

## OUT OF STATE CONSIDERATIONS FOR PRESCRIBING PRACTICES

Scenario: Patient, resident of state other than VA, seeking Rx.	Prescriber Licensure in Other State Required?	Liability Risk in Other State?	Comments
Prescription order (new or refill) sent directly by provider to: <ul style="list-style-type: none"> <li>• Out of state patient,</li> <li>• Out of state pharmacy, or</li> <li>• Out of state “specialty” pharmacy</li> </ul>	Yes, <i>unless</i> the prescription order is continuation of care for a diagnosis and treatment plan already established in Virginia.	Yes	(a) Most states define “practice of medicine” to include “prescribing,” so there is always some risk that any prescription order directly sent out of state by an unlicensed provider may be considered the “unauthorized practice of medicine,” however, a licensure action is unlikely when the prescription is simply continuation of care of a diagnosis and treatment plan previously established for the patient in Virginia. (b) <b><i>The malpractice liability risk exists regardless of licensure</i></b> and would arise from a bad outcome for the patient that occurs in the other state and is related to the prescription order. (c) There are reported malpractice lawsuits against unlicensed out of state prescribers, including against Trust covered persons.
Prescription order sent by provider to: <ul style="list-style-type: none"> <li>• UVA Pharmacy, and the UVA Pharmacy fills and ships the prescription to the patient outside of VA.</li> </ul>	No	Yes, but low	(a) The UVA Pharmacy has to be licensed in the other state if it intends to fill and ship the medication across state lines. (b) UVA Pharmacies are able to fill and ship prescription medications to the following states - AZ, ID, KS, MD, MA, NH, NY, RI, WV, WI. (c) This scenario does not incur increased “unauthorized practice of medicine” or liability risk for the provider, because the provider’s actions all occur in VA. (d) If a patient has a bad outcome in the other state related to the prescription, suit could be brought in that state, but it will depend upon the specific facts involved and the jurisdictional laws of the particular state.
Prescription order sent by provider to: <ul style="list-style-type: none"> <li>• Other VA pharmacy, e.g., CVS, Walgreens, and the pharmacy transfers the prescription order out of state.</li> </ul>	No	Yes, but low	(a) This scenario does not incur increased “unauthorized practice of medicine” or liability risk, because the provider’s actions all occur in VA. (b) If a patient has a bad outcome in the other state related to the prescription, suit could be brought in that state, but it will depend upon the specific facts involved and the jurisdictional laws of the particular state.
Patient, resident of another state, travels into VA to receive/pick up prescription order or medications, and then returns to home state to fill or utilize.	No	Yes, but low	(a) This scenario does not incur increased “unauthorized practice of medicine” or liability risk, because the provider’s actions all occur in VA. (b) If a patient has a bad outcome in the other state related to the Rx, suit could be brought in that state, but it will depend upon the specific facts involved and the jurisdictional laws of the particular state.

\*If the patient lives in VA, and is required by their insurer to use an out of state specialty or mail-order pharmacy, an out of state license is not required, and any malpractice risk is in Virginia, where the patient is located, and where you have coverage for malpractice liability with the Trust.