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SENATE BILL 554

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

INTRODUCED BY

TIMOTHY Z. JENNINGS

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

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

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

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

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

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

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

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

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

24 G. "drug" means:

25 (1) articles recognized in the United States

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

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

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

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

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

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

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

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

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

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

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

8 [J-] K. "hospital pharmacy" means a pharmacy
9 maintained in a hospital;

10 [K-] L. "licensed practitioner" means a person
11 engaged in a profession licensed by any state, territory or
12 possession of the United States who, within the limits of his
13 license, may lawfully prescribe, dispense or administer drugs
14 for the treatment of a patient's condition;

15 [L-] M. "nonprescription drugs" means nonnarcotic
16 medicines or drugs that may be sold without a prescription and
17 are prepackaged for use by a consumer and are labeled in
18 accordance with the laws and regulations of the state and
19 federal governments;

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

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

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

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

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

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

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

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1 ~~[F.]~~ U. "prescription" means an order given
2 individually for the person for whom prescribed, either directly
3 from a licensed practitioner to the pharmacist or indirectly by
4 means of a written order signed by the prescriber, that bears
5 the name and address of the prescriber, his license
6 classification, the name and address of the patient, the name
7 and quantity of the drug prescribed, directions for use and the
8 date of issue;

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

14 ~~[V.]~~ W. "wholesale drug distributor" means a person
15 engaged in the wholesale distribution of prescription drugs,
16 including manufacturers, repackers, own-label distributors,
17 private-label distributors, jobbers, brokers, manufacturer's
18 warehouses, distributor's warehouses, chain drug warehouses,
19 wholesale drug warehouses, independent wholesale drug traders
20 and retail pharmacies that conduct wholesale distribution. "

21 Section 2. Section 61-11-6 NMSA 1978 (being Laws 1969,
22 Chapter 29, Section 5, as amended) is amended to read:

23 "61-11-6. POWERS AND DUTIES OF BOARD. --The board shall:

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

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1 Pharmacy Act after hearings open to the public;

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

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

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

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

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

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

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

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

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

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

11 L. make an annual report to the governor;

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

18 N. appoint and employ inspectors necessary to
19 enforce the provisions of all acts under the administration of
20 the board, which inspectors shall be pharmacists and have all
21 the powers and duties of peace officers;

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

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

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1 with the duties of the board, to represent the board in any
2 legal proceedings and to aid in the enforcement of the laws in
3 relation to the pharmacy profession and to fix the compensation
4 to be paid to the attorney; provided, however, that the attorney
5 shall be compensated from the funds of the board, including
6 those provided for in Section 61-11-19 NMSA 1978;

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

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

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