

April 8, 2013

State Board of Pharmacy
Wendy Anderson
Program Director
1560 Broadway, Suite 1350
Denver, CO 80202

Dear Ms. Anderson:

Thank you for meeting and discussing the Avastin matter with Colorado Society of Eye Physicians and Surgeons and the Colorado Medical Society (CMS). You requested that we send a letter describing our thoughts about the position of the Board of Pharmacy (BOP) that current Colorado law requires a patient specific prescription order for an in-state or nonresident pharmacy to ship repackaged Avastin to the physician's practice for administration to patients. The physician practices that are experiencing problems with the BOP's patient-specific prescription order interpretation are retina specialists.

Background

A retina specialist is a physician who has specialized in ophthalmology and has then sub-specialized in medical and surgical diseases of the retina and vitreous. The full breadth of training for a retina specialist includes four years of medical school, a one-year internship, a three-year ophthalmology residency, and a one to two year retina-vitreous fellowship. Retina specialists treat a variety of conditions, ranging from age-related macular degeneration, diabetic retinopathy, retinal detachment and cancers of the eye. They also treat patients who experience severe eye trauma, hereditary blinding diseases, and inflammatory disorders of the eye. They are highly trained and a vital community resource.

Retina specialists in Colorado routinely treat macular degeneration with the drug Avastin. Avastin is an FDA-approved cancer medication that also is commonly used off-label by retina specialists for the treatment of macular degeneration. Avastin is widely used by the 32 practicing Colorado retina specialists because it is a highly effective treatment and it is substantially less expensive than the other approved alternatives Lucentis and Eylea. As a point of fact, Avastin is reimbursed at \$63 per injection as compared to approximately \$1,850 for Eylea and \$1,900 for Lucentis. Based upon data from the largest retina practice in the state (11 physicians performing 13,000 injections annually), one can conservatively estimate (500 injections per physician/per year) that the increased annual cost to the health care system of switching from Avastin to either Eylea or Lucentis would be \$28.52 million or \$29.32 million respectively. Given the conservative nature of this estimate, total costs could be even higher. While ensuring that patients receive the safest, highest quality care is a priority for Colorado ophthalmologists, we are also committed to providing that care in the most cost-effective



manner possible. We believe that there are better ways to provide stewardship of these precious health care dollars to help attain the vision that Colorado is the healthiest state in the nation.

As we understand the Avastin supply trail, Genentech ships large vial sizes of Avastin to Besse or McKesson, who in turn ships these vials to pharmacies based upon orders received from the pharmacies. A nonresident pharmacy or an in-state pharmacy repackages the Avastin from the 400mg or 100mg vials to 1.25 mg unit dose syringes. The nonresident or in-state pharmacy ships these small unit dose syringes directly to the practices of Colorado retina specialists, without patient specific prescriptions.

For several years Colorado retina specialists have been receiving repackaged Avastin from non-resident pharmacies without patient specific prescription orders. Enforcement of the Board of Pharmacy's interpretation that these orders must have a patient specific prescription is interrupting the supply chain and driving higher costs through the usage of more expensive Eylea and Lucentis.

Issue:

Does state law require patient specific prescriptions be submitted to in-state or nonresident pharmacies in order for the pharmacy to ship repackaged Avastin to a Colorado physician practice?

Short Answer:

No, there is no statutory or regulatory requirement for patient specific prescriptions for in-state or nonresident pharmacies to ship repackaged Avastin to physician practices.

Discussion:

According to the Colorado Board of Pharmacy letter to Colorado Retina Associates dated February 28, 2013, in-state pharmacies may distribute compounded preparations to practitioners for office use without a prescription order; however, the statute limits nonresident pharmacies to only dispense and deliver prescriptions pursuant to valid patient specific prescription orders.

The pharmacy board stated that breaking down Avastin into smaller units is not compounding; it is repackaging. With certain limited exceptions, a pharmacy must be registered with the FDA as a Repackager in order to repackage and distribute medications. Once the pharmacy has FDA registration, it may apply to become a wholesaler with Colorado Board of Pharmacy and distribute the repackaged Avastin into or within Colorado.

In this letter, the State Board of Pharmacy offers one of 4 suggestions, that the physician provide a patient specific prescription order for the drug to the in-state or nonresident pharmacy.

In a telephone call with CMS, the Colorado Pharmacy Board indicated that it is relying on section 12-42.5-130, C.R.S., as statutory authority, and rule 21.00.20(a), as authority for requiring a nonresident pharmacy to have a prescription order for delivery of repackaged drugs into Colorado. Under section 12-42.5-130, C.R.S., any prescription drug outlet¹ located outside of Colorado that ships, mails or delivers drugs into Colorado is a nonresident prescription drug outlet and must register with the Board and submit required disclosures and other information annually to the Board. According to this section, “The registration requirements of this section apply only to a nonresident prescription drug outlet that only ships, mails, or delivers, in any manner, drugs and devices into this state pursuant to a prescription order.” (Emphasis added.)

Contrary to the position of the Pharmacy Board, the plain language of this statute applies when a non-resident pharmacy delivers, ships, or mails drugs pursuant to a prescription order. *See Burnett v. Colo. Dep’t of Natural Resources*, 2013 WL 1245366 (Colo.App., Mar. 28, 2013). The statute does not require a prescription order for the delivery of repackaged drugs to Colorado physicians for administration to patients.

The Pharmacy Board also misplaces reliance on rule 21.00.20(a). Rule 21.00.20(a) provides “An in-state prescription drug outlet may only distribute a compounded product to a practitioner authorized by law to prescribe the drug for the purposes of administration. An in-state compounding prescription drug outlet registered pursuant to CRS 12-42.5-117(9) may distribute compounded product pursuant to CRS 12-42.5-118(15)(a) and (b)(I) and (II). Nonresident prescription drug outlets may not distribute compounded products into Colorado. Nonresident prescription drug outlets may dispense compounded products pursuant to prescription orders and ship them into the state.”

This Rule applies only to compounded products, not repackaged products.² The Board’s letter clearly states that the process of breaking down Avastin into smaller dose units is not compounding. It is repackaging.

In sum, there is no statutory or regulatory authority to require nonresident or in-state pharmacies to obtain a patient specific prescription for Avastin to be able to ship

¹ A “prescription drug outlet” or “pharmacy” means any pharmacy outlet registered pursuant to this article where prescriptions are compounded and dispensed. A “prescription drug outlet” includes, without limitations, a compounding prescription drug outlet registered pursuant to section 12-42.5-117(9) or specialized prescription drug outlet registered pursuant to section 12-42.5-117(11).

² Under section 12-42.5-102(36.3), the term repackaging means “repackaging or otherwise changing the container, wrapper, or labeling to further the distribution of a prescription drug, excluding repackaging or labeling completed by the pharmacist responsible for dispensing product to the patient.” On the other hand, compounding means “the preparation, mixing, assembling, packaging, or labeling of a drug or device.” C.R.S. 12-42.5-102(7)(a). Rule 21.00.30(e) defines compounding as “the preparation, mixing, assembling, of one or more active ingredients with one or more other substances....” Rule 21.00.30(j) defines repackaging as the “subdivision or transfer of a product from one container or device to a different container or device. Repackaging does not constitute compounding, whether or not the product being repackages was previously compounded.”

the repackaged product to a physician's practice. If you disagree with this interpretation, please let us know. We look forward to working with you to solve this problem.

Sincerely,

A handwritten signature in black ink that reads "Geo. Ulrich, MD". The signature is written in a cursive, slightly slanted style.

George Ulrich, MD
President