

MINNESOTA STATUTES § 151.461 – GIFTS TO PRACTITIONERS PROHIBITED
Frequently Asked Questions – A Guidance Document

Q. Does the Minnesota Statute governing *gifts* apply to pharmacists?

A. Yes, if the pharmacist is licensed by the state of Minnesota and prescribes self-administered hormonal contraceptives, nicotine replacement medications, or opiate antagonists pursuant to Minnesota Statute 151.37, subdivisions 14, 15, or 16. The Statute applies to gifts of value to “practitioners,” and pharmacists are “practitioners” when they prescribe the three aforementioned categories of prescription drugs. *See* Minn. Stat. 151.01, subd. 23 (“practitioner” also means a pharmacist authorized to prescribe self-administered hormonal contraceptives, nicotine replacement medications, or opiate antagonists under section 151.37, subd. 14, 15, or 16.”).

Q. Can the Board provide a list of pharmacists who are prescribing any of the three types of drugs that they can independently prescribe?

A. No. Pharmacists are not required by statute or rule to tell the Board if they are prescribing any of these drugs. Before making payments or giving gifts to pharmacists, manufacturers of these drugs might want to ask pharmacists if they are prescribing any of the types of drugs that the manufacturer produces.

Q. If a manufacturer does *not* produce any of the types of drugs that pharmacists can prescribe, do they still need to limit gifts given to pharmacists, or report payments made to pharmacists?

A. No. Pharmacists are only practitioners to the extent that they are prescribing one of those three types of drugs.

Q. To which type of practitioners does Minnesota’s reporting requirement apply?

A. The federal Physician Payment Sunshine Act (PPSA) pre-empts state law and prohibits states from collecting data that the federal government collects. The federal agency enforcing the PPSA has adopted a board definition of physician to include many types of practitioners. Currently, manufacturers must report to the Board, only those payments that are made to dental therapists, veterinarians, and pharmacists (when the pharmacists are independently prescribing drugs from one of the three categories of drugs they can independently prescribe).

Q. What is a “gift” for purposes of the Minnesota statute?

A. It is reasonable to use the definition of “gift” as found in Minnesota Statutes 10A.071, subd. 1(b) and the Board has chosen to use that definition. Therefore, a gift would include any money, real or personal property, a service, a loan, a forbearance or forgiveness of indebtedness, or a promise of future employment, that is given and received without the giver receiving consideration of equal or greater value in return.

Q. Can any gifts be given to practitioners?

A. Yes, M.S. § 151.461 allows practitioners to receive gifts from manufacturers up to a combined annual limit of \$50 in retail value. That is, the total retail value of gifts given to a practitioner must not exceed \$50 per year.

Q. Are modest meals considered gifts under Minnesota law and under what circumstances may a practitioner accept a modest meal?

- A. Yes, modest meals are "gifts" under the definition mentioned above. However, there are situations provided for in statute where the provision of a meal by a manufacturer to a practitioner would be allowed. A meal is not considered a gift if the practitioner is serving on the faculty at a professional or educational conference or meeting or if the practitioner is providing to the manufacturer "substantial professional and consulting services" as part of a genuine research project. Also, the law does allow a manufacturer to provide a meal to a practitioner as a "gift" - as long as the total value of all gifts provided to the practitioner does not exceed the \$50 per year limit.

Q. Under Minnesota law, is it appropriate to make cash payments to practitioners for participation in so-called "surveys" that are intended by pharmaceutical manufacturers to promote, market or sell a drug directly to those practitioners?

- A. No. Such practices would be considered commercial marketing activities, rather than bona fide market research (i.e. a "genuine research project") conducted by independent survey research organizations. Participation in marketing activities is not a "substantial service," nor does it involve a "genuine research project" as intended by the legislature. Therefore, cash payments to practitioners who participate in marketing activities are prohibited under the gifts to practitioners statute.

Q. Are cash payments to practitioners that attend educational conferences and programs appropriate under Minnesota law?

- A. No. While a practitioner who is on the faculty of an educational conference or program may be paid a reasonable amount for their services, practitioners who are merely attendees at the conference should not be given a cash payment.

Q. What sort of payments made by a manufacturer to a practitioner are not considered gifts?

- A. M.S. § 151.461 states that the following items and types of payments are **not** gifts. A manufacturer may legally make these payments, but must file an annual report with the Board of pharmacy concerning the payments it makes for items (4) and (5):
- (1) professional samples of a drug provided to a prescriber for free distribution to patients;
 - (2) items with a total combined retail value, in any calendar year, of not more than \$50;
 - (3) a payment to the sponsor of a medical conference, professional meeting, or other educational program, provided the payment is not made directly to a practitioner and is used solely for bona fide educational purposes;
 - (4) reasonable honoraria and payment of the reasonable expenses of a practitioner who serves on the faculty at a professional or educational conference or meeting;
 - (5) compensation for the substantial professional or consulting services of a practitioner in connection with a genuine research project;
 - (6) publications and educational materials; or
 - (7) salaries or other benefits paid to employees.

Q. Do manufacturers have to report gifts to the Minnesota Board of Pharmacy?

A. No. However, they do have to report any payments that they make to practitioners under items (4) and (5) that are listed in the preceding answer – if such payments exceed \$100 annually. The Board sends out a notice to manufacturers late each year and directs them to download a spreadsheet template from the Board’s Web site. The template must be completed and returned, in an electronic format, May 1st.

Q. Are textbooks considered gifts under Minnesota law?

A. Yes. Textbooks likely do not fall under the “publications and educational materials” exception as intended by the Legislature. “Publications and educational materials” refers to materials used by a manufacturer or wholesaler to market a specific product. (e.g. - reprints of journal articles, marketing brochures and related materials, and instructional materials intended for use in educating patients about a specific drug that a manufacturer sells). Textbooks, subscriptions to online services that provide general medical and drug information and other general references are considered “gifts” that are subject to the \$50 aggregate annual limit.

Q. What is the penalty for violating the partial gift ban or reporting requirements?

A. The Board would handle a violation as it would any other complaint and, if warranted, could discipline the manufacturer as follows:

- Issue a reprimand;
- Assess a civil penalty of up to \$10,000 per violation;
- Place limitations or conditions on the manufacturer’s license;
- Suspend the license; or
- Revoke the license.