HOUSE BILL 712

42ND LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 1996

INTRODUCED BY

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AN ACT

RELATING TO THE WHOLESALE PURCHASE AND DISTRIBUTION OF PHARMACY DRUGS FROM FOREIGN PERSONS; AMENDING THE PHARMACY ACT; AMENDING CERTAIN SECTIONS OF THE NMSA 1978.

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

Section 1. 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 giving a unit dose of medication to a patient as a result of an order of a licensed practitioner;

B. "board" means the board of pharmacy;

C. "compound" means taking two or more measured ingredients and fabricating them into a single preparation, usually referred to as a dosage form, except for preparations

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that involve repetitive tasks that do not require the professional judgment of a licensed pharmacist; provided that such preparations will be defined in regulations adopted by the board;

D. "consulting pharmacist" means a pharmacist whose services are engaged on a routine part-time basis by a hospital or other health facility:

(1) to assist in drawing up correct procedures, rules and regulations for the distribution of drugs;

(2) to assume the overall responsibility for the system of control and distribution of drugs;

(3) to see that a designated person has the responsibility of day-to-day operation of the hospital pharmacy or drug room; and

(4) to visit the hospital pharmacy or drug room on a regularly scheduled basis in the course of his duties;

E. "dangerous drug" means a drug that is determined by law to be unsafe for self-medication and that is enumerated in the New Mexico Drug, Device and Cosmetic Act;

F. "dispense" means issuing to a patient or a person acting on his behalf one or more unit doses of medication and may result from compounding or from repackaging from a bulk or original container;

G. "drug" means:

(1) articles recognized in the United States

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pharmacopoeia, homeopathic pharmacopoeia or national formulary or any supplement to any of them;

(2) articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in man or animal;

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

(4) articles intended for use as a component of Paragraph (1), (2) or (3) of this subsection, but does not include instruments, apparatus or contrivances, including their components, parts or accessories, known as devices, intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in man or animal or that affect the structure or any function of the body of man or animal;

H. "drug room" means that area provided only for the proper and safe storage, preservation and control of drugs;

I. "foreign wholesale drug distributor" means a person:

(1) residing, located or principally doing business outside of the United States;

(2) not licensed in this state as a wholesale drug distributor; and

(3) engaged in the wholesale distribution of prescription drugs, including manufacturers, repackers, own-label distributors, private-label distributors, jobbers,

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brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution;

[~~I.~~] J. "hospital" means an institution for the reception and care of the ill or infirm that is licensed as a hospital by the department of health;

[~~J.~~] K. "hospital pharmacy" means a pharmacy maintained in a hospital;

[~~K.~~] L. "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;

[~~L.~~] M. "nonprescription drugs" means nonnarcotic 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;

[~~M.~~] N. "nonresident pharmacy" means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

[~~N.~~] O. "patient counseling" means communication with a patient or his agent regarding dispensing of a prescription drug or drugs;

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[~~O.~~] P. "person" means an individual, corporation, partnership or association and, when the context requires, includes a hospital, nursing home or clinic;

[~~P.~~] Q. "pharmacist" means a person who holds a current license as a pharmacist in this state;

[~~Q.~~] R. "pharmacy" means any store, laboratory or place of business where drugs are sold at retail or where physicians' prescriptions are compounded or dispensed, or both, but does not include the place used by a drug manufacturer or wholesale drug distributor or the place of business of a nonregistered person selling nonnarcotic proprietary preparations or remedies;

[~~R.~~] S. "pharmacist intern" means a person registered by the board to train under a pharmacist in accordance with regulations of the board and who is entitled to compound and dispense drugs and poisons under the personal supervision of a pharmacist;

[~~S.~~] T. "practice of pharmacy" means engaging in the preparation, compounding and dispensing of drugs and includes the identification, preservation, proper and safe storage, selection, combination, analysis, standardization, labeling, manufacturing, repackaging and distribution of drugs, the reconstitution or preparation of intravenous admixtures, the proper maintenance of any records required by state or federal law and counseling with respect to pharmaceutical practices;

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[~~T.~~] U. "prescription" means an order given individually for the person for whom prescribed, either directly from a licensed practitioner to the pharmacist 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;

[~~U.~~] V. "supportive personnel" means persons who are not pharmacists or pharmacist interns, who, under the supervision of a licensed pharmacist, perform repetitive tasks not requiring the professional judgment of a pharmacist in accordance with rules and regulations adopted by the board; and

[~~V.~~] W. "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 2. 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.--The board shall:

A. adopt, regularly review and revise rules and regulations necessary to carry out the provisions of the

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Pharmacy Act after hearings open to the public;

B. provide for at least two examinations a year of applicants for registration as pharmacists;

C. provide for the registration and the annual renewal of licenses for pharmacists;

D. require and establish criteria for continuing education as a condition of renewal of annual licensure;

E. provide for the registration of pharmacist interns, their certification, annual renewal of certification, training, supervision and discipline;

F. provide for the licensing of retail pharmacies, nonresident pharmacies, wholesale drug distributors, drug manufacturers, hospital pharmacies and the drug rooms of hospitals, nursing home drug facilities, industrial and public health clinics and all places where dangerous drugs are dispensed or administered and provide for the inspection of their facilities and activities;

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

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

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I. provide for the institution of proceedings concerning minor violations of the Pharmacy Act whenever the board believes that the public interest will be adequately served by a suitable written notice or warning or by a suspension of registration or licensure for a period not to exceed thirty days;

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

K. keep a record of all proceedings of the board;

L. make an annual report to the governor;

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

N. 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;

O. provide for qualified employees necessary to carry out the provisions of the Pharmacy Act;

P. have the authority to employ a competent attorney to give advice and counsel in regard to any matter connected

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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 funds of the board, including those provided for in Section 61-11-19 NMSA 1978;

Q. adopt, regularly review and revise rules and regulations regarding the use of supportive personnel, including pharmacists' supervision, duties and responsibilities in relation to supportive personnel and requirements for training of supportive personnel, including on-the-job training; [~~and~~]

R. adopt rules and regulations that define requirements for patient counseling in each practice setting; and

S. investigate and determine proper methods and procedures by which a pharmacy, hospital pharmacy, nonresident pharmacy or wholesale drug distributor may purchase drugs wholesale for resale in this state from foreign wholesale drug distributors under equivalent conditions as wholesale drug distributors; and adopt, regularly review and revise rules and regulations regarding the purchase of drugs by a pharmacy, hospital pharmacy, nonresident pharmacy or a wholesale drug distributor from a foreign wholesale drug distributor."

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