health care practitioner, practicing in Florida, who dispenses any controlled substances, Schedules II-IV, and who is licensed under Chapter 458, 459, 461, 462 or 466, F.S.

~~(e2) Exemptions from reporting are as stated in Section 893.055(5), F.S.: The "Dispenser's Implementation Guide" DH XXXX, effective September 2012, which is incorporated by reference and located at http://www.hidinc.com/assets/files/flpdms/FL_RxSentry%20Dispensers%20Implementation%20Guide.pdf is available for review prior to registration and outlines the process for uploading prescription information.~~

~~(23) All dispensers will electronically submit data to the Program's database as soon thereafter as possible, but not more than 7 days after the controlled substance is dispensed to an individual. Extensions of the time within which a dispenser must report the dispensing of a controlled substance shall be granted for no more than 30 days upon request to the Program by any dispenser unable to submit data by electronic means for good cause if the dispenser provides evidence of having suffered a mechanical or electronic failure or cannot report for reasons beyond the control of the dispenser or if the database is unable to receive submissions.~~

~~(34) Data not accepted by the database system due to a substantial number of errors or omissions shall be corrected and resubmitted to the database by the reporting dispenser within ten business days of receiving written notice that the submitted data was unacceptable.~~

~~(45) Failure to report the dispensing of Schedules II-IV controlled substances will result in the Program filing a complaint with the Department for investigation and a referral to law enforcement.~~

~~(56) All information from the database disseminated in any form by the Program to any entity is considered protected health information and the use of it is governed by any and all applicable federal and state laws.~~

~~(67)(a) A patient, health care provider, prescriber, or dispenser is authorized to submit to the Program an~~

electronic request for the correction of erroneous information in the database. The request shall include:

1. A statement explaining in detail the basis for the requested correction;
2. The precise change requested;
3. Documentation establishing the error and the correct information;
4. The requester's name, address, telephone number, and license number if licensed as a health care provider in Florida.

(b) The Program manager or designated staff will review all requests to correct information in the database and will contact the entity that provided the data under review. If the reporter of the data concurs that the data should be corrected as requested, the reporter will make the correction. If the reporter does not agree, the reporter will not enter the correction. The entity or person requesting the correction will be notified of whether the correction has been made.

(8) All controlled substance prescription transactions uploaded into the database will be retained for a period of no less than 2 years from the date of reporting.

(9) All reports from the database will be provided in PDF format.

Rulemaking Authority 893.055 FS. Law Implemented 893.055 FS. History—New 11-24-11.

64K-1.005 Privacy of Information.

(1) Breaches in database security discovered by the Program manager or designated staff must be reported to the Department and to law enforcement within one business day of discovery of the breach. System users who become aware of a breach in security must report the suspected breach to the Program manager or designated staff as soon as possible, but no later than one business day after its discovery.

(2) The PDMP shall only disclose data to persons and entities authorized to receive the data under sections 893.055 and 893.0551, Florida Statutes. Disclosure to any other person or entity, including disclosure in the context of a civil action or an administrative action where the disclosure is sought either for the purpose of discovery or for evidence, is prohibited. The PDMP shall be authorized to provide data to:

(a) A health care practitioner, or dispenser who requests information and certifies that the requested information is for the purpose of:

1. Providing medical or pharmaceutical treatment to a current or prospective patient; or
2. Reviewing and assessing the individual prescribing or dispensing patterns of the practitioner or pharmacist or to determine the accuracy and completeness of information contained in the monitoring system.
3. These authorized users may share the report with the patient or person authorized to act on the patient's behalf. Upon placement of the report in the patient's medical record, the report shall be deemed part of the patient's medical record subject to disclosure on the same terms and conditions as an ordinary medical record as described by section 456.057, Florida Statutes. A pharmacist or dispenser may place the report in the patient's pharmacy record, with that individual report being deemed a prescription record subject to the disclosure on the same terms and conditions as an ordinary prescription record in s. 893.07(4), Florida Statutes.

(b) The DOH or its regulatory board responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other person who is authorized to prescribe, administer, or dispense controlled substances shall use any data or report from the system for the purpose of identifying individuals involved in a bona fide specific investigation involving a designated person. Key personnel shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by the Department for a period of two years.

(c) The Attorney General Medicaid Fraud Unit shall use any data or reports from the system for the purpose of identifying Medicaid providers or recipients whose prescribing, dispensing, or usage of controlled substances may be indicative of improper, inappropriate, or illegal prescribing or dispensing practices by a practitioner or drug

seeking by a Medicaid recipient. The Attorney General Medicaid Fraud Unit shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by the Medicaid Fraud Unit for a period of two years.

(d) A law enforcement agency authorized to receive data or a report may share that information with other key personnel within the agency. Key personnel shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by the law enforcement agency engaged in the investigation for a period of two years.

(3) Each request made pursuant to subparagraphs (2)(b)-(d) above must be reviewed by the designated administrator prior to being submitted to the Program Manager for approval. The agency administrator must certify that the request is pursuant to an active investigation.

(4) Disclosure of transmitted data to a person not authorized by sections 893.055 or 893.0551, Florida Statutes, or obtaining information under this section not relating to a bona fide specific investigation, shall be reported to the Florida Department of Law Enforcement and the U.S. Department of Health and Human Services.

Rulemaking Authority 893.055 FS. Law Implemented 893.055 FS. History—New 11-24-11.

July 1, 2013

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CRIMES

DRUG ABUSE PREVENTION AND CONTROL

893.055 Prescription drug monitoring program.—

(1) As used in this section, the term:

(a) "Patient advisory report" or "advisory report" means information provided by the department in writing, or as determined by the department, to a prescriber, dispenser, pharmacy, or patient concerning the dispensing of controlled substances. All advisory reports are for informational purposes only and impose no obligations of any nature or any legal duty on a prescriber, dispenser, pharmacy, or patient. The patient advisory report shall be provided in accordance with s. [893.13\(7\)\(a\)8](#). The advisory reports issued by the department are not subject to discovery or introduction into evidence in any civil or administrative action against a prescriber, dispenser, pharmacy, or patient arising out of matters that are the subject of the report; and a person who participates in preparing, reviewing, issuing, or any other activity related to an advisory report may not be permitted or required to testify in any such civil action as to any findings, recommendations, evaluations, opinions, or other actions taken in connection with preparing, reviewing, or issuing such a report.

(b) "Controlled substance" means a controlled substance listed in Schedule II, Schedule III, or Schedule IV in s. [893.03](#).

(c) "Dispenser" means a pharmacy, dispensing pharmacist, or dispensing health care practitioner.

(d) "Health care practitioner" or "practitioner" means any practitioner who is subject to licensure or regulation by the department under chapter 458, chapter 459, chapter 461, chapter 462, chapter 464, chapter 465, or chapter 466.

(e) "Health care regulatory board" means any board for a practitioner or health care practitioner who is licensed or regulated by the department.

(f) "Pharmacy" means any pharmacy that is subject to licensure or regulation by the department under chapter 465 and that dispenses or delivers a controlled substance to an individual or address in this state.

(g) "Prescriber" means a prescribing physician, prescribing practitioner, or other prescribing health care practitioner.

(h) "Active investigation" means an investigation that is being conducted with a reasonable, good faith belief that it could lead to the filing of administrative, civil, or criminal proceedings, or that is ongoing and continuing and for which there is a reasonable, good faith anticipation of securing an arrest or prosecution in the foreseeable future.

(i) "Law enforcement agency" means the Department of Law Enforcement, a Florida sheriff's department, a Florida police department, or a law enforcement agency of the Federal Government which enforces the laws of this state or the United States relating to controlled substances, and

which its agents and officers are empowered by law to conduct criminal investigations and make arrests.

(j) "Program manager" means an employee of or a person contracted by the Department of Health who is designated to ensure the integrity of the prescription drug monitoring program in accordance with the requirements established in paragraphs (2)(a) and (b).

(2)(a) The department shall design and establish a comprehensive electronic database system that has controlled substance prescriptions provided to it and that provides prescription information to a patient's health care practitioner and pharmacist who inform the department that they wish the patient advisory report provided to them. Otherwise, the patient advisory report will not be sent to the practitioner, pharmacy, or pharmacist. The system shall be designed to provide information regarding dispensed prescriptions of controlled substances and shall not infringe upon the legitimate prescribing or dispensing of a controlled substance by a prescriber or dispenser acting in good faith and in the course of professional practice. The system shall be consistent with standards of the American Society for Automation in Pharmacy (ASAP). The electronic system shall also comply with the Health Insurance Portability and Accountability Act (HIPAA) as it pertains to protected health information (PHI), electronic protected health information (EPHI), and all other relevant state and federal privacy and security laws and regulations. The department shall establish policies and procedures as appropriate regarding the reporting, accessing the database, evaluation, management, development, implementation, operation, storage, and security of information within the system. The reporting of prescribed controlled substances shall include a dispensing transaction with a dispenser pursuant to chapter 465 or through a dispensing transaction to an individual or address in this state with a pharmacy that is not located in this state but that is otherwise subject to the jurisdiction of this state as to that dispensing transaction. The reporting of patient advisory reports refers only to reports to patients, pharmacies, and practitioners. Separate reports that contain patient prescription history information and that are not patient advisory reports are provided to persons and entities as authorized in paragraphs (7)(b) and (c) and s. [893.0551](#).

(b) The department, when the direct support organization receives at least \$20,000 in nonstate moneys or the state receives at least \$20,000 in federal grants for the prescription drug monitoring program, shall adopt rules as necessary concerning the reporting, accessing the database, evaluation, management, development, implementation, operation, security, and storage of information within the system, including rules for when patient advisory reports are provided to pharmacies and prescribers. The patient advisory report shall be provided in accordance with s. [893.13\(7\)\(a\)8](#). The department shall work with the professional health care licensure boards, such as the Board of Medicine, the Board of Osteopathic Medicine, and the Board of Pharmacy; other appropriate organizations, such as the Florida Pharmacy Association, the Florida Medical Association, the Florida Retail Federation, and the Florida Osteopathic Medical Association, including those relating to pain management; and the Attorney General, the Department of Law Enforcement, and the Agency for Health Care Administration to develop rules appropriate for the prescription drug monitoring program.

(c) All dispensers and prescribers subject to these reporting requirements shall be notified by the department of the implementation date for such reporting requirements.

(d) The program manager shall work with professional health care licensure boards and the stakeholders listed in paragraph (b) to develop rules appropriate for identifying indicators of controlled substance abuse.

(3) The pharmacy dispensing the controlled substance and each prescriber who directly dispenses a controlled substance shall submit to the electronic system, by a procedure and in a format established by the department and consistent with an ASAP-approved format, the following information for inclusion in the database:

- (a) The name of the prescribing practitioner, the practitioner's federal Drug Enforcement Administration registration number, the practitioner's National Provider Identification (NPI) or other appropriate identifier, and the date of the prescription.
 - (b) The date the prescription was filled and the method of payment, such as cash by an individual, insurance coverage through a third party, or Medicaid payment. This paragraph does not authorize the department to include individual credit card numbers or other account numbers in the database.
 - (c) The full name, address, and date of birth of the person for whom the prescription was written.
 - (d) The name, national drug code, quantity, and strength of the controlled substance dispensed.
 - (e) The full name, federal Drug Enforcement Administration registration number, and address of the pharmacy or other location from which the controlled substance was dispensed. If the controlled substance was dispensed by a practitioner other than a pharmacist, the practitioner's full name, federal Drug Enforcement Administration registration number, and address.
 - (f) The name of the pharmacy or practitioner, other than a pharmacist, dispensing the controlled substance and the practitioner's National Provider Identification (NPI).
 - (g) Other appropriate identifying information as determined by department rule.
- (4) Each time a controlled substance is dispensed to an individual, the controlled substance shall be reported to the department through the system as soon thereafter as possible, but not more than 7 days after the date the controlled substance is dispensed unless an extension is approved by the department for cause as determined by rule. A dispenser must meet the reporting requirements of this section by providing the required information concerning each controlled substance that it dispensed in a department-approved, secure methodology and format. Such approved formats may include, but are not limited to, submission via the Internet, on a disc, or by use of regular mail.
- (5) When the following acts of dispensing or administering occur, the following are exempt from reporting under this section for that specific act of dispensing or administration:
- (a) A health care practitioner when administering a controlled substance directly to a patient if the amount of the controlled substance is adequate to treat the patient during that particular treatment session.
 - (b) A pharmacist or health care practitioner when administering a controlled substance to a patient or resident receiving care as a patient at a hospital, nursing home, ambulatory surgical center, hospice, or intermediate care facility for the developmentally disabled which is licensed in this state.
 - (c) A practitioner when administering or dispensing a controlled substance in the health care system of the Department of Corrections.
 - (d) A practitioner when administering a controlled substance in the emergency room of a licensed hospital.
 - (e) A health care practitioner when administering or dispensing a controlled substance to a person under the age of 16.
 - (f) A pharmacist or a dispensing practitioner when dispensing a one-time, 72-hour emergency resupply of a controlled substance to a patient.
- (6) The department may establish when to suspend and when to resume reporting information during a state-declared or nationally declared disaster.
- (7)(a) A practitioner or pharmacist who dispenses a controlled substance must submit the information required by this section in an electronic or other method in an ASAP format approved by rule of the department unless otherwise provided in this section. The cost to the dispenser in submitting the information required by this section may not be material or extraordinary. Costs not considered to be material or extraordinary include, but are not limited to, regular postage,

electronic media, regular electronic mail, and facsimile charges.

(b) A pharmacy, prescriber, or dispenser shall have access to information in the prescription drug monitoring program's database which relates to a patient of that pharmacy, prescriber, or dispenser in a manner established by the department as needed for the purpose of reviewing the patient's controlled substance prescription history. Other access to the program's database shall be limited to the program's manager and to the designated program and support staff, who may act only at the direction of the program manager or, in the absence of the program manager, as authorized. Access by the program manager or such designated staff is for prescription drug program management only or for management of the program's database and its system in support of the requirements of this section and in furtherance of the prescription drug monitoring program. Confidential and exempt information in the database shall be released only as provided in paragraph (c) and s. [893.0551](#). The program manager, designated program and support staff who act at the direction of or in the absence of the program manager, and any individual who has similar access regarding the management of the database from the prescription drug monitoring program shall submit fingerprints to the department for background screening. The department shall follow the procedure established by the Department of Law Enforcement to request a statewide criminal history record check and to request that the Department of Law Enforcement forward the fingerprints to the Federal Bureau of Investigation for a national criminal history record check.

(c) The following entities shall not be allowed direct access to information in the prescription drug monitoring program database but may request from the program manager and, when authorized by the program manager, the program manager's program and support staff, information that is confidential and exempt under s. [893.0551](#). Prior to release, the request shall be verified as authentic and authorized with the requesting organization by the program manager, the program manager's program and support staff, or as determined in rules by the department as being authentic and as having been authorized by the requesting entity:

1. The department or its relevant health care regulatory boards responsible for the licensure, regulation, or discipline of practitioners, pharmacists, or other persons who are authorized to prescribe, administer, or dispense controlled substances and who are involved in a specific controlled substance investigation involving a designated person for one or more prescribed controlled substances.
2. The Attorney General for Medicaid fraud cases involving prescribed controlled substances.
3. A law enforcement agency during active investigations regarding potential criminal activity, fraud, or theft regarding prescribed controlled substances.
4. A patient or the legal guardian or designated health care surrogate of an incapacitated patient as described in s. [893.0551](#) who, for the purpose of verifying the accuracy of the database information, submits a written and notarized request that includes the patient's full name, address, and date of birth, and includes the same information if the legal guardian or health care surrogate submits the request. The request shall be validated by the department to verify the identity of the patient and the legal guardian or health care surrogate, if the patient's legal guardian or health care surrogate is the requestor. Such verification is also required for any request to change a patient's prescription history or other information related to his or her information in the electronic database.

Information in the database for the electronic prescription drug monitoring system is not discoverable or admissible in any civil or administrative action, except in an investigation and disciplinary proceeding by the department or the appropriate regulatory board.

(d) The following entities shall not be allowed direct access to information in the prescription drug monitoring program database but may request from the program manager and, when authorized by the program manager, the program manager's program and support staff, information

that contains no identifying information of any patient, physician, health care practitioner, prescriber, or dispenser and that is not confidential and exempt:

- 1. Department staff for the purpose of calculating performance measures pursuant to subsection (8).
- 2. The Program Implementation and Oversight Task Force for its reporting to the Governor, the President of the Senate, and the Speaker of the House of Representatives regarding the prescription drug monitoring program. This subparagraph expires July 1, 2012.

(e) All transmissions of data required by this section must comply with relevant state and federal privacy and security laws and regulations. However, any authorized agency or person under s. [893.0551](#) receiving such information as allowed by s. [893.0551](#) may maintain the information received for up to 24 months before purging it from his or her records or maintain it for longer than 24 months if the information is pertinent to ongoing health care or an active law enforcement investigation or prosecution.

(f) The program manager, upon determining a pattern consistent with the rules established under paragraph (2)(d) and having cause to believe a violation of s. [893.13\(7\)\(a\)8.](#), (8)(a), or (8)(b) has occurred, may provide relevant information to the applicable law enforcement agency.

(8) To assist in fulfilling program responsibilities, performance measures shall be reported annually to the Governor, the President of the Senate, and the Speaker of the House of Representatives by the department each December 1, beginning in 2011. Data that does not contain patient, physician, health care practitioner, prescriber, or dispenser identifying information may be requested during the year by department employees so that the department may undertake public health care and safety initiatives that take advantage of observed trends. Performance measures may include, but are not limited to, efforts to achieve the following outcomes:

- (a) Reduction of the rate of inappropriate use of prescription drugs through department education and safety efforts.
 - (b) Reduction of the quantity of pharmaceutical controlled substances obtained by individuals attempting to engage in fraud and deceit.
 - (c) Increased coordination among partners participating in the prescription drug monitoring program.
 - (d) Involvement of stakeholders in achieving improved patient health care and safety and reduction of prescription drug abuse and prescription drug diversion.
- (9) Any person who willfully and knowingly fails to report the dispensing of a controlled substance as required by this section commits a misdemeanor of the first degree, punishable as provided in s. [775.082](#) or s. [775.083](#).

(10) All costs incurred by the department in administering the prescription drug monitoring program shall be funded through federal grants or private funding applied for or received by the state. The department may not commit funds for the monitoring program without ensuring funding is available. The prescription drug monitoring program and the implementation thereof are contingent upon receipt of the nonstate funding. The department and state government shall cooperate with the direct-support organization established pursuant to subsection (11) in seeking federal grant funds, other nonstate grant funds, gifts, donations, or other private moneys for the department so long as the costs of doing so are not considered material. Nonmaterial costs for this purpose include, but are not limited to, the costs of mailing and personnel assigned to research or apply for a grant. Notwithstanding the exemptions to competitive-solicitation requirements under s. [287.057\(3\)\(f\)](#), the department shall comply with the competitive-solicitation requirements under s. [287.057](#) for the procurement of any goods or services required by this section. Funds provided, directly or indirectly, by prescription drug manufacturers may not be used to implement the program.

(11) The department may establish a direct-support organization that has a board consisting of at least five members to provide assistance, funding, and promotional support for the activities authorized for the prescription drug monitoring program.

(a) As used in this subsection, the term “direct-support organization” means an organization that is:

1. A Florida corporation not for profit incorporated under chapter 617, exempted from filing fees, and approved by the Department of State.
2. Organized and operated to conduct programs and activities; raise funds; request and receive grants, gifts, and bequests of money; acquire, receive, hold, and invest, in its own name, securities, funds, objects of value, or other property, either real or personal; and make expenditures or provide funding to or for the direct or indirect benefit of the department in the furtherance of the prescription drug monitoring program.

(b) The direct-support organization is not considered a lobbying firm within the meaning of s. [11.045](#).

(c) The State Surgeon General shall appoint a board of directors for the direct-support organization. Members of the board shall serve at the pleasure of the State Surgeon General. The State Surgeon General shall provide guidance to members of the board to ensure that moneys received by the direct-support organization are not received from inappropriate sources. Inappropriate sources include, but are not limited to, donors, grantors, persons, or organizations that may monetarily or substantively benefit from the purchase of goods or services by the department in furtherance of the prescription drug monitoring program.

(d) The direct-support organization shall operate under written contract with the department. The contract must, at a minimum, provide for:

1. Approval of the articles of incorporation and bylaws of the direct-support organization by the department.
2. Submission of an annual budget for the approval of the department.
3. Certification by the department that the direct-support organization is complying with the terms of the contract in a manner consistent with and in furtherance of the goals and purposes of the prescription drug monitoring program and in the best interests of the state. Such certification must be made annually and reported in the official minutes of a meeting of the direct-support organization.
4. The reversion, without penalty, to the state of all moneys and property held in trust by the direct-support organization for the benefit of the prescription drug monitoring program if the direct-support organization ceases to exist or if the contract is terminated.
5. The fiscal year of the direct-support organization, which must begin July 1 of each year and end June 30 of the following year.
6. The disclosure of the material provisions of the contract to donors of gifts, contributions, or bequests, including such disclosure on all promotional and fundraising publications, and an explanation to such donors of the distinction between the department and the direct-support organization.
7. The direct-support organization’s collecting, expending, and providing of funds to the department for the development, implementation, and operation of the prescription drug monitoring program as described in this section and s. 2, chapter 2009-198, Laws of Florida, as long as the task force is authorized. The direct-support organization may collect and expend funds to be used for the functions of the direct-support organization’s board of directors, as necessary and approved by the department. In addition, the direct-support organization may collect and provide funding to the department in furtherance of the prescription drug monitoring program by:
 - a. Establishing and administering the prescription drug monitoring program’s electronic database,

including hardware and software.

b. Conducting studies on the efficiency and effectiveness of the program to include feasibility studies as described in subsection (13).

c. Providing funds for future enhancements of the program within the intent of this section.

d. Providing user training of the prescription drug monitoring program, including distribution of materials to promote public awareness and education and conducting workshops or other meetings, for health care practitioners, pharmacists, and others as appropriate.

e. Providing funds for travel expenses.

f. Providing funds for administrative costs, including personnel, audits, facilities, and equipment.

g. Fulfilling all other requirements necessary to implement and operate the program as outlined in this section.

(e) The activities of the direct-support organization must be consistent with the goals and mission of the department, as determined by the department, and in the best interests of the state. The direct-support organization must obtain a written approval from the department for any activities in support of the prescription drug monitoring program before undertaking those activities.

(f) The department may permit, without charge, appropriate use of administrative services, property, and facilities of the department by the direct-support organization, subject to this section. The use must be directly in keeping with the approved purposes of the direct-support organization and may not be made at times or places that would unreasonably interfere with opportunities for the public to use such facilities for established purposes. Any moneys received from rentals of facilities and properties managed by the department may be held in a separate depository account in the name of the direct-support organization and subject to the provisions of the letter of agreement with the department. The letter of agreement must provide that any funds held in the separate depository account in the name of the direct-support organization must revert to the department if the direct-support organization is no longer approved by the department to operate in the best interests of the state.

(g) The department may adopt rules under s. [120.54](#) to govern the use of administrative services, property, or facilities of the department or office by the direct-support organization.

(h) The department may not permit the use of any administrative services, property, or facilities of the state by a direct-support organization if that organization does not provide equal membership and employment opportunities to all persons regardless of race, color, religion, gender, age, or national origin.

(i) The direct-support organization shall provide for an independent annual financial audit in accordance with s. [215.981](#). Copies of the audit shall be provided to the department and the Office of Policy and Budget in the Executive Office of the Governor.

(j) The direct-support organization may not exercise any power under s. [617.0302](#)(12) or (16).

(12) A prescriber or dispenser may have access to the information under this section which relates to a patient of that prescriber or dispenser as needed for the purpose of reviewing the patient's controlled drug prescription history. A prescriber or dispenser acting in good faith is immune from any civil, criminal, or administrative liability that might otherwise be incurred or imposed for receiving or using information from the prescription drug monitoring program. This subsection does not create a private cause of action, and a person may not recover damages against a prescriber or dispenser authorized to access information under this subsection for accessing or failing to access such information.

(13) To the extent that funding is provided for such purpose through federal or private grants or gifts and other types of available moneys, the department shall study the feasibility of enhancing the prescription drug monitoring program for the purposes of public health initiatives and statistical reporting that respects the privacy of the patient, the prescriber, and the dispenser. Such a study

shall be conducted in order to further improve the quality of health care services and safety by improving the prescribing and dispensing practices for prescription drugs, taking advantage of advances in technology, reducing duplicative prescriptions and the overprescribing of prescription drugs, and reducing drug abuse. The requirements of the National All Schedules Prescription Electronic Reporting (NASPER) Act are authorized in order to apply for federal NASPER funding. In addition, the direct-support organization shall provide funding for the department to conduct training for health care practitioners and other appropriate persons in using the monitoring program to support the program enhancements.

(14) A pharmacist, pharmacy, or dispensing health care practitioner or his or her agent, before releasing a controlled substance to any person not known to such dispenser, shall require the person purchasing, receiving, or otherwise acquiring the controlled substance to present valid photographic identification or other verification of his or her identity to the dispenser. If the person does not have proper identification, the dispenser may verify the validity of the prescription and the identity of the patient with the prescriber or his or her authorized agent. Verification of health plan eligibility through a real-time inquiry or adjudication system will be considered to be proper identification. This subsection does not apply in an institutional setting or to a long-term care facility, including, but not limited to, an assisted living facility or a hospital to which patients are admitted. As used in this subsection, the term "proper identification" means an identification that is issued by a state or the Federal Government containing the person's photograph, printed name, and signature or a document considered acceptable under 8 C.F.R. s. 274a.2(b)(1)(v)(A) and (B).

(15) The Agency for Health Care Administration shall continue the promotion of electronic prescribing by health care practitioners, health care facilities, and pharmacies under s. [408.0611](#).

(16) The department shall adopt rules pursuant to ss. [120.536\(1\)](#) and [120.54](#) to administer the provisions of this section, which shall include as necessary the reporting, accessing, evaluation, management, development, implementation, operation, and storage of information within the monitoring program's system.

History.—s. 1, ch. 2009-198; s. 41, ch. 2010-151; s. 12, ch. 2010-211; s. 50, ch. 2011-4; s. 23, ch. 2011-141; s. 86, ch. 2012-5.

July 1, 2013

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CRIMES

DRUG ABUSE PREVENTION AND CONTROL

893.0551 Public records exemption for the prescription drug monitoring program.—

(1) For purposes of this section, the term:

- (a) "Active investigation" has the same meaning as provided in s. [893.055](#).
- (b) "Dispenser" has the same meaning as provided in s. [893.055](#).
- (c) "Health care practitioner" or "practitioner" has the same meaning as provided in s. [893.055](#).
- (d) "Health care regulatory board" has the same meaning as provided in s. [893.055](#).
- (e) "Law enforcement agency" has the same meaning as provided in s. [893.055](#).
- (f) "Pharmacist" means any person licensed under chapter 465 to practice the profession of

pharmacy.

- (g) "Pharmacy" has the same meaning as provided in s. [893.055](#).
- (h) "Prescriber" has the same meaning as provided in s. [893.055](#).

(2) The following information of a patient or patient's agent, a health care practitioner, a dispenser, an employee of the practitioner who is acting on behalf of and at the direction of the practitioner, a pharmacist, or a pharmacy that is contained in records held by the department under s. [893.055](#) is confidential and exempt from s. [119.07](#)(1) and s. 24(a), Art. I of the State Constitution:

- (a) Name.
- (b) Address.
- (c) Telephone number.
- (d) Insurance plan number.
- (e) Government-issued identification number.
- (f) Provider number.
- (g) Drug Enforcement Administration number.
- (h) Any other unique identifying information or number.

(3) The department shall disclose such confidential and exempt information to the following entities after using a verification process to ensure the legitimacy of that person's or entity's request for the information:

(a) The Attorney General and his or her designee when working on Medicaid fraud cases involving prescription drugs or when the Attorney General has initiated a review of specific identifiers of Medicaid fraud regarding prescription drugs. The Attorney General or his or her designee may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. [119.011](#) as part of an active investigation that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances. The Attorney General's Medicaid fraud investigators may not have direct access to the department's database.

(b) The department’s relevant health care regulatory boards responsible for the licensure, regulation, or discipline of a practitioner, pharmacist, or other person who is authorized to prescribe, administer, or dispense controlled substances and who is involved in a specific controlled substances investigation for prescription drugs involving a designated person. The health care regulatory boards may request information from the department but may not have direct access to its database. The health care regulatory boards may provide such information to a law enforcement agency pursuant to ss. [456.066](#) and [456.073](#).

(c) A law enforcement agency that has initiated an active investigation involving a specific violation of law regarding prescription drug abuse or diversion of prescribed controlled substances. The law enforcement agency may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. [119.011](#) as part of an active investigation that is specific to a violation of prescription drug abuse or prescription drug diversion law as it relates to controlled substances. A law enforcement agency may request information from the department but may not have direct access to its database.

(d) A health care practitioner who certifies that the information is necessary to provide medical treatment to a current patient in accordance with ss. [893.05](#) and [893.055](#).

(e) A pharmacist who certifies that the requested information will be used to dispense controlled substances to a current patient in accordance with ss. [893.04](#) and [893.055](#).

(f) A patient or the legal guardian or designated health care surrogate for an incapacitated patient, if applicable, making a request as provided in s. [893.055\(7\)\(c\)4](#).

(g) The patient’s pharmacy, prescriber, or dispenser who certifies that the information is necessary to provide medical treatment to his or her current patient in accordance with s. [893.055](#).

(4) The department shall disclose such confidential and exempt information to the applicable law enforcement agency in accordance with s. [893.055\(7\)\(f\)](#). The law enforcement agency may disclose the confidential and exempt information received from the department to a criminal justice agency as defined in s. [119.011](#) as part of an active investigation that is specific to a violation of s. [893.13\(7\)\(a\)8.](#), s. [893.13\(8\)\(a\)](#), or s. [893.13\(8\)\(b\)](#).

(5) Any agency or person who obtains such confidential and exempt information pursuant to this section must maintain the confidential and exempt status of that information.

(6) Any person who willfully and knowingly violates this section commits a felony of the third degree, punishable as provided in s. [775.082](#), s. [775.083](#), or s. [775.084](#).

(7) This section is subject to the Open Government Sunset Review Act in accordance with s. [119.15](#) and shall stand repealed on October 2, 2014, unless reviewed and saved from repeal through reenactment by the Legislature.

History.—s. 1, ch. 2009-197; s. 13, ch. 2010-211; s. 51, ch. 2011-4.

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Rick Scott
Governor

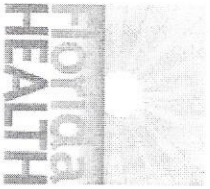
John H. Armstrong, MD, FACS
State Surgeon General & Secretary

Vision: To be the Healthiest State in the Nation

RULE WORKSHOP
Prescription Drug Monitoring Program
4052 Bald Cypress Way
Room 301
Tallahassee, FL 32399
August 27, 2013
1:00PM to 5:00PM

SIGN IN SHEET

Ms. Poston will make all sign in sheets part of the rules workshop record. The following individuals were in attendance at the meeting.



Rules Workshop – 64K-1.003, 64K-1.004, 64K-1.005, F.A.C.

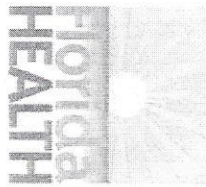
August 27, 2013

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Room 301

Tallahassee, FL 32399

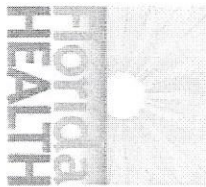
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LEZUE FORDEN	FBI		410-7000
JOE WHELE	FDCE		410-7000
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ROBERT MCMAHUS	Polk County S.O.	rmcmanus@polksheriff.org	863-298-6295
Pamela Burch Fort	Accu of FL	Teglobby@aol.com	850-425-1344
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Keith Wood	Parde Pharma	Keith.Wood@pharma.ca	850-898-3379
Tim Mitchell	Tampa Bay Times/Michael	tmitchell@tampabay.com	224-7263
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Rules Workshop – 64K-1.003, 64K-1.004, 64K-1.005, F.A.C.

August 27, 2013
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Jill Gran	FADA	jill@fadaa.org	688-2196



Rules Workshop – 64K-1.003, 64K-1.004, 64K-1.005, F.A.C.

August 27, 2013
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Chelsea Mangnatt	FDLE	chelseamangnatt@fdle.state.fl.us	410-8794
Sarah Carroll	Florida Sheriffs Association	sarroll@flsheriffs.org	877-2165
Julie Meadows-Keefe	Grossman Furlow Bay O	jmeadows-keefe@grossmanfurlow.com	385-1314
Walt McNeil	Fl. Police Chief Assoc.	wmcneil@myquincy.net	510-0110
Toni Large	FCBP/FOs/FSR	toni@slalaw.net	(850) 556-1461

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SPEAKER CARDS

Ms. Poston will make all speaker cards part of the rules workshop record.

SPEAKER INFORMATION CARD

Name:
Title:
Company:

Pamela Burch Fort
Acu of Florida

Which rule do you wish to comment on?

 64K-1.003, F.A.C.

 64K-1.004, F.A.C.

 ✓ 64K-1.005, F.A.C. ✓

SPEAKER INFORMATION CARD

Name:
Title:
Company:

Walt McNeil
Police Chief
Florida Police Chiefs Association

Which rule do you wish to comment on?

☒ 64K-1.003, F.A.C.

☐ 64K-1.004, F.A.C.

☒ 64K-1.005, F.A.C.

SPEAKER INFORMATION CARD

Name:
Title:
Company:

Sarah Annell
Asst Executive Director
Florida Sheriffs Association

Which rule do you wish to comment on?

64K-1.003, F.A.C.

64K-1.004, F.A.C.

☒ 64K-1.005, F.A.C. /

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4052 Bald Cypress Way
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Tallahassee, FL 32399
August 27, 2013
1:00PM to 5:00PM

WRITTEN COMMENTS

Ms. Poston will make all written comments part of the rules workshop record and will be accepted until September 6, 2013.



To: Florida Department of Health
From: Pamela Burch Fort, on behalf of the ACLU of Florida
Maria Kayanan, Associate Legal Director, ACLU of Florida
Date: August 26, 2013
Re: DOH Rule Workshop August 27, 2013 for E-FORCSE Rule Amendment

I. Developments Since the July DOH Workshop

The ACLU of Florida (“ACLU”) thanks DOH for the opportunity to participate in its second rule workshop on issues surrounding the agency’s PDMP. However, the proposed changes to Ch.64K-1.005 (“Privacy of Information”) are minor and inconsequential, and utterly fail to address the privacy issues brought to light in June 2013. The proposed changes to that section simply reflect existing law, and still incorporate, by reference, the same version of DOH’s “Training Guide for Enforcement and Investigative Agencies” that permits broad fishing expeditions by law enforcement, invites abuse of the PDMP, and threatens the privacy rights of all Floridians—rights that are guaranteed by Article I, § 23 of the Florida Constitution.

Specifically, as we set out below, no protection is offered to innocent individuals whose names are gathered by law enforcement from the PDMP, without their knowledge or consent, which are then turned over to defense counsel in criminal prosecutions. This disclosure is particularly dangerous: although identifying information gleaned from the PDMP is exempt from disclosure under Ch. 119, Florida Statutes, *see* Fla. Stat. § 893.0551(a)-(b), once it is provided in criminal discovery, it may be stripped of those protections and be subject to production pursuant to a public records request. *See, e.g., Rameses, Inc. v. Demings*, 29 So. 3d 418 (Fla. 5th DCA 2010); *Sarasota Herald-Tribune v. State*, 597 So. 2d 940 (Fla. 1st DCA 2005); *Staton v. McMillan*, 597 So. 2d 940 (Fla. 1st DCA 1992).

The mere possibility that thousands of law-abiding individuals’ private medical records¹ would, unbeknownst to them, become public records subject to disclosure under Ch. 119 is unacceptable and contrary to the Florida Constitution and public policy. The Proposed Rule must include protections against a repeat of the very event that triggered the ACLU’s investigation, and DOH’s rulemaking process.

The ACLU became aware of significant privacy issues surrounding E-FORCSE in June 2013 upon learning that confidential prescription information of 3300 Floridians—obtained by a DEA

¹ At least one Florida appellate court has treated prescription drug records as medical records. *See Poston v. Wiggins*, 112 So. 3d 783, 785-86 (Fla. 1st DCA 2013).

agent from the State's PDMP—was released to individuals who were not physicians, pharmacists, or law enforcement agents.² That concern has grown even graver.

In the six criminal cases that brought this breach of confidentiality to light, a Volusia Circuit Judge will hear, tomorrow August 28, the State's motion seeking clarification of its discovery obligations in the case. The State's Motion argues that each disc containing the medical records of 3300 Floridians is the "product of a search and seizure, as well as a tangible object or paper **the State intends to use at trial or hearing, and as such, the State is required to produce such disc in discovery.**" *See Ex. A* (Motion) (emphases added).³ Notably, it is the State Attorney's office, not defense counsel, who asserts the need for disclosure of information on the discs. To the best of our knowledge, defense counsel only want their own client's information, assuming their clients' names are even on the discs.

Further, the Florida Prosecuting Attorneys Association issued, on June 19, 2013, at Attorney General Pam Bondi's request, a policy statement regarding criminal discovery demands of PDMP records. *See Ex. B*. The statement reads in pertinent part as follows:

Pursuant to your request, the following is the statement of the policy utilized by State Attorneys regarding the above-captioned matter. When Discovery demands are made upon us regarding information we have pursuant to Chapter 893.055, Florida Statutes, which is not directly related to a criminal case at hand, we will inform the inquirer that we have that information. The unrelated information will not be released to anyone requesting it unless ordered to do so by a court of competent jurisdiction.

Thus, it appears that despite no demands by defense counsel (that we are aware of) for the confidential records of non-parties, the State Attorney in her motion is *asking* the Court to order the re-release of the discs containing the 3300 names.

The details surrounding the release of the 3300 names remain unknown. DOH provided the ACLU on Friday, August 23, with hundreds of documents; that is only a partial production as more documents have been promised. However, all search queries are so heavily redacted that it's impossible to discern whether the agent used partial names, the "sounds like" feature, or other overbroad query terms that would yield 3300 names.

Rather than repeat the ACLU's remarks and comments submitted person and in writing on July 8, 2013, the ACLU incorporates them by reference in this submission.

² The DEA investigation resulted in 6 prosecutions in Volusia County for prescription drug fraud. The defense attorneys for the 6 defendants were provided with discs containing the prescription drug history of all 3300 individuals.

³ The characterization of the information as the product of a "search and seizure" underscores the need for Fourth Amendment protections, i.e., a warrant based upon probable cause, which are missing from the current statute.

II. The Proposed Revisions Provide No Greater Protection Than What is Currently In Statute.

A. DOH's "Training Guide for Enforcement and Investigative Agencies" is Unchanged.

The Proposed Rules incorporate DOH's "Training Guide for Enforcement and Investigative Agencies," which, as we argued in July, encourages "wild card" queries and the use of partial names, and names that "sound like" whatever the requestor enters. Such queries result in unacceptably broad results, and invite abusive fishing expeditions.

The records of queries provided to the ACLU indicate no field for entry of information regarding specific violations of law, contrary to what's required by Fla. Stat. § 893.0551(3)(c); as the documents attached as **Comp. Ex. C** reflect, the field labeled "Purpose" consists only of the terms "Diversion" or "Shopper." One "query" does not even list a case number, let alone a "Purpose."

Such broad queries by law enforcement users should be prohibited. "Wild card" queries, queries based on names that "sound like," and partial name queries should be rejected by the Program Manager. Law enforcement queries for "recipients" should be limited to specific individuals who are the subject of ongoing investigations as defined in Fla. Stat. § 893.055(1)(h).

B. The Proposed Revisions Provide No Protection to Third Parties Whose Names Were Captured During Law Enforcement's Access to E-FORCSE, Who Are Not the Subject of Any Criminal Investigation or Prosecution.

The criminal discovery process poses a clear and present danger to the privacy of all Floridian's confidential prescription and medical records. Protections against disclosure in *civil and administrative* proceedings are already in statute. See Fla. Stat. § 893.055(1)(a) (emphasis added). The same advisory appears on the E-FORCSE website's home page: "NOTE: Information in the Prescription Drug Monitoring Program (PDMP) database is *not discoverable or admissible in any civil or administrative action*, except in an investigation and disciplinary proceeding by the department or the appropriate regulatory board, Section 893.055(7)(c), Florida Statutes.⁴ (emphasis added).

Therefore, this Proposed Rule simply incorporates what is already prohibited by statute, and fails to impose critical protections to the criminal discovery process. The Proposed Rule change for 64K-1.005 provides as follows at (2):

The PDMP shall only disclose data to persons and entities authorized to receive the data under sections 893.055 and 893.0551, Florida Statutes. Disclosure to any other person or entity, *including disclosure in the context of a civil or an administrative action*, where the disclosure is sought either for the purpose of discovery or evidence, is prohibited.

⁴ See <http://www.eforcse.com/> (last viewed Aug.25, 2013)

The ACLU strongly urges DOH to insert the word “criminal” so that the Proposed Rule would read “Disclosure to any other person or entity, *including disclosure in the context of a civil, criminal, or an administrative action*, where the disclosure is sought either for the purpose of discovery or evidence, is prohibited.” Without that critical addition, the Proposed Rule simply parrots what current law already prohibits.

C. The Proposed Rule Offers Scant DOH Oversight for Maintaining the Confidentiality of Confidential Records Released to Law Enforcement.

64K-1.005(2)(d) (“Privacy of Information”) requires nothing more than keeping records of “each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received.”

- There is no requirement that the report or data be labeled “confidential” or “This information was obtained from E-FORCSE, contains confidential medical information, and shall not be copied.”
- There is no restriction on copying, or keeping track of who made how many copies. There is no requirement that E-FORCSE reports or data maintained by law enforcement be redacted so that they reflect only parties to the proceeding, and not law-abiding citizens whose private information was scooped up from the PDMP in a fishing expedition.
- In section (4), there is no penalty for receiving or giving confidential information—the Proposed Rule only requires reporting—but doesn’t say by whom, to FDLE and the U.S. Dept. of Health & Human Services.
- There is no requirement of notice to individuals whose confidential information has been inappropriately provided to third parties (i.e., non-law enforcement, such as the defense attorneys in the Volusia County criminal proceedings).

D. The Proposed Rule Deletes “Active Investigation” Language from 64K-1.003(2)(a).

Section 64K-1.003(2)(c) (“Accessing Database”) currently reads as follows:

The following entities **do not have direct access** to the information in the database, but may request access from the Program manager or authorized staff:

- (a) The Department or the health care regulatory boards in Section 893.005(7)(c)1., F.S., when involved in a specific controlled substance investigation involving a designated person for one or more prescribed controlled substances.
- (b) The Attorney General or designee for Medicaid Fraud cases involving prescribed controlled substances.
- (c) **A law enforcement agency during an active investigation regarding potential criminal activity, fraud, or theft relating to prescribed controlled substances.**

The Proposed Rule seeks to delete current section (c). Why?

III. Conclusion

The Agency has attempted to reduce the risk of disclosure, to unauthorized persons, of confidential prescription drug information maintained in the PDMP database. Although we appreciate the Agency's efforts, the end result, should these Proposed Rules become final, only preserves the status quo.

The simplest fix to the present danger posed to Floridian's privacy is to insert the word "criminal" into section (2) as suggested above. Other necessary changes, such as narrowing the broad queries currently authorized by the DOH Manual, and curing the lack of meaningful oversight of records in the hands of law enforcement, will take additional attention and revision, but are critical next steps to bring the operation of Florida's PDMP up to constitutional muster.

The ACLU once again emphasizes its opposition to the existence and maintenance of the E-FORCSE database, and our position that law enforcement should have access to E-FORCSE only after obtaining a warrant or court order targeting specific individuals or entities for specific crimes, supported by probable cause. Accordingly, we incorporate by reference, the additional arguments we made in our July 8, 2013 submission.

Respectfully submitted,

/s/ Pamela Burch Fort, for the ACLU of Florida

/s/ Maria Kayanan, Esq., Associate Legal Director, ACLU of Florida

IN THE CIRCUIT COURT, SEVENTH
JUDICIAL CIRCUIT, IN AND FOR
VOLUSIA COUNTY, FLORIDA

STATE OF FLORIDA

VS.

CASE NO.: [REDACTED] CFDB

LAURA JO LEONARD,
Defendant /

**MOTION FOR CLARIFICATION ON DISCOVERY AND FOR
RETRIEVAL OF DISCOVERY DISC**

The State of Florida, by and through the undersigned assistant state attorney, hereby moves this Honorable Court for an Order giving direction in discovery in the above-styled case, as well as an order demanding the return of a discovery disc in the possession of Michael Lambert, and as grounds therefore states:

- 1) The Defendant is charged with Trafficking in Hydrocodone (28 grams-30 kilograms), Obtaining/Attempting to Obtain Controlled Substance by Fraud, and Fraudulent Use of Personal Identification Information. The Information was filed on or about January 29, 2013.
- 2) Assistant Public Defender Frank Powers was appointed on January 9, 2013. (Frank Scott subsequently withdrew, and attorney Paul Kwilecki was appointed to represent the defendant.)
- 3) Pursuant to Administrative Order V [REDACTED] the appointment of the Public Defender's Office automatically triggers the Blanket Demand for Discovery, without the requirement of a specific demand being filed in individual cases.
- 4) The State filed an Answer to Demand for Discovery on February 15, 2013. Within the discovery materials was a disc containing information from the Prescription Monitoring Data Base. The information on the disc was gathered

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CLERK OF COURT
VOLUSIA COUNTY, FL

pursuant to Section 893.0551, Fla. Stat. (2012), and was utilized by law enforcement to identify the defendants within a drug trafficking ring, including the identification of the Defendant in the instant case.

- 5) An attorney for one of the co-defendants, upon seeing some prescription information related to Michael Lambert on the disc, and despite the disclaimer on the disc NOT to distribute in any way, improperly forwarded the disc to Michael Lambert, though Mr. Lambert is not a defense attorney in any of the co-defendants' cases. Defense counsel is required to maintain the confidentiality of the data pursuant to § 893.0551(5), Florida Statutes (2012).
- 6) Mr. Lambert, by his own admission, has improperly copied the disc, and, though the State has requested the immediate return of the disc, Mr. Lambert refuses to return it to the State of Florida. The disc contains sensitive prescription information to which Mr. Lambert is not entitled.
- 7) In order to protect the privacy rights of any other patients on the disc, the State of Florida respectfully requests an order directing the immediate return of the disc, along with an Affidavit from Mr. Lambert, citing whether he has made any other copies, or disseminated the information on the disc in any way, and if so, to whom.
- 8) The State is entitled to retrieval of the disc pursuant to §119.021(4)(b), Florida Statutes (2012), which states, "Whoever is entitled to custody of public records shall demand them from any person having illegal possession of them, who must forthwith deliver the same to him or her. Any person unlawfully possessing public records must within 10 days deliver such records to the lawful custodian of public records unless just cause exists for failing to deliver such records."

- 9) Upon Mr. Lambert's discovery of the information on the disc, on or about May 23, 2013, Mr. Lambert notified the State Attorney's Office of his prescription information within the discovery, and that he intended to copy the disc.
- 10) In the abundance of caution, the State did retrieve and secure all the discs immediately from defense counsel in all of the cases where the disc had been provided, pending this Court's direction in regard to discovery.
- 11) The disc is a product of a search and seizure, as well as a tangible object or paper the State intends to use at trial or hearing, and as such, the State is required to produce such disc in discovery. See Rule 3.220(1), Fla.R.Crim.Pro. (2012). Further, the State is required to produce any relevant information to the defense that may assist in trial preparation or strategy. Scipio v. State, 928 So.2d 1138 (Fla. 2006).
- 12) Mr. Lambert, however, filed a Motion for Protective Order to prevent the information from being released. Though he since withdrew the Motion, the State, again in the abundance of caution, requests that the Court review the issue and enter an Order addressing the release of the disc, and any conditions attached thereto.
- 13) The State further requests this Honorable Court to direct defense counsel to hold any such information confidential, and to refrain from improperly disseminating such information, so as to prohibit any unnecessary or unlawful review of such records.

WHEREFORE, the State respectfully requests that this Court order Mr. Lambert to return the above-referenced PMDB disc immediately to the State, along with an Affidavit avowing whether any other copies were made of the disc, or whether the disc was further disseminated in any way. The State further requests clarification from the Court on the discovery of the disc, prohibitions to defense counsel on the handling of such sensitive information, and any other remedy the Court deems just and proper.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided by U.S. Mail to Paul Kwilecki, 327 South Palmetto Avenue, Daytona Beach, FL 32114; John Tanner, Esquire, 428 N. Halifax Avenue, Daytona Beach, Florida 32114; Michael Lambert, 428 N. Halifax Avenue, Daytona Beach, Florida, 32114; and to Aaron Delgado, Esquire, 227 Seabreeze Blvd, Daytona Beach, Florida 32118 on this 23 day of July, 2013.

Respectfully submitted:



KAREN ADAMS FOXMAN
ASSISTANT STATE ATTORNEY
FL BAR NO: 0088943
251 N. RIDGEWOOD AVENUE
DAYTONA BEACH, FL 32114
(386) 239-7710

**FLORIDA PROSECUTING ATTORNEYS
ASSOCIATION**



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WILLIAM EDDINS
First Circuit
P.O. Box 12726
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BRAD KING
Fifth Circuit

SECRETARY

GLENN HESS
Fourteenth Circuit

TREASURER

R.J. LARIZZA
Seventh Circuit

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Third Circuit

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Sixth Circuit

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Eighth Circuit

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Ninth Circuit

Jerry Hill
Tenth Circuit

Katherine Fernandez Rundle
Eleventh Circuit

Earl Moreland
Twelfth Circuit

Mark Ober
Thirteenth Circuit

Michael McAuliffe
Fifteenth Circuit

Dennis Ward
Sixteenth Circuit

Michael Satz
Seventeenth Circuit

Norman Wolfinger
Eighteenth Circuit

Bruce Colton
Nineteenth Circuit

Stephen B. Russell
Twentieth Circuit

GENERAL COUNSEL

Arthur I. Jacobs

**EXECUTIVE
DIRECTOR**

John Hogenmuller
107 W. Gaines St., Suite L66
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Fax: 850/922-0467
Website: www.myfpaa.org

June 19, 2013

The Honorable Pam Bondi
Attorney General
Department of Legal Affairs
The Capitol
Tallahassee, Florida 32399-1050

RE: Release of Information in Criminal Discovery Demands for
Materials received regarding the Prescription Drug-Monitoring
Program under Chapter 893.055, Florida Statutes

Dear General Bondi:

Pursuant to your request, the following is the statement of the policy utilized by State Attorneys regarding the above-captioned matter. When Discovery demands are made upon us regarding information we have pursuant to Chapter 893.055, Florida Statutes, which is not directly related to a criminal case at hand, we will inform the inquirer that we have that information. This unrelated information will not be released to anyone requesting it unless ordered to do so by a court of competent jurisdiction.

I hope this satisfactorily responds to your inquiry and if I may be of further assistance, please contact me.

Sincerely,

**WILLIAM EDDINS, PRESIDENT
FLORIDA PROSECUTING ATTORNEYS ASSOCIATION**

WE/klm

cc: Governor Rick Scott

[illegible]

COMP. EX. C

Case No	Query No	Requestor ID	Status
20113470553	57263	EA4101	Approved
Deny Reason			
Request Date	12/13/11		
Purpose	Diversion		
From Date	12/01/10		
To Date	12/12/11		
Recipient Name	First Name	Address	DOB
893.0551, FS	[REDACTED]	[REDACTED]	[REDACTED]
			[REDACTED]
			[REDACTED]
			[REDACTED]

COMP. EX. C



Query Selection Details

Case No	Query No	Requestor ID	Status
201220001524	462462	EA4101	Approved
Deny Reason			
Request Date	07/23/12		
Purpose	Diversion		
From Date	12/01/10		
To Date	07/23/12		
Recipient Name	First Name	Address	DOB
893.0551, FS			
			?
			?
			?

Job Sequence ID	Date Requested	Status	Output	User
2211549	07/23/12	Done	file-pdf	EA4101
Law Enforcement Report All Prescribers All Dispensers 5 out of 5 Recipient Selected From: Name Begins 893.0551, FS				
beg-dspns=12/01/10 end-dspns=07/23/12 lestatus=approve phrm-list=ALL fields=DD,QD,DS,AR,N,DN,PL,DP,RL,RF,DB,RA query-number=462462 REMOTE_USER=erika.marshall REMOTE_ADDR=167.78.4.18 prsb-min-miles=0 dspns-min-miles=0 recip-list=00017036,00744166,02464168,02980282,04759838 prsb-list=ALL output=file-pdf recipSelected=5 out of 5 Recipient(s) Selected w_head=Law Enforcement Report All Prescribers All Dispensers 5 out of 5 Recipient Selected From: Name Begins 893.0551, FS				



Query Selection Details

Job Sequence ID	Date Requested	Status	Output	User
2640026	08/29/12	Online	file-pdf	EA4101
Prescriber Query Dispensed From 08/30/2011 to 08/29/2012 All Recipients				
phrm-list=ALL beg-dspns=08/30/2011 end-dspns=08/29/2012 fields=DD,DP,QD,DS,AR,N,LN,PL,PN,D,DC,RL,RF,DB,RA,CI REMOTE_USER=EA4101 REMOTE_ADDR=66.193.169.37 dt-sort-by=dtonly mode=Search_Prsb prsb-list=893.0551, FS recip-list=ALL output=file-pdf recipSelected=ALL				



**THOMAS M. KNIGHT, SHERIFF
SARASOTA COUNTY SHERIFF'S OFFICE**

**Post Office Box 4115
Sarasota, Florida 34230-4115
Telephone (941) 861-5800
Fax (941) 861-4039
www.sarasotasheriff.org**

August 26, 2013

Rebecca R. Poston, BPharm, MHL
Program Manager
E-FORCSE Florida's Prescription Drug Monitoring Program
4052 Bald Cypress Way, Bin C-16
Tallahassee, FL 32399

Dear Ms. Poston:

The purpose of this letter is to voice a concern of the Sarasota County Sheriff's Office regarding proposed Rule 64K-1.005 and suggest a revision that will address the concern. While this agency generally believes the entirety of the proposed rules are well-drafted and properly balance patient privacy with the precise investigative needs of law enforcement, the portion of Rule 64K-1.005 concerning the limited sharing of data and reports from the Prescription Drug Monitoring (PDMP) with only key personnel will substantially burden the day-to-day operations of law enforcement agencies throughout the state given the vast integration of prescription drug abuse and diversion of prescribed controlled substances in all crime categories.

Proposed rule 64K-1.005(2)(d) currently states:

A law enforcement agency authorized to receive data or a report may share that information with other key personnel within the agency. Key Personnel shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by the law enforcement agency engaged in the investigation for a period of two years.

A fair interpretation of this proposed rule suggests that the PDMP data and reports authorized by the Department of Health and received by an approved law enforcement agency can *only* be shared with other key personnel. If this interpretation is the intent of the proposed rule, limiting the sharing of the data and reports to only key personnel will create operational difficulties within law enforcement agencies given the narrowness of the information sharing and the certifications the law enforcement agency's administrator is required to make. In a typical law enforcement agency not all officers investigating prescription drug abuse or prescription drug diversion as it relates to controlled substances are supervised by the law enforcement agency's sole administrator yet the administrator is required to certify that the request is pursuant to an active investigation. If the rule is implemented as currently drafted, it will likely lead to an increase in the number of employees requesting the key personnel designation so that the information can be shared and will likely result in the administrator having to certify that unfamiliar key personnel's requests are pursuant to active investigations that administrator is unfamiliar with. The opportunity for an inadvertent disclosure of PDMP data and reports is increased when the number of key personnel unfamiliar to the administrator increases. Limiting the number of key personnel will deter inadvertent disclosures.



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Rebecca R. Poston, BPharm, MHL
August 26, 2013
Page 2

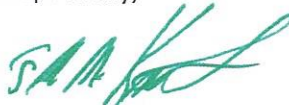
Modifying the rule to create more flexibility with the sharing of PDMP data and reports to include not only key personnel but also any person or entity authorized by sections 893.055 or 893.0551, Florida Statutes to receive the information would not only be consistent with Chapter 893, Florida Statutes, but also prevent an increase in the number of key personnel authorized to receive the information which would reduce the likelihood of an inadvertent disclosure.

Therefore the Sarasota County Sheriff's Office requests the modification of proposed Rule 64K-1.005(2)(d) so that it instead states:

A law enforcement agency authorized to receive data or a report may share that information with other key personnel within the agency or with any person or entity authorized by section 893.055 or 893.0551, Florida Statutes to receive such data or reports. Key Personnel shall document in writing each person to whom the data or report has been given or received and the day, month, and year that the data or report has been given or received. This document shall be maintained in a file by the law enforcement agency engaged in the investigation for a period of two years.

After a careful review this agency believes all of the other proposed rules strike an appropriate balance between protecting the privacy of patient prescription records and the investigative needs of law enforcement while investigating prescription drug abuse or prescription drug diversion as it relates to controlled substances. The suggested modification outlined within this letter will ensure that all of the proposed rules, including 64K-1.005(2)(d), properly balance these two diverse but important objectives.

Respectfully,



Thomas M. Knight, Sheriff
Sarasota County, Florida



To: Florida Department of Health, E-FORCSE
From: Pamela Burch Fort, on behalf of the ACLU of Florida
Maria Kayanan, Associate Legal Director, ACLU of Florida
Date: September 5, 2013
Re: Comments on Proposed Rules 64K-1.003, 64K-1.005

The ACLU of Florida submits the following comments on Proposed Rules 64K-1.003 and 64K-1.005. We previously submitted lengthy written comments at the rule workshops on July 8 and August 28, 2013, and respectfully request that those comments, as well as these, be included in the official records of these proceedings.

DOH's primary concern during this rulemaking process should be the privacy of law-abiding individuals' confidential medical information. The PDMP should not be a research tool for law enforcement.

Proposed Rule 64K-1.003 Accessing Database

1. The "Training Guide for Enforcement and Investigative Agencies" ("Training Guide") referenced in section 5 and incorporated therein, should be revised to limit law enforcement queries submitted to the Program Manager to specific, targeted individuals, and should require, on the query form, the specific offense investigated. The Training Guide should prohibit, and the Program Manager should reject, "wildcard searches," and searches for names that "sound like" or are only partial names. Such broad queries invite abusive fishing expeditions by law enforcement.
2. Law enforcement and investigative agencies that submit queries should be limited to as few "authorized individuals" as possible. The more authorized individuals there are who can submit queries, the greater the chance that innocent individuals' privacy rights will be violated. For example, there is no apparent need for *five* investigators from the State Attorney's Office for the Seventh Judicial Circuit to be authorized under the Law Enforcement Officer Appointment Forms, all dated November 2011, see Ex. A, or for **57** FDLE employees to be authorized during 2011-2013.¹

The root cause of the privacy breach that occurred in Volusia County this past summer, which led to the ACLU's investigation and participation in this rulemaking, remains unknown. Despite the production to the ACLU, pursuant to Ch. 119, Florida Statutes, of

¹ The Law Enforcement Officer Appointment Forms were provided to the ACLU by DOH pursuant to Ch. 119, Florida Statutes. The 57 FDLE forms are not attached, because the PDF file is so large. The documents are available at the ACLU of Florida's home office, 4500 Biscayne Blvd. Suite 340, Miami, FL 33137, or via email directed to mkayanan@aclufl.org.

hundreds of documents, DOH has to date provided no “Law Enforcement Authorization Forms” for the Volusia County Sheriff’s office or the DEA, agencies that were involved in the collection and dissemination of the 3300 individuals’ names and prescription drug information provided in June 2013 to defense attorneys for six individuals charged with felonies.

3. DOH must enforce Fla. Stat. § 893.0551(3)(c), which prohibits law enforcement agencies from having direct access to the E-FORCSE database (“A law enforcement agency may request information from the department *but may not have direct access to its database*”) (emphasis added).

Among the documents produced to the ACLU by DOH is a series of queries, in an electronic file labeled “Tucker.” Agent Tucker was, according to the State Attorney for the Seventh Judicial Circuit, the DEA agent who supplied the information that included the 3300 names. Of the 79 queries in that file, one is significantly different than the others, and strongly suggests that the agent directly accessed the database, which, if true, would violate section 893.0551(3) (c). See Comp. Ex. B.

Note that “User **EA4101**” is the “Requestor ID” in the first three queries; those documents are representative of 78 of the 79 queries. However, the last “query” in Comp. Ex. B is extremely broad (“All Recipients,” for a year-long period, selecting “ALL” as “recipSelected”); it lists **EA4101** as the User *and* as the Remote User. That last query also reflects an entirely different computer “Remote Address” (66.193.169.37) than the other queries, in which Ms. Poston or Ms. Marshall used the remote address “167.78.4.18.”

ACLU counsel has repeatedly asked DOH’s General Counsel, and the Program Manager for E-FORCSE, to explain the discrepancies, and to answer our direct question: “Does this show direct access by law enforcement?” To date, DOH has neither confirmed nor denied whether law enforcement directly accessed E-FORCSE, and has provided no explanation of the “query” that is distinctively unique.

A. Proposed Rule 64K-1.005 Privacy of Information

1. Section (2) should be amended to insert the word “criminal” so that the Proposed Rule would read: “Disclosure to any other person or entity, including disclosure in the context of a civil, criminal, or an administrative action, where the disclosure is sought either for the purpose of discovery or evidence, is prohibited.”

Without that critical addition, the Proposed Rule simply parrots what current law already prohibits.

2. The following protections for “Privacy of Information” should be added to the end of section (4), as sections (5)- (8):

(5) DOH and the E-FORCSE Program Administrator shall require that all query results provided to any agency, entity, or individual, be labeled **CONFIDENTIAL**. This information was obtained from E-FORCSE, contains confidential medical information, and **shall not be copied**.

(6) All agencies, entities, or individuals who receive query results are prohibited from copying the results in any format, and by any means.

(7) DOH shall inform, by registered or certified mail that requires the addressee's signature, those individuals whose names were released to law enforcement agencies or individuals, and who are not the subject or target of active investigations regarding potential criminal activity, fraud, or theft relating to prescribed controlled substances, of the disclosure, and the individuals or entities to whom it was disclosed.

(8) Any agency or individual who violates section (6) shall be subject to fines and penalties, including but not limited to revocation of their authorization to submit queries to the E-FORCSE Program Manager or their designee.

The ACLU of Florida thanks the Florida Department of Health and E-FORCSE for the opportunity to submit these additional comments.

Respectfully Submitted,

/s/ Pamela Burch Fort, for the ACLU of Florida

/s/ Maria Kayanan, Esq., Associate Legal Director, ACLU of Florida



Florida's Prescription Drug Monitoring Program

4052 Bald Cypress Way, Bin C-16

Tallahassee, FL 32399

Phone: (850) 245-4797

Fax: (850) 617-6430

e-forcse@doh.state.fl.us

Law Enforcement Officer Appointment Form

In accordance with section 893.055, Florida Statutes (F.S.), local, state, and federal law enforcement, or prosecutorial officials, engaged in the administration, investigation, or enforcement of the laws governing scheduled substances and drugs of concern may have access to controlled substance prescription information subject to a valid criminal investigation under section 893.0551, F.S., and amendments thereto. Please complete the fields below to appoint a sworn law enforcement officer within your agency, to act as an Agency E-FORCSE Administrator, to verify and credential potential law enforcement officers' individual registration forms to request confidential protected health information maintained in the database.

FORM INSTRUCTIONS: This is an adobe fillable form. Once complete, click on the "Submit Form" button in the purple box at the top of the form. Type in your email address and full name and click send.

Please provide the information requested below. ALL fields are required. (Print or Type) Use full name not initials.			
Agency E-FORCSE Law Enforcement Officer Applicant Information <input checked="" type="checkbox"/> Addition <input type="checkbox"/> Deletion			
Agency Name Office of the State Attorney, 7th Judicial Circuit			
Name Michael Shane Harrell		Title Investigator	
Date of Birth 11/9/07	Employee ID Number 975016	Email Address harrellm@sao7.org	
I affirm that all information on this registration form is true and that all requests made pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such. HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: //Michael Shane Harrell// (Format for electronic signature: //John F. Doe//)		Date: 11/09/2011	
Agency E-FORCSE Administrator Information			
Name Noel Griffin		Title Chief Investigator	
Phone Number 386/239-7722		Email Address griffin@sao7.org	
I affirm that the individual above represents this agency and is authorized to access E-FORCSE. I affirm all information on this registration form is true and that all requests made are pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such as HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: //Noel Griffin// (Format for electronic signature: //John F. Doe//)		Date: 11/08/11	
For Department Use Only			
Date Received 11/09/2011	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied	PDMP Staff Signature //Rebecca R. Poston//	Date of Action 11/11/2011
Notes:			

Please use this form to communicate any changes in E-FORCSE Law Enforcement Officer status.

Ex. A to ACLU's Comments 9/6/13



Florida's Prescription Drug Monitoring Program

4052 Bald Cypress Way, Bin C-16

Tallahassee, FL 32399

Phone: (850) 245-4797

Fax: (850) 617-6430

e-forcse@doh.state.fl.us

Law Enforcement Officer Appointment Form

In accordance with section 893.055, Florida Statutes (F.S.), local, state, and federal law enforcement, or prosecutorial officials, engaged in the administration, investigation, or enforcement of the laws governing scheduled substances and drugs of concern may have access to controlled substance prescription information subject to a valid criminal investigation under section 893.0551, F.S., and amendments thereto. Please complete the fields below to appoint a sworn law enforcement officer within your agency, to act as an Agency E-FORCSE Administrator, to verify and credential potential law enforcement officers' individual registration forms to request confidential protected health information maintained in the database.

FORM INSTRUCTIONS: This is an adobe fillable form. Once complete, click on the "Submit Form" button in the purple box at the top of the form. Type in your email address and full name and click send.

Please provide the information requested below. ALL fields are required. (Print or Type) Use full name not initials.			
Agency E-FORCSE Law Enforcement Officer Applicant Information <input checked="" type="checkbox"/> Addition <input type="checkbox"/> Deletion			
Agency Name State Attorney's Office 7th Judicial Circuit			
Name Travis G. Harrell		Title Investigator	
Date of Birth 11/9/07	Employee ID Number 889799	Email Address harrellt@sao7.org	
I affirm that all information on this registration form is true and that all requests made pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such. HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: //Travis G. Harrell// (Format for electronic signature: //John F. Doe//)		Date: 11/14/2011	
Agency E-FORCSE Administrator Information			
Name Noel Griffin		Title Chief Investigator	
Phone Number 386/239-7722		Email Address griffin@sa07.org	
I affirm that the individual above represents this agency and is authorized to access E-FORCSE. I affirm all information on this registration form is true and that all requests made are pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such as HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: //Noel Griffin// (Format for electronic signature: //John F. Doe//)		Date: 11/08/11	
For Department Use Only			
Date Received 11/14/2011	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied	PDMP Staff Signature //Rebecca R. Poston//	Date of Action 11/15/2011
Notes:			

Please use this form to communicate any changes in E-FORCSE Law Enforcement Officer status.

Ex. A to ACLU's Comments 9/6/13



Florida's Prescription Drug Monitoring Program

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FORM INSTRUCTIONS: This is an adobe fillable form. Once complete, click on the "Submit Form" button in the purple box at the top of the form. Type in your email address and full name and click send.

Please provide the information requested below. ALL fields are required. (Print or Type) Use full name not initials.			
Agency E-FORCSE Law Enforcement Officer Applicant Information <input checked="" type="checkbox"/> Addition <input type="checkbox"/> Deletion			
Agency Name Office of the State Attorney 7th Circuit			
Name Chris Mason		Title Investigator	
Date of Birth 11/9/07	Employee ID Number 105893	Email Address masonc@sao7.org	
I affirm that all information on this registration form is true and that all requests made pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such. HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: //Chris Mason// (Format for electronic signature: //John F. Doe//)		Date: 11/10/2011	
Agency E-FORCSE Administrator Information			
Name Noel Griffin		Title Chief Investigator	
Phone Number 386/239-7722		Email Address griffin@sa07.org	
I affirm that the individual above represents this agency and is authorized to access E-FORCSE. I affirm all information on this registration form is true and that all requests made are pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such as HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: //Noel Griffin// (Format for electronic signature: //John F. Doe//)		Date: 11/08/11	
For Department Use Only			
Date Received 11/10/2011	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied	PDMP Staff Signature //Rebecca R. Poston//	Date of Action 11/11/2011
Notes:			

Please use this form to communicate any changes in E-FORCSE Law Enforcement Officer status.

Ex. A to ACLU's Comments 9/6/13



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Law Enforcement Officer Appointment Form

In accordance with section 893.055, Florida Statutes (F.S.), local, state, and federal law enforcement, or prosecutorial officials, engaged in the administration, investigation, or enforcement of the laws governing scheduled substances and drugs of concern may have access to controlled substance prescription information subject to a valid criminal investigation under section 893.0551, F.S., and amendments thereto. Please complete the fields below to appoint a sworn law enforcement officer within your agency, to act as an Agency E-FORCSE Administrator, to verify and credential potential law enforcement officers' individual registration forms to request confidential protected health information maintained in the database.

FORM INSTRUCTIONS: This is an adobe fillable form. Once complete, click on the "Submit Form" button in the purple box at the top of the form. Type in your email address and full name and click send.

Please provide the information requested below. ALL fields are required. (Print or Type) Use full name not initials.			
Agency E-FORCSE Law Enforcement Officer Applicant Information <input checked="" type="checkbox"/> Addition <input type="checkbox"/> Deletion			
Agency Name Office of the State Attorney, 7th Judicial Circuit			
Name James A. Parker		Title Investigator	
Date of Birth 119.071	Employee ID Number 892915	Email Address parkerj@sao7.org	
I affirm that all information on this registration form is true and that all requests made pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such. HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: James A. Parker (Format for electronic signature: //John F. Doe//)		Date: November 9, 2011	
Agency E-FORCSE Administrator Information			
Name Noel Griffin		Title Chief Investigator	
Phone Number 386/239-7722		Email Address griffin@sa07.org	
I affirm that the individual above represents this agency and is authorized to access E-FORCSE. I affirm all information on this registration form is true and that all requests made are pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such as HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: //Noel Griffin// (Format for electronic signature: //John F. Doe//)		Date: 11/08/11	
For Department Use Only			
Date Received 11/09/2011	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied	PDMP Staff Signature //Rebecca R. Poston//	Date of Action 11/11/2011
Notes:			

Please use this form to communicate any changes in E-FORCSE Law Enforcement Officer status.

Ex. A to ACLU's Comments 9/6/13



Florida's Prescription Drug Monitoring Program

4052 Bald Cypress Way, Bin C-16

Tallahassee, FL 32399

Phone: (850) 245-4797

Fax: (850) 617-6430

e-forcse@doh.state.fl.us

Law Enforcement Officer Appointment Form

In accordance with section 893.055, Florida Statutes (F.S.), local, state, and federal law enforcement, or prosecutorial officials, engaged in the administration, investigation, or enforcement of the laws governing scheduled substances and drugs of concern may have access to controlled substance prescription information subject to a valid criminal investigation under section 893.0551, F.S., and amendments thereto. Please complete the fields below to appoint a sworn law enforcement officer within your agency, to act as an Agency E-FORCSE Administrator, to verify and credential potential law enforcement officers' individual registration forms to request confidential protected health information maintained in the database.

FORM INSTRUCTIONS: This is an adobe fillable form. Once complete, click on the "Submit Form" button in the purple box at the top of the form. Type in your email address and full name and click send.

Please provide the information requested below. ALL fields are required. (Print or Type) Use full name not initials.			
Agency E-FORCSE Law Enforcement Officer Applicant Information <input checked="" type="checkbox"/> Addition <input type="checkbox"/> Deletion			
Agency Name Office of the State Attorney, Seventh Judicial Circuit of Florida			
Name Deborah A. Reith		Title Assistant Chief Investigator	
Date of Birth 119.071	Employee ID Number 176411	Email Address ReithD@sao7.org	
I affirm that all information on this registration form is true and that all requests made pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such. HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: //Deborah A. Reith// (Format for electronic signature: //John F. Doe//)		Date: November 9, 2011	
Agency E-FORCSE Administrator Information			
Name Noel Griffin		Title Chief Investigator	
Phone Number 386/239-7722		Email Address griffin@sa07.org	
I affirm that the individual above represents this agency and is authorized to access E-FORCSE. I affirm all information on this registration form is true and that all requests made are pursuant to approval of this registration will be used for legitimate purposes. All data obtained from the site should be treated as Protected Health Information and handled in accordance with all federal and state laws regarding such as HIPAA and other privacy laws affect the disclosure of any data that is obtained.			
Signature: //Noel Griffin// (Format for electronic signature: //John F. Doe//)		Date: 11/08/11	
For Department Use Only			
Date Received 11/09/2011	<input checked="" type="checkbox"/> Approved <input type="checkbox"/> Denied	PDMP Staff Signature //Rebecca R. Poston//	Date of Action 11/11/2011
Notes:			

Please use this form to communicate any changes in E-FORCSE Law Enforcement Officer status.

Ex. A to ACLU's Comments 9/6/13



Query Selection Details

Case No	Query No	Requestor ID	Status
201220001524	462462	EA4101	Approved
Deny Reason			
Request Date	07/23/12		
Purpose	Diversion		
From Date	12/01/10		
To Date	07/23/12		
Recipient Name	First Name	Address	DOB
893.0551, FS			
			?
			?
			?

Job Sequence ID	Date Requested	Status	Output	User
2211549	07/23/12	Done	file-pdf	EA4101
Law Enforcement Report All Prescribers All Dispensers 5 out of 5 Recipient Selected From: Name Begins 893.0551, FS				
beg-dspns=12/01/10 end-dspns=07/23/12 lestatus=approve phrm-list=ALL fields=DD,QD,DS,AR,N,DN,PL,DP,RL,RF,DB,RA query-number=462462 REMOTE_USER=erika.marshall REMOTE_ADDR=167.78.4.18 prsb-min-miles=0 dspns-min-miles=0 recip-list=00017036,00744166,02464168,02980282,04759838 prsb-list=ALL output=file-pdf recipSelected=5 out of 5 Recipient(s) Selected w_head=Law Enforcement Report All Prescribers All Dispensers 5 out of 5 Recipient Selected From: Name Begins 893.0551, FS				

[illegible]

Law Enforcement Report
All Prescribers
All Dispensers
12 out of 12 Recipient Selected From:
Name Begins **893.0551, FS**



Query Selection Details

Case No	Query No	Requestor ID	Status
20113470553	57263	EA4101	Approved
Deny Reason			
Request Date	12/13/11		
Purpose	Diversion		
From Date	12/01/10		
To Date	12/12/11		
Recipient Name	First Name	Address	DOB
893.0551, FS			
			?
			?

Job Sequence ID	Date Requested	Status	Output	User
298269	12/13/11	Done	file-pdf	EA4101

Law Enforcement Report
 All Prescribers
 All Dispensers
 3 out of 3 Recipient Selected From:
 Name Begins **893.0551, FS**

beg-dspns=12/01/10
end-dspns=12/12/11
lestatus=approve
phrm-list=ALL
fields=DD,QD,DS,AR,N,DN,PL,DP,RL,RF,DB,RA
query-number=57263
REMOTE_USER=erika.marshall
REMOTE_ADDR=167.78.4.18
prsb-min-miles=0
dspns-min-miles=0
recip-list=00450216,01664167,02803055
prsb-list=ALL
output=file-pdf
recipSelected=3 out of 3 Recipient(s) Selected
w_head=Law Enforcement Report
 All Prescribers
 All Dispensers
 3 out of 3 Recipient Selected From:
 Name Begins **893.0551, FS**



Query Selection Details

Job Sequence ID	Date Requested	Status	Output	User
2640026	08/29/12	Online	file-pdf	EA4101
Prescriber Query Dispensed From 08/30/2011 to 08/29/2012 All Recipients				
phrm-list=ALL beg-dspns=08/30/2011 end-dspns=08/29/2012 fields=DD,DP,QD,DS,AR,N,LN,PL,PN,D,DC,RL,RF,DB,RA,CI REMOTE_USER=EA4101 REMOTE_ADDR=66.193.169.37 dt-sort-by=dtonly mode=Search_Prsb prsb-list=893.0551, FS recip-list=ALL output=file-pdf recipSelected=ALL				