(Emergency)
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SECOND REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document No. 2555

S.P. 963 In Senate, March 21, 1988

Reported by Senator WHITMORE of Androscoggin for the Committee on Business Legislation and printed under Joint Rule 2. Original Bill sponsored by Senator BALDACCI of Penobscot. Cosponsored by: Senator GOULD of Waldo.

JOY J. O'BRIEN, Secretary of the Senate

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-EIGHT

AN ACT to Reform the Pharmacy Laws.

Emergency preamble. Whereas, Acts of the Legislature do not become effective until 90 days after adjournment unless enacted as emergencies; and

Whereas, the pharmacy board and the Department of Professional and Financial Administration need the recodified laws in force in time to prepare for the next fiscal year; and

Whereas, in the judgment of the Legislature, these facts create an emergency within the meaning of the Constitution of Maine and require the following legislation as immediately necessary for the preservation of the public peace, health and safety; now, therefore,

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004, sub-§1, ¶A, sub-¶(29) is amended to read:

(29) Board of Commissioners of the Profession of Pharmacy	~~$25/Day~~ $35/Day	~~32 MRSA §2851~~ 32 MRSA §13711

Sec. 2. 22 MRSA c. 551, sub-c. II, as amended, is repealed.

Sec. 3. 22 MRSA c. 557, as amended, is repealed.

Sec. 4. 32 MRSA c. 41, as amended, is repealed.

Sec. 5. 32 MRSA c. 117 is enacted to read:

CHAPTER 117

MAINE PHARMACY ACT

SUBCHAPTER I

TITLE AND DEFINITIONS

§13701. Short title

This chapter shall be known and may be cited as the "Maine Pharmacy Act."

§13702. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means the Board of Commissioners of the Profession of Pharmacy.

2. Commissioner. "Commissioner" means the Commissioner of the Department of Professional and Financial Regulation.

3. Dangerous substance. "Dangerous substance" means a substance defined in section 11541, subsection 2.

4. Deliver or delivery. "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

5. Department. "Department" means the Department of Professional and Financial Regulation.

6. Device. "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

7. Dispense or dispensing. "Dispense" or "dispensing" means the preparation and delivery of a prescription drug in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug pursuant to a lawful order of a practitioner.

8. Distribute. "Distribute" means the delivery of a drug other than by administering or dispensing.

9. Drug. "Drug" means:

A. Articles recognized as drugs in the official United States Pharmacopeia and National Formulary, other drug compendiums or any supplement to any of them;

B. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in humans or other animals;

C. Articles, other than food, intended to affect the structure or any function of the body of humans or other animals; and

D. Articles intended for use as a component of any articles specified in paragraphs A to C.

10. Drug outlet. "Drug outlet" means:

A. Any pharmacy located in a retail store, mail order business or rural health center with facilities located in this State which is engaged in dispensing, delivering or distributing prescription drugs; or

B. Any mail order prescription company, or wholesaler, with facilities located in this State or doing business in this State which is engaged in dispensing, delivering or distributing prescription drugs.

11. Generic and therapeutically equivalent drug. "Generic" and "therapeutically equivalent drug" means any drug which has identical amounts of the same active ingredients in the same dosage form and in the same concentration which, when administered in the same amounts, will produce or can be expected to have the same therapeutic effect as the drug prescribed.

12. Labeling. "Labeling" means the process of preparing and affixing a label to the outside of any drug container, exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal law or regulation and state law or rule.

13. Mail order prescription pharmacy. A "mail order prescription pharmacy" means an entity that dispenses prescription medications by mail or carrier

from a facility not located in this State to a patient who resides in Maine.

14. Manufacture. "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or drug, either directly or indirectly, 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 repacking of the substances or labeling or relabeling of its container, except that manufacture does not include the preparation or compounding of a drug by an individual for personal use or the preparation, compounding, packaging or labeling of a drug:

A. By a pharmacist or practitioner incidental to administering or dispensing a drug in the course of professional practice; or

B. By a practitioner or by authorization under the practitioner's supervision for the purpose of or incidental to research, teaching or chemical analysis and not for sale.

15. Manufacturer. "Manufacturer" means a person engaged in the manufacture of prescription drugs.

16. Nonprescription drugs. "Nonprescription drugs" means nonnarcotic drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the laws and rules of this State and the Federal Government.

17. Person. "Person" means an individual, corporation, partnership, association or any other legal entity.

18. Pharmacist. "Pharmacist" means an individual licensed by this State to engage in the practice of pharmacy.

A. "Chain pharmacist" means an individual who is practicing pharmacy within a chain; that is, where

there is a corporate grouping of 4 or more stores.

B. "Hospital pharmacist" means an individual who is practicing pharmacy in a hospital setting.

C. "Independent pharmacist" means an individual who is practicing pharmacy in an independent pharmacy; that is, where there are fewer than 4 pharmacies under the same ownership.

D. "Qualified assistant pharmacist" means an individual licensed by this State as a qualified assistant apothecary, qualified assistant or assistant pharmacist, provided that the license is in full force and effect, except for the right to serve as a "pharmacist in charge."

19. Pharmacist in charge. "Pharmacist in charge" means the pharmacist who is responsible for the licensing of the prescription department.

20. Physician. "Physician" means an allopathic physician or osteopathic physician.

21. Poison. "Poison" means an agent that when ingested, inhaled or otherwise absorbed by a living organism is capable of producing a deleterious response seriously injuring function or producing death.

22. Practice of pharmacy. "Practice of pharmacy" means the interpretation and evaluation of prescription drug orders; the compounding, dispensing, labeling of drugs and devices, except labeling by a manufacturer, packer or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection and drug utilization reviews; the proper and safe storage of drugs and devices and the maintenance of proper records for these drugs and devices; the responsibility for advising, when necessary or regulated, of therapeutic values, content, hazards and use of drugs and devices; and the offering or performing of those acts, services, operations or transactions necessary in the conduct, operation,

management and control of a pharmacy.

23. Practitioner. "Practitioner" means a physician, dentist, podiatrist, veterinarian, scientific investigator or other person, other than pharmacists, licensed in the United States and Canada to dispense, conduct research with respect to or administer drugs in the course of professional practice or research.

24. Prescription drug or legend drug. "Prescription drug" or "legend drug" means a drug which:

A. Under federal law, is required, prior to being dispensed or delivered, to be labeled with either of the following statements:

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

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

B. Is required by an applicable federal or state law or rule to be dispensed on prescription only or is restricted to use by practitioners only.

25. Prescription drug order. "Prescription drug order" means a lawful written or oral order of a practitioner for a drug.

26. Wholesaler. "Wholesaler" means a person who buys prescription drugs for resale and distribution to persons other than consumers.

SUBCHAPTER II

BOARD OF COMMISSIONERS OF THE PROFESSION OF PHARMACY

§13711. Establishment

There is established, within the department, in accordance with Title 5, chapter 379, the Board of

Commissioners of the Profession of Pharmacy. The board has all of the duties, powers and authority specifically granted by and necessary to the enforcement of this Act.

§13712. Membership

The board shall consist of 7 members, two of whom shall be representatives of the public and the remainder of whom shall be licensed pharmacists who possess the qualifications specified in section 11523. At the time of the appointment, at least one of the licensed pharmacists must be a hospital pharmacist, at least one must be a chain pharmacist and at least one must be an independent pharmacist.

§13713. Qualifications

1. Public members. The public members of the board must be residents of this State who are at least 21 years of age and shall not be, nor ever have been, members of the profession of pharmacy, the spouse of a member of the profession of pharmacy, a person who has ever had any material financial interest in providing pharmacy services or a person who has engaged in any activity directly related to the practice of pharmacy.

2. Licensed pharmacists. The licensed pharmacist members of the board shall, at the time of their appointment:

A. Be residents of this State;

B. Be licensed and in good standing to engage in the practice of pharmacy in this State;

C. Be engaged in the practice of pharmacy in this State; and

D. Have 5 years of experience in the practice of pharmacy in this State after licensure.

§13714. Appointment

The Governor shall appoint the members of the

board. Prior to appointing any pharmacist as a member of the board, the Governor may solicit recommendations of candidates from the Maine Pharmacy Association and other pharmaceutical organizations as appropriate.

§13715. Terms of office

1. Length. Except as provided in subsection 2, members of the board shall be appointed for terms of 3 years; except that members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of that term.

2. Staggered terms. The terms shall be staggered as follows.

A. The terms of the members of the board shall be staggered so that the terms of no more than 2 members shall expire in any year.

B. The present members of the board shall serve the balance of their terms.

C. Any present board member appointed initially for a term of less than 3 years shall be eligible to serve 3 additional full terms.

3. Successorship. No member of the board may serve more than 3 consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

4. Commencement. An appointee to a full term on the board shall be appointed by the Governor before the expiration of the term of the member being succeeded and shall become a member of the board on the first day of the calendar year next following appointment or day of appointment if that appointment is made after January 1st. Appointees to unexpired portions of full terms shall become members of the board on the day of that appointment. If the number of board members is increased, the term of any new member shall commence at such time as is designated in the

law providing for the enlargement of the board.

5. Expiration. Each term of office on the board expires at midnight on the last day of the calendar year in the final year of the board member's term or on the date a successor is appointed, whichever occurs later.

6. Vacancies. Any vacancy which occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability or disqualification, shall be filled by the Governor in the manner prescribed by section 11524. The Governor shall fill vacancies which occur by expiration of full terms within 90 days prior to each date of expiration and shall fill vacancies which occur for any other reason within 60 days after the vacancy occurs.

7. Grounds for removal. The Governor may remove a member of the board for cause.

§13716. Organization

1. Officers. The board shall elect from its members a president and other officers as it deems appropriate and necessary to the conduct of its business. The president of the board shall preside at all meetings of the board and shall be responsible for the performance of all of the duties and functions of the board required or permitted by this Act. Each additional officer elected by the board shall perform those duties normally associated with that position and those other duties assigned from time to time by the board.

2. Terms of office. Officers elected by the board shall serve terms of one year commencing with the day of their elections and ending upon elections of their successors and shall serve no more than 3 consecutive full terms in each office to which elected.

3. Executive director. The department may employ, with the advice of the board, a licensed pharmacist who shall be an ex officio member of the board without

a vote to serve as an employee of the board in the position of executive director. The executive director shall be responsible for the performance of the regular administrative functions of the board and other duties as the board may direct. The executive director shall not perform any discretionary or decision-making functions for which the board is solely responsible.

§13717. Compensation

1. Members. Each member of the board shall be compensated in accordance with Title 5, chapter 379.

2. Secretary. The secretary of the board shall receive reimbursement for all expenses incurred in connection with performance of official duties.

§13718. Meetings

1. Number. The board shall meet at least once every 2 months to transact its business. The December meeting shall be designated as the annual meeting and shall be for the purpose of electing officers and for the reorganization of the board. The board shall meet at additional times as it may determine. Additional meetings may be called by the president or by 2/3 of the members of the board.

2. Place. The board shall meet at such place as it may from time to time determine. The place for each meeting shall be determined prior to giving notice of the meeting and shall not be changed after the notice is given without adequate subsequent notice.

3. Notice. Notice of all meetings of the board shall be given in the manner and pursuant to requirements prescribed by the State's applicable laws and rules.

4. Quorum. A majority of the members of the board constitutes a quorum for the conduct of a board meeting and, except when a greater number is required by this Act or by any rule of the board, all actions of the board shall be by a majority of a quorum.

5. Open meeting. All board meetings and hearings shall be open to the public. The board may conduct portions of its meetings in executive session pursuant to the freedom of access laws, Title 1, section 405.

§13719. Employees

With the advice of the board, the commissioner may appoint, subject to the Civil Service Law, such employees as may be necessary to carry out this chapter. Any person so employed shall be located in the department and under the administrative and supervisory direction of the commissioner.

§13720. Rules

The board shall make, adopt, amend and repeal such rules as may, from time to time, be determined necessary by the board for the proper administration and enforcement of this Act. These rules shall be promulgated in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

§13721. Licensure and discipline

1. Responsibility. The board's responsibility for the control and regulation of the practice of pharmacy in this State includes, but is not limited to, the following actions:

A. The licensing by examination or by reciprocity of applicants who are qualified to engage in the practice of pharmacy under this Act;

B. The renewal of licenses to engage in the practice of pharmacy;

C. The determination and issuance of standards for recognition and approval of degree programs of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this State and the specification and enforcement of requirements for practical training, including internship;

D. The inspection during business hours of all pharmacies, dispensaries, stores, hospital pharmacies, extended care facilities, boarding homes, nursing homes, drug abuse treatment centers, penal institutions, family planning centers or other drug outlets in which drugs or medicines are manufactured, stored, distributed, compounded, dispensed or retailed in this State;

E. The registration of any drug outlet as set out in section 11561 and any manufacturer or wholesaler whose products are distributed in this State;

F. The enforcement of those provisions of this Act relating to the conduct or competence of pharmacists practicing in this State and the processing of complaints which could lead to the suspension, revocation or restriction of licenses to engage in the practice of pharmacy;

G. The rules of the training, qualification and employment of pharmacy interns and pharmacy students; and

H. The rules of the training, qualification and employment of pharmacy ancillary personnel.

2. Reciprocal inspections. The Board of Commissioners of the Profession of Pharmacy may enter into reciprocal inspection agreements with any state in which a Maine licensed mail order prescription facility is located. The purpose of this agreement is to authorize the state in which the facility is located to inspect the facility for compliance with Maine laws and rules.

§13722. Medications, drugs, devices and other materials

1. Responsibility. The board has the following responsibilities in regard to medications, drugs, devices and other materials used in this State in the diagnosis, mitigation and treatment or prevention of injury, illness and disease. The board shall:

A. Promulgate rules concerning the sale and dispensing of medications, drugs, devices and other materials, including the right to seize any such drugs, devices and other materials found to be detrimental to the public health and welfare by the board after appropriate hearing as required under the Maine Administrative Procedure Act, Title 5, chapter 375;

B. Establish the specifications of minimum professional and technical equipment, environment, supplies and procedure for the compounding or dispensing of medications, drugs, devices and other materials within the practice of pharmacy;

C. Assure that standards for purity and quality of medications, drugs, devices and other materials within the practice of pharmacy are met;

D. Issue and renew certificates of registration for purposes of ascertaining those persons engaged in the manufacture and distribution of drugs;

E. Promulgate rules concerning the sale and the dispensing of any exempt narcotic preparation. An "exempt narcotic preparation" means any medicinal preparation that contains in 30 milliliters or, if a solid or semisolid preparation, in 30 grams:

(1) Not more than 130 milligrams of opium;

(2) Not more than 15 milligrams of morphine or any of its salts;

(3) Not more than 65 milligrams of codeine or any of its salts;

(4) Not more than 30 milligrams of dihydrocodeine or any of its salts; or

(5) Not more than one of the drugs named in subparagraphs (1) to (4).

A record shall be kept of the sale of exempt

narcotic preparations. The record must contain the date of sale, signature and address of the purchaser, name of the preparation, purpose for which purchased and signature of the person making the sale; and

F. After notice and hearing, 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.

§13723. Other duties, powers and authority

The board has such other duties, powers and authority as may be necessary to enforce this Act and the board may adopt rules pursuant to this Act, which include, but are not limited to, the following.

1. Professional associations. The board may join professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board.

2. Bond. In addition to any statutory requirements, the board may require such surety bonds as it deems necessary to guarantee the performance and discharge of the duties of any officer or employee receiving and disbursing funds.

3. Seal. The executive director of the board or the secretary of the board shall keep the seal of the board at the department and shall affix it only in such manner as may be prescribed by the board.

4. Reports. The board shall submit to the commissioner no later than August 1st of each year a report summarizing its proceedings and activities during the fiscal year, together with a report of all money received and disbursed by the board.

5. Fees. The board shall determine within 30 days prior to the beginning of each state fiscal year the fees to be collected for:

A. An examination and reexamination, which fee shall not exceed costs of the examination, plus an amount not to exceed $100;

B. The issuance of a pharmacist's license, by reciprocity, which fee shall not exceed $150;

C. The issuance of renewal of a pharmacist's license, which fee shall not exceed $100;

D. The issuance of a nonactive pharmacist's license, which fee shall not exceed $15 if the nonactive pharmacist is 65 years of age or older, or which fee shall not exceed $50 if the nonactive pharmacist is under 65;

E. The issuance of a certificate of registration for a new drug outlet, manufacturer or wholesaler license, which fee shall not exceed $200;

F. The issuance of a certificate of registration for renewal of a drug outlet, manufacturer or wholesaler license, which fee shall not exceed $200;

G. The issuance of a certificate of registration necessitated by a change in the pharmacist responsible for the license, which fee shall not exceed $100; and

H. The certification of an approved provider of continuing education courses, which fee shall not exceed $100 per year, provided that a provider approved by the American Council of Pharmaceutical Education is exempt from the fee established in this paragraph.

6. Grants. The board may receive and expend funds, in addition to its annual allocation, from parties other than the State, provided that:

A. The funds are awarded for the pursuit of a specific objective which the board is authorized to accomplish by this Act or which the board is qualified to accomplish by reason of its jurisdiction or professional expertise;

B. The funds are expended for the pursuit of the objective for which they are awarded;

C. Activities connected with or occasioned by the expenditures of the funds do not interfere with or impair the performance of the board's duties and responsibilities and do not conflict with the exercise of the board's powers as specified by this Act;

D. The funds are kept in a separate, special state account; and

E. Periodic reports are made to the commissioner concerning the board's receipt and expenditure of the funds.

7. Investigatory powers. The board shall notify the Department of the Attorney General upon receipt of a complaint. Upon receipt of the notifications, the Attorney General shall notify the department within a timely period if the alleged violation requires criminal investigation. If a case does not require criminal investigation, the board or its authorized representatives may investigate and gather evidence concerning alleged violations of this Act or of the rules of the board. The board may remove certain records, including, but not limited to, prescription records, patient profiles, inventories and other drug records for the purposes of photocopying and furthering the investigation. An inventory receipt shall be furnished and the articles removed shall be returned within 3 hours. The pharmacist who has custody of the records may accompany the board's representatives so that the pharmacist can attest to the authenticity and lack of alteration of the records being photocopied.

A. Prescriptions, orders and records required by this chapter and stocks of narcotic drugs shall be open for inspection only to the board and to federal, state, county and municipal officers whose duty it is to enforce the laws of this State or of the United States relating to narcotic drugs. No officer having knowledge by virtue of the officer's office of any such prescription, order or record may divulge that knowledge, except in connection with a prosecution or proceeding in court or before a licensing or registration board or officer, to which prosecution or proceeding the person to whom such prescriptions, orders or records relate is a party.

B. The Bureau of Health, the board, their officers, agents, inspectors and representatives, all peace officers within the State and all county attorneys shall enforce all provisions of this chapter, 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.

8. Embargo. The board may embargo certain drugs or devices as follows.

A. Notwithstanding anything in this Act to the contrary, if a duly authorized representative of the board finds or has probable cause to believe that any drug or device is adulterated or misbranded within the meaning of the United States Food and Drug Act, the board representative shall affix to the drug or device a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of the article by sale or otherwise until provision for removal or disposal is given by the board, its agent or the court. No person may remove or dispose of the embargoed drug or device by sale or otherwise without the permission of the board or its agent or, after summary proceedings have been

instituted, without permission from the court.

B. When a drug or device detained or embargoed under paragraph A has been declared by a representative of the board to be adulterated or misbranded, the board shall, as soon as practical, report the declaration to the Attorney General's office, along with sufficient information to permit the Attorney General to bring a petition for an injunction to the judge of the court in whose jurisdiction the article is detained or embargoed. If the judge determines that the drug or device so detained or embargoed is not adulterated or misbranded, the board shall direct the immediate removal of the tag or other marking.

C. If the court finds the detained or embargoed drug or device is adulterated or misbranded, that drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of the board representative and all court costs and fees, storage and other proper expense shall be borne by the owner of the drug or device. When the adulteration or misbranding may be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after the costs, fees and expenses have been paid and a good and sufficient bond has been posted, may direct that the drug or device be delivered to the owner for labeling or processing under the supervision of a board representative. The expense of the supervision shall be paid by the owner. The bond shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid.

9. Budget. The board shall submit to the Commissioner of Human Services its budgetary requirements in the same manner as is provided in Title 5, section 1665, and the commissioner shall in turn transmit these requirements to the Bureau of the Budget without any revision, alteration or change.

10. Procedure. Except as otherwise provided, the board shall exercise all of its duties, powers and authority in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375.

SUBCHAPTER III

LICENSING

§13731. Unlawful practice; penalties; injunctions

1. Applicability. It is unlawful for any person to engage in the practice of pharmacy unless licensed to practice under this Act; provided that physicians, dentists, veterinarians or other practitioners of the healing arts who are licensed under the laws of this State may dispense and administer prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by law.

2. Authorization to deal with dangerous substances. Practitioners, drug jobbers, drug wholesalers, drug manufacturers, pharmacists and pharmacies registered under this chapter and approved animal shelters as provided in Title 7, section 3913, are authorized to deal professionally with dangerous substances. A dangerous substance is:

A. Any substance listed under the Federal Uniform Controlled Substance Act, sections 1 through 5; or

B. Anything deemed to be dangerous by the Federal Drug Administration, other federal agency, or the Attorney General of the United States.

3. Violation. Any person who violates this chapter commits a Class E crime and, notwithstanding Title 17-A, section 1301, may be punished by a fine of not more than $1,000. Each violation of each section of this chapter constitutes a separate offense.

4. Violation; suspension; penalty. For any violation of this chapter, in addition to other disciplinary action which may be taken by the board,

the board may suspend the violator's license for up to 90 days or impose a civil penalty of up to $500, or both, for each violation of each section of this chapter. The jurisdiction to suspend a license for up to 90 days shall be concurrent with that of the Administrative Court.

5. Action to enjoin. The State may bring an action to enjoin any licensee or person from violating this chapter, regardless of whether proceedings have been or may be instituted in the Administrative Court or whether criminal proceedings have been or may be instituted.

6. Fees; fines; forfeitures. All fees, fines and forfeitures under this chapter shall be paid to the Treasurer of State and shall be considered funds of the board to be expended by them for the enforcement of laws relating to pharmacists and for expenses in carrying out the duties of the board. The money shall not lapse but shall be carried forward.

§13732. Qualifications for licensure by examination

1. Requirements. To obtain a license to engage in the practice of pharmacy, an applicant for licensure by examination must:

A. Have submitted a written application in the form prescribed by the board;

B. Have attained the age of 21 years;

C. Have demonstrated good moral character and temperate habits;

D. Have graduated and received the first professional undergraduate degree from a pharmacy degree program accredited by the American Council on Pharmaceutical Education or have received a degree from an equivalent program, which has been approved by the board, from a school outside the United States;

E. Have completed an internship or other program

which has been approved by the board or demonstrated, to the board's satisfaction, experience in the practice of pharmacy which meets or exceeds the minimum internship requirement of the board;

F. Have successfully passed an examination given by the board; and

G. Have paid the fees specified by the board for application, examination and issuance of a license.

2. Examinations. Examinations shall be prepared and administered according to this subsection.

A. The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed the examination.

B. The examination for licensure shall be given by the board at least 2 times during each fiscal year of the State. The board shall determine the content and subject matter of each examination, the place, time and date of administration of the examination and those persons who have successfully passed the examination.

3. Internship and other training programs. Internship and practical experience requirements shall be determined as follows.

A. All applicants for licensure by examination must obtain practical experience in the practice of pharmacy concurrent with or after college attendance under such terms and conditions as the board may determine.

B. The board shall establish standards for internship or any other program necessary to qualify an applicant for the licensure examination

and shall also determine the necessary qualifications of any preceptors used in any internship or other program.

§13733. Qualifications for licensure by reciprocity

1. Requirements. To obtain a license as a pharmacist by reciprocity an applicant for licensure must:

A. Have submitted a written application in the form prescribed by the board;

B. Have attained the age of 21 years;

C. Have demonstrated good moral character and temperate habits;

D. Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in this State;

E. Have engaged in the practice of pharmacy for a period of at least one year or have met the internship requirements of this State within the one-year period immediately previous to the date of the application;

F. Have passed the state pharmacy law exam as administered by the board;

G. Have presented to the board proof of initial licensure by examination and proof that the license and any other license or licenses granted to the applicant by any other state or states have not been suspended, revoked, canceled or otherwise restricted for any reason except nonrenewal or the failure to obtain required continuing education credits in any state where the applicant is licensed, but not engaged in the practice of pharmacy; and

H. Have paid the fees specified by the board for issuance of licenses.

2. Eligibility. No applicant is eligible for licensure by reciprocity unless the state in which the applicant was initially licensed as a pharmacist also grants reciprocal licensure to pharmacists duly licensed by examination in this State under like circumstances and conditions.

§13734. Renewal of licenses

1. Annual renewal. A license shall expire annually on December 31st or on such other date as the commissioner may determine. Notice of expiration shall be mailed to each licensee's last known address at least 30 days in advance of the expiration of the license. The notice shall include any requests for information necessary for renewal.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee of $10 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license renewal date shall be subject to all requirements governing new applicants under this chapter, except that the board may, giving due consideration to the protection of the public, waive examination if that renewal application is made within 2 years from the date of that expiration.

2. Nonactive renewal registration. Every registered pharmacist not practicing pharmacy within this State shall pay annually, on or before December 31st or on another date as determined by the commissioner, a renewal fee to the secretary of the board, in return for which a nonactive renewal registration shall be issued.

Every registered pharmacist holding a nonactive renewal registration who desires to practice pharmacy in this State shall be required to submit proof satisfactory to the board that, during the calendar year preceding application for active registration, the pharmacist has participated in not less than 15 hours of approved courses of continuing professional pharmaceutical education as defined in section 13735.

The board may make exceptions from the operation of the continuing education requirement of this section in emergency or hardship cases.

If any person fails or neglects to procure the annual nonactive renewal registration, notice of that failure having been mailed to that person's last known address by the board, after the expiration of 30 days following the issue of notice, that person's original registration shall expire. That person, in order to regain registration, shall be required to pay one renewal fee in addition to the sum of all fees that person may be in arrears.

3. Fees. The board shall specify by rule the procedures to be followed, in addition to those specified by section 11545, and the fees to be paid for renewal of licenses.

§13715. Continuing pharmacy education

No annual renewal certificate may be issued by the board until the applicant submits proof satisfactory to the board that, during the year preceding an application for renewal, the applicant has participated in not less than 15 hours of approved courses of continuing professional pharmaceutical education as set out in this section. The continuing professional pharmaceutical educational courses shall consist of postgraduate studies, institutes, seminars, workshops, lectures, conferences, extension studies, correspondence courses or such other forms of continuing professional pharmaceutical education as may be approved by the board.

These courses shall consist of subject matter pertinent to the following general areas of professional pharmaceutical education: The socioeconomic and legal aspects of health care; the properties and actions of drugs and dosage forms; and the ideology, characteristics and therapeutics of the disease state. The specific subject matter of the courses may include, but is not limited to, pharmacology, biochemistry, physiology, pharmaceutical chemistry, pharmacy administration, pharmacy

jurisprudence, public health and communicable diseases, pharmaceutical marketing, professional practice management, anatomy, histology and such other subject matter as represented in curricula of accredited colleges of pharmacy. The content of each course offered for credit under this continuing professional educational program must be approved in advance of the course by a committee composed of equal representation from the board, hospital pharmacy and retail pharmacy within the State. The number and members of the committee shall be selected by the board and shall serve for a period of 2 years. The board may make exceptions from the operation of this section in emergency or hardship cases.

SUBCHAPTER IV

DISCIPLINE

§13741. Disciplinary actions

The board shall investigate civil complaints regarding noncompliance with or violation of this chapter or of any rules adopted by the board.

The board shall notify the licensee of the content of a complaint filed against the licensee as soon as possible, but in no event later than within 60 days of receipt of this information. The licensee shall respond within 30 days. If the licensee's response to the complaint satisfies the board that the complaint does not merit further investigation or action, the matter may be dismissed, with notice of the dismissal to the complainant, if any.

If, in the opinion of the board, the factual basis of the complaint is or may be true and it is of sufficient gravity to warrant further action, the board may request an informal conference with the licensee. The board shall provide the licensee with adequate notice of the conference and of the issues to be discussed. The conference shall be conducted in executive session of the board, unless otherwise requested by the licensee. Statements made at the conference may not be introduced at a subsequent

formal hearing unless all parties consent.

If the board finds that the factual basis of the complaint is true and is of sufficient gravity to warrant further action, it may take any of the following actions it deems appropriate as set forth in Title 10, section 8003, subsection 5 and including:

1. Warning. Warning, censuring or reprimanding the licensee;

2. Consent agreement. With the consent of the licensee, entering into a consent agreement which fixes the period and terms of probation best adapted to protect the public health and safety and to rehabilitate or educate the licensee. A consent agreement may be used to terminate a complaint investigation if entered into by the board, the licensee and the Attorney General's office;

3. Negotiate stipulations. In consideration for acceptance of a voluntary surrender of the license, negotiating stipulations, including terms and conditions for reinstatement which ensure protection of the public health and safety and which serve to rehabilitate or educate the licensee. These stipulations shall be set forth only in a consent agreement signed by the board, the licensee and the Attorney General's office; or

4. Adjudicatory hearing. If the board concludes that modification or nonrenewal of the license might be in order, holding an adjudicatory hearing in accordance with the Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV.

§13742. Grounds for discipline

1. Suspension or revocation. The board may suspend or revoke a license, pursuant to Title 5, section 10004.

2. Grounds for action. The following shall be grounds for an action to refuse to issue a modification of the license or for refusal to renew

the license of a person licensed under this chapter:

A. The practice of fraud or deceit in obtaining a license under this chapter or in connection with service rendered within the scope of the license issued;

B. Habitual intemperance in the use of alcohol or the habitual use of narcotic, hypnotic or other substances, the use of which has resulted or may result in the licensee performing duties in a manner which endangers the health or safety of the patients;

C. A professional diagnosis of a mental or physical condition which has resulted or may result in the licensee performing duties in a manner which endangers the health or safety of the patients;

D. Aiding or abetting the practice of pharmacy by a person not duly licensed under this chapter and who was represented as duly licensed;

E. Incompetence in the practice for which licensed. A licensee shall be deemed incompetent in the practice if the licensee has:

(1) Engaged in conduct which evidences a lack of ability or fitness to discharge the duty owed by the licensee to a client, patient or the general public; or

(2) Engaged in conduct which evidences a lack of knowledge or inability to apply principles or skills to carry out the practice for which licensed;

F. Engaging in unprofessional conduct by violating any standard of professional behavior which has been established in the practice for which the licensee is licensed;

G. Subject to the limitations of Title 5, chapter 341, conviction of a crime which involves

dishonesty or false statement or which relates directly to the practice for which the licensee is licensed or conviction of any crime for which incarceration for one year or more may be imposed;

H. Engaging in false, misleading or deceptive advertising; or

I. Any violation of this Act or of any rule adopted by the board.

3. Crime in course of business. If any registered pharmacist is convicted in state or federal court of a crime which is committed during the course of duties performed as a registered pharmacist or committed through the use of the pharmacy in which the pharmacist is employed, or which the pharmacist owns or operates, and which demonstrates unfitness to practice as a pharmacist, including, but not limited to, convictions for defrauding the Medicaid program and for illegally distributing prescription drugs, the pharmacist's license is subject to suspension or revocation as set forth in section 13741.

§13743. Penalties and reinstatement

1. Penalties. Upon finding grounds for discipline of any person holding a license or seeking a license or a renewal of a license under this chapter, the board may take one or more of the following actions:

A. Request the Attorney General's office to institute appropriate judicial proceedings which may lead to suspension or revocation of license;

B. Restrict the offender's license to prohibit the offender from performing certain acts or engaging in the practice of pharmacy in a particular manner for a term to be determined by the board; or

C. Hold an adjudication hearing which may result in:

(1) Refusal to renew offender's license; or

(2) Placement of the offender on probation and supervision by the board for a period to be determined by the board.

2. Reinstatement. Any person whose license to practice pharmacy in this State has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, may at reasonable intervals petition the board for reinstatement of the license. The petition must be made in writing in a form prescribed by the board. Upon investigation and hearing, the board may grant or deny the petition or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant those modifications.

3. Criminal prosecutions. Nothing in this chapter bars criminal prosecution for any violation of this chapter where that violation is a criminal offense under the laws of this State or of the United States.

4. Judicial review. All final decisions by the board are subject to judicial review pursuant to the Maine Administrative Procedure Act, Title 5, chapter 375.

SUBCHAPTER V

REGISTRATION OF FACILITIES

§13751. Registration

1. Registration. All drug outlets, manufacturers or wholesalers shall annually register with the board.

2. Classifications. Drug outlets shall be registered in classifications set out in this subsection.

Each drug outlet must apply for a certificate of registration in one of the following classifications:

A Retail drug outlet;

B Mail order prescription drug outlet;

C Wholesale drug outlet; or

D Rural health center.

3. Rules. The board shall establish by rule the criteria which each drug outlet must meet to qualify for registration in each classification designated in subsection 2. The board may issue various types of certificates with varying restrictions to the outlets referred to in subsection 2, paragraph A when the board determines it necessary by reason of the type of drug outlet requesting a certificate.

4. Nonprescription drugs. It shall be lawful for a person to sell and distribute nonprescription drugs. Any person engaging in the sale and distribution of those items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule may be adopted by the board under this Act which requires the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist or otherwise applies to or interferes with the sale and distribution of those medicines.

§13752. Application

1. Procedures. The board shall specify by rule the registration procedures to be followed, including, but not limited to, specification of forms for use in applying for certificates of registration and the times, places and fees for filing an application, provided that the annual fee for an original or renewal certificate does not exceed $200.

2. Required information. Applications for certificates of registration shall include the following information about the proposed drug outlet:

A. Ownership;

B. Location; and

C. Identity of the pharmacist licensed to

practice in the State who shall be the pharmacist in charge of the drug outlet, when one is required by this chapter, and such further information as the board may deem necessary. A pharmacist may be the pharmacist in charge for only one drug outlet. The position of pharmacist in charge may not be held by a qualified assistant pharmacist.

3. Transferability. Certificates of registration issued by the board pursuant to this chapter are not transferable or assignable.

4. Professional responsibility. The board shall specify by rule minimum standards for the professional responsibility in the conduct of any drug outlet that has employees or personnel engaged in the practice of pharmacy. The board may require that the portion of the facility to which the certificate of registration applies be operated only under the direct supervision of no less than one pharmacist licensed to practice in this State and not otherwise and to provide such other special requirements as necessary.

5. Minimum inventory. The board shall ascertain that the applicant has a sufficient amount of prescription inventory on location to respond appropriately to prescription orders.

§13753. Notifications

1. Changes. All registered drug outlets shall report to the board, by registered mail, the occurrence of any of the following changes:

A. Permanent closing which requires 14 days' prior notice to the public and to the board;

B. Change of ownership which requires 7 days' prior notice to the board;

C. Change of pharmacist in charge which requires notice no later than 7 days after the change; and

D. Any other matters and occurrences as the board may require by rule.

2. Other reportable events. Disasters, accidents and emergencies which may affect the strength, purity or labeling of drugs, medications, devices or other materials used in the diagnosis or the treatment of injury, illness and disease shall be immediately reported to the board.

§13754. Violations and penalties

1. Unlawful conduct. No drug outlet registered pursuant to section 13751 may be operated until a certificate of registration has been issued to that facility by the board. Upon the finding of a violation of this section, the board may impose one or more of the penalties enumerated in section 13731 or 13743.

2. Reinstatement. Reinstatement of a certificate that has been suspended, revoked or restricted by the board may be granted in accordance with the procedures specified by section 13743, subsection 2.

SUBCHAPTER VI

MANUFACTURERS AND WHOLESALERS WITHOUT FACILITIES IN THIS STATE

§13758. Registration

1. Purpose; statement of intent. The purpose of this section is to require registration of manufacturers and wholesalers without facilities in this State. The intent of the Legislature is that the board shall not promulgate rules regarding companies without wholesale facilities or manufacturers' facilities located in this State which are more restrictive than federal law or regulation.

2. Registration, manufacturers and wholesalers. All manufacturers and wholesalers whose products are distributed in the State in any manner shall register with the Board of Commissioners of the Profession of Pharmacy.

3. Registration, individuals. No individual who

is employed by a manufacturer or wholesaler which is registered under this subchapter need register under this subchapter.

4. Form. Registration forms shall state: Applicant's name; address; day phone; 24-hour phone; ownership status; manufacturer or wholesaler designation; Drug Enforcement Agency and Federal Drug Administration members; and date executed. Registration forms shall be executed by an owner or officer of the entity, providing printed name and title.

5. Fees. Each registrant shall pay a fee not to exceed $200.

6. Violations. It shall be unlawful for manufacturers or wholesale companies to distribute prescription drugs in this State unless registered under the provisions of this subchapter or subchapter V.

SUBCHAPTER VII

SERVICES AT RURAL HEALTH CENTERS

§13761. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Pharmacy provider. "Pharmacy provider" means a pharmacy licensed in this State participating with a rural community health center under this subchapter.

2. Rural community health center. "Rural community health center" means an incorporated nonprofit health facility which provides comprehensive primary health care to citizens in rural areas without a pharmacy or in a community where available pharmacy services cannot meet the documented need.

§13762. Center to be licensed

1. License required. A rural community health center that desires to contract for pharmaceutical services with a pharmacy must be licensed by the board and shall abide by the rules of the board. These rules may be no more restrictive than those regulating private pharmacy practice in the State.

2. Annual renewal. Licenses shall expire annually on December 31st or on such other date as the commissioner determines. Notice of expiration shall be mailed to each licensee's last known address at least 30 days in advance of the expiration of the license. The notice shall include any requests for information necessary for renewal.

Licenses may be renewed up to 90 days after the date of expiration upon payment of a late fee of $10 in addition to the renewal fee. Any person who submits an application for renewal more than 90 days after the license renewal date shall be subject to all requirements governing new applicants under this chapter.

3. Notice. Any rural community health center wishing to be licensed under this subchapter shall notify the board of its intent to establish such a contract and shall apply for a license, submit floor plans of the physical plant and pay the same fee required for a pharmacy under section 13723. The application shall include the name, address and registration number of the provider of pharmaceutical services.

4. Board action. The board shall approve or disapprove of the application within 60 days of receipt and shall notify the applicant in writing of its decision and the reason for the decision.

§13763. Scope of license

A licensee under this subchapter shall comply with sections 13784; 13785, subsections 1 to 7; and any applicable rules promulgated by the board. No licensee may refill a prescription and all orders shall be treated as new orders. In all other respects,

notwithstanding any other provision of law, a licensee may provide pharmaceutical services under this subchapter subject to section 13764.

§13764. Rules

The board shall adopt rules in conformity with the Maine Administrative Procedure Act, Title 5, chapter 375, to carry out the purposes of this subchapter.

SUBCHAPTER VIII

THIRD-PARTY PRESCRIPTION PROGRAM ACT

§13771. Short title

This subchapter shall be known and may be cited as the "Third-party Prescription Program Act."

§13772. Definitions

As used in this subchapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Third-party prescription program. "Third-party prescription program" means any system of providing for the reimbursement of pharmaceutical goods and services under a contractual arrangement or agreement between a provider of goods and services and another party who is not the consumer of those goods and services. These programs include, but are not limited to, insurance plans which provide coverage for prescription drugs or other pharmaceutical services.

§13773. Notice

No 3rd-party prescription program may be instituted in this State until written notice of the provisions of the program has been filed with the Superintendent of Insurance and given to all pharmacies which are located within the counties covered by the program at least 30 days prior to the commencement of the program. In the case of chain or branch pharmacies, the notice shall be given to the

main office or headquarters. These pharmacies shall have 30 days from the date of notice to enroll in the program.

§13774. Denial of payment

No program administrator may deny to any pharmacy payment for services which may have resulted from the fraudulent or illegal use of an identification card by any person, unless the pharmacy has been notified that the card has been canceled or discontinued and that the program administrator has been unsuccessful in attempting to regain possession of the card.

§13775. Reimbursement rates

A 3rd-party prescription program is prohibited from charging a pharmacy a registration fee or other fixed charge, either annually or otherwise, except in cases where a charge is necessary to specifically cover any equipment, forms or materials required by the program.

§13776. Contract renewal and changes

Any changes in benefits or provisions in any contract may not be made unilaterally by either the program administrator or the pharmacy. Any change in a contract offered to one pharmacy shall be offered to all the state pharmacies participating in the program.

§13777. Exceptions

This Act does not apply to any medical assistance or public health programs administered by the Department of Human Services, including, but not limited to, the Medicaid program and the Low Cost Drug Program.

SUBCHAPTER IX

MISCELLANEOUS PROVISIONS

§13781. Generic and therapeutically equivalent substitution

Every written prescription issued by a practitioner in this State shall contain in the lower right-hand corner of the prescription form a box at least 1/2 inch by 1/2 inch. The following words must appear to the left of this box: "Any drug which is the generic and therapeutic equivalent of the drug specified above in this prescription may be dispensed, provided that no check mark ( ) has been handwritten in the box in the lower right-hand corner."

Any pharmacist receiving a prescription in which no handwritten check mark ( ) is found in the box provided may substitute a generic and therapeutically equivalent drug for the drug specified on the prescription, provided that the substituted drug is distributed by a business entity doing business in the United States which is subject to suit and the service of legal process in the United States and that the price of the substituted drug does not exceed the price of the drug specified by the practitioner.

Any pharmacist who substitutes a generic drug under this section shall inform the person to whom the drug is dispensed of the substitution. When any substitution is made under this section, the pharmacist shall cause the name or abbreviation of the drug manufacturer or distributor to appear on the container label of the drug dispensed.

This section does not apply to prescriptions ordered by practitioners for patients in hospitals when those prescriptions are filled by a hospital pharmacy or in any institution where a formulary system is established.

§13782. Advertising

It is lawful for any pharmacy, pharmacist or other licensee of the board to advertise to the public the current retail price charged for any drugs, medicines or appliances as defined in the United States Code, Title 21, Section 3211 (g) (1) which bears the legend "Caution: Federal law prohibits dispensing without prescription." The advertising may be according to

either the brand name or the generic name of the drug. No media advertising of any drugs included in the United States Comprehensive Drug Abuse Prevention and Control Act of 1970, 84 Stat. 1236, is permitted.

§13783. Posting prices

Each licensed pharmacy shall maintain on its premises in a conspicuous place a price listing of those 100 drugs sold most frequently in the State during the previous year which bears the legend "Caution: Federal law prohibits dispensing without prescription." This list is not to include any Schedule II substances, as defined by the Federal Drug Enforcement Administration. This price listing shall be prepared annually by the board and shall be provided by the board to each licensed pharmacy in the State by September 1st. This price listing shall be prepared in accordance with the following specifications.

1. Size of list. The list must be of uniform size and shall be no smaller than 36 inches wide by 36 inches high.

2. Contents and price. The list must include the name, strength and quantity of each drug and a space for the insertion of the current retail price of each drug by each licensed pharmacy.

3. Services. The list must include the professional services and nonprofessional convenience services provided by the pharmacy.

4. Generic name. The list must include the generic name of each drug when a generic and therapeutically equivalent is available.

5. Type of print. The list must be printed in type sufficiently large to be easily read.

6. Alphabetical listing. The list must be compiled alphabetically.

Nothing in this section prevents a pharmacy from

changing the current retail price of any drug at any time, provided that the listed price is simultaneously adjusted to reflect the new current retail price.

§13784. Patient information regulation

1. Explanation by pharmacist. With each new prescription dispensed, the pharmacist, in addition to labeling the prescription in accordance with the requirements of the State, must orally explain to the patient or the patient's agent the directions for use and any additional information, in writing if necessary, to assure the proper utilization of the medication or device prescribed. For those prescriptions delivered outside the confines of the pharmacy, the explanation shall be by telephone or in writing. This section does not apply to those prescriptions for patients in hospitals or institutions where the medication is to be administered by a nurse or other individual licensed to administer medications or to those prescriptions for patients who are to be discharged from a hospital or institution.

2. Maintenance of current reference material. To ensure that proper information is available to each pharmacist, each pharmacy or pharmacist shall maintain current reference material on drug interactions.

§13785. Patient profile record system regulation

A patient profile record system shall be maintained in all pharmacies for persons for whom prescriptions are dispensed. The patient profile record system shall be devised to enable the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing. One profile record or document may be maintained for all members of a family living at the same address and possessing the same family name. The following information shall be recorded:

1. Name. The family name and the first name of the person for whom the medication is intended;

2. Address. The address to correspond to the name in subsection 1;

3. Age group. An indication of the patient's age group, that is, infant, child or adult;

4. Original date of dispensing. The original date the medication is dispensed pursuant to the receipt of a practitioner's prescription;

5. Prescription identification. The number or designation identifying the prescription;

6. Prescriber's name. The name of the person prescribing the drug or device;

7. Drug information. The name, strength and quantity of the drug; and

8. Initials of pharmacist; date of refill. The initials of the dispensing pharmacist and the date of dispensing the medication as a renewal or refill, if those initials and that date are not recorded on the back of the original prescription.

The pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic conditions which may relate to drug utilization as communicated to the pharmacy by the patient.

Upon receipt of a prescription, a pharmacist shall examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potentially harmful reaction or interaction, the pharmacist shall take appropriate action to avoid or minimize the problem which may include consultation with the practitioner.

A patient profile record must be maintained for a period of not less than 5 years from the date of the last entry in the profile record.

§13786. Identification of persons prescribing medicines on hospital prescription blanks

Any practitioner who writes a prescription upon a prescription blank of a hospital or clinic shall sign that practitioner's name and cause that name to be printed, stamped or typed on the blank.

This section applies to any physician's assistant or registered nurse who writes a prescription while working under the control or supervision of a physician. In case of the physician's assistant or registered nurse, the name of the physician under whom the assistant or nurse works shall be printed, stamped or typed on the blank.

§13787. Hypodermic syringes; prescriptions

1. Possession. A hypodermic apparatus may be possessed by a practitioner, funeral director, nurse, manufacturer or dealer in embalming supplies, wholesale druggist, manufacturing pharmacist, pharmacist, manufacturer of surgical instruments, an employee of an incorporated hospital acting under official direction, carrier or messenger engaged in the transportation of a hypodermic apparatus as an agent of any of the persons named in this subsection, employees of scientific research laboratories, employees of educational institutions, employees of an agency or organization duly authorized by the board or a person who has received a written prescription issued under subsection 2.

2. Prescriptions. A practitioner may issue to a patient under the practitioner's immediate charge a written prescription to purchase a hypodermic apparatus. The board shall, by rule, prescribe the form of prescription that the practitioner shall use and the records and information that must be kept by the practitioner and by the pharmacist filling that prescription.

3. Hypodermic apparatus. As used in this section, "hypodermic apparatus" has the meaning set forth in Title 17-A, section 1101, subsection 2, except that it

does not include a syringe, needle or instrument for use on farm animals and poultry.

§13788. Sale of poisonous drugs

Each licensed pharmacist who sells a poison shall affix to the package sold 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 address 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 practitioners, sales at wholesale to pharmacists or sales to hospitals, colleges or public institutions.

§13789. Possession of drug samples

No person may purchase manufacturers' drug samples from any person for purposes of resale. If those samples are given gratuitously to a registered pharmacist, qualified assistant pharmacist or medical practitioner, any such sample may be given to any person, provided that any such sample is kept in containers suitably labeled to conform to the Federal Food and Drug Act and the state food and drug laws and provided that this gift shall be subject to the laws relating to the sale of drugs.

§13790. Using drugs not in prescription

If a pharmacist knowingly uses any drugs or ingredients in preparing or compounding a written or oral prescription of any practitioner different from those named in the prescription, that use shall constitute a civil violation for which a forfeiture of not more than $1,000 nor less than $50 may be adjudged.

§13791. Return of drugs prohibited

A drug or pharmaceutical preparation which has been dispensed on prescription shall not be returned to pharmacy stock after being in possession and under

the control of another person and shall not be dispensed again, unless the drug is packaged in an unbroken, sealed container or unless, in the case of a hospital, a licensed pharmacist determines that the drug has not been impaired.

§13792. Sale by certain methods prohibited

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.

§13793. Adulterating and selling drugs

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. These adulterated drugs and medicines shall be forfeited and destroyed under the direction of the court.

§13794. Labeling of prescriptions

Every drug dispensed pursuant to prescription, whether for a legend drug or not, shall carry on the label the following information: The prescription number; the date of filling; the patient's name; directions for use; the name and strength of the drug and the amount dispensed, including either the brand name of the drug or, if a generic and therapeutically equivalent drug is dispensed, it shall be in accordance with section 13781; the name of the practitioner prescribing the drug; and the name, address and telephone number of the pharmacy where the prescription was compounded and dispensed.

Sec. 6. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1988-89

PROFESSIONAL AND FINANCIAL
REGULATION, DEPARTMENT OF

Board of Commissioners of the Profession of Pharmacy	
Positions	(1.5)
Personal Services	$(57,090)
All Other	85,000
Capital Expenditures	5,000
Total	$32,910
Division of Licensing and Equipment	
Positions	(3)
Personal Services	80,000
TOTAL	$112,910

Sec. 7. Transition.

1. Funds transferred. All liabilities and assets shall remain with the Board of Commissioners of the Profession of Pharmacy and the Department of Professional and Financial Regulation.

2. Personnel transferred. All employees of the Board of Commissioners of the Profession of Pharmacy shall become employees of the Department of Professional and Financial Regulation. The accrued fringe benefits, including vacation and sick leave, health and life insurance and retirement of these personnel shall remain with those personnel.

3. Rules and procedures. All rules and procedures currently in effect and operations pertaining to any unit and which are in compliance with the provisions of this Act shall remain in effect until rescinded or amended as provided by state law.

4. Members. Members of the Board of Commissioners of the Profession of Pharmacy who have been appointed to terms extending beyond the effective date of this Act shall continue to serve in their appointed terms of office under the Board of Commissioners of the Profession of Pharmacy and shall serve until their successors are appointed and qualified.

Emergency clause. In view of the emergency cited in the preamble, this Act shall take effect when approved.

STATEMENT OF FACT

The purpose of this bill is to recodify and reform the pharmacy laws.

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