



Lewis v. Superior Court (Medical Board of California), 3 Cal. 5th 561 (Cal. 2017)

Topics Covered: Patient Privacy

Outcome: Very Unfavorable

Issue

The issue in this case was whether the California Medical Board infringed patients' constitutional right of privacy when it obtained information, without a prior showing of good cause, about prescribing patterns from a California Department of Justice (DOJ) database of controlled substance prescriptions.

AMA Interest

Patients have a basic right to privacy of their medical information and records. Access to state databases of controlled substance prescriptions by non-health care individuals should be limited to those instances in which there is probable cause that an unlawful act or a breach of the standard of care may have occurred.

Case Summary

California established a computerized database of controlled substance prescription records known as the Controlled Substance Utilization Review and Evaluation System ("CURES"). The DOJ maintains the CURES database.

During their initial meeting, Dr. Alwin Carl Lewis recommended to a prospective patient that she follow a diet he proposed for her. The patient considered this advice "unhealthful" and complained to the Medical Board. Pursuant to its routine procedure following patient complaints, the Medical Board obtained CURES reports on Dr. Lewis from November 1, 2005 through approximately the end of December 2009. This was notwithstanding that Dr. Lewis had not prescribed any medications to the complaining patient.

Following an eight day hearing, an administrative law judge concluded that Dr. Lewis had failed to maintain adequate records regarding the patient who had complained about him, and two of his other patients had been over-prescribed controlled substances for a short period of time. The Medical Board placed Dr. Lewis on probation for three years.

Dr. Lewis appealed to the Superior Court of Los Angeles County. He did not challenge the factual findings or legal conclusions as to the initial, prospective patient (for whom he had advised the diet), but he did challenge the findings and conclusions as to the additional patients. He argued that the decision of the Medical Board to review the CURES prescription records of patients as to whom there was no reason to believe there was any wrongdoing – and without

any complaint from any patient as to his prescribing practices – was an invasion of his patients’ privacy. The Superior Court denied his appeal.

Dr. Lewis then appealed to the California Court of Appeal. The Court of Appeal observed that the validity of the CURES database would depend on whether the interest of the patients in maintaining the privacy of their prescription records outweighed the interest of the State of California in maintaining the data and the interest of the Medical Board in obtaining the data.

As to the first part of this test, the Court of Appeal held that the privacy interest of the patients was minimal. Controlled substances are inherently dangerous and subject to abuse. Therefore, patients should reasonably expect that controlled substances are just that: controlled under government supervision. Governments must have some means of exercising that control and supervision, and the CURES database was specifically designed for that purpose. Moreover, the CURES statute prohibited any unauthorized disclosure of the information in the database. Also, the Court of Appeal noted that in this case there was no contention that the Medical Board had improperly disclosed any patient information.

As to the second part of the constitutionality test, the Court of Appeal found that the State of California and the Medical Board each had a compelling interest both in preventing the diversion and abuse of controlled substances and in protecting the public against incompetent, impaired, or negligent physicians. The Medical Board should not have to show reasonable cause before accessing the CURES records. If Dr. Lewis was incompetent in one area of medical practice, he might also be negligent in his prescribing practices, or he might personally have a substance abuse problem which could endanger the public health. The Court of Appeal denied the petition of Dr. Lewis to reverse the trial court decision, which had upheld the Medical Board’s disciplinary action. Dr. Lewis appealed to the California Supreme Court.

On July 17, 2017, the California Supreme Court affirmed the Court of Appeal. Like the Court of Appeal, it found that the Medical Board had a compelling interest in controlling the diversion and abuse of controlled substances and in protecting the public against incompetent, impaired, or negligent physicians. These outweighed any privacy interests the patients may have had in their prescription records. The Medical Board, therefore, did not have to show reasonable cause before accessing the CURES records..

Litigation Center Involvement

The Litigation Center joined an amicus letter brief with the California Medical Association, asking the California Supreme Court to hear the appeal of Dr. Lewis. In order to protect patient privacy, the brief argued, access to the CURES database by Medical Board investigators should be limited to instances in which the Medical Board had found probable cause to believe the standard of care was breached.

The Litigation Center, along with CMA, also filed an amicus brief on the merits.

California Supreme Court brief on the merits

California Supreme Court letter brief