

# West's 50 State Surveys

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## HEALTH CARE

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### Regulatory and Statutory Tables

- Advertising and Marketing Regulations for Pharmacies and Pharmaceutical Companies
- Medical Malpractice: Punitive Damages
- Medical Malpractice: Tort Reform
- Methamphetamine
- Pharmaceutical Assistance Programs
- Prescription Cost Controls
- Prescription Coverage

2012

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## PREFACE

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This publication contains selected tables from West's 50 State Surveys databases (SURVEYS and REG-SURVEYS) on Westlaw covering statutory and regulatory law for Health Care topics relating to malpractice, pharmaceuticals, and the manufacture of methamphetamine. The tables include State, District of Columbia, and Federal statutes and regulations; summary descriptions of each specific topic; important subtopics; complete citations for easy reference; and applicable statutory references for Guam, Puerto Rico, and the Virgin Islands. The tables are prepared by attorneys and are updated annually.

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**HEALTH CARE**  
**PHARMACEUTICALS**  
**ADVERTISING AND MARKETING REGULATIONS FOR PHARMACIES AND  
PHARMACEUTICAL COMPANIES (REGULATIONS)**

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In general, the courts have held that the police power of the state or of its political subdivision may be exercised to regulate or prohibit the advertising of certain types of merchandise or information, such as the advertisement of contraceptives and the dissemination of birth control information, drugs and medicines, medical supplies or services. More specifically, it has been held that the practice of pharmacy is a profession vitally affecting public health and welfare, and is therefore subject to regulation by the state. Consequently, a number of states have enacted legislation banning or limiting advertising by pharmacies. However, such regulations must not violate the First Amendment rights of freedom of speech and freedom of the press. For the most part, these regulations limit and specify how, when and what pharmacies may advertise.

The courts that have dealt with this issue have not agreed that state regulation of advertising by pharmacies is a proper exercise of the state's police power. Those courts that have upheld the validity of such legislation have stated that the ban or limitation on advertising benefits public welfare by aiding pharmacists in monitoring prescriptions to avoid allergic reactions or the simultaneous use of antagonistic drugs of which a patient's physician may not be aware. It has also been asserted that regulation of drug price advertising protects the public from buying drugs that have deteriorated on a pharmacist's shelf because of an overstock of inventory. These courts have held that the First Amendment rights of speech are not infringed upon by such legislation banning or limiting pharmacy advertisements.

On the other hand, the courts that have held such legislation unconstitutional maintain that a ban or limitation on pharmacies advertising bears no substantial relation to the various aims and goals purported to be attained by such legislation. Those in agreement with these courts assert that the advertising of prescription drug prices is protected as commercial speech under the First Amendment because the information contained in such advertising is vital to the health and welfare of consumers.

This table collects and summarizes regulations addressing advertising in four common contexts: the regulation of prescription drug advertising, generally, the regulation of controlled substance advertising, the regulation of false and misleading advertising, and the regulation of pharmacy service advertising.

## Advertising and Marketing for Pharmacies - Regulations

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State	Regulations Dealing Generally with Prescription Drug Advertising	Regulations Dealing Specifically with Controlled Substance Advertising	Regulations Dealing Generally with False and Misleading Advertising	Regulations Dealing with Pharmacy Services Advertising
Alabama	None	None	None	None
Alaska	<p>A pharmacy may advertise prescription drug prices if the ad contains all of the following:</p> <ul style="list-style-type: none"> <li>(1) the name of the drug product (proprietary, trade, or generic);</li> <li>(2) the manufacturer or distributor;</li> <li>(3) the dosage form and strength;</li> <li>(4) the price for a particular quantity; and</li> <li>(5) the hours that pharmaceutical services are available.</li> </ul> <p>12 AK ADC 52.550</p>	None	None	<p>A pharmacy may advertise a prescription drug if the ad contains, inter alia, the hours that pharmaceutical services are available.</p> <p>12 AK ADC 52.550</p>
Arizona	Pharmacies and pharmacists may advertise the fact that they provide prescription compounding services.	None	None	A pharmacist or pharmacy shall not Directly or indirectly furnish to a medical practitioner a prescription



**Advertising and Marketing for Pharmacies - Regulations**

<b>State</b>	<b>Regulations Dealing Generally with Prescription Drug Advertising</b>	<b>Regulations Dealing Specifically with Controlled Substance Advertising</b>	<b>Regulations Dealing Generally with False and Misleading Advertising</b>	<b>Regulations Dealing with Pharmacy Services Advertising</b>
	AZ ADC R4-23-410			order-blank that refers to a specific pharmacist or pharmacy in any manner. To do so is an unethical practice. AZ ADC R4-23-404
Arkansas	It shall be considered unprofessional or dishonorable for a pharmacist to promote, distribute, or advertise premiums, rebates, coupons, and the like on prescription drugs unless the same offer is made to all customers buying prescriptions in the same time period. (Senior citizen discounts are not included in this rule.)	Retention, dispensing, promotion, or advertisement of drug products by a licensee of the Board of Pharmacy, either at their business premises or at any separate storage facility after notification of their contraband status, shall constitute a direct and immediate danger to the public health and safety and will be good and sufficient	None	None

**Advertising and Marketing for Pharmacies - Regulations**

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State	Regulations Dealing Generally with Prescription Drug Advertising	Regulations Dealing Specifically with Controlled Substance Advertising	Regulations Dealing Generally with False and Misleading Advertising	Regulations Dealing with Pharmacy Services Advertising
	<p>AR ADC 070.00.2-02-04-0002</p> <p>Sales permit required for prescription drugs</p> <p>AR ADC 070.00.8-08-00-0002</p>	<p>cause for the suspension or revocation of license.</p> <p>AR ADC 070.00.7-07-01-0002</p>		
California	<p>The labeling and advertising of any prescription drug must contain the name and place of business of the manufacturer who tableted or encapsulated the “finished dosage form,” as defined in the regulation. The labeling or advertising shall contain phrases such as “final ingredients mixed by,” “encapsulated by,” “mixed by,” or words of similar meaning.</p>	None	<p>No pharmacist or permit holder shall violate CA BUS &amp; PROF § 17500, which prohibits false or misleading advertising. 16 CA ADC § 1766</p>	None

State	Regulations Dealing Generally with Prescription Drug Advertising	Regulations Dealing Specifically with Controlled Substance Advertising	Regulations Dealing Generally with False and Misleading Advertising	Regulations Dealing with Pharmacy Services Advertising
	<p>The regulation contains specific rules for providing the manufacturer's name and place of business. Products not conforming to this regulation shall be considered "misbranded." 17 CA ADC § 10386</p>			
Colorado	<p>A prescription drug outlet may only use, operate under, or advertise under the name currently appearing on the registration issued by the Board of Pharmacy. An "other outlet," as defined in the regulations, may not advertise, either orally or in writing, that it is a prescription drug outlet (pharmacy).</p>	None	<p>No pharmacist or prescription drug outlet shall advertise or allow advertising that is untrue or misleading regarding prescription drugs. 3 CO ADC 719-1:8.00.00</p>	None

## Advertising and Marketing for Pharmacies - Regulations

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State	Regulations Dealing Generally with Prescription Drug Advertising	Regulations Dealing Specifically with Controlled Substance Advertising	Regulations Dealing Generally with False and Misleading Advertising	Regulations Dealing with Pharmacy Services Advertising
	3 CO ADC 719-1:14.00.00			
Connecticut	None	None	None	All advertising for a specific pharmacy shall state the hours of operation for the department filling prescriptions. If more than one specific pharmacy is being advertised, the ad may, instead of listing the hours of the prescription department, include this statement: "The services of a pharmacist may not be available at all times when stores are open[.]" CT ADC § 20-576-19
Delaware	The only over-the-counter drugs that can be promoted, sold, labeled, marketed, or advertised as a	None	It shall be considered unprofessional conduct for a pharmacist to place an advertisement	None

**Advertising and Marketing for Pharmacies - Regulations**

<b>State</b>	<b>Regulations Dealing Generally with Prescription Drug Advertising</b>	<b>Regulations Dealing Specifically with Controlled Substance Advertising</b>	<b>Regulations Dealing Generally with False and Misleading Advertising</b>	<b>Regulations Dealing with Pharmacy Services Advertising</b>
	stimulant are those having no active ingredient other than caffeine. 24 DE ADC 2500-6		that the pharmacist knows is false or misleading. 24 DE ADC 2500-2	
District of Columbia	Requires manufacturer or labeler of prescription drugs to disclose prescription drug marketing and advertising costs. The annual report must include all expenses associated with advertising, marketing, and direct promotion of prescription drugs through radio, television, magazines, newspapers, direct mail, and telephone communications as they pertain to District residents	None	Pharmaceutical detailers must be licensed, and are prohibited from engaging in any deceptive or misleading marketing, and must provide information to healthcare professionals that is accurate and fairly balanced in compliance with FDA policy and practices. Failure to do so is a violation of the Code of Ethics. 17 DC ADC § 8305	None

## Advertising and Marketing for Pharmacies - Regulations

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State	Regulations Dealing Generally with Prescription Drug Advertising	Regulations Dealing Specifically with Controlled Substance Advertising	Regulations Dealing Generally with False and Misleading Advertising	Regulations Dealing with Pharmacy Services Advertising
	22-B DC ADC § 1800 22-B DC ADC § 1801			
Florida	A pharmacy or a pharmacist may advertise medicinal drugs, except certain specified controlled substances, as long as the ad is not false, misleading, or deceptive. 64 FL ADC 64B16-27.104	A pharmacy or a pharmacist may advertise medicinal drugs, except certain specified controlled substances, as long as the ad is not false, misleading, or deceptive. 64 FL ADC 64B16-27.104	A pharmacy or a pharmacist may advertise medicinal drugs, except certain specified controlled substances, as long as the ad is not false, misleading, or deceptive. 64 FL ADC 64B16-27.104	None
Georgia	None	None	A pharmacist or licensed pharmacy shall not engage in advertising that is false, misleading, or fraudulent. No person or entity licensed by the State Board of Pharmacy may engage in fraudulent or deceptive advertising with respect to, inter alia, drugs.	None

State	Regulations Dealing Generally with Prescription Drug Advertising	Regulations Dealing Specifically with Controlled Substance Advertising	Regulations Dealing Generally with False and Misleading Advertising	Regulations Dealing with Pharmacy Services Advertising
			GA ADC 480-5-.03 GA ADC 480-16-.05	
Hawaii	The purpose of prescription drug advertising is to provide information and not to create a demand for the drugs advertised. A pharmacy may post its prices on a prescription drug poster. It may also advertise its prices for prescription drugs in the media (as defined in the regulation) provided that: (1) the ad describes three commonly prescribed quantities; (2) the ad contains the brand name of the drug advertised; (3) the ad is	No person shall advertise or promote the sale of drugs classified in the Federal Controlled Substances Act (and the rules promulgated thereunder) as Schedule II, III, IV, or V or defined as controlled substances in HI ST Chapter 329 (and the rules promulgated thereunder). HI ADC § 16-95-103	Upon request, a pharmacist or a pharmacist's agent shall give the current price for any drug sold at the pharmacy, which shall be for informational purposes only. The quoted price must not be false or misleading, but instead shall be "truthful, reasonable, informative, and understandable to the public." Advertising of pharmacy services shall be done with the purpose of providing information to the public in a manner consistent with public health	Advertising of pharmacy services shall be done with the purpose of providing information to the public in a manner consistent with public health and safety. Such advertising must be "truthful, reasonable, fully informative, and understandable to the public and shall not be false or misleading." A pharmacy may advertise the following services: (1) that it maintains a personal medication record

**Advertising and Marketing for Pharmacies - Regulations**

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State	Regulations Dealing Generally with Prescription Drug Advertising	Regulations Dealing Specifically with Controlled Substance Advertising	Regulations Dealing Generally with False and Misleading Advertising	Regulations Dealing with Pharmacy Services Advertising
	<p>“truthful, reasonable, fully informative, and understandable to the public” and not false or misleading; and (4) the ad states the time period during which the prices for the advertised drugs will be effective. The cost of the prescription drugs shall not be below the price authorized by HI ST § 481-3. Upon request, a pharmacist or a pharmacist’s agent shall give the current price for any drug sold at the pharmacy, which shall be for informational purposes only. The quoted price must not be false or</p>		<p>and safety. Such advertising must be “truthful, reasonable, fully informative, and understandable to the public and shall not be false or misleading.” False, fraudulent, or deceptive advertising has licensing consequences including revocation or suspension. HI ADC § 16-95-101 HI ADC § 16-95-110</p>	<p>(provided that certain requirements are met); (2) that it provides professional consultation with the patient and the doctor (provided that certain requirements are met); and (3) that it provides “emergency prescription services,” as defined. HI ADC § 16-95-102</p>



State	Regulations Dealing Generally with Prescription Drug Advertising	Regulations Dealing Specifically with Controlled Substance Advertising	Regulations Dealing Generally with False and Misleading Advertising	Regulations Dealing with Pharmacy Services Advertising
	misleading, but instead shall be “truthful, reasonable, informative, and understandable to the public.” HI ADC § 16-95-101			
Idaho	Advertised prices for prescription drugs shall be limited to the quantities that are “consistent with good medical practice,” and shall contain the strength, dosage form, and dates during which the prices will be effective. Advertisements for prescription drugs shall contain all of the following: (1) the drug’s brand name, if applicable; (2) the drug’s established or generic name; (3) the drug’s	No person shall advertise to the public any controlled substance classified as Schedule I, II, III, IV, or V, and no pharmacy may display such substances to its customers. ID ADC 27.01.01.468	No person licensed by or drug outlet registered with the Board of Pharmacy may disseminate or cause to be disseminated any public communication that is false, misleading or deceptive (as defined) for the purpose of garnering business for which the license or registration is issued. Price advertising shall not be fraudulent, misleading, or deceitful, and the advertised	Any advertising by a “mercantile establishment” that includes references to both the pharmacy or to pharmacy products and to the mercantile establishment’s hours of operation must also include the pharmacy’s hours of operation. ID ADC 27.01.01.180