

MAINE STATE LEGISLATURE

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REVISED STATUTES
OF THE
STATE OF MAINE
1954

1963 CUMULATIVE SUPPLEMENT

ANNOTATED

IN FIVE VOLUMES

VOLUME 2

Discard Previous Supplement

THE MICHIE COMPANY
CHARLOTTESVILLE, VIRGINIA
1963

dicted to the use of morphine, cocaine or other drugs having similar effect, or if the person named therein uses intoxicants to such an extent as to render him unfit to practice physical therapy. Said board may also revoke or suspend any license where such license has been obtained by fraud or misrepresentation. Said board may suspend the license of any physical therapist who has been declared insane by a court of competent jurisdiction and has not thereafter been lawfully declared sane. (1955, c. 271, § 1.)

Chapter 68.

Registration of Apothecaries. Drugs, Poisons and Narcotics.

Commissioners of Pharmacy.

Sec. 1. Commissioners of the profession of pharmacy, nomination and appointment; tenure; vacancies; compensation; expenses.—A board of commissioners of the profession of pharmacy, as heretofore established and hereinafter in this chapter called the “board,” shall consist of 5 pharmacists all of whom shall be residents of the state and actually engaged in the practice of their profession, who shall be appointed and may be removed for cause by the governor with the advice and consent of the council. The terms of office of said commissioners shall be so arranged that one member of said board shall be appointed annually as the term of the present members expire, to hold office for 5 years from the 1st day of December in each year or until his successor is appointed and qualified. Vacancies shall be filled by appointment for the unexpired term. The board shall have power:

I. To make such rules and regulations, not inconsistent with the laws of the state, as may be necessary for the regulation and practice of the profession of pharmacy and the lawful performance of its duties;

II. To regulate the sale of poisons and to adopt schedules of those poisons of which a written record shall be kept by the retailer;

III. Inspection; analysis; sales. To inspect during business hours all apothecaries, dispensaries, stores or places in which drugs or medicines are manufactured, stored, distributed, compounded, dispensed or retailed, and to regulate and control the sale, character and standard of all drugs, poisons and medicines compounded, dispensed or distributed in this state; to secure samples and cause them to be analyzed; and to prevent the sale of such drugs, poisons or medicines as do not conform to this chapter;

IV. To investigate all violations of this chapter; to enforce the provisions thereof; and to prosecute or institute prosecution in all instances of violations thereof.

The Maine pharmaceutical association may, at its annual meeting each year, nominate 6 members of said association, whose names shall be forthwith certified by the president and secretary of said association to the governor, and members of said board, appointed during any year, shall be selected from the persons whose names are so certified for said year, unless in the opinion of the governor said persons are manifestly unsuitable or incompetent.

The members of the board shall each receive as compensation for their services \$20 per day for the time actually spent and their necessary expenses incurred in the discharge of their duties. The secretary of the board shall certify to the accounts. The secretary of the board shall be the treasurer thereof and shall receive all fees, charges and assessments payable to the board, and account for and pay over the same according to law. (R. S. c. 62, § 1. 1947, c. 58. 1957, c. 304, § 1. 1963, c. 332, § 1.)

Effect of amendments. — The 1957 following “board of commissioners” at amendment inserted “of the profession” the beginning of the first sentence, sub-

stituted "and practice of the profession of" for "of the business appertaining to the practice of" in subsection I, added all of the provisions relative to sale, character and standards and relative to samples in subsection III, inserted subsection IV, and increased the compensation men-

tioned in the last paragraph from \$10 to \$20.

The 1963 amendment inserted "stored, distributed" and "or distributed" in subsection III and also deleted "the provisions of" preceding "this chapter" at the end of such subsection.

Sec. 2-A. Employees.—The board shall be empowered to appoint and remove, subject to the provisions of the personnel law, a drug inspector to enforce the provisions of this chapter and the rules and regulations of the board. (1957, c. 304, § 2.)

Sec. 4. Complaints against registered apothecaries.—The board shall prosecute all complaints against any person registered as an apothecary for the violation of any of the requirements of this chapter to be performed by a registered apothecary. Such complaints shall be made within 60 days after the act complained of has been committed. (R. S. c. 62, § 4. 1957, c. 304, § 3. 1961, c. 394, § 24.)

Effect of amendments. — Prior to the 1961 amendment the second sentence as previously rewritten by the 1957 amendment required complaints to be in writing and to set out the offense. The 1961

amendment also substituted "prosecute" for "hear" near the beginning of the first sentence and deleted the former last four sentences.

Sec. 5. Certificate suspended or revoked. — If the hearing officer as designated in chapter 20-A shall find that the person so complained against is guilty of the act charged against him, he may suspend his registration as a pharmacist and his certificate thereof, for such term as may be deemed for the best interest of the public, or may revoke it altogether. (R. S. c. 62, § 5. 1957, c. 304, § 4. 1961, c. 394, § 25.)

Effect of amendments. — Prior to the 1957 amendment this section also provided that the certificate of registration should not be suspended or revoked for a cause punishable by law until after con-

viction by a court of competent jurisdiction.

Prior to the 1961 amendment this section provided for suspension or revocation by the board instead of the hearing officer.

Sec. 6. Examination and certification of apothecaries; certificates issued to persons registered in other states; certificates displayed; examination of registered assistant pharmacists.—Every person not already registered, entering upon the practice of pharmacy, upon the payment of a fee of \$25 to the secretary of said board, except as otherwise provided, shall be examined by said commissioners and shall present to them satisfactory evidence that he had been graduated from some regularly incorporated college of pharmacy and has been employed in an apothecary store for at least one year, and is competent for the practice of pharmacy. Such employment in an apothecary store may be accumulated during the years at the college of pharmacy. The commissioners may give him a certificate of the fact and that he is authorized to engage in the business of an apothecary, and such certificate must be signed by at least 3 members of the board. No such certificate shall be issued unless the applicant is at least 21 years of age, of good moral character, a citizen of the United States and a graduate of a school or college of pharmacy or a department of pharmacy of a university, accredited by the American council on pharmaceutical education, and shall file proof satisfactory to the board, substantiated by proper affidavits, of sufficient service and experience in a retail pharmacy under the supervision of a registered or licensed pharmacist; and shall pass an examination by said board. Service and experience in a retail pharmacy under the supervision of a licensed or registered pharmacist as required in this section shall be predominantly related to the selling of drugs, compounding physicians' prescriptions, preparing pharma-

ceutical preparations and keeping records and making reports required under the state and federal statutes. The board may, in its discretion, grant certificates of registration to such persons as shall furnish with their application satisfactory proof that they have been registered in some other state, provided that such other state shall require a degree of competency equal to that required of applicants of this state. Persons of good character who have become registered as pharmacists by examination in other states prior to July 3, 1931 shall be required to satisfy only the requirements which existed in this state at the time when they became registered in such other states; and provided also that the state in which such person is registered shall, under like conditions, grant reciprocal registration as a pharmacist, without examination, to pharmacists duly registered by examination in this state. All certificates or permits issued under the provisions of this chapter shall be constantly displayed, in a conspicuous place, in the store or shop of the persons to whom the same were issued.

Every person holding a valid and unexpired certificate of registration as a registered assistant pharmacist, in the state of Maine, on July 1, 1960, may be permitted to qualify as a registered pharmacist by examination as such, prior to July 1, 1966, provided such a registered assistant pharmacist has held such a certificate for a minimum of 5 years and shall have been in actual practice as a registered assistant as actively engaged in retail or hospital practice or pharmacy for a minimum of at least 3 years immediately preceding the date of his application for examination by the Maine state board of pharmacy as a registered pharmacist. No applicant who fails in 2 such examinations, by July 1, 1966, shall be permitted to qualify for any additional examinations as a registered pharmacist. (R. S. c. 62, § 6. 1957, c. 304, §§ 5-7. 1959, c. 234, §§ 1-3; c. 277, § 1. 1963, c. 332, § 1-A.)

Effect of amendments. — The 1957 amendment increased the fee in the first sentence from \$15 to \$25 and rewrote the provisions as to schooling and experience of applicants in such sentence, deleted the former fifth sentence which pertained to re-examinations, and also deleted the former eighth sentence which provided for registration of only one partner in a firm.

This section was amended twice by the 1959 legislature. P. L. 1959, c. 234, amended this section three times. Section 1 added the second sentence. Section 2 substituted "3 members" for "2 members" in the third sentence. Section 3 rewrote the fourth sentence. P. L. 1959, c. 277, § 1, added the last paragraph.

The 1963 amendment substituted "practice of pharmacy" for "business of an apothecary" near the beginning of the first sentence, deleted "such" preceding "an

apothecary store" near the end of such sentence, and substituted "practice of pharmacy" for "business" at the end of that sentence.

Editor's note. — P. L. 1959, c. 277, amending this section and repealing § 7, provided in sections 3 and 4 thereof as follows:

"Sec. 3. (Intent) It is the intent of the Legislature that those persons holding a valid and unexpired certificate of registered assistant pharmacist on the effective date of this act shall continue to enjoy all the privileges held under the repealed act, and that their certificates shall remain valid, despite the fact that there will be no provision from the effective date of this act for examining and certifying registered assistant pharmacists.

"Sec. 4. Effective date. The provisions of this act shall become effective on July 1, 1960."

Sec. 7. Repealed by Public Laws 1959, c. 277, § 2.

Cross reference.—See Editor's note to § 6.

Sec. 8. Registration renewal; fee. — Every registered pharmacist and every qualified assistant who desires to continue to practice pharmacy in this state shall annually, after the expiration of the first year of his registration, on or before the last day of June, pay a renewal fee of \$3 to the secretary of the board, in return for which a renewal registration shall be issued. If any person shall fail or neglect to procure his annual renewal registration or permit as herein speci-

fied, notice of such failure having been mailed to his post-office address, the board may, after the expiration of 30 days following the issue of said notice, suspend his original registration and all other privileges conferred by this chapter. Such person in order to regain registration shall be required to pay one renewal fee in addition to the sum of all fees such person may be in arrears. (R. S. c. 62, § 8. 1951, c. 130, § 1. 1957, c. 304, § 9.)

Effect of amendment. — The 1957 amendment increased the renewal fee from \$2 to \$3 in the first sentence.

Sec. 9. Annual store registration; procedure; suspension or revocation.

The application for such a permit shall be made on a form to be prescribed and furnished by said board and shall be accompanied by the required fee of \$15, which amount shall also be paid for each renewal of such permit. If it is desired to operate, maintain, open or establish more than one apothecary store, separate applications shall be made and separate permits issued for each.

The said board shall make such rules and regulations not inconsistent with the law as may be necessary to carry out the purposes and enforce this section, and is authorized, after notice and opportunity for hearing in the county in which the apothecary store is located, to suspend or revoke any permit when examination or inspection of the apothecary store shall disclose that such apothecary store is not being conducted according to law or is being conducted so as to endanger the public health or safety. (R. S. c. 62, § 9. 1951, c. 130, § 2. 1957, c. 304, § 10. 1961, c. 394, § 26. 1963, c. 332, § 2.)

Effect of amendments. — The 1957 amendment increased the fee in the second paragraph from \$5 to \$15.

The 1961 amendment deleted "the provisions of" preceding "this section" in the last paragraph and also deleted "due" following "after" and before "notice" in that

paragraph.

The 1963 amendment inserted "suspend or" preceding "revoke" near the middle of the last paragraph.

As the rest of the section was not affected by the amendments, it is not set out.

Use or Sale of Drugs and Poisons.

Sec. 11. Employment of registered apothecary.—Any person may enter upon the business of an apothecary without the certificate required by this chapter, provided he does not personally do the duties of an apothecary, but employs a duly registered apothecary in whose name the store license shall be issued and who has sole charge of compounding, putting up and dispensing medicines, drugs, poisons and chemicals. (R. S. c. 62, § 11. 1963, c. 332, § 3.)

Effect of amendment.—The 1963 amendment inserted "in whose name the store license shall be issued and" and deleted

"under the provisions hereof" at the end of this section.

Sec. 12. Using drugs not named in physician's prescription.—Whoever, engaged in the business of an apothecary, knowingly uses any drugs or ingredients in preparing or compounding a written prescription of any physician different from those named in the prescription, shall upon conviction thereof be punished by a fine of not less than \$50 nor more than \$1,000. (R. S. c. 62, § 12. 1963, c. 332, § 4.)

Effect of amendment.—The 1963 amendment substituted "\$50" for "\$5" and "\$1,000" for "\$100".

Sec. 13. Adulterating drugs and selling same.—Whoever fraudulently adulterates, for the purpose of sale, any drug or medicine or sells any fraudulently adulterated drug or medicine, knowing the same to be adulterated, shall be

punished by a fine of not more than \$1,000 or by imprisonment for not more than 11 months. Such adulterated drugs and medicines shall be forfeited and destroyed under the direction of the court. (R. S. c. 62, § 13. 1963, c. 332, § 5.)

Effect of amendment.—The 1963 amendment divided this section into two sentences and substituted “\$1,000” for “\$400” in the present first sentence.

Sec. 14. Business of apothecary.

This section shall not apply to physicians, hospitals and sanatoriums who supply medicines to their bona fide patients, nor to nonpoisonous patent or proprietary medicines when sold in original and unbroken packages nor to the following remedies; alum, chloride of lime, petroleum jelly, cream of tartar, borax, baking soda, castor oil, flax seed, bicarbonate of soda, ammonia, sulphur, olive oil, saltpeter,, epsom salts, cotton seed oil, cod liver oil, linseed oil, flavoring extracts, boric acid, aromatic spirits ammonia, isopropyl alcohol, acetic acid, citric acid, camphor, chalk, flexible collodion, essence of peppermint, witch hazel, glauber salts, glycerine, gum arabic, peroxide hydrogen, milk of magnesia, aspirin, oil sweet almond, mineral oil U. S. P., zinc oxide ointment, seidlitz powders, rochelle salts, senna leaves, antiseptic solution N. F., solution citrate magnesia N. F., sugar of milk, soda mint tablets and compound tincture benzoin; nor to compounds used for the destruction of bugs, beetles, insects, slugs, grubs and fungi provided that the package is properly labeled. In towns and villages where registered apothecaries are not located and where necessity exists for some means of obtaining drugs and medicines, the commission shall designate such drugs and medicines other than those designated in this section, as might with safety to the public health, be sold in original packages as and when put up and labeled by qualified pharmacists. (R. S. c. 62, § 14. 1957, c. 304, § 11. 1963, c. 332, § 6.)

Effect of amendments. — The 1957 amendment inserted in the second paragraph in the list of remedies which are exempted the word “iso-propul”, deleted the word “rubbing” which formerly preceded the word “alcohol” in such list, and also deleted “quinine pills” and “potassium chlorate tablets” which formerly appeared in such list.

The 1963 amendment deleted “vaseline” from the list of exempted remedies in the second paragraph, substituted “bicarbon-

ate” for “carbonate” in such list, substituted “isopropyl” for “isopropul” in such list, deleted “camphorated oil” from the list, substituted “N. F.” for “U. S. P.” following “magnesia” in such list, and deleted “Paris green, London purple or other poisonous preparations or” from such list.

As only the second paragraph was changed by the amendment, the first paragraph is not set out.

Quoted in *State v. Fantastic Fair*, 158 Me. 450, 186 A. (2d) 352.

Sec. 15. Sale of poisonous drugs.—Each licensed pharmacist who sells arsenic, carbolic acid, chloroform, corrosive sublimate, cyanide of potassium or sodium, strychnine or its salts shall affix to the package sold by him a label plainly marked with the name and address of the store and the word “POISON” and the name of the poison sold, and shall enter at the time of sale in a permanently bound book to be kept for that purpose the name and residence of the purchaser, the date of sale, the name of the poison and the quantity sold, and the person making the sale shall sign the entry. This section shall not apply to sales on prescription of physicians, dentists, podiatrists or veterinarians, or sales at wholesale to pharmacists or sale to hospitals, colleges or public institutions. (1963, c. 332, § 7.)

Editor’s note.—Former § 15, relating to the sale of poisonous drugs without prescription, was repealed by P. L. 1957, c.

304, § 12. P. L. 1963, c. 332, § 7, inserted present § 15.

Sec. 17. Sale of opium.—No person except a registered apothecary or a physician of regular standing in his profession shall furnish, sell or keep for sale

any opium, morphine, laudanum or preparations containing opium, morphine or derivative of opium. Whoever violates this section shall be punished by a fine of not less than \$50 nor more than \$1,000, for each offense, to be recovered by complaint or indictment. (R. S. c. 62, § 17. 1963, c. 332, § 8.)

Effect of amendment.—The 1963 amendment deleted “the provisions of” formerly preceding “this section” in the second sen-

tence and substituted “\$50” for “\$5” and “\$1,000” for “\$50” in such sentence.

Sec. 20. Violation of §§ 18, 19.—Whoever violates any provision of the 2 preceding sections, or aids or abets another in the violation thereof, shall be punished by a fine of not less than \$50 nor more than \$1,000, or by imprisonment for not more than 11 months, or by both such fine and imprisonment. The county attorney in each county, upon complaint made by any member of the board or its inspectors or of the bureau of health, shall prosecute all violations of the provisions of this chapter. The district court shall have original and concurrent jurisdiction with the superior court of offenses under the provisions of sections 18 and 19. (R. S. c. 62, § 20. 1957, c. 304, § 13. 1963, c. 402, § 103.)

Effect of amendments. — The 1957 amendment inserted the words “or its inspectors” in the second sentence.

sions of the 2 preceding sections” at the end of the sentence.

The 1963 amendment substituted “The district court” for “Trial justices” at the beginning of the last sentence, deleted “municipal courts and” preceding “the superior court” in that sentence and substituted “sections 18 and 19” for “the provi-

Application of 1963 amending act.—Section 280 of c. 402, P. L. 1963, provides that the act shall apply only to the district court when established in a district and that the laws in effect prior to the effective date of the act shall apply to all municipal and trial justice courts.

Sec. 24. Sale of certain drugs.—It shall be unlawful for any person, firm or corporation to sell, furnish or give away or offer to sell, furnish or give away any veronal or barbital, or any other salts, derivatives or compounds of barbituric acid, or any registered, trademarked or copyrighted preparation registered in the United States patent office containing the above substance, or any drug designated by the board as a “potent medicinal substance” pursuant to section 25, except upon the written order or prescription of a physician, surgeon, dentist or veterinary surgeon. These provisions shall not apply to the sale, furnishing or giving away, or the offering to sell, furnish or give away such drugs, by drug jobbers, drug wholesalers and drug manufacturers and their agents and employees to registered pharmacists and the pharmacies registered under section 9, nor to physicians, dentists, veterinary surgeons or hospitals, nor to each other, nor to the sale at retail in pharmacies by pharmacists to each other, nor to physicians, surgeons, dentists, veterinary surgeons or hospitals. Nothing in this section shall be construed to affect the right of a physician, surgeon, dentist or veterinary surgeon in good faith and in the legitimate practice of his profession personally to administer, prescribe or deliver any of the foregoing substances to his own patients.

Nothing in this chapter shall apply to a compound, mixture or preparation which is sold in good faith by a pharmacy for the purpose for which it is intended and not for the purpose of evading this chapter if:

I. Contains other drugs. Such compound, mixture or preparation contains a sufficient quantity of another drug or drugs to cause it to produce an action other than hypnotic, somnifacient, stimulating or depressant action; or

II. Spray or gargle. Such compound, mixture or preparation is intended for use as a spray or gargle or for external applications and contains some other drug or drugs rendering it unfit for internal administration. (R. S. c. 62, § 24. 1957, c. 304, § 14. 1963, c. 332, § 8-A.)

Effect of amendments. — The 1957 amendment added the second paragraph.

The 1963 amendment divided the first sentence into two sentences, inserted “any

drug designated by the board as a ‘potent medicinal substance’ pursuant to section 25” in the present first sentence, substituted “These” for “the above” at the be-

ginning of the present second sentence, substituted "sale, furnishing or giving away, or the offering to sell, furnish or give away such drugs" for "sale at wholesale" in the present second sentence, inserted "and their agents and employees" in such sentence, deleted "containing salts

or derivatives of barbituric acid" following "preparation" near the beginning of the second paragraph, deleted "in addition to such salts or derivatives" in subsections I and II, inserted "stimulating or depressant" near the end of subsection II, and made other minor changes.

Sec. 25. Regulations.—The board may from time to time, after notice and hearing, by regulations, designate as potent medicinal substances any compounds of barbituric acid, amphetamines or any other central nervous system stimulants or depressants, psychic energizers or any other drugs having a tendency to depress or stimulate which are likely to be injurious to health if improperly used, and it shall be unlawful for any person, firm or corporation to sell, furnish or give away or to offer to sell, furnish or give away any such potent medicinal substances so designated, except as prescribed in section 24. (R. S. c. 62, § 25. 1963, c. 332, § 9.)

Effect of amendment.—The 1963 amendment inserted "after notice and hearing" near the beginning of the section, inserted "amphetamines or any other central nervous system stimulants or depressants, psychic energizers or any other drugs hav-

ing a tendency to depress or stimulate" near the middle of the section, deleted "of" following "any" near the end of the section, and deleted "for the substances therein named" at the end of the section.

Sec. 26. Violations.—Whoever violates any provision of sections 24 and 25 or is found to be under the influence of any of the substances enumerated in section 24 in any street, highway or other public place shall be punished by a fine of not more than \$1,000 or by imprisonment for not more than 6 months, or by both. (R. S. c. 62, § 26. 1963, c. 332, § 10.)

Effect of amendment.—The 1963 amendment substituted "sections 24 and 25" for "the 2 preceding sections," substituted

"\$1,000" for "\$100," and deleted "such fine and imprisonment" at the end of the section.

Sec. 28. Sale of drugs, etc., by certain means.—It shall be unlawful for any person to sell, distribute, vend or otherwise dispose of any drug, medicine or pharmaceutical or medical preparation by means of any public exhibition, entertainment, performance, carnival or by vending machines. (R. S. c. 62, § 28. 1963, c. 332, § 11.)

Effect of amendment.—The 1963 amendment deleted "commonly known as a medicine show or a patent medicine show" and

added "or by vending machines" at the end of this section.

Use or Sale of Narcotic Drugs.

Sec. 29. Narcotic drugs, contraband; search warrants; procedure.—Narcotic drugs unlawful in the possession or under the control of any person and which are kept and deposited in the state intended for unlawful sale in the state, and the vessels in which they are contained, are contraband and forfeited to the county in which they are so kept at the time when they are seized under this chapter. In all cases where an officer may seize narcotic drugs or the vessels containing them upon a warrant, he may seize the same without a warrant and keep them in some safe place for a reasonable time until he can procure such warrant.

If any person competent to be a witness in civil actions makes sworn complaint before the proper officer of the district court, that he believes that narcotic drugs are unlawfully kept or deposited in any place in the state by any person, or that the same are intended for sale within the state in violation of law, such officer shall issue his warrant directed to any officer having power to serve criminal process, commanding him to search the premises described and specially

designated in such complaint and warrant, and if said narcotic drugs are found there, to seize the same with the vessels in which they are contained, and safely keep them until final action thereon, and make immediate return of said warrant. The name of the person so keeping said drugs, if known to the complainant, shall be stated in such complaint, and the officer shall be commanded by said warrant, if he finds said drugs, to arrest said person and hold him to answer as having in possession said drugs. Any person who may be suspected of unlawfully having in his possession, or selling from, or keeping for illegal sale in his pockets, narcotic drugs, may be searched in the same manner and by the same process as is provided for the search of places and, if drugs are found upon his person, may be held to answer as though such drugs were kept and deposited by him in any place. If narcotic drugs are in any manner destroyed by the tenant, assistant or other person, when premises are about to be searched, manifestly for the purpose of preventing their seizure by officers authorized to make such search and seizure, such drugs may be held to have been unlawfully in possession and the penalties shall be the same as if said drugs had been seized. If the name of the person keeping such drugs is unknown to the complainant, he shall so allege in his complaint, and the judge shall thereupon issue his warrant as provided in the first sentence of this paragraph. (R. S. c. 62, § 30. 1963, c. 327, § 1; c. 402, § 104.)

Effect of amendments.—The first 1963 amendment deleted the former first paragraph, deleted “the provisions of” preceding “this chapter” at the end of the present first sentence, made changes in the first sentence of the present second paragraph, deleted “as aforesaid” twice in the second sentence of such paragraph, substituted “judge” for “magistrate” in the present last sentence, and deleted the former last sentence. The second 1963 amendment, which did not refer or give effect to the first 1963 amendment, substituted “ac-

tions” for “suits” near the beginning of the first sentence in the present second paragraph, substituted “the proper officer of the district court” for “any judge of a municipal court or trial justice” in that sentence, substituted “officer” for “magistrate” therein and made two other minor changes in such sentence. Effect has been given to both amendments as far as possible in the section as set out above.

Application of second 1963 amending act.—See note to § 20.

Sec. 30. Repealed by Public Laws 1963, c. 327, § 2.

Sec. 31. Forms provided in intoxicating liquor cases made applicable.—The forms set forth in chapter 61, section 97, when changed by substituting the words “narcotic drugs” for the words “intoxicating liquors,” wherever found in the same, together with such other changes therein as further adapt them for use under this chapter, and with such additional changes as adapt them for use in municipalities, are sufficient in law for all cases to which they purport to be adapted. (R. S. c. 62, § 32. 1963, c. 327, § 3.)

Effect of amendment.—The 1963 amendment substituted “municipalities” for “cit-

ies, towns and plantations” and deleted “arising under the provisions of sections 29 to 32.” The amendment also made other minor changes.

Sec. 32. Repealed by Public Laws 1963, c. 327, § 4.

Sec. 33. Definitions.

III. Repealed by Public Laws 1957, c. 429, § 66.

X-A. “Isonipecaïne” means the substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name identified.

VI. “Commission” means Maine board of commissioners of the profession of pharmacy.

XIV. Narcotic drugs. “Narcotic drugs” means coca leaves, opium, isonipecaïne, cannabis and every other substance neither chemically nor physically distinguishable from them and any other drugs to which the federal laws re-

lating to narcotic drugs may now apply; and any drug found by the board of commissioners of the profession of pharmacy, after reasonable notice and opportunity for hearing, to have an addiction-forming or addiction-sustaining liability similar to morphine or cocaine from the date of publication of such finding by said board of commissioners of the profession of pharmacy.

XXIV. "Secretary" means the secretary of the Maine board of commissioners of the profession of pharmacy.

(1957, c. 191, §§ 1, 2; c. 304, § 15; c. 429, §§ 66-69. 1963, c. 332, § 12.)

Effect of amendments.— This section was amended three times in 1957. Chapter 191, § 1, inserted subsection X-A. Chapter 191, § 2, rewrote subsection XIV. Chapter 304, § 15, also amended subsection XIV but did not refer to or give effect to the first amendment. However, chapter 429, § 68, which referred to both prior 1957 amendments, re-enacted subsection XIV as it had been rewritten by chapter 191, § 2. Chapter 429, § 66 repealed subsection III. Section 67 added the words

"of the profession" in subsection VI. Section 69 added the words "of the profession" in subsection XXIV. As the rest of the section was not changed by the amendments, only the subsections affected are set out. Chapter 429 became effective on its approval, October 31, 1957.

The 1963 amendment substituted "board of commissioners of the profession of pharmacy" for "director of health" twice in subsection XIV.

Sec. 37. Sale on written orders; orders; possession.

I.

B. To a physician, dentist, podiatrist or veterinarian.

(1957, c. 111, § 1.)

Effect of amendment.— The 1957 amendment inserted the word "podiatrist" in paragraph B of subsection I.

As the rest of the section was not changed by the amendment, only paragraph B of subsection I is set out.

Sec. 38. Sales by apothecaries.—

I. An apothecary, in good faith, may sell and dispense narcotic drugs to any person upon a written prescription, or an oral prescription in pursuance to regulations promulgated by the United States commissioner of narcotics under federal narcotic laws in effect on August 20, 1955, provided said oral prescription is promptly reduced to writing by the pharmacist, of a physician, dentist, podiatrist or veterinarian, dated and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the drug is dispensed, and the full name, address and registry number under the federal narcotic laws of the person prescribing, if he is required by those laws to be so registered. If the prescription be for an animal, it shall state the species of animal for which the drug is prescribed. The person filling the prescription shall write the date of filling and his own signature on the face of the prescription. The prescription shall be retained on file by the proprietor of the pharmacy in which it is filled for a period of 2 years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of the provisions of this chapter. The prescription shall not be refilled. (1955, c. 292. 1957, c. 111, § 2)

III. An apothecary, only upon an official written order, may sell to a physician, dentist, podiatrist or veterinarian, in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than 20% of the complete solution, to be used for medical purposes. [1957, c. 111, § 3]. (R. S. c. 62, § 39. 1955, c. 292. 1957, c. 111, §§ 2, 3. 1963, c. 332, § 13.)

Effect of amendments.— The 1955 amendment inserted the provision as to an oral prescription in the first sentence of subsection I.

The 1957 amendment substituted "Au-

gust 20, 1955" for "the effective date of the act" in the first sentence of subsection I and inserted the word "podiatrist" in subsections I and III.

The 1963 amendment inserted "provided

said oral prescription is promptly reduced to writing by the pharmacist" in the first sentence of subsection I. As subsection II was not changed by the amendments, it is not set out.

Sec. 39. Professional use of narcotic drugs.—

I. Physicians, dentists and podiatrists. A physician, dentist or a podiatrist, in good faith and in the course of his professional practice only, may prescribe, administer and dispense narcotic drugs, or he may cause the same to be administered by a nurse or interne under his direction and supervision.

III. Return of unused drugs. Any person, who has obtained from a physician, dentist, podiatrist or veterinarian any narcotic drug for administration to a patient during the absence of such physician, dentist, podiatrist or veterinarian, shall return to such physician, dentist, podiatrist or veterinarian any unused portion of such drug when it is no longer required by the patient. (R. S. c. 62, § 40. 1957, c. 111, § 4.)

Effect of amendment. — The 1957 amendment made subsections I and III applicable also to podiatrists. As subsection II was not changed by the amendment, it is not set out.

Sec. 40. Preparations exempted.

I. Medical preparations containing certain drugs. Prescribing, administering, dispensing or selling at retail of any medicinal preparation that contains in one fluid ounce, or if a solid or semisolid preparation, in one avoirdupois ounce:

- A. Not more than 2 grains of opium,
- B. Not more than $\frac{1}{4}$ of a grain of morphine or of any of its salts,
- C. Not more than one grain of codeine or of any of its salts,
- D. Not more than $\frac{1}{2}$ grain of dihydrocodeine or any of its salts, and
- E. Not more than one of the drugs named above in paragraphs A, B, C, D and E.

II.

A. No person shall prescribe, administer, dispense or sell under the exemptions of this section to any one person, or for the use of any one person or animal, any preparation or preparations included within this section, when he knows or can by reasonable diligence ascertain that such prescribing, administering, dispensing or selling will provide the person to whom or for whose use, or the owner of the animal for the use of which, such preparation is prescribed, administered, dispensed or sold, within any 48 consecutive hours, with more than 4 grains of opium, or more than $\frac{1}{2}$ grain of morphine or of any of its salts, or more than 4 grains of codeine or of any of its salts, or will provide such person or the owner of such animal, within 48 consecutive hours, with more than one preparation exempted from this chapter.

III. Exempt preparations. The Maine board of commissioners of the profession of pharmacy may by regulation exempt from the application of this chapter, to such extent as it determines to be consistent with the public welfare, pharmaceutical preparations found by the board after due notice and opportunity for hearing:

- A. Either to possess no addiction-forming or addiction-sustaining liability sufficient to warrant imposition of all of the requirements of this chapter; and
- B. Does not permit recovery of a narcotic drug having such an addiction-forming or addiction-sustaining liability, with such relative technical simplicity and degree of yield as to create a risk of improper use.

In exercising the authority granted in paragraph A, the board by regulation and without special findings may grant exempt status to such pharmaceutical preparations as determined to be exempt under the federal narcotic law and regulations.

If the board shall subsequently determine that any exempt pharmaceutical preparation does possess a degree of addiction liability that, in its opinion, results in abusive use, it shall by regulation publish the determination in the state papers. The determination shall be final and the exempt status shall cease to apply to the particular pharmaceutical preparation. (R. S. c. 62, § 41. 1957, c. 191, § 3; c. 304, §§ 16, 17; c. 429, § 70. 1963, c. 332, §§ 14, 15, 16.)

Effect of amendments.—This section was amended three times in 1957. Chapter 191, § 3, repealed paragraphs D and E of subsection I and enacted new paragraphs D to H in lieu thereof. Chapter 304, § 16, which did not refer to or give effect to the first amendment, deleted former paragraphs D and E of subsection I and enacted a new paragraph D in lieu thereof. However, chapter 429, § 70, which became effective on its approval, October 31, 1957, and which referred to both prior 1957 amendments, re-enacted subsection I as amended by chapter 191, § 3.

Chapter 304, § 17, amended paragraph A of subsection II by deleting the words "or more than $\frac{1}{4}$ of a grain of heroin or of any of its salts" which formerly ap-

peared near the end of such paragraph.

The 1963 amendment deleted former paragraphs D, E and F of subsection I, redesignated former paragraphs G and H of such subsection as present paragraphs D and E, deleted the references to paragraphs F and G at the end of present paragraph E of such subsection, substituted "4 grains of codeine" for "2 grains of codeine" in paragraph A of subsection II, deleted "the provisions of" preceding "this chapter" at the end of such paragraph, and added subsection III.

As only subsection I, paragraph A of subsection II and subsection III were affected by the amendments, the rest of the section is not set out.

Sec. 41. Record kept.—

I. Physicians, dentists, podiatrists, veterinarians and other authorized persons. Every physician, dentist, podiatrist, veterinarian or other person who is authorized to administer or professionally use narcotic drugs shall keep a record of such drugs received by him, and a record of all such drugs administered, dispensed or professionally used by him otherwise than by prescription. It shall be deemed a sufficient compliance with the provisions of this subsection if any such person using small quantities of solutions or other preparations of such drugs for local application shall keep a record of the quantity, character and potency of such solutions or other preparations purchased or made up by him, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients.

Provided that no record need be kept of narcotic drugs administered, dispensed or professionally used in the treatment of any 1 patient, when the amount administered, dispensed or professionally used for that purpose does not exceed in any 48 consecutive hours:

A. 4 grains of opium, or

B. $\frac{1}{2}$ of a grain of morphine or of any of its salts, or

C. 2 grains of codeine or of any of its salts, or

D. A quantity of any other narcotic drug or any combination of narcotic drugs that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated. (1957, c. 111, § 5; c. 304, § 18)

(1957, c. 111, § 5; c. 304, § 18.)

Effect of amendments.—The first 1957 amendment made subsection I applicable also to podiatrists. The second 1957 amendment deleted former paragraph D of subsection I and changed the designa-

tion of former paragraph E of such subsection to "D".

As only subsection I was changed by the amendments, the rest of the section is not set out.

Sec. 42. Labels.

II. Whenever an apothecary sells or dispenses any narcotic drug on a prescription issued by a physician, dentist, podiatrist or veterinarian, he shall affix to the container in which such drug is sold or dispensed, a label showing

his own name, address and registry number, or the name, address and registry number of the apothecary for whom he is lawfully acting; the name and address of the patient or, if the patient is an animal, the name and address of the owner of the animal and the species of the animal; the name, address and registry number of the physician, dentist, podiatrist or veterinarian by whom the prescription was written; and such directions as may be stated on the prescription. No person shall alter, deface or remove any label so affixed. (R. S. c. 62, § 43. 1957, c. 111, § 6.)

Effect of amendment. — The 1957 amendment made subsection II applicable also to podiatrists. As subsection I was not changed by the amendment, it is not set out.

Sec. 43. Authorized possession of narcotic drugs by individuals.—

A person to whom or for whose use any narcotic drug has been prescribed, sold or dispensed by a physician, dentist, podiatrist, apothecary or other person authorized under the provisions of section 37, and the owner or the person having the custody or control of any animal for which any such drug has been prescribed, sold or dispensed by a veterinarian, may lawfully possess it, except when in use, only in the container in which it was delivered to him by the person selling or dispensing the same. (R. S. c. 62, § 44. 1957, c. 111, § 7.)

Effect of amendment. — The 1957 amendment made this section applicable also to podiatrists.

Sec. 45. Repealed by Public Laws 1963, c. 327, § 5.

Sec. 49. Fraud or deceit.

IV. No person shall, for the purpose of obtaining a narcotic drug, falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, apothecary, physician, dentist, podiatrist, veterinarian or other authorized person.

(1957, c. 111, § 8.)

Effect of amendment. — The 1957 amendment made subsection IV applicable also to podiatrists. As only subsection IV was changed by the amendment, the rest of the section is not set out.

Sec. 50. Enforcement and cooperation. — The bureau of health, the board of commissioners of the profession of pharmacy, their officers, agents, inspectors and representatives, and all peace officers within the state and all county attorneys shall enforce all provisions of sections 33 to 51, inclusive, except those specifically delegated, and shall cooperate with all agencies charged with the enforcement of the laws of the United States, of this state and of all other states relating to narcotic drugs. (R. S. c. 62, § 51. 1957, c. 304, § 19; c. 429, § 71.)

Effect of amendments.—The first 1957 amendment made subsection IV applicable also to the board of pharmacy and its officers, agents, inspectors and representatives. The second 1957 amendment, which became effective on its approval, October 31, 1957, added the words "commissioners of the profession of" after the word "of" and before the word "pharmacy" near the beginning of this section.

Penalties.

Sec. 51. Violation of sections 29 to 51.—Whoever violates any provision of sections 29 to 51 shall upon conviction be punished by a fine of not more than \$1,000 and by imprisonment for not less than 2 nor more than 8 years. For a 2nd offense, or if, in case of a first conviction of violation of any provision of sections 29 to 51, the offender shall previously have been convicted of any violation of the laws of the United States or of any other state, territory or district relating to narcotic drugs or marihuana, the offender shall be pun-

ished by a fine of not more than \$2,000 and by imprisonment for not less than 5 nor more than 15 years. For a 3rd or subsequent offense, or if the offender shall previously have been convicted 2 or more times in the aggregate of any violation of the laws of the United States or of any other state, territory or district relating to narcotic drugs or marihuana, the offender shall be punished by a fine of not more than \$5,000 and by imprisonment for not less than 10 nor more than 20 years.

Except in the case of conviction for a first offense for violation of sections 29 to 51, the imposition or execution of sentence shall not be suspended. Parole shall not be granted until the minimum imprisonment herein provided for the offense shall have been served. (R. S. c. 62, § 52. 1953, c. 85. 1963, c. 327, § 6.)

Effect of amendment.—The 1963 amendment substituted “sections 29 to 51” for “sections 33 to 51” in the first and second sentences of the first paragraph and the present first sentence of the second paragraph, substituted “8 years” for “5 years” at the end of the first sentence, substituted “\$2,000” for “\$1,000” and “15 years” for

“10 years” at the end of the second sentence, substituted “\$5,000” for “\$1,000” in the third sentence, divided the second paragraph into two sentences, deleted “probation or” at the beginning of what is now the second sentence of the second paragraph and made other minor changes.

Sec. 52. Violation of chapter; disposal of fines and forfeitures.—Unless otherwise provided for, the violation of any provision of this chapter shall constitute a misdemeanor and any person convicted of such violation shall be punished by a fine of not more than \$1,000. Each violation of each section of this chapter shall constitute a separate offense. All fees, fines and forfeitures collected under this chapter shall be paid to the treasurer of state and shall be considered funds of the board, to be by them expended for the enforcement of laws relating to apothecaries and the sale of poisons and for expenses incurred in their official work. (R. S. c. 62, § 29. 1963, c. 332, § 17.)

Effect of amendment.—The 1963 amendment substituted “punished by” for “subject to” and “\$1,000” for “\$100” in the first sentence, substituted “Each” for

“The” at the beginning of the second sentence, and deleted “the provisions of” from the third sentence.

Chapter 69.

Registration of Nurses.

Editor's note. — P. L. 1959, c. 303, repealing R. S. cc. 69, 70, provided in section 2 thereof as follows:

“Sec. 2. R. S., cc. 69, 70, repealed. Chapter 69 and 70 of the Revised Statutes, which relate to Registered Nurse and

Practical Nurses, as amended, are repealed, except as their continued effectiveness is required to permit the carrying out of the provisions of chapter 69-A, sections 3 and 6.”

Secs. 1-8. Repealed by Public Laws 1959, c. 303, § 2.

Chapter 69-A.

Practice of Nursing.

Sec. 1. Purpose.—In order to safeguard the life and health of the people in this state, any person who for compensation practices or offers to practice professional nursing or practical nursing as a licensed practical nurse in this state shall hereafter be required to submit evidence that he or she is qualified so to practice, and shall be licensed as hereinafter provided. After December 31, 1961 it shall be unlawful for any person not licensed under this chapter to practice or