

**STATE OF FLORIDA
BOARD OF PHARMACY**

IN RE: PETITION FOR DECLARATORY STATEMENT
UNIVERSITY OF FLORIDA

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FINAL ORDER

THIS MATTER came before the Board of Pharmacy (hereinafter "the Board") pursuant to Section 120.565, Florida Statutes, at a duly-noticed public meeting held on June 10, 2008, in Orlando, Florida, for consideration of a letter received from the University of Florida (hereinafter, "Petitioner"). Although the letter did not meet the requirements of a petition for Declaratory Statement, the Board voted to deem the letter a Petition for Declaratory Statement and considered the following question.

The inquiry posed by the declaratory statement is: does Section 893.04(2)(e), Florida Statutes, that states, "A pharmacist may not dispense more than a 30-day supply of a controlled substance listed in Schedule III upon an oral prescription issued in this state" interpreted to mean that refills on oral Schedule III prescriptions prohibited?

Petitioner was present at the meeting and was represented by Russell P. McKelvey, Pharm.D. The Board was represented by Deborah Bartholow Loucks, Assistant Attorney General. Having considered the petition, the Board makes the following findings and conclusions:

FINDINGS OF FACT:

1. Petitioner, University of Florida, operates a Drug Information and Resource Center at Shands UF.

2. Petitioner provides information regarding pharmacy laws and rules to healthcare professionals throughout the State of Florida.

3. Petitioner learned that there were varying interpretations of Section 893.04(2)(e), Florida Statutes. One interpretation is that pharmacists may dispense one single 30-day fill of an oral Schedule III prescriptions with no refills permitted. The other interpretation is that oral Schedule III medications may be dispensed up to the legal limit of refills (5 refills in 6 months) as long as each fill is limited to a 30-day supply.

CONCLUSIONS OF LAW:

6. The Board has authority to issue this Final Order pursuant to Section 120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code.

7. Section 893.04(2)(e), Florida Statutes, states:

A pharmacist may not dispense more than a 30-day supply of a controlled substance listed in Schedule III upon an oral prescription issued in this state.

8. It is the Board's opinion that this statute should be interpreted to mean that a pharmacist may dispense the initial 30 day supply upon the oral prescription. If the prescriber orally prescribed the initial 30 day supply with an authorization for refills of the prescription, up to the maximum number of allowable refills, then the pharmacist should reduce the oral prescription to writing, and may dispense the refills; however, each subsequent refill dispensing should only be a 30 day supply.

9. The Board's response to the Petition is with regard only to the question propounded by Petitioner and only applies to the facts set forth therein. It does not in any way allow pharmacists to alter the oral prescription.

DONE AND ORDERED this 11 day of September, 2008.

BOARD OF PHARMACY

Rebecca R. Poston

Rebecca R. Poston, R. Ph.
Executive Director
Florida Board of Pharmacy

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS ARE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE AGENCY CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY FILING FEES PRESCRIBED BY LAW, WITH THE DISTRICT COURT OF APPEAL, FIRST DISTRICT, OR WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES. THE NOTICE OF APPEAL MUST BE FILED WITHIN THIRTY (30) DAYS OF RENDITION OF THE ORDER TO BE REVIEWED.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail to: **Russell McKelvey**, Shands UF; by interoffice mail to **Deborah B. Loucks**, Assistant Attorney General, PL-01, The Capitol, Tallahassee, Florida 32399-1050 this 19 day of Sept., 2008.

Angel R. Loucks

Deputy Agency Clerk

UF UNIVERSITY of
FLORIDA

FILED
DEPARTMENT OF HEALTH
DEPUTY CLERK
CLERK: *Rachel R. [unclear]*
DATE 4-15-08

Shands
University of Florida

Drug Information & Pharmacy Resource Center
PO Box 100316 Gainesville, FL 32610-0316
352.265.0408 352.265.1091 fax
A Joint Effort of Shands and the College of Pharmacy

April 3, 2008

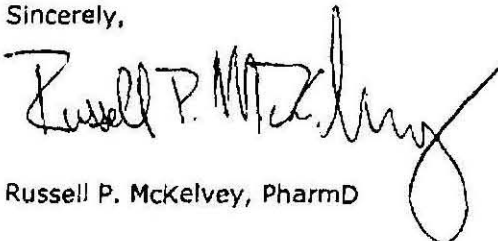
Petition for Declaratory Statement Before the Florida Board of Pharmacy

This petition is in reference to Florida statute Title XLVI Chapter 893.04(2)(e) which states "A pharmacist may not dispense more than a 30-day supply of a controlled substance listed in Schedule III upon an oral prescription issued in this state."

The Drug Information & Pharmacy Resource Center at Shands UF is dedicated to providing accurate information to healthcare professional in the state of Florida. Many of our callers are community pharmacists seeking guidance on legal matters regarding prescriptions. It has recently come to our attention that there is controversy over how the statute above is being interpreted. Some pharmacists believe that this statute limits oral Schedule III prescriptions to a single 30-day fill with no refills permitted. Others believe that the phoned-in prescriptions can have up to the legal limit of refills (5 refills in 6 months) as long as each fill is limited to a 30-day supply. Is the intent of this statute to prohibit refills on oral Schedule III prescriptions?

We feel clarification of this statute is import in helping community pharmacist stay current and informed on the legal issues that affect their practice. It is a challenge for community pharmacist to stay abreast of the many changing laws that govern prescribing and we at the Drug Information & Pharmacy Resource Center would like to assist these professionals by giving them the most accurate information available.

Sincerely,



Russell P. McKelvey, PharmD

SHANDS.ORG