



THE PENCAK REPORT

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New for 2009

I am changing the way I send out the *Pencak Report*. Starting in 2009, I will be publishing a quarterly, electronic newsletter on my website and an annual, mailed newsletter. Some of the reasons for the changes are self-evident, including reduced paper waste, postage and printing costs. **For you, the reader**, this change allows you to access previous *Pencak Reports* and their useful advice. Most important, I will be able to **disseminate important information faster and more frequently**.

As I write these words, we are changing my website to keep you better informed of developments in healthcare law and pharmacy practice. Remember our website is www.pharmacylawpro.com

Pharmacy Audit Tips

As I work with pharmacists, I notice common trends. Here is a little advice learned from experience to avoid pain and monetary losses if you are audited:

Take the audit notice seriously.

An audit can cost your pharmacy thousands of dollars and *even your insurance contract*. If you are smart and work hard to provide documentation, you will limit your losses.

If you receive notice that you are being audited, call me **immediately** so that we can work on it together from **Day One**. My assistance to you will be more powerful if I am involved early in the audit or better, before.

Pay attention to deadlines. Even if you have all the documentation, it may mean nothing if you send it to them after the audit deadline. Prepare the documents early for submission. Do not ignore appeal deadlines either.

Read billing rules and amendments. If you do not understand the rules, contact the insurance company for clarification. If you do not understand the rules, you will lose thousands of dollars in an audit or even the contract itself.

If you are interested in learning the secrets to operating more effectively, please email me your interest at cpencak@pharmacylawpro.com.

We are looking to form seminar groups and sponsors.

Are You Being Abused by Insurance Audits?

I have been very busy representing numerous pharmacists and other health professionals who feel under siege from insurance company audits. Healthcare providers realize that the occasional audit of their billing practices by private insurance companies, Medicare and Medicaid is a necessary, though time consuming and stressful event.

The question becomes- *When do audits by some insurance companies become abusive or anti-competitive?* I am frequently asked by pharmacists just how many audits can the same company do in one year? Sometimes the request for documentation- including invoices- appears to be excessive and the time period for providing the documentation is arbitrarily short.

I am increasingly hearing from community pharmacy owners who are feeling so harassed by these time-consuming and expensive audits that they feel pressured to sell their pharmacy to a chain. These pharmacists have openly questioned whether or not CVS/Caremark is actually working in concert with certain chains to bring about the demise of independent pharmacy competition. After all, those pharmacists reason, since the auditing company is owned by a retail chain pharmacy company, isn't that a situation where the fox is guarding the chicken coop? I have received complaints from pharmacy owners as far away as Texas!

In my career, I have never met so many pharmacists and other healthcare practitioners who are this upset and so abused by audits.

Not every insurance company audit and insurance company has been unfair or unreasonable. There are a handful of insurance companies that I deal with which have been more than fair and reasonable. Further, even when dealing with some of the more troublesome companies, there are individuals working for those companies that I have found to be fair, honest and helpful people.

But what can a pharmacist or other healthcare professional located in Michigan do when they are being abused by excessive and unreasonable insurance audits? If you have been of a victim of insurance audit abuse, I suggest that you contact:

State of Michigan's Insurance Commissioner Ken Ross
(517) 373-0220 - ofis-info@michigan.gov

His job is to protect the citizens of the State of Michigan (including **you**) from predatory insurance company practices. Mr. Ross has the power to really adjust the attitudes of abusive insurance companies. This power includes prohibiting such insurance companies from doing practice in the State of Michigan! That is one powerful hammer.

Attorney General

It seems to be a tradition in the State of Michigan for our State Attorney General to take a run at the Governor's office. Our present **Attorney General, Mike Cox**, formed an exploratory committee to run for the Governor's office. Mike Cox's office as Attorney General also affords him the power and the duty to protect Michigan's citizens from abusive or fraudulent practices by insurance companies. His phone number is: (517) 373-1110 and his email address is miag@michigan.gov.

If healthcare practitioners and pharmacy owners bombard the Insurance Commissioner and the State's Attorney General with telephone calls, e-mails and letters, these two gentlemen might be motivated to protect you from audit abuse.

I might also point out that the voters of the State of Michigan removed Chief Justice Cliff Taylor from the State Supreme Court. Taylor has, in my opinion, been the biggest friend insurance companies ever had in the state of Michigan. As an attorney, I am looking forward to a new Michigan Supreme Court where **all** litigants are treated fairly and the law is followed.

Exciting Continuing Education Opportunity

Stay tuned to my website to learn more about an exciting opportunity for an innovative continuing education course. I partnered with NLP master and communication expert Anna Russo to present a course entitled, "Secrets of High Performance Pharmacists". Over the course of many years of practicing, I observed that a small number of high-performance pharmacists do not succumb to the stresses of the job, but actually thrive. Not only do these pharmacists perform well, but also they are well liked and respected by their supervisors, peers, pharmacy technicians and above all, their patients. These pharmacists earn significantly more money than their peers make and are worth it to their employers. These charismatic pharmacists are able to leave one employer and take most of their patients with them because of the intense loyalty they inspire. There is no practical limit to what they achieve.

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The high performance pharmacist communicates effectively with colleagues and supervisors, subordinates and patients so effectively that he or she seldom has any job stress. Things run smoothly day after day and week after week. These pharmacists have the time and energy to enjoy their family life, sports and friends and seldom make mistakes but if they do, their patients do not make complaints to their bosses or the Board of Pharmacy.

New Professional Opportunity?

New regulations in Michigan for centralized prescription processing are an opportunity for you. "Central fill" allows pharmacists to prepare prescriptions for contracted retail pharmacies. If you are interested in this professional opportunity, you will need to comply with regulations. I can provide the counseling to establish your pharmacy for central fill. If you are interested in compounding, this opportunity is for you. Remember, my fees can be tax deductible because they are business expenses.

Whistleblower Backup

Qui tam is defined by *Black's Law Dictionary* as "An action brought under a statute that allows a private person to sue for a penalty, part of which the government or some specified public institution will receive."

More than 900 whistle-blower cases are backlogged at the Department of Justice because the department lacks capacity to investigate the cases. The 75 lawyers tasked with reviewing these cases lack the ability to investigate the 300-400 new cases each year. Although 75% of the cases are rejected, their successes have paid off—in recent years it has collected almost \$13 billion. With that type of success, one wonders why they do not add more attorneys.

Remote Viewing, or Killing Yourself?

"Remote viewing" used to be a paranormal skill allegedly used by the Soviets and the CIA to see things at great distance. Today, it is a way of outsourcing your job as a pharmacist to lower paid pharmacists located in foreign countries. The scheme is to have technicians prepare a prescription at your neighborhood pharmacy or hospital (the place where you *used* to work) and the final check of the prescription is done by a pharmacist located in the Caribbean or in India, etc.

By the way, some U.S. corporations and idiotic lawyers are using briefs and research done by lawyers located in the Caribbean. I personally cannot imagine relying on attorney work I have outsourced. I would only agree to such an arrangement if there were an island with dozens of clones of myself doing the research and writing. A handsome and intelligent group of clones they would be indeed!

Health Savings Accounts

The growing popularity of health savings accounts, encouraged by federal tax breaks, is causing insurers to rebrand themselves as banks. Because deposits in HSA's are tax free and can be invested, commercial banks seized the opportunity to charge lucrative fees. Insurers took notice and some are rebranding themselves as banks to profit from these fees. However, FDIC rules require these banks to be owned by financial services companies. In one instance, the

nation's largest health insurer, WellPoint, argued that its healthcare services were "complementary" to its primary financial services in order to meet this requirement.

There are two primary dangers to this trend. First, it appears that HSA's are being used as tax havens by the wealthy. Further evidence indicates these accounts are being used for tax-free retirement savings. Second, because of high deductibles, most HSA holders are healthy, wealthy and young. When these individuals leave the common insurance pool, it leaves mostly ill customers in a shrinking, costly pool.

Online Pharmacy Consumer Protection Act of 2008

Taking effect April 15, 2009 is the **Ryan Haight Online Pharmacy Consumer Protection Act of 2008**. It amends the Controlled Substances Act to provide for greater regulation of Internet pharmacies. Specifically, the Act prohibits delivery, dispensing and distribution of controlled substances unless it has been prescribed by a practitioner who conducted at least one in-person physical examination and evaluation of the patient in the past 2 years. Internet pharmacies are also required to register with the DEA, among other requirements. If you operate an Internet pharmacy or would like to, contact me to ensure that your pharmacy is compliant with the changes to the Act.

Pharmacy Investigation Trends

Pharmacy Board Investigators continue to search for illegal internet dispensing pharmacies. Generally, the investigation is triggered by wholesaler reports of inordinate purchases of meds like tramadol and carisoprodol.

Please pharmacy owners, review your Regulations and Statutes. Many of the violations are easily prevented.

If you don't know what inspectors look for at your pharmacy, call and retain me and you won't have to worry. Remember the nominal cost is tax-deductible.

Attorneys to be Wary of

If you are searching for an attorney be skeptical when the attorney says:

- I play golf with that judge!
- I have friends on the Board of _____.
(fill in the blank)
- I **used** to be a prosecutor, attorney general, CIA agent, etc. I left because nobody took me seriously.

Another cause for concern is when the entity you are fighting against suggests you hire an attorney they suggest!

The truth is, if an attorney is overly friendly with prosecutors, police, agencies, etc. there is a potential for that attorney to trade away your case in return for consideration for another client who pays that attorney more than you do.

An attorney has an ethical obligation to **zealously** represent you. That inevitably means that the opposition will not always be in love with that ethical, zealous attorney. You try for win-win agreements but sometimes there can be only one. And that takes an attorney who can live with the consequences of doing what is best for each client. My wife loves me. That is enough for me.



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