

practice of podiatry as defined in section 153.01, or the practice of dentistry as defined in section 150A.05 and whose license is in good standing; or when a previous diagnosis exists indicating an ongoing condition warranting physical therapy treatment, subject to periodic review defined by board of medical examiners rule;

(b) treat human ailments by physical therapy treatment without first having practiced one year under a physician's orders as verified by the board's records;

(c) utilize any chiropractic manipulative technique whose end is the chiropractic adjustment of an abnormal articulation of the body; and

(d) treat human ailments other than by physical therapy unless duly licensed or registered to do so under the laws of this state.

Approved April 18, 1988

CHAPTER 550—S.F.No. 752

An act relating to occupations and professions; amending the laws regulating the practice of pharmacy; providing definitions; providing for registration of pharmacies, drug manufacturers, and others; providing for licensing of pharmacists; providing remedies for violations; amending Minnesota Statutes 1986, sections 151.01, subdivision 2, and by adding subdivisions; 151.04; 151.06, subdivision 1; 151.101; 151.15; 151.19; 151.211; 151.212, subdivision 1, and by adding a subdivision; 151.25; 151.26, subdivision 1; 151.32; 151.34; and 151.37; proposing coding for new law in Minnesota Statutes, chapter 151; repealing Minnesota Statutes 1986, sections 151.01, subdivision 4; 151.06, subdivision 2a; 151.11; 151.28; and 151.31.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 1986, section 151.01, subdivision 2, is amended to read:

Subd. 2. **PHARMACY.** ~~The term "pharmacy" means a drug store or other established place regularly registered by the state board of pharmacy, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold at retail~~ "Pharmacy" means an established place of business in which prescriptions, drugs, medicines, chemicals, and poisons are prepared, compounded, dispensed, vended, or sold to or for the use of patients and from which related clinical pharmacy services are delivered.

Sec. 2. Minnesota Statutes 1986, section 151.01, is amended by adding a subdivision to read:

Subd. 27. PRACTICE OF PHARMACY. "Practice of pharmacy" means (1) the interpretation and evaluation of prescriptions or drug orders; (2) the

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compounding, dispensing, or labeling of drugs and devices (except labeling by a manufacturer or packager of nonprescription drugs or commercially packaged legend drugs and devices); (3) the participation in clinical interpretations of drug therapy for assurance of safe and effective use of drugs; (4) participation in drug selection and drug utilization reviews; (5) participation in the storage of drugs and the maintenance of records therefor; (6) the responsibility for advising on therapeutic values, content, hazards and uses of drugs and devices; and (7) the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of a pharmacy.

Sec. 3. Minnesota Statutes 1986, section 151.01, is amended by adding a subdivision to read:

Subd. 28. VETERINARY LEGEND DRUG. "Veterinary legend drug" means a drug that is required by federal law to bear the following statement: "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian."

Sec. 4. Minnesota Statutes 1986, section 151.01, is amended by adding a subdivision to read:

Subd. 29. LEGEND MEDICAL GAS. "Legend medical gas" means a liquid or gaseous substance used for medical purposes and that is required by federal law to bear the following statement: "Caution: Federal law prohibits dispensing without a prescription."

Sec. 5. Minnesota Statutes 1986, section 151.01, is amended by adding a subdivision to read:

Subd. 30. DISPENSE. "Dispense or dispensing" means the preparation or delivery of a drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the drug.

Sec. 6. Minnesota Statutes 1986, section 151.04, is amended to read:

151.04 **RECOMMENDED NAMES.**

The Minnesota state pharmaceutical association and the Minnesota society of hospital pharmacists may jointly recommend five names for each pharmacist to be appointed.

Sec. 7. Minnesota Statutes 1986, section 151.06, subdivision 1, is amended to read:

Subdivision 1. **(a) POWERS AND DUTIES.** The board of pharmacy shall have the power and it shall be its duty:

- (1) to regulate the practice of pharmacy;

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(2) to regulate the manufacture, wholesale, and retail sale of drugs ~~or medicines~~ within this state;

(3) to regulate the identity, labeling, purity, and quality of all drugs and medicines dispensed in this state, using the United States pharmacopoeia and the national formulary, or any revisions thereof, or standards adopted under the federal act as the standard;

(4) ~~It may, by its duly authorized representative,~~ to enter and inspect by its authorized representative any and all places where drugs ~~or~~ medicines, medical gases, or veterinary drugs or devices are sold, vended, given away, compounded, dispensed, manufactured, wholesaled or held; it may secure samples or specimens of any ~~drug or medicine~~ drugs, medicines, medical gases, or veterinary drugs or devices after paying or offering to pay for such sample; it shall be entitled to inspect and make copies of any and all records of shipment, purchase, manufacture, quality control, and sale of ~~drugs or medicines~~ these items provided, however, that such inspection shall not extend to financial data, sales data, or pricing data;

(5) to examine and license as pharmacists all applicants whom it shall deem qualified to be such;

(6) to deny, suspend, revoke, or refuse to renew any registration or license required under this chapter, to any applicant or registrant or licensee upon any of the following grounds:

(~~a~~) (i) fraud or deception in connection with the securing of such license or registration;

(~~b~~) (ii) in the case of a pharmacist, conviction in any court of a felony;

(~~c~~) (iii) in the case of a pharmacist, conviction in any court of an offense involving moral turpitude;

(~~d~~) (iv) habitual indulgence in the use of narcotics, stimulants, or depressant drugs; or habitual indulgence in intoxicating liquors in a manner which could cause conduct endangering public health;

(~~e~~) (v) unprofessional conduct or conduct endangering public health;

(~~f~~) (vi) gross immorality;

(~~g~~) (vii) employing, assisting, or enabling in any manner an unlicensed person to practice pharmacy;

(~~h~~) (viii) conviction of theft of drugs, or the unauthorized use, possession, or sale thereof;

(~~i~~) (ix) violation of any of the provisions of this chapter or any of the rules of the state board of pharmacy;

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(~~g~~) ~~(x)~~ in the case of a pharmacy license, operation of such pharmacy without a pharmacist present and on duty;

(~~h~~) ~~(xi)~~ in the case of a pharmacist, physical or mental disability which could cause incompetency in the practice of pharmacy; or

(xii) in the case of a pharmacist, the suspension or revocation of a license to practice pharmacy in another state;

(7) to employ necessary assistants and make rules for the conduct of its business; and

(8) to perform such other duties and exercise such other powers as the provisions of the act may require;

(b) TEMPORARY SUSPENSION. In addition to any other remedy provided by law, the board may, without a hearing, temporarily suspend a license for not more than 60 days if the board finds that a pharmacist has violated a statute or rule that the board is empowered to enforce and continued practice by the pharmacist would create an imminent risk of harm to others. The suspension shall take effect upon written notice to the pharmacist, specifying the statute or rule violated. At the time it issues the suspension notice, the board shall schedule a disciplinary hearing to be held under the administrative procedure act. The pharmacist shall be provided with at least 20 days notice of any hearing held under this subdivision.

(~~g~~) ~~(c)~~ RULES. For the purposes aforesaid it shall be the duty of the board to make and publish uniform rules not inconsistent herewith for carrying out and enforcing the provisions of this chapter.

Sec. 8. [151.095] INACTIVE STATUS LICENSE.

The board may, by rule, establish standards for an inactive status of licensure for previously licensed pharmacists who have retired from active practice, have left the state, or have otherwise ceased to be actively engaged in the practice of pharmacy in this state.

Sec. 9. Minnesota Statutes 1986, section 151.101, is amended to read:

151.101 INTERNSHIP.

The board may license as an intern any natural persons who have satisfied the board that they are of good moral character, not physically or mentally unfit, and who have successfully completed the educational requirements for intern licensure prescribed by the board. The board shall prescribe standards and requirements for interns, pharmacist-preceptors, and internship training but may not require more than one year of such training.

The board in its discretion may accept internship experience obtained in another state provided the internship requirements in such other state are in the opinion of the board equivalent to those herein provided.

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Sec. 10. Minnesota Statutes 1986, section 151.15, is amended to read:

151.15 COMPOUNDING DRUGS UNLAWFUL UNDER CERTAIN CONDITIONS.

Subdivision 1. LOCATION. It shall be unlawful for any person to compound, dispense, vend, or sell ~~at retail~~, drugs, medicines, chemicals, or poisons in any place other than a pharmacy, except as provided in this chapter.

Subd. 2. PROPRIETORS OF PHARMACIES. No proprietor of a pharmacy shall permit the compounding or dispensing of prescriptions except by a pharmacist; ~~or by an assistant pharmacist~~, or by a pharmacist intern under the personal supervision of a pharmacist; or the vending or selling ~~at retail~~ of drugs, medicines, chemicals, or poisons in the proprietor's pharmacy except under the personal supervision of a pharmacist ~~or of an assistant pharmacist in the temporary absence of the pharmacist.~~

Subd. 3. UNLICENSED PERSONS; VETERINARY LEGEND DRUGS. It shall be unlawful for any person other than a licensed veterinarian or pharmacist to compound or dispense veterinary legend drugs except as provided in this chapter.

Subd. 4. UNLICENSED PERSONS; LEGEND DRUGS. It shall be unlawful for any person other than a licensed practitioner or pharmacist to compound or dispense legend drugs except as provided in this chapter.

Sec. 11. Minnesota Statutes 1986, section 151.19, is amended to read:

151.19 REGISTRATION OF PHARMACIES; LICENSE, FEE; FEES.

Subdivision 1. PHARMACY REGISTRATION. The board shall require and provide for the annual registration of every pharmacy now or hereafter doing business within this state. Upon the payment of a fee to be set by the board, the board shall issue a ~~license~~ registration certificate in such form as it may prescribe to such persons as may be qualified by law to conduct a pharmacy. Such ~~license~~ certificate shall be ~~exposed~~ displayed in a conspicuous place in the pharmacy for which it is issued and expire on the thirtieth day of June following the date of issue. It shall be unlawful for any person to conduct a pharmacy unless such ~~license~~ certificate has been issued to the person by the board.

Subd. 2. NONRESIDENT PHARMACIES. The board shall require and provide for an annual nonresident special pharmacy registration for all pharmacies located outside of this state that regularly dispense medications for Minnesota residents and mail, ship, or deliver prescription medications into this state. Nonresident special pharmacy registration shall be granted by the board upon the disclosure and certification by a pharmacy:

(1) that it is licensed in the state in which the dispensing facility is located and from which the drugs are dispensed;

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(2) the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing drugs to residents of this state;

(3) that it complies with all lawful directions and requests for information from the board of pharmacy of all states in which it is licensed or registered, except that it shall respond directly to all communications from the board concerning emergency circumstances arising from the dispensing of drugs to residents of this state;

(4) that it maintains its records of drugs dispensed to residents of this state so that the records are readily retrievable from the records of other drugs dispensed;

(5) that it cooperates with the board in providing information to the board of pharmacy of the state in which it is licensed concerning matters related to the dispensing of drugs to residents of this state; and

(6) that during its regular hours of operation, but not less than six days per week, for a minimum of 40 hours per week, a toll-free telephone service is provided to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patients' records; the toll-free number must be disclosed on the label affixed to each container of drugs dispensed to residents of this state.

Subd. 3. SALE OF OTHER DRUGS AND DEVICES. The board shall require and provide for the annual registration of every person or establishment not licensed as a pharmacy or a practitioner engaged in the retail sale or distribution of federally restricted medical gases or of veterinary drugs or devices. Upon the payment of a fee to be set by the board, the board shall issue a registration certificate in such form as it may prescribe to those persons or places that may be qualified to sell or distribute these items. The certificate shall be displayed in a conspicuous place in the business for which it is issued and expire on the date set by the board. It is unlawful for a person to sell or distribute these items unless a certificate has been issued to him by the board.

Sec. 12. Minnesota Statutes 1986, section 151.211, is amended to read:

151.211 RECORDS OF PRESCRIPTIONS.

All prescriptions dispensed shall be kept on file ~~in~~ at the pharmacy location in which such dispensing occurred for a period of at least two years. No prescription shall be refilled except with the written or verbal consent of the prescriber; ~~provided that~~. The date of such refill must be recorded and initialed upon the original prescription or within the electronically maintained record of the original prescription by the pharmacist, ~~assistant pharmacist or pharmacist intern, or practitioner~~ who refills the prescription.

Sec. 13. Minnesota Statutes 1986, section 151.212, subdivision 1, is amended to read:

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Subdivision 1. **PRESCRIPTION DRUGS.** Drugs dispensed pursuant to a prescription shall bear a label permanently affixed to the immediate container in which the drug is dispensed and which is received by the purchaser. The label shall bear the name of the manufacturer or distributor of the finished dosage form of the drug and all other information required by law and by rules of the board.

Sec. 14. Minnesota Statutes 1986, section 151.212, is amended by adding a subdivision to read:

Subd. 3. VETERINARY DRUGS. Drugs dispensed, sold, or distributed in any manner pursuant to the order of a licensed veterinarian shall bear a label permanently affixed to the container in which the drug is dispensed and which is received by the purchaser. The label shall bear the name of the manufacturer or distributor of the finished dosage form of the drug and all other information required by law and the rules of the board.

Sec. 15. Minnesota Statutes 1986, section 151.25, is amended to read:

151.25 ~~LICENSURE~~ **REGISTRATION OF MANUFACTURERS OR WHOLESALERS; FEE; PROHIBITIONS.**

The board shall require and provide for the annual licensure registration of every person engaged in manufacturing or selling at wholesale drugs, medicines, chemicals or poisons for medicinal purposes, now or hereafter doing business ~~within~~ with accounts in this state. Upon a payment of a fee as set by the board, the board shall issue a licensure registration certificate in such form as it may prescribe to such manufacturer or wholesaler. Such licensure registration certificate shall be ~~exposed~~ displayed in a conspicuous place in such manufacturer's or wholesaler's place of business for which it is issued and expire on the ~~13th~~ day of June following the date of issue date set by the board. It shall be unlawful for any person to manufacture or sell at wholesale drugs, medicines, chemicals or poisons for medicinal purposes unless such a licensure certificate has been issued to the person by the board. It shall be unlawful for any person engaged in the manufacture or selling at wholesale, or the person's agent, to sell legend drugs to other than a pharmacy, except as provided in this chapter.

Sec. 16. Minnesota Statutes 1986, section 151.26, subdivision 1, is amended to read:

Subdivision 1. Nothing in this chapter shall subject a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine, to inspection by the state board of pharmacy, nor prevent ~~such a~~ the person from ~~compounding or using~~ administering drugs, medicines, chemicals, or poisons in the person's practice, nor prevent ~~one~~ a duly licensed ~~to practice medicine practitioner~~ from furnishing to a patient ~~such~~ properly packaged and labeled drugs, medicines, chemicals, or poisons ~~the licensed person deems proper as may be considered appropriate~~ in the treatment of such patient; unless the person is engaged in the dispensing, sale, or distribution of drugs and the board provides reasonable notice of an inspection.

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Except for the provisions of section 151.37, nothing in this chapter applies to or interferes with the dispensing, in its original package and at no charge to the patient, of a legend drug, other than a controlled substance, that was packaged by a manufacturer and provided to the dispenser for distribution as a professional sample.

Nothing in this chapter shall prevent the sale of drugs, medicines, chemicals, or poisons at wholesale to licensed physicians, dentists and veterinarians for use in their practice, nor to hospitals for use therein.

Nothing in this chapter shall prevent the sale of drugs, chemicals, or poisons either at wholesale or retail for use for commercial purposes, or in the arts, nor interfere with the sale of insecticides, as defined in Minnesota Statutes 1974, section 24.069, and nothing in this chapter shall prevent the sale of common household preparations and other drugs, chemicals, and poisons sold exclusively for use for nonmedicinal purposes.

Nothing in this chapter shall apply to or interfere with the vending or retailing of any nonprescription medicine or drug not otherwise prohibited by statute which is prepackaged, fully prepared by the manufacturer or producer for use by the consumer, and labeled in accordance with the requirements of the state or federal food and drug act; nor to the manufacture, wholesaling, vending, or retailing of flavoring extracts, toilet articles, cosmetics, perfumes, spices, and other commonly used household articles of a chemical nature, for use for non-medical purposes. Nothing in this chapter shall prevent the sale of drugs or medicines by licensed pharmacists at a discount to persons over 65 years of age.

Sec. 17. Minnesota Statutes 1986, section 151.32, is amended to read:

151.32 CITATION.

The title of sections 151.01 to ~~151.32~~ 151.40 shall be the pharmacy law of ~~1937~~ practice act of 1988.

Sec. 18. Minnesota Statutes 1986, section 151.34, is amended to read:

151.34 PROHIBITED ACTS.

It shall be unlawful to:

- (1) manufacture, sell or deliver, hold or offer for sale any drug that is adulterated or misbranded;
- (2) adulterate or misbrand any drug;
- (3) receive in commerce any drug that is adulterated or misbranded, and to deliver or proffer delivery thereof for pay or otherwise;
- (4) refuse to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by this chapter;

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(5) remove or dispose of a detained or embargoed article in violation of this chapter;

(6) alter, mutilate, destroy, obliterate, or remove the whole or any part of the labeling of, or to do any other act with respect to a drug, if such act is done while such drug is held for sale and results in such drug being adulterated or misbranded;

(7) use for a person's own advantage or to reveal other than to the board or its authorized representative or to the courts when required in any judicial proceeding under this chapter any information acquired under authority of this chapter concerning any method or process which is a trade secret and entitled to protection;

(8) use on the labeling of any drug any representation or suggestion that an application with respect to such drug is effective under the federal act or that such drug complies with such provisions;

(9) in the case of a manufacturer, packer, or distributor offering legend drugs for sale within this state, fail to maintain for transmittal or to transmit, to any practitioner licensed by applicable law to administer such drug who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under provisions of this chapter;
~~or~~

(10) conduct a pharmacy without a pharmacist in charge;

(11) dispense a legend drug without first obtaining a valid prescription for that drug;

(12) conduct a pharmacy without proper registration with the board; or

(13) sell at retail federally restricted medical devices, medical gases, or veterinary drugs or devices without proper registration with the board except as provided in this chapter.

Sec. 19. Minnesota Statutes 1986, section 151.37, is amended to read:

151.37 LEGEND DRUGS, WHO MAY PRESCRIBE, POSSESS.

Subdivision 1. Except as otherwise provided in this chapter, it shall be unlawful for any person to have in possession, or to sell, give away, barter, exchange, or distribute a legend drug.

Subd. 2. A licensed practitioner in the course of professional practice only, may prescribe, administer, and dispense a legend drug, ~~or~~ and may cause the same to be administered by a nurse or intern under the practitioner's direction and supervision.

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Subd. 3. A licensed doctor of veterinary medicine, in the course of professional practice only and not for use by a human being, may personally prescribe, administer, and dispense a legend drug, and may cause the same to be administered or dispensed by an assistant under the doctor's direction and supervision.

Subd. 4. Any qualified person may use legend drugs in the course of a bona fide research project, but cannot administer or dispense such drugs to human beings unless such drugs are prescribed, dispensed, and administered by a person lawfully authorized to do so.

Subd. 5. Nothing in this chapter shall prohibit the sale to, or the possession of, a legend drug by licensed drug wholesalers, licensed manufacturers, registered pharmacies, local detoxification centers, licensed hospitals, bona fide hospitals wherein animals are treated, or licensed pharmacists and licensed practitioners while acting within the course of their practice only.

Subd. 6. Nothing in this chapter shall prohibit the possession of a legend drug by an employee, agent, or sales representative of a registered drug manufacturer, or an employee or agent of a licensed manufacturer, licensed registered drug wholesaler, or registered pharmacy, while acting in the course of employment.

Subd. 7. Nothing in this chapter shall prohibit the possession of a legend drug by a person for that person's use when it has been dispensed to the person pursuant to in accordance with a written or oral prescription by a practitioner.

Subd. 8. It ~~shall be~~ is unlawful for ~~any~~ a person to procure, attempt to procure, possess, or control a legend drug by any of the following means:

(~~a~~) (1) deceit, misrepresentation, or subterfuge;

(~~b~~) (2) using a false name; or

(~~c~~) (3) falsely assuming the title of, or falsely representing ~~any~~ a person to be a manufacturer, wholesaler, pharmacist, practitioner, or other authorized person for the purpose of obtaining a legend drug.

Subd. 9. Nothing in this chapter shall prohibit the possession of a legend drug by an employee or agent of a registered analytical laboratory while acting in the course of laboratory employment.

Sec. 20. **REPEALER.**

Minnesota Statutes 1986, sections 151.01, subdivision 4; 151.06, subdivision 2a; 151.11; 151.28; and 151.31, are repealed.

Approved April 18, 1988

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