



National Association of Boards of Pharmacy

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nabp

July 30, 2015

Allen Grogan, Chief Compliance Officer
Internet Corporation for Assigned Names and Numbers
12025 Waterfront Drive, Suite 300
Los Angeles, CA 90094-2536

Dear Mr Grogan:

The National Association of Boards of Pharmacy[®] (NABP[®]) represents government pharmacy and pharmacist regulatory authorities in the United States, Canada, Australia and New Zealand. Additionally, we work closely with our counterparts in jurisdictions throughout the European Union, Asia, and other regions. In that capacity, the NABP writes to express our concern with Internet Corporation of Assigned Names and Numbers' (ICANN's) current interpretation of Section 3.18 of the 2013 Registrar Accreditation Agreement (RAA).

Background

As you are likely aware, the unregulated sale of medicines has, on numerous occasions, contributed to hospitalizations or deaths. This is why prescription drug sales are, in every jurisdiction worldwide, a regulated activity – for patient safety. NABP supports the efforts of law enforcement and NABP-endorsed entities such as LegitScript to effectuate the suspension of domain names used to illegally sell prescription drugs.

As you also know, Section 3.18 of the RAA requires registrars to “respond appropriately” to and “investigate” claims that a domain name is being used in furtherance of illegal activity. Unfortunately, it appears that in some cases, ICANN is finding that registrars comply with this provision despite the registrar appearing to have done nothing substantive in response to claims about illegal or unlicensed medicine sales, or by taking only superficial steps that are not responsive to the allegations or information presented to the registrar.

Request

In this letter, on behalf of the government regulatory bodies that NABP represents, NABP requests that if a domain name is alleged to be used for the illegal or unlicensed sale of prescription drugs, at a minimum, an “appropriate response” and “investigation” by the registrar under Section 3.18 must include requesting that the registrant produce a pharmacy license or registration in the jurisdiction where the drugs are offered to be shipped to, or other legal authorization to dispense prescription drugs in that jurisdiction. If the seller cannot produce legally required pharmacy licensure, registration, reciprocity, or other legal authorization to sell prescription drugs to patients in that jurisdiction, the domain name should be suspended or the registrar should take other steps to ensure that the registrar’s services are no longer used to facilitate the criminal activity in question.

Furthermore, pharmacy licenses and registrations are public documents. The registrar and ICANN should disclose the pharmacy license to the complainant upon request, and registrars should be encouraged to verify the authenticity and legal relevance of the pharmacy license with NABP or LegitScript.

Although we recognize that ICANN has stated it is not the “Internet police,” neither does ICANN have the right to ignore and unilaterally dismember over 100 years of careful and remarkably consistent regulatory development designed to protect patients. Central to this regulatory structure are two principles: prescription drug sellers must be licensed or otherwise authorized to dispense medicines in the patients’ jurisdictions, and information about these licenses are intended to be publicly available and disclosed upon request. By finding that registrars who fail to ask registrants to produce the legally required pharmacy license are nevertheless “responding appropriately” and conducting an adequate investigation, ICANN takes on the role of an unaccountable sovereign who singlehandedly revokes global regulatory requirements pertaining to pharmacy licensure. In other words, there is already a well-established set of requirements pertaining to the sale or dispensing of prescription drugs; it is not ICANN’s place to pretend that these requirements do not exist or to actively subvert them.

Similarly, nowhere in the world do licensed pharmacies have a right to confidentiality or privacy as to their licensure. NABP understands that ICANN is permitting registrars to claim that they have verified legally required pharmacy licenses, but then refuse to share the license with a complainant such as LegitScript, despite NABP’s previous requests that registrars be encouraged to use LegitScript for pharmacy license verification. It is not ICANN’s place to unilaterally create a right to non-disclosure of pharmacy licenses.

As an explanatory note, NABP urges ICANN not to simply allow the provision of a pharmacy license from **any** jurisdiction to suffice. Rather, it must be a pharmacy license, registration, or some other legal authorization from the appropriate regulatory authority **in the jurisdiction where the drugs are offered to be shipped to** (not from). The reason for this is simple: rogue Internet pharmacies pose a danger precisely because they do sell drugs (eg, without a prescription, or diverted/expired/substandard drugs), and the drugs must come from **somewhere**. But as a practical matter, pharmacy regulators can generally only take regulatory action against a seller when the seller and recipient of the drugs are in the regulator’s jurisdiction.

NABP is not asking ICANN to act as an enforcement agency. We are simply asking that in determining what constitutes an “investigation” and “appropriate response,” ICANN recognize requirements that already exist, and defer to the entities who are authorized to make this determination: pharmacy regulators, which NABP represents.

About the National Association of Boards of Pharmacy

NABP is the independent, international, and impartial Association that assists its member boards and jurisdictions for the purpose of protecting the public health. NABP’s member boards are government agencies that regulate pharmacies and pharmacists in their jurisdiction. NABP is the only professional association that represents these government agencies in all 50 states, the District of Columbia, Guam, Puerto Rico, the Bahamas, the Virgin Islands, New Zealand, nine Canadian Provinces, and Australia.

LegitScript Abuse Notifications and ICANN-Accredited Registrars

On behalf of the NABP’s member regulatory boards, NABP continues to recommend and request that domain name Registrars act on abuse notifications submitted to them by LegitScript, LLC (LegitScript.com), an Internet pharmacy monitoring and classification program that bridges the gap between Internet/electronic commerce platforms and drug safety/pharmacy licensure regulatory authorities by submitting notifications to Registrars about illegal prescription drug marketing websites and assisting Registrars in interacting with

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registrants.

LegitScript is well aware of where exceptions exist to these common global standards (eg, where pharmacy licensure reciprocity exists as a matter of regulation) and Internet pharmacies falling under an exception are not included in rogue Internet pharmacy abuse notifications to Registrars.

Conclusion

NABP renews our request to ICANN to ensure that their registration services are not used by illegal online drug outlets. We also encourage ICANN and Registrars to collaborate with LegitScript to identify, prioritize, and pursue contractual enforcement against rogue Registrars and registries.

NABP welcomes the opportunity to support ICANN in any efforts to ensure Registrars, registries, and the registrants they serve fully comply with applicable laws in order to protect patients worldwide. I am available to discuss our concerns with you over the phone or in person as well. You can reach me by email at Exec-Office@nabp.net or by phone at 847/391-4400.

Sincerely,

NATIONAL ASSOCIATION OF
BOARDS OF PHARMACY



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