

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.

1 State of Arkansas
2 87th General Assembly
3 Regular Session, 2009
4
5 By: Senator P. Malone
6
7

A Bill

SENATE BILL 120

For An Act To Be Entitled

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.

Subtitle

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:
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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
36 following classifications of medications: immunizations, vaccines, allergy



1 medications, vitamins, minerals, antihyperglycemics, and antinausea
2 medications.

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

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

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

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

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

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

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

35 (viii) Advising and providing information concerning
36 utilization of drugs and devices and participation in drug utilization

1 reviews;

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

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

12 (x) Providing pharmacy care; and

13 (xi) Providing pharmacokinetic services.

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

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

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

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

35 (iv) The use of pharmacy technicians in a manner not
 36 authorized by this chapter or regulations promulgated hereunder shall be

1 unprofessional conduct by the pharmacist-in-charge and the supervising
 2 pharmacist.

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

7
 8 SECTION 2. Arkansas Code § 17-92-108(10), concerning fees for pharmacy
 9 intern registration, is amended to read as follows:

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

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

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

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

20
 21 SECTION 3. Arkansas Code § 17-92-206(b), concerning annual reports by
 22 the Arkansas State Board of Pharmacy, is amended to read as follows:

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

28
 29 SECTION 4. Arkansas Code § 17-92-315, concerning alternative penalties
 30 for violations of the regulating pharmacies, is amended to add an additional
 31 subsection to read as follows:

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

1
 2 SECTION 5. Arkansas Code § 17-92-401(a), concerning licensure of out-
 3 of-state pharmacies, is amended to read as follows:

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

10
 11 SECTION 6. Arkansas Code § 17-92-412 is amended to read as follows:
 12 17-92-412. Nursing home consultant permit.

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

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

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

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

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

32
 33 SECTION 7. Arkansas Code § 17-92-706 is amended to read as follows:
 34 17-92-706. Funding.

35 (a)(1) The Arkansas State Board of Pharmacy ~~is authorized to~~ may
 36 provide up to ~~five thousand dollars (\$5,000)~~ fifty thousand dollars (\$50,000)

1 per year to the committee for ~~expenses incurred in management and operation~~
 2 ~~of~~ the program.

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

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

7
 8 SECTION 8. Arkansas Code § 17-92-1003(15), defining "proper
 9 practitioner-patient relationship for the Arkansas Internet Prescription
 10 Consumer Protection Act, is amended to read as follows:

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

12 ~~(A) The physician:~~

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

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

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

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

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

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

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

35 (i) Maintains an ongoing relationship with the
 36 patient;

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

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

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

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