

01-086

**TRADE AND COMMERCE: FINGERPRINTING IN CONNECTION WITH BUSINESS TRANSACTION.**

**PROFESSIONS AND OCCUPATIONS: PHARMACY — DRUG CONTROL ACT.**

**CRIMES AND OFFENSES GENERALLY: CRIMES INVOLVING HEALTH AND SAFETY - DRUGS.**

**CIVIL REMEDIES AND PROCEDURE: EVIDENCE.**

**Pharmacist, prior to filling prescription, may obtain fingerprint from customer as proof of identification, provided pharmacist returns or destroys print within 21 days of transaction's completion or termination; may provide to law-enforcement officials fingerprint of any customer suspected of prescription fraud.**

The Honorable K. Mike Fleenor Jr.  
Commonwealth's Attorney for Pulaski County  
January 11, 2002

You ask whether a pharmacist or his assistant<sup>1</sup> legally may obtain a fingerprint from a customer purchasing prescriptive medication.

Section 59.1-478 of the *Code of Virginia* provides, in part:

Whenever any person requires another to furnish a fingerprint or fingerprints in conjunction with any business, commercial or financial transaction, unless the parties otherwise agree, within twenty-one days of the transaction's completion or termination the original record of such prints and all copies of such prints, including electronic or facsimile copies shall be (i) returned to the person providing such prints or (ii) destroyed by the person requiring and obtaining such prints.

Section 54.1-3303 details the prescriptions to be issued and drugs to be dispensed by a pharmacist for medical and therapeutic purposes. In particular, § 54.1-3303(B) outlines the procedure to be followed by a pharmacist who questions the validity of a prescription, including "verify[ing] the identity of the patient." Section 54.1-3319(D) states that "[r]easonable efforts shall be made to obtain, record, and maintain the ... patient information generated at the individual pharmacy." Such patient information shall include the "[n]ame, address, telephone number, date of birth or age, and gender."<sup>2</sup> Section 54.1-3420.1 authorizes a pharmacist, "[b]efore dispensing any drug listed on Schedules II through V, [to] require proof of identity from any patient presenting a prescription or requesting a refill of a prescription."

Neither these statutes, nor any other statutes of which I am aware, prohibit a pharmacist, prior to filling a prescription, from obtaining a fingerprint from the

customer. In addition, pharmacists are not government agents and, therefore, are not constrained by the Fourth Amendment to the Constitution of the United States.<sup>3</sup>

The primary purpose of statutory construction is to "ascertain and give effect to legislative intent."<sup>4</sup> It is clear from the language of § 59.1-478 that the General Assembly intended to legislate procedures involving the use of fingerprints in conjunction with business and commercial transactions. Further, when reading §§ 54.1-3303(B), 54.1-3319(D) and 54.1-3420.1 together, it is clear that the General Assembly intended pharmacists to verify the identity of customers. A fingerprint may be used to identify an individual.

Based on the above, it is my opinion that a pharmacist, prior to filling a prescription, may obtain a fingerprint from a customer as proof of the customer's identification, provided the pharmacist complies with the twenty-one day limitation in § 59.1-478.

You next ask whether a pharmacist may provide a fingerprint to law-enforcement officials if the pharmacist suspects the customer of prescription fraud pursuant to § 18.2-258.1.

Section 18.2-258.1 states:

A. It shall be unlawful for any person to obtain or attempt to obtain any drug or procure or attempt to procure the administration of any controlled substance ...: (i) by fraud, deceit, misrepresentation, ... or subterfuge; or (ii) by the forgery or alteration of a prescription or of any written order; ... or (iv) by the use of a false name or the giving of a false address.

B. It shall be unlawful for any person to furnish false or fraudulent information in or omit any information from, or willfully make a false statement in, any prescription ....

....

E. It shall be unlawful for any person to make or utter any false or forged prescription ....

Section 8.01-399 recognizes a privilege of confidentiality between physicians and patients. Even if such privilege of confidentiality existed between pharmacists and customers, the privilege would not be recognized in a criminal prosecution.<sup>5</sup> Pursuant to § 18.2-258.1, therefore, a pharmacist may provide to law-enforcement officials the fingerprint of any customer suspected of prescription fraud.

<sup>1</sup>Further reference in this opinion to a pharmacist shall mean a pharmacist or his assistant.

<sup>2</sup>Va. Code Ann. § 54.1-3319(D)(1) (Michie Repl. Vol. 1998).

<sup>3</sup>See *Morke v. Commonwealth*, 14 Va. App. 496, 503, 419 S.E.2d 410, 414 (1992) ("The constraints of the Fourth Amendment apply only to government or state action; they do not apply to searches or seizures undertaken by private individuals."); cf. *Hayes v. Florida*, 470 U.S. 811, 814 (1985) ("[F]ingerprinting ... represents a much less serious intrusion upon personal security than other types of searches and detentions.").

<sup>4</sup>Turner v. Commonwealth, 226 Va. 456, 459, 309 S.E.2d 337, 338 (1983).

<sup>5</sup>See Gibson v. Commonwealth, 216 Va. 412, 414, 219 S.E.2d 845, 847 (1975) ("There exists ... no physician-patient privilege in a criminal prosecution in Virginia.... While Virginia has enacted a statutory privilege, it is expressly confined to civil proceedings.").

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