

Pharmacy Insights

Owing prescriptions – are you courting danger?

Most pharmacists will have been asked to dispense prescription-only medicines to patients who do not have a valid prescription. Although Pharmacy Dispensing Software (PDS) allows for the processing and supply of medicines without a valid prescription, thereby creating an ‘owing’, there is no legislation that provides for this. Pharmacists assisting their patients should familiarise themselves with the legal requirements for ‘owing’ prescriptions and emergency supply to ensure that they do not:

- potentially place their patients at risk
- breach their State or Territory drugs and poisons legislation when reconciling patients’ PBS Safety Net cards or
- potentially face prosecution by poisons regulation units and/or disciplinary action

Owing prescription v emergency supply

Pharmacists are often confronted by patients seeking medications without a valid prescription. A range of factors can lead to such a situation, for example when the patient has not seen the prescriber before supply is exhausted or, in the case of Residential Aged Care Facilities (RACF), the prescriber is yet to review the chart or write the necessary prescription(s) to provide for continuity of supply. These situations may place pharmacists in a difficult professional and ethical position when they rightly have the patient’s wellbeing at the forefront of their minds, and do not want to see therapy interrupted.

Provisions for the supply of ‘prescription only’ medicines without a written prescription include:

- continued dispensing (in the case of oral contraceptives and statin medications) under the National Health (Continued Dispensing) Determination Act 2012
- taking a telephone order (or other electronic order) from a prescriber which enables pharmacists to dispense medication as an ‘owing’ in advance of receiving a valid prescription and/or
- ‘emergency supply’

It always is preferable to obtain a faxed or electronically transmitted prescription in addition to a verbal order (subject to State legislation). Where this is not possible, a note should be made about the verbal order in the patient’s dispensing history with a reminder to follow-up for the written prescription (requirements vary in each State). Good risk management practice requires that conversations with prescribers be well-documented.

PBS non-streamlined authority prescriptions need approval before they can be dispensed. In the case of an authority prescription requested verbally, pharmacists should ask for the authority approval number or streamlined code, depending on the item, and the authority prescription number prior to supply. Those PBS items unavailable via streamlined code or phone approval cannot be supplied until approved by a PBS

representative. It is recommended that a faxed or emailed copy of the prescription be received prior to supply of high cost items to minimise the risk of financial loss.

A doctor is not obliged to provide a prescription to a pharmacist and this process can lead to delays in receiving the prescription or the refusal to supply the prescription if the medicine has been ceased or the patient's situation changes. This scenario is especially problematic if the medicine involved is a Schedule 8 item. A controlled drugs register can be inspected at any time and any discrepancies will be easily identified. In the event that discrepancies are found, the pharmacist and/or proprietor concerned may be investigated by the relevant health department or regulator such as AHPRA (on behalf of the Pharmacy Board) or the Pharmacy Council of NSW. We are aware of cases where restrictions on pharmacists' registration have been imposed after they were unable to satisfactorily explain discrepancies.

The difficulties of managing prescriptions for RACF patients are also well known and PDL suggests that pharmacists engage with both prescribers and RACF managers to establish a mutual understanding of the obligations, challenges and solutions to allow for successful management of prescription requirements. It is apparent that prescribers may be unaware of the process of DAA preparation in advance of supply and the need for the provision of prescriptions in a timely manner, especially when medication charts serve as a repeat authority for S4 but not S8 items. Furthermore, prescribers may be unaware of the legislative requirements for the supply of prescription medications following oral or faxed authorisations.

In situations where an RACF contracts with a pharmacy to supply residents' medications, it may be useful to provide this information to both the RACF and prescribers upon the commencement of the service, as collaborative strategies may be necessary. These could include:

- regular meetings with RACF nursing managers to identify which prescriptions will be required before the next supply run of medications to the RACF
- accompanying the prescriber to the RACF (although in reality this may be impractical) or
- establishing a 'communication book/tool' in addition to the medication chart that the prescriber must check prior to reviewing the patient so that following the consultation they either:
 - provide the required written prescription or
 - confirm in writing how and when they will provide the required (S8) prescription

In addition to potential regulatory action, an unintentional consequence of supply without a prescription or authorisation from a prescriber may lead to an expectation by the patient that all pharmacists are able to provide medicines in this manner. PDL is aware of cases where a patient demands that they receive a full supply of a medicine without a prescription since this has previously occurred at another pharmacy or with another pharmacist. This precedent makes such an interaction with a patient confronting and has led to abuse or complaint when the patient's expectation is not satisfied. The use of intimidation or threats of harm or formal complaint by patients demanding supply without prescription have seen pharmacists yield to these behaviours and supply against their better professional judgement.

An emergency supply of up to three days' of a patient's medication can be provided when certain conditions are met. Such circumstances may include:

- when it is unfeasible to obtain a valid prescription from the patient's usual prescriber or
- it is after hours and a prescription cannot be obtained from another prescriber
- In the case of emergency supply, no claim can be made under the PBS and it is independent from any future supply of the medication (that is, when a new prescription is obtained).

Schedule 8 medicines cannot be provided as an emergency supply in any jurisdiction. In some jurisdictions, certain classes of medication such as anabolic steroids and benzodiazepines also cannot be provided as an emergency supply. Pharmacists need to ensure they are familiar with, and comply with their state's or territory's legal requirements. If found to be providing controlled or restricted medications without a valid oral or written prescription, suspension or deregistration (in severe cases) is possible.

Owing prescriptions

While the National Health (Pharmaceutical Benefits) Regulations 2017 allow pharmacists to dispense certain medicines before the provision of a written prescription, a PBS benefit cannot be claimed until the Pharmacy receives the paper prescription.

Upon receipt of the paper prescription:

- Confirm the prescribing date is the date the prescriber requested the prescription (if the prescribing date is more than seven days after the date of supply it is still payable providing all other prescription requirements are met including any authority, if applicable)
- If the patient cannot sign, a Pharmacist must state the reason patient was unable to sign this and certify the date of supply on the prescription
- use the owing mark-off function to enter the prescribing date and
- mark off the prescription recorded in your Pharmacy dispensing software

The date of supply should not be amended.

This article was originally published as a Practice Alert by Pharmaceutical Defence Limited. This article was written by Scott Ames, Principal. Please contact Scott if you have any questions or if you would like further information.



Scott Ames

Principal

+61 7 3220 9310

sames@meridianlawyers.com.au

Disclaimer: This information is current as of December 2019. This article does not constitute legal advice and does not give rise to any solicitor/client relationship between Meridian Lawyers and the reader. Professional legal advice should be sought before acting or relying upon the content of this article.