



# Oregon Prescription Drug Monitoring Program v. US Drug Enforcement Administration, 860 F.3d 1228 (9th Cir. 2017)

Topics Covered: Patient Privacy

**Outcome: Very Unfavorable**

## Issue

This issue in this case was whether, in violation of Oregon law, the Drug Enforcement Administration (DEA), a division of the United States Department of Justice, can access the information in the Oregon Prescription Drug Monitoring Program (Oregon PDMP), an agency of the State of Oregon, through an administrative subpoena, without a showing of probable cause.

## 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.

## Case Summary

Oregon, like many other states, established a computerized database of controlled substance prescription records. The Oregon PDMP was created primarily as a public health tool for use by physicians and pharmacists to identify signs of drug addiction and diversion in their patients. It is maintained by the Oregon Health Authority.

The DEA, through an order of a federal magistrate judge, was able to have one of its subpoenas enforced against the Oregon PDMP. The Oregon PDMP then sued in federal court for a declaratory judgment as to whether the federal subpoena statute could override the state-law warrant provision.

The American Civil Liberties Union of Oregon (ACLU) intervened in the case, along with one physician and four patients, who had confidential prescription records in the Oregon PDMP. The ACLU argued that there is a reasonable expectation of privacy in prescription records held in the PDMP. Under the Fourth Amendment to the U.S. Constitution, therefore, the federal government required a warrant to search those records.

The DEA countered that patients and physicians have no reasonable expectation of privacy in their prescription records. The DEA relied in part on the "third party doctrine," taking the

position that because people disclose medical information to a pharmacist they therefore forfeit their privacy interest in that information vis-a`-vis law enforcement.

The district court granted summary judgment in favor of the intervenors on Fourth Amendment grounds, without reaching the question of whether federal law conflicted with and overrode state law. The court concluded that the Fourth Amendment prohibited the DEA from issuing administrative subpoenas for Oregon PDMP records. The DEA was permanently enjoined and required, if it sought prescription records from the Oregon PDMP, to request a judicial warrant, based on probable cause. The DEA appealed to the Ninth Circuit.

On June 26, 2017, the Ninth Circuit reversed. It held that the ACLU lacked standing to intervene in the case, and the federal subpoena statute preempted the state-law warrant provision.

### **Litigation Center Involvement**

The Litigation Center, along with all of the medical associations of the states in the Ninth Circuit (Alaska, Arizona, California, Idaho, Montana, Nevada, Oregon, Washington, and Hawaii), filed an amicus brief supporting the lower court decision.

United States Court of Appeals for the Ninth Circuit brief