

1 SENATE BILL 92

2 **56TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2023**

3 INTRODUCED BY

4 Gerald Ortiz y Pino

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10 AN ACT

11 RELATING TO PROFESSIONAL LICENSURE; AMENDING AND ENACTING  
12 SECTIONS OF THE PHARMACY ACT TO EXPAND PHARMACIST SCOPE OF  
13 PRACTICE.

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

16 SECTION 1. Section 61-11-2 NMSA 1978 (being Laws 1969,  
17 Chapter 29, Section 2, as amended) is amended to read:

18 "61-11-2. DEFINITIONS.--As used in the Pharmacy Act:

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

23 B. "board" means the board of pharmacy;

24 C. "compounding" means preparing, mixing,  
25 assembling, packaging or labeling a drug or device as the

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1 result of a licensed practitioner's prescription or for the  
2 purpose of, or as an incident to, research, teaching or  
3 chemical analysis and not for sale or dispensing.

4 "Compounding" also includes preparing drugs or devices in  
5 anticipation of a prescription based on routine, regularly  
6 observed prescribing patterns;

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

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

24 F. "custodial care facility" means a nursing home,  
25 retirement care, mental care or other facility that provides

1 extended health care;

2 G. "dangerous drug" means a drug that is required  
3 by an applicable federal or state law or rule to be dispensed  
4 pursuant to a prescription or is restricted to use by licensed  
5 practitioners; or that is required by federal law to be labeled  
6 with any of the following statements prior to being dispensed  
7 or delivered:

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

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

12 (3) "RX only";

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

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

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

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K. "drug" means:

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

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1 (8) proper use and optimum therapeutic  
2 outcomes;

3 M. "electronic transmission" means transmission of  
4 information in electronic form or the transmission of the exact  
5 visual image of a document by way of electronic equipment;

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

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

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

20 Q. "manufacturing" means the production,  
21 preparation, propagation, conversion or processing of a drug or  
22 device, either directly or indirectly, by extraction from  
23 substances of natural origin or independently by means of  
24 chemical or biological synthesis and includes packaging or  
25 repackaging, labeling or relabeling and the promotion and

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1 marketing of the drugs or devices. "Manufacturing" also  
2 includes the preparation and promotion of commercially  
3 available products from bulk compounds for resale by  
4 pharmacies, licensed practitioners or other persons;

5 R. "nonprescription drugs" means nonnarcotic  
6 medicines or drugs that may be sold without a prescription and  
7 are prepackaged for use by a consumer and are labeled in  
8 accordance with the laws and regulations of the state and  
9 federal governments;

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

13 T. "outsourcing facility" means a facility at one  
14 geographic location or address that engages in the compounding  
15 of sterile drugs, is licensed by the board and, in accordance  
16 with board rules, is currently registered with the United  
17 States food and drug administration as an outsourcing facility;

18 U. "patient counseling" means the oral  
19 communication by the pharmacist of information to a patient or  
20 the patient's agent or caregiver regarding proper use of a drug  
21 or device;

22 V. "person" means an individual, corporation,  
23 partnership, association or other legal entity;

24 W. "pharmaceutical care" means the provision of  
25 drug therapy and other patient care services related to drug

1 therapy intended to achieve definite outcomes that improve a  
2 patient's quality of life, including identifying potential and  
3 actual drug-related problems, resolving actual drug-related  
4 problems and preventing potential drug-related problems;

5 X. "pharmacist" means a person who is licensed as a  
6 pharmacist in this state;

7 Y. "pharmacist in charge" means a pharmacist who  
8 accepts responsibility for the operation of a pharmacy in  
9 conformance with all laws and rules pertinent to the practice  
10 of pharmacy and the distribution of drugs and who is personally  
11 in full and actual charge of the pharmacy and its personnel;

12 Z. "pharmacy" means a place of business licensed by  
13 the board where drugs are compounded or dispensed and  
14 pharmaceutical care is provided;

15 AA. "pharmacist intern" means a person licensed by  
16 the board to train under a pharmacist;

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

20 CC. "practice of pharmacy" means the evaluation and  
21 implementation of a lawful order of a licensed practitioner;  
22 the dispensing of prescriptions; the participation in drug and  
23 device selection or drug administration that has been ordered  
24 by a licensed practitioner, drug regimen reviews and drug or  
25 drug-related research; the administering or prescribing of

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1 dangerous drug therapy, devices or supplies for prescribed drug  
2 therapy for health conditions, including diabetes; the  
3 provision of patient counseling and pharmaceutical care; the  
4 responsibility for compounding and labeling of drugs and  
5 devices; the proper and safe storage of drugs and devices; the  
6 ordering, performing and interpreting of tests authorized by  
7 the federal food and drug administration and waived pursuant to  
8 the federal Clinical Laboratory Improvement Amendments of 1988,  
9 as amended; and the maintenance of proper records;

10 DD. "prescription" means an order given  
11 individually for the person for whom prescribed, either  
12 directly from a licensed practitioner or the licensed  
13 practitioner's agent to the pharmacist, including electronic  
14 transmission or indirectly by means of a written order signed  
15 by the prescriber, that bears the name and address of the  
16 prescriber, the prescriber's license classification, the name  
17 and address of the patient, the name and quantity of the drug  
18 prescribed, directions for use and the date of issue;

19 EE. "repackager" means a person that repackages a  
20 drug, including a medicinal gas, and that, in accordance with  
21 board rules, has a valid registration as a drug establishment  
22 with the United States food and drug administration;

23 FF. "significant adverse drug event" means a  
24 drug-related incident that may result in harm, injury or death  
25 to the patient;

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1 GG. "third-party logistics provider" means a person  
2 that provides or coordinates warehousing or other logistics  
3 services of a product in interstate commerce on behalf of a  
4 manufacturer, wholesale distributor or dispenser of a product  
5 but which person does not take ownership of the product nor  
6 have responsibility to direct the sale or disposition of the  
7 product; and

8 HH. "wholesale drug distributor" means a person  
9 engaged in the wholesale distribution of prescription drugs,  
10 including own-label distributors, private-label distributors,  
11 jobbers, brokers, manufacturers' warehouses, distributor's  
12 warehouses, chain drug warehouses, wholesale drug warehouses,  
13 independent wholesale drug traders and retail pharmacies that  
14 conduct wholesale distribution."

15 SECTION 2. A new section of the Pharmacy Act is enacted  
16 to read:

17 "[NEW MATERIAL] TESTING, SCREENING AND TREATMENT OF HEALTH  
18 CONDITIONS.--

19 A. Pursuant to a board-approved written protocol, a  
20 pharmacist may order, test, screen and treat for the following  
21 health conditions or situations:

- 22 (1) influenza;  
23 (2) group A streptococcus pharyngitis;  
24 (3) SARS-COV-2 or other respiratory illness,  
25 condition or disease;

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- 1 (4) lice;  
2 (5) urinary tract infection;  
3 (6) skin conditions, including ringworm and  
4 athlete's foot;  
5 (7) minor, uncomplicated infections;  
6 (8) human immunodeficiency virus; and  
7 (9) other emerging and existing public health  
8 threats identified by the board or department of health,  
9 including preventive health, mental health, substance abuse  
10 disorders and infectious disease prevention if permitted by an  
11 order, rule or regulation or pursuant to a declaration by the  
12 board's executive director during civil or public health  
13 emergencies.

14 B. A pharmacist who orders, tests, screens or  
15 treats for health conditions or situations pursuant to this  
16 section may use any test that may guide clinical decision  
17 making that is waived pursuant to the federal Clinical  
18 Laboratory Improvement Amendments of 1988, as amended, the  
19 federal rules adopted thereunder or any established screening  
20 procedure that can safely be performed by a pharmacist.

21 C. A pharmacist may delegate the administrative and  
22 technical tasks of performing a test waived by the federal  
23 Clinical Laboratory Improvement Amendments of 1988, as amended,  
24 to a pharmacist intern or pharmacy technician acting under the  
25 supervision of the pharmacist.

