SENATE BILL 353

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Stuart Ingle

AN ACT

RELATING TO HEALTH; PROVIDING EXPANDED PRESCRIPTIVE AUTHORITY FOR PHARMACISTS; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 26-1-2 NMSA 1978 (being Laws 1967, Chapter 23, Section 2, as amended) is amended to read:

"26-1-2. DEFINITIONS.--As used in the New Mexico Drug, Device and Cosmetic Act:

A. "board" means the board of pharmacy or its duly authorized agent;

B. "person" includes individual, partnership, corporation, association, institution or establishment;

C. "biological product" means any virus, therapeutic serum, toxin, antitoxin or analogous product applicable to the prevention, treatment or cure of diseases or

injuries of man and domestic animals and, as used within the meaning of this definition:

(1) a "virus" is interpreted to be a product containing the minute living cause of an infectious disease and includes filterable viruses, bacteria, rickettsia, fungi and protozoa;

(2) a "therapeutic serum" is a product obtained from blood by removing the clot or clot components and the blood cells;

(3) a "toxin" is a product containing a soluble substance poisonous to laboratory animals or man in doses of one milliliter or less of the product and having the property, following the injection of nonfatal doses into an animal, or causing to be produced therein another soluble substance that specifically neutralizes the poisonous substance and that is demonstrable in the serum of the animal thus immunized; and

(4) an "antitoxin" is a product containing the soluble substance in serum or other body fluid of an immunized animal that specifically neutralizes the toxin against which the animal is immune;

D. "controlled substance" means any drug, substance or immediate precursor enumerated in Schedules I through V of the Controlled Substances Act;

E. "drug" means:

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(1) articles recognized in an official compendium;

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals and includes the domestic animal biological products regulated under the federal Virus-Serum-Toxin Act, 37 Stat 832-833, 21 U.S.C. 151-158 and the biological products applicable to man regulated under Federal 58 Stat 690, as amended, 42 U.S.C. 216, Section 351, 58 Stat 702, as amended, and 42 U.S.C. 262;

(3) articles other than food that affect the structure or any function of the body of man or other animals; and

(4) articles intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but does not include devices or their component parts or accessories;

F. "dangerous drug" means a drug, other than a controlled substance enumerated in Schedule I of the Controlled Substances Act, that because of a potentiality for harmful effect or the method of its use or the collateral measures necessary to its use is not safe except under the supervision of a practitioner licensed by law to direct the use of such drug and hence for which adequate directions for use cannot be prepared. "Adequate directions for use" means directions under which the layman can use a drug or device

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safely and for the purposes for which it is intended. A drug shall be dispensed only upon the prescription of a practitioner licensed by law to administer or prescribe such drug if it:

(1) is a habit-forming drug and contains any quantity of a narcotic or hypnotic substance or a chemical derivative of such substance that has been found under the federal act and the board to be habit forming;

(2) because of its toxicity or other potential for harmful effect or the method of its use or the collateral measures necessary to its use is not safe for use except under the supervision of a practitioner licensed by law to administer or prescribe the drug;

(3) is limited by an approved application by Section 505 of the federal act to the use under the professional supervision of a practitioner licensed by law to administer or prescribe the drug;

(4) bears the legend: "Caution: federal law prohibits dispensing without prescription.";

(5) bears the legend: "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(6) bears the legend "RX only";

G. "counterfeit drug" means a drug other than a controlled substance that, or the container or labeling of

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which, without authorization, bears the trademark, trade name or other identifying mark, imprint or device or any likeness of a drug manufacturer, processor, packer or distributor other than the person who manufactured, processed, packed or distributed the drug and that falsely purports or is represented to be the product of or to have been packed or distributed by such other drug manufacturer, processor, packer or distributor;

H. "device", except when used in Subsection P of this section and in Subsection G of Section 26-1-3, Subsection L and Paragraph (4) of Subsection A of Section 26-1-11 and Subsection C of Section 26-1-24 NMSA 1978, means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, that is:

(1) recognized in an official compendium;

(2) intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in man or other animals; or

(3) intended to affect the structure or a function of the body of man or other animals and that does not achieve any of its principal intended purposes through chemical action within or on the body of man or other animals and that is not dependent on being metabolized for achievement of any of its principal intended purposes;

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I. "prescription" means an order given individually for the person for whom prescribed, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, and bearing the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue. No person other than a practitioner shall prescribe or write a prescription;

J. "practitioner" means a physician, doctor of oriental medicine, dentist, veterinarian, certified nurse practitioner, clinical nurse specialist, pharmacist, pharmacist clinician, certified nurse-midwife or other person licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act;

K. "cosmetic" means:

(1) articles intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; and

(2) articles intended for use as a component of any articles enumerated in Paragraph (1) of this subsection, except that the term shall not include soap;

L. "official compendium" means the official United

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States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them;

M. "label" means a display of written, printed or graphic matter upon the immediate container of an article. A requirement made by or under the authority of the New Mexico Drug, Device and Cosmetic Act that any word, statement or other information appear on the label shall not be considered to be complied with unless the word, statement or other information also appears on the outside container or wrapper, if any, of the retail package of the article or is easily legible through the outside container or wrapper;

N. "immediate container" does not include package liners;

O. "labeling" means all labels and other written, printed or graphic matter:

(1) on an article or its containers or wrappers; or

(2) accompanying an article;

P. "misbranded" means a label to an article that is misleading. In determining whether the label is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device or any combination of the foregoing, but also the extent to which the label fails to

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reveal facts material in the light of such representations or material with respect to consequences that may result from the use of the article to which the label relates under the conditions of use prescribed in the label or under such conditions of use as are customary or usual;

Q. "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or that are likely to induce, directly or indirectly, the purchase of drugs, devices or cosmetics;

R. "antiseptic", when used in the labeling or advertisement of an antiseptic, shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be or represented as an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder or such other use as involves prolonged contact with the body;

S. "new drug" means any drug:

(1) the composition of which is such that the drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and efficacy of drugs, as safe and effective for use under the conditions prescribed, recommended or suggested in the labeling thereof; or

(2) the composition of which is such that the drug, as a result of investigation to determine its safety and

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efficacy for use under such conditions, has become so recognized, but that has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions;

T. "contaminated with filth" applies to a drug, device or cosmetic not securely protected from dirt, dust and, as far as may be necessary by all reasonable means, from all foreign or injurious contaminations, or a drug, device or cosmetic found to contain dirt, dust, foreign or injurious contamination or infestation;

U. "selling of drugs, devices or cosmetics" shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession and holding of any such article for sale and the sale and the supplying or applying of any such article in the conduct of a drug or cosmetic establishment;

V. "color additive" means a material that:

(1) is a dye, pigment or other substance made by a process of synthesis or similar artifice or extracted, isolated or otherwise derived, with or without intermediate or final change of identity, from a vegetable, mineral, animal or other source; or

(2) when added or applied to a drug or cosmetic or to the human body or a part thereof, is capable, alone or through reaction with other substances, of imparting

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color thereto; except that such term does not include any material that has been or hereafter is exempted under the federal act;

W. "federal act" means the Federal Food, Drug and Cosmetic Act;

X. "restricted device" means a device for which the sale, distribution or use is lawful only upon the written or oral authorization of a practitioner licensed by law to administer, prescribe or use the device and for which the federal food and drug administration requires special training or skills of the practitioner to use or prescribe. This definition does not include custom devices defined in the federal act and exempt from performance standards or premarket approval requirements under Section 520(b) of the federal act; and

Y. "prescription device" means a device that, because of its potential for harm, the method of its use or the collateral measures necessary to its use, is not safe except under the supervision of a practitioner licensed in this state to direct the use of such device and for which "adequate directions for use" cannot be prepared, but that bears the label: "Caution: federal law restricts this device to sale by or on the order of a _____", the blank to be filled with the word "physician", "doctor of oriental medicine", "dentist", "veterinarian", "certified nurse

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practitioner", "clinical nurse specialist", "pharmacist", "pharmacist clinician", "certified nurse-midwife" or with the descriptive designation of any other practitioner licensed in this state to use or order the use of the device."

Section 2. Section 30-31-2 NMSA 1978 (being Laws 1972, Chapter 84, Section 2, as amended) is amended to read:

"30-31-2. DEFINITIONS.--As used in the Controlled Substances Act:

A. "administer" means the direct application of a controlled substance by any means to the body of a patient or research subject by a practitioner or his agent;

B. "agent" includes an authorized person who acts on behalf of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman;

C. "board" means the board of pharmacy;

D. "bureau" means the narcotic and dangerous drug section of the criminal division of the United States department of justice, or its successor agency;

E. "controlled substance" means a drug or substance listed in Schedules I through V of the Controlled Substances Act or [~~regulations~~] rules adopted thereto;

F. "counterfeit substance" means a controlled substance that bears the unauthorized trademark, trade name, imprint, number, device or other identifying mark or likeness

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of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the controlled substance;

G. "deliver" means the actual, constructive or attempted transfer from one person to another of a controlled substance or controlled substance analog, whether or not there is an agency relationship;

H. "dispense" means to deliver a controlled substance to an ultimate user or research subject pursuant to the lawful order of a practitioner, including the administering, prescribing, packaging, labeling or compounding necessary to prepare the controlled substance for that delivery;

I. "dispenser" means a practitioner who dispenses and includes hospitals, pharmacies and clinics where controlled substances are dispensed;

J. "distribute" means to deliver other than by administering or dispensing a controlled substance or controlled substance analog;

K. "drug" or "substance" means substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States or official national formulary or any respective supplement to those publications. It does not include devices or their components, parts or accessories;

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L. "hashish" means the resin extracted from any part of marijuana, whether growing or not, and every compound, manufacture, salt, derivative, mixture or preparation of such resins;

M. "manufacture" means the production, preparation, compounding, conversion or processing of a controlled substance or controlled substance analog by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

(1) by a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or

(2) by a practitioner, or by his agent under his supervision, for the purpose of or as an incident to research, teaching or chemical analysis and not for sale;

N. "marijuana" means all parts of the plant cannabis, including any and all varieties, species and subspecies of the genus cannabis, whether growing or not, the seeds thereof and every compound, manufacture, salt, derivative, mixture or preparation of the plant or its seeds. It does not include the mature stalks of the plant, hashish,

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tetrahydrocannabinols extracted or isolated from marijuana, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture or preparation of the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination;

O. "narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:

(1) opium and opiate and any salt, compound, derivative or preparation of opium or opiate;

(2) any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of the substances referred to in Paragraph (1) of this subsection, except the isoquinoline alkaloids of opium;

(3) opium poppy and poppy straw, including all parts of the plant of the species Papaver somniferum L. except its seeds; or

(4) coca leaves and any salt, compound, derivative or preparation of coca leaves, any salt, compound, isomer, derivative or preparation that is a chemical equivalent of any of these substances except decocainized coca leaves or extractions of coca leaves that do not contain

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cocaine or ecgonine;

P. "opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under Section 30-31-5 NMSA 1978, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). "Opiate" does include its racemic and levorotatory forms;

Q. "person" means an individual, partnership, corporation, association, institution, political subdivision, government agency or other legal entity;

R. "practitioner" means a physician, doctor of oriental medicine, dentist, physician assistant, certified nurse practitioner, clinical nurse specialist, certified nurse-midwife, veterinarian, pharmacist, pharmacist clinician or other person licensed or certified to prescribe and administer drugs that are subject to the Controlled Substances Act;

S. "prescription" means an order given individually for the person for whom is prescribed a controlled substance, either directly from the prescriber to the pharmacist or indirectly by means of a written order signed by the prescriber, in accordance with the Controlled Substances Act or [~~regulations~~] rules adopted thereto;

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T. "scientific investigator" means a person registered to conduct research with controlled substances in the course of his professional practice or research and includes analytical laboratories;

U. "ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal under the care, custody and control of the person or by a member of his household;

V. "drug paraphernalia" means all equipment, products and materials of any kind that are used, intended for use or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance or controlled substance analog in violation of the Controlled Substances Act. It includes:

(1) kits used, intended for use or designed for use in planting, propagating, cultivating, growing or harvesting any species of plant that is a controlled substance or controlled substance analog or from which a controlled substance can be derived;

(2) kits used, intended for use or designed

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for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances or controlled substance analogs;

(3) isomerization devices used, intended for use or designed for use in increasing the potency of any species of plant that is a controlled substance;

(4) testing equipment used, intended for use or designed for use in identifying or in analyzing the strength, effectiveness or purity of controlled substances or controlled substance analogs;

(5) scales or balances used, intended for use or designed for use in weighing or measuring controlled substances or controlled substance analogs;

(6) diluents and adulterants, such as quinine hydrochloride, mannitol, mannite dextrose and lactose, used, intended for use or designed for use in cutting controlled substances or controlled substance analogs;

(7) separation gins and sifters used, intended for use or designed for use in removing twigs and seeds from, or in otherwise cleaning and refining, marijuana;

(8) blenders, bowls, containers, spoons and mixing devices used, intended for use or designed for use in compounding controlled substances or controlled substance analogs;

(9) capsules, balloons, envelopes and other

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containers used, intended for use or designed for use in packaging small quantities of controlled substances or controlled substance analogs;

(10) containers and other objects used, intended for use or designed for use in storing or concealing controlled substances or controlled substance analogs;

(11) hypodermic syringes, needles and other objects used, intended for use or designed for use in parenterally injecting controlled substances or controlled substance analogs into the human body;

(12) objects used, intended for use or designed for use in ingesting, inhaling or otherwise introducing marijuana, cocaine, hashish or hashish oil into the human body, such as:

(a) metal, wooden, acrylic, glass, stone, plastic or ceramic pipes, with or without screens, permanent screens, hashish heads or punctured metal bowls;

(b) water pipes;

(c) carburetion tubes and devices;

(d) smoking and carburetion masks;

(e) roach clips, meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small to hold in the hand;

(f) miniature cocaine spoons and cocaine vials;

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(g) chamber pipes;

(h) carburetor pipes;

(i) electric pipes;

(j) air-driven pipes;

(k) chilams;

(l) bongs; or

(m) ice pipes or chillers; and

(13) in determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(a) statements by the owner or by anyone in control of the object concerning its use;

(b) the proximity of the object, in time and space, to a direct violation of the Controlled Substances Act or any other law relating to controlled substances or controlled substance analogs;

(c) the proximity of the object to controlled substances or controlled substance analogs;

(d) the existence of any residue of a controlled substance or controlled substance analog on the object;

(e) instructions, written or oral, provided with the object concerning its use;

(f) descriptive materials accompanying

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the object that explain or depict its use;

(g) the manner in which the object is displayed for sale; and

(h) expert testimony concerning its use;

W. "controlled substance analog" means a substance other than a controlled substance that has a chemical structure substantially similar to that of a controlled substance in Schedule I, II, III, IV or V or that was specifically designed to produce effects substantially similar to that of controlled substances in Schedule I, II, III, IV or V. Examples of chemical classes in which controlled substance analogs are found include the following:

(1) phenethylamines;

(2) N-substituted piperidines;

(3) morphinans;

(4) ecgonines;

(5) quinazolinones;

(6) substituted indoles; and

(7) arylcycloalkylamines.

Specifically excluded from the definition of "controlled substance analog" are those substances that are generally recognized as safe and effective within the meaning of the Federal Food, Drug and Cosmetic Act or have been manufactured, distributed or possessed in conformance with the provisions of

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an approved new drug application or an exemption for investigational use within the meaning of Section 505 of the Federal Food, Drug and Cosmetic Act;

X. "human consumption" includes application, injection, inhalation, ingestion or any other manner of introduction; and

Y. "drug-free school zone" means a public school or property that is used for public school purposes and the area within one thousand feet of the school property line, but it does not mean any post-secondary school."

Section 3. Section 61-11-2 NMSA 1978 (being Laws 1969, Chapter 29, Section 2, as amended) is amended to read:

"61-11-2. DEFINITIONS.--As used in the Pharmacy Act:

A. "administer" means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compounding" means preparing, mixing, assembling, packaging or labeling a drug or device as the result of a licensed practitioner's prescription or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. "Compounding" also includes preparing drugs or devices in anticipation of a prescription based on routine, regularly

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observed prescribing patterns;

D. "confidential information" means information in the patient's pharmacy records accessed, maintained by or transmitted to the pharmacist or communicated to the patient as part of patient counseling and may be released only to the patient or as the patient directs; or to those licensed practitioners and other authorized health care professionals as defined by regulation of the board when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; or to such other persons authorized by law to receive such information, regardless of whether such information is on paper, preserved on microfilm or stored on electronic media;

E. "consulting pharmacist" means a pharmacist whose services are engaged on a routine basis by a hospital or other health care facility and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations;

F. "custodial care facility" means a nursing home, retirement care, mental care or other facility that provides extended health care;

G. "dangerous drug" means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription or is restricted to use by licensed practitioners; or that is required by federal law to be

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labeled with any of the following statements prior to being dispensed or delivered:

(1) "Caution: federal law prohibits dispensing without prescription.";

(2) "Caution: federal law restricts this drug to use by or on the order of a licensed veterinarian."; or

(3) "RX only";

H. "device" means an instrument, apparatus, implement, machine, contrivance, implant or similar or related article, including a component part or accessory, that is required by federal law to bear the label, "Caution: federal or state law requires dispensing by or on the order of a physician.";

I. "dispense" means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient;

J. "distribute" means the delivery of a drug or device other than by administering or dispensing;

K. "drug" means:

(1) an article recognized as a drug in any official compendium or its supplement that is designated from time to time by the board for use in the diagnosis, cure,

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mitigation, treatment or prevention of disease in humans or other animals;

(2) an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or other animals;

(3) an article, other than food, that affects the structure or any function of the body of humans or other animals; and

(4) an article intended for use as a component of an article described in Paragraph (1), (2) or (3) of this subsection;

L. "drug regimen review" includes an evaluation of a prescription and patient record for:

(1) known allergies;

(2) rational therapy contraindications;

(3) reasonable dose and route of administration;

(4) reasonable directions for use;

(5) duplication of therapy;

(6) drug-drug interactions;

(7) adverse drug reactions; and

(8) proper use and optimum therapeutic outcomes;

M. "electronic transmission" means transmission of information in electronic form or the transmission of the

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exact visual image of a document by way of electronic equipment;

N. "hospital" means an institution that is licensed as a hospital by the department of health;

O. "labeling" means the process of preparing and affixing a label to any drug container exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device; and which label includes all information required by federal or state law or regulations adopted pursuant to federal or state law;

P. "licensed practitioner" means a person engaged in a profession licensed by any state, territory or possession of the United States who, within the limits of his license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

Q. "manufacturing" means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling and the promotion and marketing of such drugs or devices. "Manufacturing" also includes the preparation and promotion of commercially available products from bulk compounds for resale by

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pharmacies, licensed practitioners or other persons;

R. "nonprescription drugs" means non-narcotic medicines or drugs that may be sold without a prescription and are prepackaged for use by a consumer and are labeled in accordance with the laws and regulations of the state and federal governments;

S. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

T. "patient counseling" means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or device;

U. "person" means an individual, corporation, partnership, association or other legal entity;

V. "pharmaceutical care" means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems;

W. "pharmacist" means a person who is licensed as a pharmacist in this state;

X. "pharmacist in charge" means a pharmacist who accepts responsibility for the operation of a pharmacy in

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conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel;

Y. "pharmacy" means a licensed place of business where drugs are compounded or dispensed and pharmaceutical care is provided;

Z. "pharmacist intern" means a person licensed by the board to train under a pharmacist;

AA. "pharmacy technician" means a person who is registered to perform repetitive tasks not requiring the professional judgment of a pharmacist;

BB. "practice of pharmacy" means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the administering, prescribing or modifying of dangerous drug therapy; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and labeling of drugs and devices; the proper and safe storage of drugs and devices; and the maintenance of proper records;

CC. "prescription" means an order given individually for the person for whom prescribed, either

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directly from a licensed practitioner or his agent to the pharmacist, including electronic transmission or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

DD. "significant adverse drug [~~reaction~~] event" means a drug-related incident that may result in harm, injury or death to the patient; and

EE. "wholesale drug distributor" means a person engaged in the wholesale distribution of prescription drugs, including manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution."

Section 4. Section 61-11-6 NMSA 1978 (being Laws 1969, Chapter 29, Section 5, as amended) is amended to read:

"61-11-6. POWERS AND DUTIES OF BOARD.--

A. The board shall:

(1) adopt, amend or repeal rules and regulations necessary to carry out the provisions of the Pharmacy Act in accordance with the provisions of the Uniform Licensing Act;

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(2) provide for examinations of applicants for licensure as pharmacists;

(3) provide for the issuance and renewal of licenses for pharmacists;

(4) require and establish criteria for continuing education as a condition of [~~annual~~] renewal of licensure for pharmacists;

(5) provide for the issuance and [~~annual~~] renewal of licenses for pharmacist interns and for their training, supervision and discipline;

(6) provide for the licensing of retail pharmacies, nonresident pharmacies, wholesale drug distributors, drug manufacturers, hospital pharmacies, nursing home drug facilities, industrial and public health clinics and all places where dangerous drugs are stored, distributed, dispensed or administered and provide for the inspection of the facilities and activities;

(7) enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs or cosmetics and their standards of strength and purity;

(8) conduct hearings upon charges relating to the discipline of a registrant or licensee or the denial, suspension or revocation of a registration or a license in accordance with the Uniform Licensing Act;

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(9) cause the prosecution of any person violating the Pharmacy Act, the New Mexico Drug, Device and Cosmetic Act or the Controlled Substances Act;

(10) keep a record of all proceedings of the board;

(11) make an annual report to the governor;

(12) appoint and employ, in the board's discretion, a qualified person who is not a member of the board to serve as executive director and define his duties and responsibilities; except that the power to deny, revoke or suspend any license or registration authorized by the Pharmacy Act shall not be delegated by the board;

(13) appoint and employ inspectors necessary to enforce the provisions of all acts under the administration of the board, which inspectors shall be pharmacists and have all the powers and duties of peace officers;

(14) provide for other qualified employees necessary to carry out the provisions of the Pharmacy Act;

(15) have the authority to employ a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to the pharmacy profession and to fix the compensation to be paid to the attorney; provided, however, that the attorney shall be compensated from the money of the

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board, including that provided for in Section 61-11-19 NMSA 1978;

(16) register and regulate qualifications, training and permissible activities of pharmacy technicians;

(17) provide a registry of all persons licensed as pharmacists or pharmacist interns in the state; [~~and~~]

(18) adopt rules and regulations that prescribe the activities and duties of pharmacy owners and pharmacists in the provision of pharmaceutical care, drug regimen review and patient counseling in each practice setting; and

(19) adopt, after consultation with the New Mexico board of medical examiners and the board of nursing, rules for the administering, prescribing or modifying of dangerous drug therapy, including vaccines and immunizations, and the notification of the primary or appropriate physician of the person receiving the dangerous drug therapy.

B. The board may:

(1) delegate its authority to the executive director to issue temporary licenses as provided in Section 61-11-14 NMSA 1978; and

(2) provide by regulation for the electronic transmission of prescriptions."

Section 5. Section 61-11-7 NMSA 1978 (being Laws 1969,

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Chapter 29, Section 6, as amended) is amended to read:

"61-11-7. DRUG DISPENSATION--LIMITATIONS.--

A. The Pharmacy Act does not prohibit:

(1) any hospital or state or county institution or clinic without the services of a staff pharmacist from acquiring and having in its possession any dangerous drug for the purpose of dispensing if it is in a dosage form suitable for dispensing and if the hospital, institution or clinic employs a consulting pharmacist, [~~(2)~~] and if the consulting pharmacist is not available, the withdrawal of any drug from stock by a licensed professional nurse on the order of a licensed practitioner in such amount as needed for administering to and treatment of his patient;

[~~(3)~~] (2) the extemporaneous preparation by a licensed professional nurse on the order of a licensed practitioner of simple solutions for injection when the solution may be prepared from a quantity of drug that has been prepared previously by a pharmaceutical manufacturer or pharmacist and obtained by [~~the~~] a hospital, institution or clinic in a form suitable for the preparation of the solution;

[~~(4)~~] (3) the sale of non-narcotic, nonpoisonous or nondangerous nonprescription medicines or preparations by nonregistered persons or unlicensed stores when sold in their original containers;

[~~(5)~~] (4) the sale of drugs intended for

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veterinary use; provided that if such drugs bear the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian", the drug may be sold or distributed only as provided in Subsection A of Section 26-1-15 NMSA 1978, by a person possessing a license issued by the board pursuant to Subsection B of Section 61-11-14 NMSA 1978;

[~~(6)~~] (5) the sale to or possession or administration of topical ocular pharmaceutical agents by licensed optometrists who have been certified by the board of optometry for the use of such agents;

[~~(7)~~] (6) the sale to or possession or administration of oral pharmaceutical agents as authorized in Subsection A of Section 61-2-10.2 NMSA 1978 by licensed optometrists who have been certified by the board of optometry for the use of such agents;

[~~(8)~~] (7) pharmacy technicians from providing assistance to pharmacists; [~~or~~]

(8) a pharmacist from administering, prescribing or modifying dangerous drug therapy, including vaccines and immunizations, under rules adopted by the board after consultation with the New Mexico board of medical examiners and the board of nursing; or

(9) a pharmacist from exercising his professional judgment in refilling a prescription for a

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prescription drug, unless prohibited by another state or federal law, without the authorization of the prescribing licensed practitioner, if:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) the pharmacist is unable to contact the licensed practitioner after reasonable effort;

(c) the quantity of prescription drug dispensed does not exceed a seventy-two-hour supply;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the licensed practitioner is required for future refills; and

(e) the pharmacist informs the licensed practitioner of the emergency refill at the earliest reasonable time.

B. All prescriptions requiring the preparation of dosage forms or amounts of dangerous drugs not available in the stock of a hospital, institution or clinic or a prescription requiring compounding shall be either compounded or dispensed only by a pharmacist."

Section 6. Section 61-11-13 NMSA 1978 (being Laws 1969, Chapter 29, Section 12, as amended) is amended to read:

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"61-11-13. RENEWAL--REVOCATION.--

A. The [~~annual~~] renewal date for each licensee shall be the last day of the licensee's birth month, as set by rule of the board. Any person who intends to continue practice shall file an application for renewal prior to that date and pay the renewal fee set by the board in an amount not to exceed one hundred fifty dollars ($150) [~~prior to that date~~] per year; provided, however, the board shall prorate any renewal fee charged for any period of less than [~~one~~] a full year. The license of a pharmacist failing to renew his license on or before [~~that~~] the date [~~will~~] set by the board shall automatically expire, and [~~it~~] the license shall not be reinstated except upon reapplication and payment of a one hundred dollar ($100) reinstatement fee and all delinquent renewal fees.

B. A pharmacist ceasing to be engaged in the practice of pharmacy for such period as the board determines, but not less than twelve months, is deemed to be inactive and shall have his license renewal so marked. A pharmacist having an inactive status shall not be reinstated to active status without either an examination or the presentation of evidence satisfactory to the board that he has taken some form of internship or continuing education relevant to the practice of pharmacy, or both, immediately prior to his application for reinstatement. Pharmacists regularly engaged in teaching in

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an approved school or college of pharmacy, servicing, manufacturing, inspecting or other phases of the pharmaceutical profession are in active status for the purposes of this subsection.

C. Application for renewal of a pharmacist's license shall be made on forms prescribed and furnished by the board and shall indicate whether the renewal applied for will be an active or inactive license. The application, together with the renewal fee, shall be filed with the board.

D. Application for renewal of a pharmacist's license shall be accompanied by proof satisfactory to the board that the applicant has completed continuing education requirements established pursuant to Section 61-11-6 NMSA 1978.

E. An application for renewal of a certificate of registration as a pharmacy technician or license as a pharmacist intern shall be filed with the board on forms prescribed and furnished by the board and shall be accompanied by a renewal fee not to exceed twenty-five dollars ($25.00) per year."

Section 7. Section 61-11-14 NMSA 1978 (being Laws 1969, Chapter 29, Section 13, as amended) is amended to read:

"61-11-14. PHARMACY LICENSURE--WHOLESALE DRUG DISTRIBUTION BUSINESS LICENSURE--REQUIREMENTS--FEES--REVOCATION.--

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A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in a wholesale drug distribution business in this state shall apply to the board for the proper license and shall meet the requirements of the board and pay the annual fee for the license and its renewal.

B. The board shall issue the following classes of licenses that shall be defined and limited by regulation of the board:

(1) retail pharmacy;

(2) nonresident pharmacy;

(3) wholesale drug distributor;

(4) drug manufacturer;

(5) hospital pharmacy;

(6) industrial health clinic;

(7) community health clinic;

(8) department of health public health offices;

(9) custodial care facility;

(10) home care services;

(11) emergency medical services;

(12) animal control facilities; [~~and~~]

(13) wholesaler, retailer or distributor of veterinary drugs bearing the legend: "caution: federal law restricts this drug to use by or on the order of a licensed veterinarian". Such drugs may be sold or dispensed by any

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person possessing a retail pharmacy license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring an additional license for veterinary drugs;

(14) returned drugs processors;

(15) drug research facilities; and

(16) drug warehouses.

C. Every application for the issuance or annual renewal of:

(1) a license for a retail pharmacy, wholesale drug distributor, nonresident pharmacy, drug manufacturer, [~~or~~] hospital pharmacy, drug research facility or drug warehouse shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars ($300);

(2) a license for a custodial care facility or a returned drugs processor business shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200); and

(3) a license for an industrial health clinic; a community health clinic; a department of health public health office; home care services; emergency medical services; animal control facilities; or wholesaler, retailer or distributor of veterinary drugs shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200).

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D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate license shall be obtained for each location.

E. Each application for a license shall be made on forms prescribed and furnished by the board.

F. Any person making application to the board for a license to operate a [~~new retail pharmacy, hospital pharmacy, wholesale drug distributor or drug manufacturer~~] facility or business listed in Subsection B of this section in this state shall submit to the board an application for licensure indicating:

(1) the name under which the business is to be operated;

(2) the address of each location to be licensed and the address of the principal office of the business;

(3) in the case of a retail pharmacy, the name and address of the owner, partner or officer or director of a corporate owner;

(4) the type of business to be conducted at each location;

(5) a rough drawing of the floor plan of each location to be licensed;

(6) the proposed days and hours of operation of the business; and

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(7) other information the board may require.

G. After preliminary approval of the application for a license for [~~a retail pharmacy, a hospital pharmacy, a drug manufacturer or a wholesale drug distributor~~] any facility or business listed in Paragraphs (1) through (8) and (10) through (16) of Subsection B of this section, a request for an inspection, together with an inspection fee not to exceed two hundred dollars ($200), shall be submitted to the board for each business location, and an inspection shall be made of each location by the board or its agent.

H. Following a deficiency-free inspection, the executive director of the board may issue a temporary license to the applicant. The temporary license shall expire at the close of business on the last day of the next regular board meeting.

I. Licenses, except temporary licenses provided pursuant to Subsection H of this section, issued by the board pursuant to this section are not transferable and shall expire on December 31 of each year unless renewed. Any person failing to renew his license on or before December 31 of each year shall not have his license reinstated except upon reapplication and payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars ($100) and all delinquent renewal fees.

J. The board, after notice and a refusal or

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failure to comply, may suspend or revoke any license issued under the provisions of the Pharmacy Act at any time examination or inspection of the operation for which the license was granted discloses that the operation is not being conducted according to law or regulations of the board.

K. Pharmaceutical sales representatives who carry dangerous drugs shall register with the board. The board may charge a registration fee not to exceed fifty dollars ($50.00) [~~for registration~~] and [~~annual~~] a renewal fee of no more than fifty dollars ($50.00) per year. Pharmaceutical sales representatives are not subject to the licensing provisions of the Pharmacy Act."

Section 8. Section 61-11-18.1 NMSA 1978 (being Laws 1997, Chapter 131, Section 21) is amended to read:

"61-11-18.1. REPORTS TO BOARD.--[~~A licensee~~] Any person licensed under Article 61, Chapter 11 NMSA 1978 shall report in writing the occurrence of any of the following events to the board within fifteen days of discovery:

A. permanent closing of a licensed premises;

B. change of ownership, management, location or pharmacist in charge;

C. theft or loss of drugs or devices;

D. conviction of an employee for violating any federal or state drug laws;

E. theft, destruction or loss of records required

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by federal or state law to be maintained;

F. occurrences of significant adverse drug [~~reactions~~] events, as defined by regulations of the board;

G. dissemination of confidential information or personally identifiable information to a person other than a person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive such information; and

H. other matters or occurrences as the board may require by regulation."

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