

February 1, 2023

The Honorable Joseph Cervantes
Chair
New Mexico Senate Judiciary Committee
State Capitol, Rm 319A
Santa Fe, NM 87501

Re: **Senate Bill 92 – Oppose**

Dear Chair Cervantes:

On behalf of the American Medical Association (AMA) and our physician and medical student members, I am writing to **strongly oppose New Mexico Senate Bill 92 (SB 92)**, which would grant pharmacists the authority to independently diagnose and prescribe medications for a broad range of potentially serious health conditions. This legislation allows pharmacists to provide medical care for which they are not trained, without access to patients' medical records, in a setting that is not conducive to performing a medical examination or protecting patients' privacy. While the AMA values the role that pharmacists play in our nation's health care system, we are deeply concerned that SB 92 threatens the safety of patients in New Mexico.

Pharmacists do not have the education and training necessary to diagnose and prescribe.

Pharmacists are medication experts and important members of the health care team. However, it is an incorrect and dangerous leap to assume that pharmacists have the education and training necessary to diagnose patients or formulate an appropriate plan of treatment, as this legislation would allow. Most of the pharmacy school curriculum consists of didactic instruction and laboratory. Pharmacy students receive only about 1,700 hours of practice experiences (compared to a physician's 10,000-12,000 patient care hours). Notably, **the practice experiences in the PharmD curriculum do not include performing a physical examination, developing differential diagnoses, or performing primary care activities. Indeed, pharmacists are not trained to examine patients or make a diagnosis.**

Moreover, in their training, pharmacists are not required to spend any time with patients of any particular age or with any specific medical condition—this means a pharmacist could graduate without ever providing care to a child or having seen a person with an illness that this legislation would authorize them to diagnose and treat. Pharmacy residencies that might give pharmacists experience in patient care are not common in the community setting. Only about 5.5 percent of pharmacists employed in community settings have undergone residency training. Accordingly, it is no surprise that the AMA strongly opposes pharmacists independently diagnosing and prescribing medications to patients. Pharmacists do not have the education and training to collect and assess subjective and objective clinical patient information, perform a comprehensive examination, diagnose a patient's condition, or prescribe drugs for treatment.

Diagnosing patients is the practice of medicine, which is care only a physician can safely provide. Physicians have more than 10,000 hours and seven-to-eleven years of postgraduate clinical education and training. This enables them to correctly diagnose, treat, prescribe, and manage patients' health care needs. But it is more than the difference in hours or years of training that distinguishes physicians from pharmacists, it is also the comprehensive and holistic approach to medical education and training received by physicians. This begins in medical school when students receive a comprehensive education in the classroom and in laboratories where they study the biological, chemical, pharmacological, and behavioral aspects of the human conditions. After graduation from medical school physicians spend three to four more years learning the complexities related to making a diagnosis and appropriate prescribing in multiple clinical situations and settings—gaining in-depth knowledge essential to their chosen specialty. Physicians are tested on this knowledge throughout their training and as part of the medical licensure process, which includes the United States Medical Licensing Exam, a series of three examinations that physicians must take and pass to be licensed to practice medicine in the United States. Such medical education and training are essential to safely treat patients and prescribe medications.

If approved, SB 92 would be one of the most expansive “test and treat” laws in the nation.

SB 92 would allow diagnosis and treatment to take place over the pharmacy counter, not only for acute physical illness but potentially including highly private and sensitive matters of chronic disease, mental illness, and substance use disorders. We encourage lawmakers to consider the numerous privacy and logistical concerns with this proposition by simply imagining for a moment the atmosphere of one's local pharmacy chain. We also draw your attention to profound medical concerns raised by the bill.

The AMA is deeply concerned with the breadth of this legislation. SB 92 would allow pharmacists to test for, screen for, diagnose, and treat a broad range of illnesses including influenza, COVID-19, and any other unspecified “respiratory illness, condition, or disease.” It grants pharmacists the authority to treat not only urinary tract infections, “skin conditions,” and purportedly “minor, uncomplicated infections,” but also HIV. It also opens the door for pharmacists to provide preventative health care, mental health care, and treatment for substance use disorders. It authorizes pharmacists to treat patients of any age and with any pre-existing health condition. The bill is both impractical in its application and troublesome from a patient care perspective because it allows pharmacists to practice medicine by diagnosing a condition and treating it with prescription drugs.

SB 92 would also allow pharmacists to prescribe drugs for patients based on a diagnosis from a Clinical Laboratory Improvement Amendments (CLIA) waived test. There are more than 1,500 CLIA waived tests, many of which require special laboratory equipment and/or specially trained personnel to perform or read. These are not simply pregnancy tests found on the shelves in the pharmacy. Yet SB 92 allows pharmacists to use these tests—all 1,500—to “guide their diagnosis or clinical decision making.” This would be done without a thorough medical examination of the patient or access to the patient's full medical history. It is also unclear how these tests will be administered in a pharmacy setting.

The latitude afforded to pharmacist in SB 92 raises serious patient safety concerns. To repeat, this bill would allow pharmacists—who are not trained to perform a physical examination and have no education in making a medical diagnosis—to diagnose and treat any child, adult, senior, or pregnant patient who arrives at the pharmacy, without a review of the patient's medical record; without knowledge or understanding of the patients' medical history, other medical conditions or potential co-morbidities; and regardless of whether the pharmacist has any experience treating that population. Consider respiratory illness. **One must ask how a pharmacist might know whether the lungs are clear without any training and without actually listening to a patient's lungs; similarly, how might a pharmacist discern a “minor infection” from something more serious in the absence of a physical exam?** The results of a test alone are not enough to make a conclusive diagnosis or to rule out other complications.

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Without a competent physical exam, the severity of an illness is easily under-appreciated. Underlying causes of symptoms may go overlooked. Physicians are trained in residency to identify seriously ill patients and to perform differential diagnosis; pharmacists simply are not. It is dangerous to assume otherwise.

Pharmacists are already overburdened, especially in the community setting.

Data suggests that pharmacists in community settings are already at capacity, without the added burden of treating illness and providing preventative health care. A reputable workforce study of more than 3,000 pharmacists found that a full 75 percent of pharmacists in chain settings said they already have so much work to do that everything cannot be done well. The problem appears systemic: 71 percent of all pharmacists and 91 percent of pharmacists working in pharmacy chains rated their workload as high or excessively high. Scope expansions like the one proposed in SB 92 only add burden and put patient safety at risk.

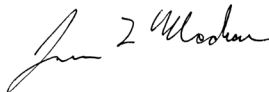
SB 92 threatens patient safety.

SB 92 raises serious concerns that threaten the health of New Mexico's patients. For the many reasons noted above, the AMA is deeply concerned with the expansion of scope of practice afforded to pharmacists in SB 92. We urge you and members of the Senate Judiciary Committee to put patients first and oppose SB 92.

If you have any questions, please contact Kimberly Horvath, JD, Senior Attorney, AMA Advocacy Resource Center, at kimberly.horvath@ama-assn.org.

Thank you for your consideration.

Sincerely,



James L. Madara, MD

Attachment

cc: New Mexico Medical Society