CMA POLICY

STATEMENT OF PRINCIPLES: THE SALE AND USE OF DATA ON INDIVIDUAL PHYSICIANS' PRESCRIBING

The CMA believes that prescribing data that identify individual physicians should be used in a manner that does not breach the privacy of patients or of physicians in their personal or professional lives. To address this concern, the CMA has developed the following set of principles for the compilation, sale and other commercial use of data on individual physician prescribers.

Private health-care-information companies have been purchasing data on prescriptions filled at pharmacies, analysing the data and producing profiles of individual physicians' prescribing patterns, which are sold to drug manufacturers. It is claimed that patient identity is protected from disclosure during this process. However, some pharmacies provide the physicians' identity to allow individual profiles to be developed. This situation is a symptom of a much broader issue. A general set of principles governing the sale and use of data on individual physicians' prescribing is clearly required.

The CMA recognizes that pharmacists must collect prescriber data for governmental and certain nongovernmental use. This practice is sanctioned by law and is not the subject of this statement of principles. However, this statement does apply to the use of these data for purposes other than the purpose for which they were originally collected.

The Issue

Prescribing data that identify individual physicians and that allow profiles to be constructed have been compiled and sold without physicians' consent. Until news of the practice became public in March 1996, most physicians were unaware that identifying information about their prescribing was being compiled and disclosed to third parties. The invasion of physician privacy raises major ethical and legal concerns for the medical profession.

CMA believes that data that identify individual physicians should be compiled or used only in an ethically and legally appropriate manner that does not breach the privacy of patients or of physicians in their personal or professional lives. Furthermore,
the CMA believes that the ethical framework for any compilation and use of prescribing data that identify physicians should be based on public benefit and quality of care. If used appropriately as an educational tool, data on physician prescribing can have benefits for physicians and their patients. They can enhance the quality of care through the identification of learning needs and the provision of feedback to practitioners. Greater value could be gained if other information about the physician's practice characteristics and patient characteristics were compiled and compared with the prescribing profiles.

The Principles

Whereas the compilation and use of prescribing data can significantly benefit and harm physicians and their patients, the CMA encourages adherence to the following principles in order to maximize the benefits and minimize the harm.

1. **Data on individual physicians' prescribing** must be compiled, sold or otherwise used in a manner that does not compromise the privacy of patients or physicians; anonymity and confidentiality must be maintained.

2. **Except as authorized by law, physicians must be informed of, and their prior consent obtained for, the compilation of prescribing data that identify them and the sale or other use of such data. The consent obtained must be informed, positive, documented and time-limited. For greater certainty, the right of physicians to consent also includes the right to restrict or to refuse to allow the compilation, sale or other use of identifying information about them.**

The Supreme Court of Canada (*McInerney v. MacDonald* [1992], 2 SCR 138) has recognized that the medium on which patient information is recorded (the medical record, microfiche, electronic soft copy or other format) is owned by the individual or institution that compiled the information. However, the Supreme Court also drew a critical distinction between ownership of the physical record and ownership of, or beneficial interest in, the information contained in that record. The issue of ownership of the physical record is therefore extraneous to the legal status of, and protection accorded to, the information in the record.

Not all Canadian jurisdictions have specific privacy legislation governing information collected and used in or by the private sector. Furthermore, there continues to be debate over whether prescribing data that identify the prescribing physician and similar data should be treated as confidential and therefore subject to legal protection.

Despite uncertainty about the legal status of the data, it is the position of the medical associations that prescribing data that identify the prescribing physicians, whether defined as personal or professional, should be treated as confidential, with all of the ethical and legal safeguards in place. Release of the data can be a significant invasion of privacy. From the data, one can deduce physicians' location, income, personal preferences and other very personal attributes. Although the data are valuable in assessing certain aspects of physician performance, there is great potential for misuse. Inappropriate conclusions about the performance or the learning needs of a physician may be drawn from limited data. Use of the data in this respect must reside with the physician and those in whom he or she has confidence. Consequently, unless legally permitted or required, data that
identify prescribing physicians should not be compiled, sold or otherwise used without the knowledge and consent of the individual physicians concerned. This approach is in keeping with the Quebec privacy legislation governing the private sector and with the requirements in the Guidelines on the Ethics of Relationships Between Pharmacists and Pharmaceutical Manufacturers of the Canadian Pharmaceutical Association, which state that "information concerning patients' drug utilization and compliance may be shared with the drug's manufacturer, at the discretion of the pharmacist, provided patient and prescriber confidentiality is maintained." The national trend in business and other sectors is toward strengthening privacy protection, and steps should be taken to encourage and support this process in the health care sector as well.

The collection and use of physician prescriber data by governmental or regulatory agencies (e.g., for peer review or quality assurance) is outside the purview of this document.

3. **The primary purpose of compiling data on individual physicians' prescribing and developing profiles must be to provide individual physicians with an educational tool to enhance their prescribing practices and the quality of care provided to patients.**

Providing feedback on past patterns of practice, especially in conjunction with comparative data on ideal or peer practices, is an effective method of adult learning, leading to appropriate changes in practice. Studies show that many physicians wish to practise according to recognized guidelines and often believe their practice is consistent with such guidelines, but they have no way of verifying this belief from actual data. Once the data are provided, physicians can use them to ensure that their practices reflect such guidelines.

**Once consent is appropriately obtained, the following principles also apply:**

4. **Having compiled and analysed the data on individual prescribers, the compiler must make this information directly available, free of charge, to each individual physician concerned, along with appropriate data for comparison purposes. This information is an educational tool that physicians are encouraged to take advantage of to enhance the care they deliver.**

5. **Physicians must be provided with the names of any organizations that have been sold, or otherwise given access to, data about them.**

This sharing of information would put physicians on an equal footing with any representative of the organizations who may interact with the physician.