

Stricken language would be deleted from and underlined language would be added to the law as it existed prior to this session of the General Assembly.
Act 355 of the Regular Session

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009

A Bill

SENATE BILL 120

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5 By: Senator P. Malone
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For An Act To Be Entitled

8
9 AN ACT TO CLARIFY VARIOUS PROVISIONS OF THE LAW
10 REGARDING PHARMACISTS AND PHARMACIES; TO CLARIFY
11 THE REGULATORY AUTHORITY OF THE ARKANSAS STATE
12 BOARD OF PHARMACY; AND FOR OTHER PURPOSES.
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Subtitle

14
15 AN ACT TO CLARIFY VARIOUS PROVISIONS OF
16 THE LAW REGARDING PHARMACISTS AND
17 PHARMACIES AND TO CLARIFY THE REGULATORY
18 AUTHORITY OF THE ARKANSAS STATE BOARD OF
19 PHARMACY.
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22 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
23

24 SECTION 1. Arkansas Code § 17-92-101(16), defining "practice of
25 pharmacy," is amended to read as follows:

26 (16)(A) "Practice of pharmacy" means the learned profession of:

27 (i)(a) Dispensing, selling, distributing,
28 transferring possession of, vending, bartering, or, in accordance with
29 regulations adopted by the board, administering drugs, medicines, poisons, or
30 chemicals that under the laws of the United States or the State of Arkansas
31 may be sold or dispensed only on the prescription and order of a practitioner
32 authorized by law to prescribe drugs, medicines, poisons, or chemicals.

33 (b) Except in accordance with regulations
34 adopted by the board as recommended by the Medications Administration
35 Advisory Committee, the administration of medications shall be limited to the



1 following classifications of medications: immunizations, vaccines, allergy
2 medications, vitamins, minerals, antihyperglycemics, and antinausea
3 medications.

4 (c) The administration of medications shall
5 not include the administration of medications to any person under the age of
6 eighteen (18);

7 (ii) Placing, packing, pouring, or putting into a
8 container for dispensing, sale, distribution, transfer of, possession of,
9 vending, or bartering any drug, medicine, poison, or chemical that under the
10 laws of the United States or the State of Arkansas may be sold or dispensed
11 only on the prescription of a practitioner authorized by law to prescribe
12 drugs, medicines, poisons, or chemicals;

13 (iii) Placing in or affixing upon any container
14 described in subdivision (16)(A)(ii) of this section a label required to be
15 placed upon drugs, medicines, poisons, or chemicals sold or dispensed upon
16 prescription of a practitioner authorized by law to prescribe those drugs,
17 medicines, poisons, or chemicals;

18 (iv) Preparing, typing, or writing labels to be
19 placed in or affixed on any container described in subdivision (16)(A)(ii) of
20 this section, which label is required to be placed upon drugs, medicines,
21 poisons, or chemicals sold or dispensed upon prescription of a practitioner
22 authorized by law to prescribe those drugs, medicines, poisons, or chemicals;

23 (v) Interpreting prescriptions for drugs, medicines,
24 poisons, or chemicals issued by practitioners authorized by law to prescribe
25 drugs, medicines, poisons, or chemicals that may be sold or dispensed only on
26 prescription;

27 (vi) Selecting, taking from, and replacing upon
28 shelves in the prescription department of a pharmacy or apothecary drugs,
29 medicines, chemicals, or poisons that are required by the laws of the United
30 States or the State of Arkansas to be sold or dispensed only on prescription
31 of a practitioner authorized by law to prescribe them;

32 (vii) Compounding, mixing, preparing, or combining
33 drugs, medicines, chemicals, or poisons that under the laws of the United
34 States or the State of Arkansas may be sold or dispensed only on the
35 prescription of a practitioner authorized by law to prescribe them;

36 (viii) Advising and providing information concerning

1 utilization of drugs and devices and participation in drug utilization
2 reviews;

3 (ix)(a) Performing a specific act of drug therapy
4 management or disease state management delegated to a pharmacist for an
5 individual patient based upon a written protocol or a patient care plan
6 approved by ~~the patient's~~ a physician, who shall be licensed in this state
7 under the Arkansas Medical Practices Act, §§ 17-95-201 et seq., 17-95-301 et
8 seq., and 17-95-401 et seq.

9 (b) Drug therapy management shall not include
10 the selection of drug products not prescribed by the physician unless the
11 drug products are either named in the physician-initiated protocol or the
12 physician-approved patient care plan;

13 (x) Providing pharmacy care; and

14 (xi) Providing pharmacokinetic services.

15 (B) The provisions of subdivisions (16)(A) and (C) of this
16 section shall not apply to employees of wholesale drug companies or other
17 drug distributors who do not fill prescriptions or sell or dispense drugs to
18 the consumer.

19 (C)(i) The board may permit pharmacy technicians other
20 than pharmacists or interns to perform some or all of those functions
21 described in board regulations under the direct, personal supervision of a
22 licensed pharmacist pursuant to regulations defining the minimum
23 qualifications of such employees, the ratio of pharmacy technicians to
24 supervising pharmacists, and the scope of the duties, practices, and
25 procedures that the board determines will promote the delivery of competent,
26 professional pharmaceutical services and promote the public health and
27 welfare. Nothing in this chapter shall be construed as allowing pharmacy
28 technicians to administer medications.

29 (ii) The conduct of a pharmacy technician is the
30 responsibility of the pharmacist-in-charge and supervising pharmacist of the
31 pharmacy who shall not permit the employee to perform any act, task, or
32 function that involves the exercise of independent judgment by the employee.

33 (iii) Pharmacy products prepared by pharmacy
34 technicians shall be verified for accuracy by the supervising pharmacist
35 prior to release for patient use, and the verification shall be documented.

36 (iv) The use of pharmacy technicians in a manner not

1 authorized by this chapter or regulations promulgated hereunder shall be
 2 unprofessional conduct by the pharmacist-in-charge and the supervising
 3 pharmacist.

4 (v) It is recognized that hospital pharmacy
 5 technicians as defined in § 17-92-602(5) are governed by the Hospital
 6 Pharmacies Act, § 17-92-601 et seq., and related board regulations developed
 7 pursuant to that act;

8
 9 SECTION 2. Arkansas Code § 17-92-108(10), concerning fees for pharmacy
 10 intern registration, is amended to read as follows:

11 (10)(A) The fee for intern registration shall not exceed forty-
 12 five dollars (\$45.00), ~~and the~~

13 (B) The fee for preceptor registration shall not exceed
 14 twenty dollars (\$20.00) every two (2) years;

15 ~~(B)(i) An intern license that expires on May 31, 2005, may~~
 16 ~~be renewed and shall be treated as a new intern license as provided in § 17-~~
 17 ~~92-310(a)(1)(C).~~

18 ~~(ii) However, the fee for the renewed license shall~~
 19 ~~be prorated so that the total fees paid by the intern for intern licensure~~
 20 ~~shall not exceed forty five dollars (\$45.00);~~

21
 22 SECTION 3. Arkansas Code § 17-92-206(b), concerning annual reports by
 23 the Arkansas State Board of Pharmacy, is amended to read as follows:

24 (b) The board shall make a written report on ~~July 1~~ September 1 of
 25 each year to the Governor and to the Arkansas Pharmacists Association of all
 26 its proceedings, orders, rules, requirements, and regulations, of its
 27 receipts and disbursements, including also the names of all persons licensed
 28 to practice under this chapter, and a record of permits and renewals.

29
 30 SECTION 4. Arkansas Code § 17-92-315, concerning alternative penalties
 31 for violations of the regulating pharmacies, is amended to add an additional
 32 subsection to read as follows:

33 (d) In addition to other sanctions authorized by this chapter, the
 34 board may also impose a civil penalty under this section against an
 35 unlicensed person or entity practicing or providing goods or services or
 36 offering to practice or provide any goods or services requiring licensure

1 under this chapter.

2
3 SECTION 5. Arkansas Code § 17-92-401(a), concerning licensure of out-
4 of-state pharmacies, is amended to read as follows:

5 (a) ~~Any~~ A pharmacy operating outside the state ~~which that~~ routinely
6 ships, mails, or delivers in any manner a dispensed legend drug into Arkansas
7 or otherwise practices pharmacy in Arkansas shall hold a pharmacy license
8 issued by the Arkansas State Board of Pharmacy, and that part of the pharmacy
9 operation dispensing the prescription for an Arkansas resident shall abide by
10 Arkansas law and regulations of the board.

11
12 SECTION 6. Arkansas Code § 17-92-412 is amended to read as follows:

13 17-92-412. Nursing home consultant permit.

14 (a)(1) The Arkansas State Board of Pharmacy shall provide by
15 regulation for the issuance of nursing home consultant permits ~~that will be~~
16 ~~issued to each nursing home or long term care facility and for its consultant~~
17 ~~pharmacist in charge for that facility.~~

18 (2) The consultant pharmacist-in-charge and the nursing home
19 administrator shall be jointly responsible to ensure that a valid permit is
20 posted at the facility at all times.

21 (b) The board shall set by regulation the standards by which the
22 controlled and legend drugs and devices will be maintained in the nursing
23 home or long-term care facility.

24 (c)~~(1)~~ The consultant pharmacist-in-charge, in conjunction with the
25 nursing home administrator and director of nurses, shall ensure the proper
26 control and accountability, storage, and proper utilization of drugs and
27 other legend devices dispensed to patients residing in the facility according
28 to board standards as well as those established by state and federal
29 guidelines.

30 ~~(2) The consultant pharmacist in charge, in conjunction with the~~
31 ~~nursing home administrator, shall be responsible for the timely renewal of~~
32 ~~the nursing home pharmacy consultant permit.~~

33
34 SECTION 7. Arkansas Code § 17-92-706 is amended to read as follows:

35 17-92-706. Funding.

36 (a)(1) The Arkansas State Board of Pharmacy ~~is authorized to~~ may

1 provide up to ~~five thousand dollars (\$5,000)~~ fifty thousand dollars (\$50,000)
2 per year to the committee for ~~expenses incurred in management and operation~~
3 ~~of~~ the program.

4 (2) The board may provide to the committee at any time the
5 moneys authorized under subdivision (a)(1) of this section.

6 (b) Documentation of the use of these funds shall be provided
7 quarterly to the board for review and comment.

8
9 SECTION 8. Arkansas Code § 17-92-1003(15), defining "proper
10 practitioner-patient relationship for the Arkansas Internet Prescription
11 Consumer Protection Act, is amended to read as follows:

12 (15) ~~"Proper physician patient relationship" means that:~~

13 ~~(A) The physician:~~

14 ~~(i) Performs a history and physical examination of~~
15 ~~the patient adequate to establish a diagnosis and to identify underlying~~
16 ~~conditions or contraindications to the treatment recommended or provided; or~~

17 ~~(ii) Personally knows the patient and the patient's~~
18 ~~general health status through an ongoing personal or professional~~
19 ~~relationship;~~

20 ~~(B) The physician provides appropriate follow up at~~
21 ~~medically necessary intervals;~~

22 ~~(C) The physician provides treatment in consultation with~~
23 ~~or upon referral by another physician who has an ongoing relationship with~~
24 ~~the patient and who has agreed to supervise the patient's treatment,~~
25 ~~including follow up care and the use of prescribed medications; or~~

26 ~~(D) The physician interacts with the patient through an~~
27 ~~on-call or cross-coverage situation.~~

28 "Proper practitioner-patient relationship" means that before the
29 issuance of a prescription, a practitioner, physician, or other prescribing
30 health professional performs a history and in-person physical examination of
31 the patient adequate to establish a diagnosis and to identify underlying
32 conditions or contraindications to the treatment recommended or provided
33 unless:

34 (A) The prescribing practitioner is consulting at the
35 specific request of another practitioner who:

36 (i) Maintains an ongoing relationship with the

1 patient;

2 (ii) Has performed an in-person physical examination
3 of the patient; and

4 (iii) Has agreed to supervise the patient's ongoing
5 care and use of prescribed medications; or

6 (B) The prescribing practitioner interacts with the
7 patient through an on-call or cross-coverage situation.

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APPROVED: 3/10/2009

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