Revised Statutes Annotated of the State of New Hampshire Currentness
Title XXX. Occupations and Professions (Ch. 309 to 332-J) (Refs & Annos)
Chapter 318. Pharmacists and Pharmacies (Refs & Annos)

318:1 Definitions.

In this chapter:

I. “Administer” means an act whereby a single dose of a drug is instilled into the body of, applied to the body of, or otherwise given to a person or animal for immediate consumption or use.

I-a. “Advanced practice registered nurse” means a person licensed to practice as an advanced practice registered nurse in this state pursuant to RSA 326-B:18.

II. “At retail” means the dispensing of drugs or medicines pursuant to the order of a physician, dentist, veterinarian, or advanced practice registered nurse, whether or not such drugs or medicines are dispensed for a valuable consideration.

III. “Board”, when not otherwise limited, means the New Hampshire pharmacy board.

III-a. “Compounding” means the preparation, mixing, assembling, packaging or labeling of a drug or device as a result of a practitioner's prescription drug order or initiative based on the pharmacist-patient-prescriber relationship in the course of professional practice or, for the purpose of, or as an incident, to research, teaching, or chemical analysis, but not selling or dispensing. “Compounding” also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns. “Compounding” shall not include the reconstitution of powdered formulations before dispensing or the addition of flavoring.

IV. “Dentist” means a practitioner of dentistry duly registered under the laws of this or some other state.

V. “Dispense” means to distribute, leave with, give away, dispose of, deliver, or sell one or more doses of a drug that will be administered or taken at a later date, time, or location and shall include the transfer of more than a single dose of a medication from one container to another and the labeling or otherwise identifying a container holding more than a single dose of a drug.

V-a. “Distributor” means a person or persons who supply or facilitate the supply of prescription drugs to persons other than consumers.

VI. “Drugs”, when not otherwise limited, means all substances used as medicines or in the practice of medicine.

VI-a. “Fee splitting” means any discount, rebate, dividend, shared income, or economic benefit from the sale of prescription medicine by a pharmacist or pharmacy with an individual licensed to prescribe medicine or such individual's spouse or dependent children.

VI-b. “Emergency medical care provider” means a person licensed to provide emergency medical care under RSA 151-B.

VI-c. “Foreign pharmacy graduate” is a pharmacist whose undergraduate pharmacy degree was conferred outside the United States by a pharmacy school listed in the World Directory of Schools of Pharmacy published by the World Health Organization.

VI-d. “FPGEC” means the Foreign Pharmacy Graduate Equivalency Committee administered by the National Association of Boards of Pharmacy.

VI-e. “FPGEE” means the Foreign Pharmacy Graduate Equivalency Examination administered by the National Association of Boards of Pharmacy and recognized and approved by the board.

VI-f. “Law enforcement officer” means any officer of the state or political subdivision of the state who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this chapter.

VII. “Licensed pharmacist” or “pharmacist”, when not otherwise limited, means a person holding a license under RSA 318:18 and who is, therefore, legally authorized to practice the profession of pharmacy in this state.

VII-a. “Limited retail drug distributor” means a distributor of legend devices or medical gases delivered directly to the consumer pursuant to a practitioner's prescription order, or federally funded clinics operated under contract with the department of health and human services and drug abuse treatment centers, where legend and controlled drugs are held, stored, or dispensed to patients pursuant to the order of an authorized practitioner.

VII-b. “Mail-order pharmacy” means a pharmacy that is located in a state of the United States, other than this state, whose primary business is to dispense a prescription drug or device under a prescription drug order and to deliver the drug or device to a patient, including a patient in this state, by the United States mail, a common carrier, or a delivery service. Mail-order pharmacies include, but are not limited to, pharmacies that do business via the Internet or other electronic media.

VIII. “Manufacturing” means the production, preparation, propagation, conversion or processing of a drug or

device, either directly or indirectly, by large volume extraction from substances of natural origin, or independently by means of chemical or biological synthesis, and includes any packaging or repackaging of a substance or labeling or relabeling of its container, and the promotion and marketing of such drugs and devices for resale. Manufacturing shall be governed by Good Manufacturing Practices as adopted and enforced by the federal Food and Drug Administration.

IX. “Medicine”, when not otherwise limited, means a drug or preparation of drugs in suitable form for use as a curative or remedial substance.

IX-a. “Nurse” means a person licensed to perform registered nursing as defined in RSA 326-B.

X. “Pharmacist-in-charge” means the pharmacist who shall be responsible for the practice of pharmacy in and by a pharmacy, including, but not limited to, compliance with all local, state, and federal pharmacy and drug laws, and who shall be responsible for the operation of the pharmacy in the best interests of the public.

XI. “Pharmacy”, when not otherwise limited, means the place registered by the board where the profession of pharmacy is practiced and where drugs, chemicals, medicines, prescriptions, or poisons are compounded, dispensed, stored, or retailed.

XI-a. “Pharmacy intern” means a person who is registered by the board pursuant to RSA 318:15-b and:

(a) Is enrolled in a professional degree program of a school or college of pharmacy that has been approved by the board and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist starting no earlier than 4 months prior to the third year of study; or

(b) Is a graduate of an approved professional degree program of a school or college of pharmacy or is a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee (FPGEC) Certificate, who is currently licensed by the board of pharmacy for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or

(c) Is a qualified applicant awaiting examination for licensure or meeting board requirements for re-licensure; or

(d) Is participating in a residency or fellowship program.

XI-b. “Pharmacy technician” means a person, other than a pharmacist or a pharmacy intern, either registered or certified by the board for the purpose of assisting a pharmacist in the practice of pharmacy.

XII. “Physician” means a practitioner of medicine duly licensed under the laws of this or some other state.

XII-a. “Physician assistant” means a person licensed as a physician assistant under RSA 328-D.

XII-b. “Podiatrist” means a person authorized by law to practice podiatry in this state pursuant to RSA 315.

XIII. “Poisons”, when not otherwise limited, means any drug, chemical medicine or preparation liable to be destructive to adult human life in quantities of 60 grains or less.

XIV. “Practice of pharmacy” means the professional acts performed by a pharmacist and shall include the interpretation and evaluation of prescription orders; the administration, compounding, dispensing, labeling and distribution of drugs and devices; the participation in drug selection and drug-related device selection; drug evaluation; utilization or regimen review; the monitoring of drug therapy and use; medication therapy management in accordance with collaborative pharmacy practice agreements; the proper and safe storage and distribution of drugs and devices, and the proper maintenance of proper records; the responsibility of advising, when necessary or when regulated, of therapeutic values, hazards, and use of drugs and devices; and the offering or performing of these acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.

XV. “Practitioner” or “licensed practitioner” means any person who is lawfully entitled to prescribe, administer, dispense or distribute legend drugs to patients.

XV-a. “Practitioner-patient relationship” means a medical connection between a licensed practitioner and a patient that includes an in-person exam, a history, a diagnosis, a treatment plan appropriate for the practitioner's scope of practice, and documentation of all prescription drugs including name and dosage. A practitioner may prescribe for a patient whom the practitioner does not have a practitioner-patient relationship under the following circumstances: for a patient of another practitioner for whom the prescriber is taking call; for a patient examined by another New Hampshire licensed practitioner; or for medication on a short-term basis for a new patient prior to the patient's first appointment. The definition of a practitioner-patient relationship shall not apply to a practitioner licensed in another state who is consulting to a New Hampshire licensed practitioner with whom the patient has a relationship.

XVI. “Prescription” means a verbal, or written, or facsimile or electronically transmitted order for drugs, medicines and devices by a practitioner licensed in the United States, to be compounded and dispensed by licensed pharmacists in a duly registered pharmacy, and to be kept on file for a period of 4 years. A written order shall include an electronic transmission prescription received and retained in a form complying with rules adopted pursuant to RSA 318:5-a, XV. Prescriptions may also apply to the finished products dispensed or administered by the licensed pharmacist in the registered pharmacy, on order of a licensed practitioner as defined in this section.

XVI-a. “Prescription device” or “legend device” means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is restricted for distribution and use only upon the order of a licensed practitioner.

XVII. “Prescription drug”, “legend drug,” or “potent drug” means:

(a) A drug which under federal law is required, prior to being dispensed or delivered, to be labelled with any 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 the licensed veterinarian”, or

(3) “RX only”, or

(b) A drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners.

XVIII. “Nonprescription or proprietary medicine” shall mean non-narcotic medicines or 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 of this state and the federal government, provided that this definition shall not include the following:

(a) A drug, the label of which bears substantially either the statement “Caution--federal law prohibits dispensing without prescription” or “Warning--may be habit forming.”

(b) A drug intended for injection.

XIX. “Supervision” means under the direct charge or direction and does not contemplate absence of the person responsible for providing such supervision, except where permitted by rules of the board under RSA 318:5-a, XIV.

XIX-a. “TOEFL” is the Test of English as a Foreign Language, as administered by American College Testing (ACT), or its successor, and certified by the FPGEC.

XX. “Veterinarian” means a practitioner of veterinary medicine duly registered under the laws of this or some other state.

XXI. “Wholesaler” means a person with facilities in or outside this state who obtains drugs for distribution or delivery to persons other than consumers.

XXII. “Automated pharmacy system” means mechanical systems that perform operations or activities, other

than compounding or administration, relative to the storage, packaging, dispensing, or distribution of medications, and which collects, controls, and maintains all transaction information.

XXIII. “Central prescription processing” means the processing by a pharmacy of a request from another pharmacy to fill or refill a prescription drug order or to perform processing functions, such as dispensing, drug utilization review, claims adjudication, refill authorizations, and therapeutic interventions.

XXIV. “Electronic transmission prescription” means both image transmissions of a prescription order for which a facsimile of the order is received by a pharmacy from a licensed prescriber, and data transmissions of a prescription order, other than an electronic image transmission prescription, that is electronically transmitted by computer link, modem, or other computer communication device from a licensed prescriber to a pharmacy.

XXIV-a. “Electronic signature” means an electronic sound, symbol, or process attached to or logically associated with a record and executed or adopted by a person with the intent to sign the record.

XXV. “Attending practitioner” means the physician or advanced practice registered nurse who has the primary responsibility for the treatment and care of the patient.

XXVI. “Collaborative pharmacy practice” means the practice of pharmacy whereby one or more pharmacists jointly agree, on a voluntary basis, to work in conjunction with one or more attending practitioners under written protocol whereby the collaborating pharmacist or pharmacists may perform medication therapy management authorized by the attending practitioner or practitioners under certain specified conditions and limitations.

XXVII. “Collaborative pharmacy practice agreement” means a written and signed specific agreement between a pharmacist, an attending practitioner, and the patient or patient's authorized representative who has granted his or her informed consent, that provides for collaborative pharmacy practice for the purpose of medication therapy management for the patient.

XXVIII. “Medication therapy management” means the review of medication therapy regimens of patients by a pharmacist for the purpose of evaluating and rendering advice to a practitioner, or evaluating and modifying the medication regimen in accordance with the collaborative pharmacy practice agreement. Decisions involving medication therapy management shall be made in the best interest of the patient. Medication therapy management shall be limited to:

(a) Implementing, modifying, and managing medication therapy according to the terms of the collaborative pharmacy practice agreement;

(b) Collecting and reviewing patient histories within the context of needs for pharmacy practice;

(c) Obtaining and checking vital signs, such as pulse, temperature, blood pressure, and respiration;

(d) Ordering laboratory tests as specifically set out in the collaborative pharmacy practice agreement between the pharmacist and the attending practitioner that are specific to the medication or protocol-driven;

(e) Formulating a medication treatment plan that will be shared with the patient's attending practitioner;

(f) Monitoring and evaluating the patient's response to therapy, including safety and effectiveness;

(g) Performing a comprehensive medication review, in conjunction with the attending practitioner, to identify, resolve, and prevent medication-related problems, including adverse drug events;

(h) Documenting the care delivered and, if applicable, communicating essential information to the patient's other health care providers; and

(i) Providing education and training designed to enhance patient understanding and the appropriate use of his or her medications.

XXIX. “Reverse distributor” means a person or persons who facilitate the removal, disposal, or destruction of prescription drugs to persons other than consumers.

➡318:1-a Exceptions and Exemptions Not Required to be Negated.

In any complaint, information, or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, it shall not be necessary to negate any exception, excuse, proviso, or exemption contained herein, and the burden of proof of any such exception, excuse, proviso or exemption shall be upon the defendant.

Pharmacy Board (Refs & Annos)

➡318:2 Board.

There shall be a pharmacy board consisting of 7 members; including 6 practicing pharmacists, at least one of whom shall be a full-time hospital pharmacist, and one public member, each to be appointed by the governor, with the approval of the council, to a term of 5 years. No member shall be appointed to more than 2 consecutive terms and no member shall serve for more than 10 consecutive years. Only board members provided for in this section shall have the authority to vote in board determinations.

318:2-a Administrative Attachment.

The board shall be an administratively attached agency, under RSA 21-G:10, to the department of health and human services.

318:3 Eligibility.

I. Pharmacist members of the board shall have been licensed pharmacists for at least 10 years, and at the time of their appointment shall have practiced pharmacy in this state for at least 5 years.

II. The public member of the board shall be a person who is not, and never was, a member of the pharmaceutical profession or the spouse of any such person, and who does not have, and never has had, a material financial interest in either the provision of pharmaceutical services or an activity directly related to pharmacy, including the representation of the board or profession for a fee at any time during the 5 years preceding appointment.

318:4 Compensation.

The members of the board shall be paid $100 a day and their necessary expenses while actually engaged in the performance of their duties.

318:5 Officers and Duties.

I. The board shall have a president, vice-president, secretary, and a treasurer who shall be elected from among their number annually in the month of September.

II. The president shall serve as chief executive officer of the board and shall preside at all meetings and hearings of the board and shall appoint any subcommittees from among the members as deemed necessary. In the absence of the president, the vice-president shall perform the duties of the president.

318:5-a Rulemaking Authority.

The board shall adopt rules, pursuant to RSA 541-A, relative to:

I. The application procedure for any license issued under this chapter;

II. The qualifications of applicants in addition to those requirements set by statute;

III. Design and content of all forms required under this chapter;

IV. How an applicant shall be examined, including:

(a) Time and place of examination;

(b) The subjects to be tested;

(c) Passing grade; and

(d) Disposition of examination papers;

IV-a. The standards for registering pharmacies and licensing pharmacists and the practice of pharmacy;

V. How a license shall be renewed;

VI. Ethical standards required to be met by each holder of any license issued under this chapter and how such license may be revoked for violation of these standards;

VII. The establishment of all fees and fines required under this chapter, including application fees for nonresidents;

VII-a. Continuing education requirements under this chapter;

VIII. Procedures for the conduct of hearings consistent with the requirements of due process;

IX. Procedures for the inspection of licensees;

X. Registration or certification of pharmacy technicians, including:

(a) Requirements for registration or certification;

(b) The duties, functions, and standards of conduct of pharmacy technicians;

(c) Requirements for the supervision of pharmacy technicians by licensed pharmacists;

(d) Standards for denial and revocation of registration and certification;

(e) Establishment of the effective period of registration or certification;

(f) Requirements for renewal of registration or certification; and

(g) Requirements for reinstatement of registration or certification.

XI. The establishment of fees for registration or certification of pharmacy technicians, including fees for renewal or reinstatement .

XI-a. Registration of pharmacy interns, including:

(a) Requirements for registration;

(b) The duties, functions, and standards of conduct of pharmacy interns;

(c) Requirements for the supervision of pharmacy interns by licensed pharmacists;

(d) Standards for denial and revocation of registration;

(e) Establishment of the effective period of registration;

(f) Requirements for renewal of registration; and

(g) Requirements for reinstatement of registration.

XI-b. The establishment of fees for registration of pharmacy interns, including fees for renewal or reinstatement.

XII. Procedures for the use, documentation, security, maintenance, and monitoring of automated pharmacy systems, including the placement of automated pharmacy systems in long-term care facilities, hospices, and state or county correctional institutions, for the purposes of storage and dispensing of controlled and non-controlled prescription drugs.

XIII. Standards for contracting, implementation, and operation of central prescription processing.

XIV. The adoption of protocols and procedures for the temporary absence of a pharmacist from a pharmacy while on duty.

XV. The requirements for the use of electronic transmission prescriptions, including the contents of such order and the verification of electronic signatures.

XVI. Procedures and protocols for emergency contraception drug therapy, pursuant to RSA 318:47-e.

XVII. The education and training standards and other requirements for pharmacists who, pursuant to prescriber-approved protocol:

(a) Administer prescription medications, including influenza immunizations.

(b) Engage in collaborative pharmacy practices.

XVIII. Disclosure and confidentiality relative to the New Hampshire Rx advantage program, pursuant to RSA 161-L:3.

318:6 Secretary.

It shall be the duty of the secretary to keep a record of the meetings of the board and to conduct its correspondence. The secretary shall file a record of the licensure of pharmacists which shall be open to the inspection of any person in the office of the secretary of state.

318:6-a Fees.

The board shall establish fees for examination of applicants, for licenses and for renewal of licenses to practice pharmacy, for registration and certification of pharmacy technicians, and for transcribing and transferring records and other services.

318:7 Disposal of Fees, Fines and Penalties.

[Repealed 2002, 254:5, IX, eff. July 1, 2002.]

318:8 Enforcement of Law.

It shall be the duty of the board, through officials and employees appointed by it or under its supervision for that purpose, and of all peace officers within the state, and of all county attorneys, to enforce all the provisions of this chapter. When so requested, the department of health and human services and its officials and employees shall cooperate with the board in collecting and analyzing samples of drugs and medicines sold, or suspected of being sold, in violation of this chapter. The members of the board, its inspectors and investigators

shall have free access during business hours to all places where drugs, medicines, poisons or hypodermic devices are held, stored, or offered for sale and to all records of sale and disposition of drugs.

318:8-a Inspection and Regulation of Certain Users of Prescription Drugs.

All physicians, veterinarians, dentists, advanced registered nurse practitioners, physician assistants, and clinics under contract to the department of health and human services and agricultural, technical, or industrial users of prescription drugs shall be subject to inspection and regulation by the board of pharmacy with regard to the storage, labeling, distribution, and disposal of prescription drugs.

318:9 Administrative, Clerical, and Inspectional Services.

I. The board shall employ one person to serve as a full-time employee of the board in the position of executive secretary. The executive secretary shall be responsible for the performance of the regular administrative functions of the board and other duties as the board may direct. The executive secretary may not perform any discretionary or decision-making functions for which the board is solely responsible.

II. The board may employ such clerical assistance and obtain such inspectional services as may in their judgment be deemed necessary, subject to the approval of the governor and council.

318:9-a Inspectional Services.

The pharmacy board shall provide inspectional services under this chapter and RSA 318-B:25 to the board of medicine, the board of veterinary medicine, the board of podiatry, the board of registration in optometry, the board of dental examiners, and the board of nursing.

318:10 Examinations.

The board shall hold meetings for the granting of licenses and the transaction of other business at least quarterly, and at such time and place as they may see fit. They shall evaluate through an examination all persons, in the art and science of pharmacy and its allied branches, who meet the requirements herein provided and who make application for licensure as licensed pharmacists.

318:11 Reports.

The board shall file with the governor and council, on or before December 1 biennially, a report upon the condition of pharmacy in the state and containing a record of their acts and proceedings.

Licensed Pharmacists (Refs & Annos)

➡318:12 Dealing With Drugs.

[Repealed 1988, 158:5, I, eff. June 21, 1988.]

➡318:13 Exceptions.

[Repealed 1988, 158:5, II, eff. June 21, 1988.]

➡318:14 Pharmacy.

A licensed pharmacist shall have the right to conduct a pharmacy for the compounding, according to the provisions of RSA 318:14-a, of medicines upon physicians', dentists', optometrists', podiatrists', veterinarians', advanced practice registered nurses', naturopathic doctors', and physician assistants' prescriptions or valid orders for the sale and distribution of drugs, medicines, and poisons.

➡318:14-a Compounding.

I. Products that are not commercially available may be compounded for hospital or office use but shall not be resold or dispensed. Nonprescription items may be compounded upon order by a practitioner for sale as long as the labeling complies with RSA 318:47-a and the product is not a copy of, or similar to, prescription or nonprescription products. All compounding shall be done in compliance with the United States Pharmacopeia as defined by board of pharmacy rules.

II. The compound drug product shall bear the label of the pharmacy responsible for compounding and dispensing the product directly to the patient for administration, and the prescription shall be filed at that pharmacy. Compounded prescription labels shall include the phrase “compounded per subscriber request” or a similar statement on the prescription label or through the use of an auxiliary label attached to the prescription container.

III. A pharmacist shall offer a compounded drug product to a practitioner for administration to an individual patient, in limited quantities. The compounded drug products are for practitioner administration only and shall not be re-dispensed. The pharmacist shall maintain records to indicate what compounded drug products were provided to the medical office or practice. Compounding pharmacies may advertise or otherwise promote the fact that they provide prescription compounding services, in accordance with state law and rules of the board, as well as applicable federal laws.

IV. Where a commercial drug shortage exists because a manufacturer is the only entity currently manufacturing a drug product of a specific strength, dosage form, or route of administration for sale in the United States, and the manufacturer cannot supply the drug product to the public or to practitioners for use, a

pharmacist may compound a limited quantity using the active pharmaceutical ingredient and sell to a patient with a valid prescription from a valid prescriber. When the compounded drug product is sold to a medical office or practice it is for the practitioner to administer to patients, and shall not be for resale.

V. The board shall adopt rules under RSA 541-A concerning the regulation of compounding.

VI. Labeling requirements pursuant to paragraph II shall not apply when medication is dispensed to institutionalized patients as provided under RSA 318:47-b.

318:15 Assistant Pharmacists.

[Repealed 1979, 155:31, eff. Aug. 5, 1979.]

318:15-a Pharmacy Technician.

No person shall perform the functions or duties of a pharmacy technician unless such person is either registered by the board to perform certain functions or, upon completion of training, certified to perform certain functions, and does so under standards of supervision established by rules of the board adopted pursuant to RSA 541-A.

318:15-b Pharmacy Interns.

No person shall perform the functions or duties of a pharmacy intern unless such person is registered by the board to perform certain functions, and does so under standards of supervision established by rules of the board adopted pursuant to RSA 541-A.

318:16 Special Permits.

In case of death or under extreme conditions, the board may, in its discretion, issue a special permit to operate a pharmacy in a manner and under conditions that will safeguard the interests of the public for a period not to exceed 60 days.

318:16-a Standards for Collaborative Pharmacy Practice.

I. For a pharmacist to participate in a collaborative pharmacy practice agreement, the pharmacist shall:

(a) Hold an unrestricted and current license to practice as a pharmacist in New Hampshire.

(b) Have at least $1,000,000 of professional liability insurance coverage.

(c) Have earned a Pharm.D. degree or completed 3 years of institutional clinical experience as a licensed pharmacist.

(d) Complete at least 5 contact hours or 0.5 continuing education units of board-approved continuing education each year. Such continuing education shall address the area or areas of practice generally related to the collaborative pharmacy practice agreement or agreements. The continuing education hours may be applied to the requirements for licensure as a pharmacist in this state.

(e) In order to administer drugs by injection, have completed training that includes programs approved by the Accreditation Council for Pharmacy Education (ACPE) or curriculum-based programs from an ACPE-accredited college of pharmacy or state or local health department programs or programs recognized by the board.

II. Collaborative pharmacy practice agreements shall meet the following general requirements:

(a) Each protocol developed, pursuant to the collaborative pharmacy practice agreement, shall contain detailed direction concerning the services that the pharmacist may perform for that patient. The protocol shall include, but not be limited to:

(1) The specific drug or drugs to be managed by the pharmacist.

(2) The terms and conditions under which drug therapy may be implemented, modified, or discontinued.

(3) The conditions and events upon which the pharmacist is required to notify the collaborating practitioner.

(4) The laboratory tests that may be ordered in accordance with medication therapy management.

(5) In instances where drug therapy is discontinued, the pharmacist shall notify the collaborating practitioner of such discontinuance in the time-frame and manner established by the collaborative pharmacy practice agreement.

(6) All activities performed by the pharmacist in conjunction with the protocol shall be documented as specified in the protocol.

(b) The collaborative pharmacy practice agreement and protocols shall be on file at the pharmacist's place of practice. The collaborative pharmacy practice agreement and protocols shall be available to the appropriate licensing board for review upon request.

(c) Collaborative pharmacy practice agreements shall be reviewed, at least every 2 years, by both the pharmacist and the practitioner, and may be terminated, in writing, by either party. When collaborative pharmacy practice agreements are terminated, the patient shall be informed and provided with details to allow for the uninterrupted continuation of his or her medication therapy management regimen.

(d) Neither the attending practitioner nor the pharmacist in a collaborative practice agreement may seek to gain personal financial benefit by participating in any incentive-based program that influences or encourages therapeutic or product changes or the ordering of tests or services.

III. A collaborative pharmacy practice agreement that complies with all the requirements of this section shall only be allowed in the following settings:

(a) Hospitals.

(b) Long-term care facilities.

(c) Licensed inpatient or outpatient hospice settings.

(d) Ambulatory care clinics with onsite supervision by the attending practitioner and with a collaborating pharmacist who has no connection to any onsite retail pharmacy.

➡ 318:16-b Pharmacist Administration of Vaccines.

A pharmacist may administer influenza vaccines to the general public and a pharmacist may administer pneumococcal and varicella zoster vaccines to individuals 18 years of age or older, provided all of the criteria in this section have been met. The pharmacist shall:

I. Hold a current license to practice as a pharmacist in New Hampshire.

II. Possess at least $1,000,000 of professional liability insurance coverage.

III. In order to administer influenza, pneumococcal, and varicella zoster vaccines, have completed training specific to the administering of the respective vaccines that includes programs approved by the Accreditation Council for Pharmacy Education (ACPE) or curriculum-based programs from an ACPE-accredited college of pharmacy or state or local health department programs or programs recognized by the board.

IV. Provide to the board evidence of compliance with paragraphs I-III.

V. Provide notice to the primary care provider, when designated by the patient, of the administration of the pneumococcal and varicella zoster vaccines.

VI. Maintain a record of administration of pneumococcal and varicella zoster vaccinations for each individual as required by state and federal law.

Examinations and Licenses (Refs & Annos)

➡318:17 Requirements.

[Repealed 1981, 484:22, I, eff. July 1, 1981.]

➡318:18 Pharmacists.

I. (a) An applicant for examination and licensure as a pharmacist shall have graduated with the basic, professional pharmacy baccalaureate degree or pharmacy doctor degree from a school of pharmacy, college of pharmacy, or pharmacy department of a university approved by the board including programs accredited by the American Council on Pharmaceutical Education or the Canadian Council for Accreditation of Pharmacy Programs or, if a graduate of a foreign school or college of pharmacy other than Canadian, the applicant shall be fully certified by the Foreign Pharmacy Graduate Equivalency Committee (FPGEC) which shall include passing the Foreign Pharmacy Graduate Equivalency Examination (FPGEE) and Test of English as a Foreign Language (TOEFL), with scores approved by the board of pharmacy as set forth in the rules.

(b) In addition to the above, all applicants for examination and licensure as a pharmacist shall:

(1) Not be less than 18 years of age;

(2) Be of good professional character and temperate habits; and

(3) File proof satisfactory to the board, substantiated by proper affidavits, of a minimum of one year (1,500 hours) internship activity in a community or institutional pharmacy in the United States or Canada or an equivalent program which has been approved by the board of pharmacy; and shall pass the national examination administered by the National Association of Boards of Pharmacy (NABP) to establish his or her fitness to practice the profession of pharmacy. The internship required in this section shall be service and experience in a community or institutional pharmacy under the supervision of a licensed pharmacist and shall be predominantly related to the selling of drugs and medical supplies; interpreting, compounding, preparing and dispensing of prescriptions; preparing of pharmaceutical products; keeping records and making reports required under federal and state statutes; and otherwise practicing pharmacy under the immediate supervision and direction of a licensed pharmacist.

II. The board may deny licensure as a pharmacist for grounds which include, but which shall not be limited to, prior conviction of a felony; or of a misdemeanor resulting from a violation of a federal, state or local drug or pharmacy-related law, rule, or regulation.

➡318:18-a Prior Registration.

Any person registered as a pharmacist in this state on January 1, 1977, shall have all the rights granted to pharmacists under this chapter, as long as such person complies with the licensing requirements of this chapter.

➡318:19 Examinations.

Applicants for licensure as pharmacists shall, to prove their respective requisite knowledge, be examined to a properly varying degree in pharmacy-related subject areas which may include chemistry, math, pharmacology, pharmacy theory, the practice of pharmacy and pharmacy law, and any other areas as the board may prescribe.

➡318:20 Impersonating Applicant.

No one shall impersonate an applicant before the board of pharmacy applying for licensure under the provisions of this chapter.

➡318:21 Applicants From Other States.

The board may license any applicant who is licensed in any other state, provided the other state's licensing requirements are substantially equivalent to or greater than those of this state, and further provided that the applicant successfully completes an examination, developed by the board, for the testing of his knowledge of New Hampshire and federal law relative to the practice of pharmacy.

➡318:22 Limitation.

[Repealed 2010, 259:11, eff. July 6, 2010.]

➡318:23 Application Fee for Pharmacist License.

Each person applying for a license to practice the profession of pharmacy in this state by way of examination shall pay a reasonable application fee to be established by the pharmacy board. This fee shall include the cost of standard examination forms, the cost of administering the examination, and the cost of investigating the applicant's qualifications to become a pharmacist in this state.

318:24 Fees.

[Repealed 1979, 155:32, eff. Aug. 5, 1979.]

318:25 Relicensure.

Pharmacist licenses shall expire annually at midnight on December 31. Every licensed pharmacist who wishes to continue to practice the profession of pharmacy shall:

I. Annually reapply for licensure as of January 1;

II. Pay a reasonable fee established by the board;

III. Satisfy any continuing education requirements established by the board; and

IV. Provide such data relating to his practice, residence, and status as deemed necessary by the board.

318:26 Neglect to Renew.

Any failure, neglect or refusal on the part of any person licensed by the board to renew his license as provided in RSA 318:25 shall cause the license to lapse. Licenses lapsed under this section shall not be restored except upon payment of a restoration fee as established by the board, and a showing of evidence, as the board may require, demonstrating professional competence.

318:26-a Change in Name, Employment, or Residence.

Any pharmacist or pharmacy technician who changes his or her name, place or status of employment, or residence shall notify the board in writing within 15 days. For failure to report such a change within 15 days, the board may suspend the pharmacist's license or the pharmacy technician's registration. Reinstatement shall be made only upon payment of a reasonable fee as established by the board.

318:27 Failure to Re-register.

[Repealed 1979, 155:33, eff. Aug. 5, 1979.]

318:28 Display of Licenses.

All licenses as pharmacists shall at all times be conspicuously displayed in the pharmacy where the licensee is

engaged as such.

318:29 Disciplinary Action.

I. The board may undertake disciplinary action against any licensee, permittee, registrant, or certificate holder:

(a) Upon its own initiative; or

(b) Upon written complaint of any person which alleges that a licensee, permittee, registrant, or certificate holder has committed misconduct under paragraph II or V of this section or any other applicable provision of this chapter or RSA 318-B, and which specifies the grounds therefor.

II. Misconduct sufficient to support disciplinary proceedings under this section shall include:

(a) The practice of fraud or deceit in procuring or attempting to procure a license, permit, registration, or certificate to practice under this chapter;

(b) Conviction of a felony or any offense involving moral turpitude;

(c) Any dishonest or unprofessional conduct, or gross or repeated negligent conduct in the practice of pharmacy or in performing activities ancillary to the practice of pharmacy or any particular aspect or specialty thereof;

(d) Behavior which demonstrates a clear conflict with the basic knowledge and competence expected of licensed pharmacists or any particular aspect or specialty of the practice of pharmacy, or any intentional act which demonstrates a clear inconsistency with the health and safety of persons making use of the professional services of any person licensed under this chapter;

(e) Addiction to the use of alcohol or other habit-forming drugs to a degree which renders him or her unfit to practice under this chapter;

(f) Mental or physical incompetency to practice under this chapter; or

(g) Willful or repeated violation of any provision of this chapter, any substantive rule of the board, or any other federal, state, or local drug or pharmacy-related law, rule, or regulation.

(h) [Repealed.]

III. [Repealed.]

IV. The board may take disciplinary action in any one or more of the following ways:

(a) By reprimand;

(b) By suspension, limitation or restriction of a license or probation for any period of time deemed reasonable by the board;

(c) By revocation of license;

(d) By assessing administrative fines in amounts established by the board;

(e) By requiring the person to participate in a program of continuing education in the area or areas in which he or she has been found deficient; or

(f) By requiring the licensee to submit to the care, observation or treatment of a physician, counseling service, health care facility, professional assistance program, or any comparable person or facility approved by the board.

V. The board may, after notice and hearing, suspend or revoke a pharmacy permit, license, or registration for grounds which include, but are not limited to:

(a) The suspension, revocation, or expiration of the pharmacist license of the pharmacist-in-charge.

(b) Termination of the employment of the pharmacist-in-charge with the pharmacy.

(c) Operation of the pharmacy in a manner that is in violation of federal, state, or local drug or pharmacy-related law, rule, or regulation.

(d) Conviction of the pharmacist-in-charge, an owner, a corporate officer, the corporation, or the pharmacy of a felony, a misdemeanor resulting from a violation of any federal, state, or local drug or pharmacy-related law, rule or regulation, or an act involving moral turpitude or gross immorality.

(e) Unsanitary conditions.

(f) Fraud, intentional misrepresentation or perjury in securing the permit, license, or registration or in any hearing before the board.

(g) Unprofessional conduct which includes, but is not limited to, violations of federal, state, or local drug or pharmacy-related laws, rules, or regulations, or other acts or omissions which, in the opinion of the board, pose a threat to the well-being or the safety of the public.

(h) Fee splitting for professional services. This does not prohibit rent payments under a rental or lease agreement for the operation of a pharmacy by a pharmacist or pharmacy to an individual licensed to prescribe medicine.

<[Paragraph V(i) effective until June 30, 2015; see also paragraph V(i) set out below.]>

(i) Any ownership or control of an ownership interest of a pharmacy within the state by an individual licensed to prescribe medicine, or a corporation, professional association or partnership consisting of such prescriber or prescriber's immediate family members, except such corporations as are expressly exempt from income taxation under section 501(c)(3) of the United States Internal Revenue Code. This shall not include ownership of investment securities purchased by the practitioner on terms available to the general public and which are publicly traded. This subparagraph shall not apply to the ownership or control of an ownership interest of an institutional pharmacy operated within the state by or for hospitals, as defined in RSA 151-C:2, XX, licensed by the state pursuant to RSA 151.

<[Paragraph V(i) effective June 30, 2015; see also paragraph V(i) set out above.]>

(i) Any ownership or control of an ownership interest of a pharmacy within the state by an individual licensed to prescribe medicine, or a corporation, professional association or partnership consisting of such prescriber or prescriber's immediate family members, except such corporations as are expressly exempt from income taxation under section 501(c)(3) of the United States Internal Revenue Code. This shall not include ownership of investment securities purchased by the practitioner on terms available to the general public and which are publicly traded. This subparagraph shall not apply to the ownership or control of an ownership interest of an institutional pharmacy operated within the state by or for hospitals, as defined in RSA 151:2, I(a), licensed by the state pursuant to RSA 151.

(j) The sale, rental, trade, transfer, or release of patient identifiable medical information for the purpose of sales or marketing of services or products without written authorization.

➡ 318:29-a Impaired Pharmacist Program.

I. Any pharmaceutical peer review committee may report relevant facts to the board relating to the acts of any pharmacist in this state if they have knowledge relating to the pharmacist which, in the opinion of the peer review committee, might provide grounds for disciplinary action as specified in RSA 318:29, II.

II. Any committee of a professional society comprised primarily of pharmacists, its staff, or any district or local intervenor participating in a program established to aid pharmacists impaired by substance abuse or mental or physical illness may report in writing to the board the name of the impaired pharmacist together with the pertinent information relating to his impairment. The board may report to any committee of such professional society or the society's designated staff information which it may receive with regard to any pharmacist who may be impaired by substance abuse or mental or physical illness.

III. Upon a determination by the board that a report submitted by a peer review committee or professional society committee is without merit, the report shall be expunged from the pharmacist's individual record in the board's office. A pharmacist or his authorized representative shall be entitled on request to examine the pharmacist's peer review or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's view with respect to any information existing in the report.

IV. Notwithstanding the provisions of RSA 91-A, the records and proceedings of the board, compiled in conjunction with an impaired pharmacist peer review committee, shall be confidential and are not to be considered open records unless the affected pharmacist so requests; provided, however, the board may disclose this confidential information only:

(a) In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

(b) To the pharmacist licensing or disciplinary authorities of other jurisdictions; or

(c) Pursuant to an order of a court of competent jurisdiction.

V. (a) No employee or member of the board, peer review committee member, pharmaceutical organization committee member, pharmaceutical organization district or local intervenor furnishing in good faith information, data, reports, or records for the purpose of aiding the impaired pharmacist shall by reason of furnishing such information be liable for damages to any person.

(b) No employee or member of the board or such committee, staff, or intervenor program shall be liable for damages to any person for any action taken or recommendations made by such board, committee, or staff unless he is found to have acted recklessly or wantonly.

VI. (a) The board may contract with other organizations to operate the impaired pharmacist program for pharmacists who are impaired by drug or alcohol abuse or mental or physical illness. This program shall include, but is not limited to, education, intervention and post-treatment monitoring.

(b) The board may allocate $3 from each pharmacist annual license renewal fee it collects to provide funding for the impaired pharmacist program as set forth in subparagraph VI(a).

318:29-b Denial or Revocation of License.

I. Upon receipt of an administratively final order from the licensing authority of another jurisdiction which imposes disciplinary sanctions against a licensee, permittee, registrant, or certificate holder of the board, or a person applying for a license, permit, registration, or certificate, the board may issue an order directing the licensee, permittee, registrant, or applicant to appear and show cause why similar disciplinary sanctions or, in the case of an applicant, why the license, permit, or registration denial or restriction, should not be imposed in this state. In any such proceeding, the decision of the foreign licensing authority may not be collaterally attacked, but the licensee, permittee, registrant, or applicant shall be given the opportunity to demonstrate why a lesser sanction should be imposed.

II. The board may issue any disciplinary sanction or take any action with regard to any pending application pursuant to this section otherwise permitted by this chapter, including sanctions or actions which are more stringent than those imposed by the foreign jurisdiction.

III. The board may adopt summary procedures for handling proceedings brought under this chapter, but shall furnish the respondent at least 10 days' written notice and a reasonable opportunity to be heard. The board may require a licensee, permittee, registrant, or certificate holder to suspend practice in this state as a condition of postponing a hearing date established for allegations brought under this section.

318:29-c Immunity From Civil Action.

No civil action shall be maintained against the board or any member thereof or its agents or employees with regard to any action or activity taken in the performance of any duty or authority established by this chapter. No civil action shall be maintained against any organization or its members or against any other person for or by reason of any good faith statement, report, communication, or testimony to the board or determination by the board in relation to proceedings under this chapter.

318:29-d Pharmacists Not Liable.

A pharmacist who dispenses drugs to a midwife certified under RSA 326-D shall not be liable for any adverse reactions caused by any method of use by the midwife.

318:30 Investigatory Powers of the Board; Complaints.

I. The board may investigate possible misconduct by licensees, permittees, registrants, certificate holders, applicants, and any other matters governed by the provisions of this chapter and RSA 318-B. Investigations may be conducted with or without the issuance of a board order setting forth the general scope of the investigation. Board investigations and any information obtained by the board pursuant to such investigations shall be exempt from the public disclosure provisions of RSA 91-A, unless such information subsequently becomes the subject of a public disciplinary hearing. However, the board may disclose information obtained in

an investigation to law enforcement or health licensing agencies in this state or any other jurisdiction, or in accordance with specific statutory requirements or court orders.

II. The board may appoint legal counsel, technical advisors or other investigators to assist with any investigation and with adjudicatory hearings.

III. The board may commence a formal or informal investigation, or an adjudicative hearing, concerning allegations of misconduct and other matters within the scope of this chapter on its own motion whenever it has a reasonable basis for doing so, and the type of procedure chosen shall be a matter reserved to the discretion of the board. Investigations may be conducted on an ex parte basis.

IV. (a) The board may administer oaths or affirmations, preserve testimony, and issue subpoenas for witnesses and for documents during any formal investigation or adjudicatory hearing. The board may also subpoena patient records, as provided in paragraph V, during informal investigations.

(b) Subpoenas not covered by paragraph V shall be served in accordance with the procedures and fee schedules established by the superior court, except that:

(1) Persons licensed or registered by the board shall not be entitled to a witness fee or mileage expenses for travel within the state.

(2) Witness fees and mileage expenses need not be tendered in advance if the subpoena is annotated “Fees Guaranteed by the New Hampshire Board of Pharmacy.”

(3) The respondent shall be allowed at least 48 hours to comply.

V. The board may at any time subpoena medical and pharmacy records from its licensees, registrants, and permittees and from physicians, dentists, veterinarians, advanced registered nurses, hospitals, and other health care providers or facilities licensed by or certified in this state. Such subpoenas shall be served by certified mail or by personal delivery to the address shown on the licensee's, registrant's, or permittee's current license, certificate or permit, and no witness or other fee shall be required. A minimum of 15 days' advance notice shall be allowed for complying with a subpoena duces tecum issued under this chapter.

VI. Persons holding or applying for licenses or other privileges granted by the board shall keep the board informed of their current business and residence addresses. A licensee, permittee, or registrant shall receive adequate notice of any hearing or other action taken under this chapter if notice is mailed in a timely fashion to the most recent home or business address furnished to the board by the licensee, permittee, or registrant.

VII. Complaints of licensee misconduct shall be in writing and shall be treated as petitions for the commencement of a disciplinary hearing. The board shall fairly investigate all complaints to the extent and in

the manner warranted by the allegations. A complaint which fails to state a cause of action may be summarily denied in whole or in part. Some or all of the allegations in a complaint may be consolidated with another complaint or with issues which the board wishes to investigate or hear on its own motion. If investigation of a complaint results in an offer of settlement by the licensee, permittee, or registrant, the board may settle the allegations against the licensee, permittee, or registrant without the consent of the complainant, provided that material facts are not in dispute and the complainant is given an opportunity to comment upon the terms of the proposed settlement.

VIII. At the commencement of an adjudicatory proceeding, or at any time during a formal or informal investigation, and without issuing a subpoena, the board may mail a statement of the issues being investigated or heard to a licensee or other person who is a proper subject of inquiry and require that licensee or other person to provide a detailed and good faith written response to such statement. The board may also require the licensee or other person to furnish complete copies of appropriate office records concerning any patient whose treatment is relevant to the matters at issue. The licensee or other person shall respond to such request within a reasonable time period of not less than 15 days, as the board may specify in its written request.

➡318:30-a Temporary Suspension Where Imminent Threat.

In cases involving imminent danger to life or health, the board may order suspension of a license, permit, registration, certification, or privilege granted under this chapter pending hearing for a period of no more than 60 days. In such cases, the basis for the board's finding of imminent danger to life or health shall be reduced to writing and combined with a hearing notice which complies with RSA 318:31, II and RSA 541-A:31, III. Notwithstanding the requirements of RSA 541-A:30, III, the board's hearing may commence as much as 30 days after the date of the order suspending the license, permit, registration, or certification. If the board does not commence the hearing within 30 days the suspension order shall be automatically vacated, but a licensee, permittee, registrant, or certificate holder shall be allowed additional time to prepare for or to complete a hearing under this section only by agreeing to a further suspension commensurate with the additional time extended.

➡318:31 Hearings, Decisions and Appeals.

I. Adjudicatory hearings shall be open public proceedings. Any member of the board may preside at such a hearing and issue oaths or affirmations to witnesses.

II. The board shall furnish the licensee or any other respondent with at least 15 days' written notice of the date, time and place of a hearing, except as otherwise provided in this chapter. Such notice shall include an itemization of the issues to be heard, and, in the case of a disciplinary hearing, a statement as to whether the action has been initiated by a written complaint or upon the board's own motion, or both. If a written complaint is involved, the complainant shall also receive a copy of the hearing notice and shall be provided with a reasonable opportunity to intervene as a party.

III. Any person appearing at a board hearing or investigation may be represented by legal counsel, but the board shall have no obligation or authority to appoint or provide an attorney to any such person.

IV. The board may at any time dispose of issues or allegations in an adjudicatory hearing, or an investigation, by default, by settlement agreement or consent order, by issuing an order of dismissal for failing to state a proper basis for disciplinary action or by summary judgment order based upon undisputed material facts. In disciplinary hearings, the board may hold prehearing conferences which shall be exempt from the provisions of RSA 91-A, but all final disciplinary actions, including those which occur without holding a public hearing, shall be available to the public.

V. Adjudicatory decisions and final disciplinary actions of the board shall be made by a majority of the board members participating in the decision. Such decisions shall not be made public until they have been reduced to writing, signed by a representative of the board, and served upon the parties.

VI. Decisions of the board may be appealed to the supreme court pursuant to RSA 541. No disciplinary sanction imposed by the board shall be stayed during appeal if the board determines that the public well-being so requires.

➡318:32 Rules and Regulations.

[Repealed 1981, 484:22, II, eff. July 1, 1981.]

Conferences of Boards, Etc.

➡318:33 Attendance.

The board, in order to be informed and to determine the status of boards of pharmacy of other states desiring reciprocal licensure, and in order to be advised regarding the progress of pharmacy throughout the country, may select at least one of its members to meet, at the expense of the state, with like representatives from other state boards of pharmacy. At such meetings, when arranged, there shall be discussed the degree of fitness for licensure which is required by the several state boards of pharmacy.

➡318:34 Rules.

[Repealed 1981, 484:22, III, eff. July 1, 1981.]

➡318:35 Association.

The board, through its representatives, may, with like representatives from other state boards of pharmacy, join in creating and maintaining an association of representatives of the several state boards of pharmacy to be

engaged in the general advancement of pharmacy and the keeping of records pertaining to reciprocal licensure of pharmacists, and, at its discretion the board may give to such association information which it possesses relating to such aims and objects.

➡318:36 Information.

The board may subscribe for and secure the service of an association engaged in the compilation of pharmaceutical information, knowledge and progress specially adapted to secure efficiency in the work of the board.

Licensure of Pharmacies (Refs & Annos)

➡318:37 Required; Compliance.

I. No person shall conduct or operate a pharmacy for the sale at retail of drugs and medicines unless such pharmacy is registered with and a permit therefor has been issued by the pharmacy board, except as provided in this chapter.

II. (a) No person shall conduct or operate a mail-order pharmacy located outside of this state by shipping, mailing, or delivering prescription drugs into this state unless such pharmacy is registered in New Hampshire and a permit has been issued by the New Hampshire pharmacy board.

(b) To obtain a permit, a mail-order pharmacy shall comply with each of the following:

(1) Maintain a license in good standing from the state in which the mail-order pharmacy is located;

(2) Submit to the New Hampshire pharmacy board an application for registration as provided by the New Hampshire pharmacy board;

(3) Pay all appropriate registration fees;

(4) Submit to the New Hampshire pharmacy board a copy of the state pharmacy license from the state in which the mail-order pharmacy is located;

(5) Submit to the New Hampshire pharmacy board a copy of the state and federal controlled substance registrations from the state in which it is located, if controlled substances are to be shipped into this state.

(c) When requested to do so by the New Hampshire pharmacy board, each mail-order pharmacy shall supply the New Hampshire pharmacy board with any inspection reports, warning notices, disciplinary actions, notice

of deficiency reports, or any other related reports from the state in which it is located concerning the operation of a mail-order pharmacy for review of compliance with state and federal drug laws.

(d) Except in emergencies that constitute an immediate threat to the public health and require expedited action by the board, the New Hampshire pharmacy board shall file a complaint with the licensing board of the state in which the mail-order pharmacy is located when known or suspected violations of the laws of the state in which the pharmacy is located are uncovered. If the licensing board in the state in which the mail-order pharmacy is located initiates disciplinary action, the New Hampshire pharmacy board may request the appropriate documents involved in the action for consideration of discipline against the pharmacy registration of the mail-order pharmacy. If no action is taken against the mail-order pharmacy by the licensing board of the state in which it is located, the New Hampshire pharmacy board may request copies of any investigation reports available from that state.

(e) The New Hampshire pharmacy board shall extend reciprocal cooperation to any state that licenses and regulates mail-order pharmacies for the purpose of investigating complaints against pharmacies located in New Hampshire or the sharing of information and investigative reports, as long as the other state shall extend the same reciprocal cooperation to the New Hampshire pharmacy board.

➡318:38 Permit; Fees.

I. The board shall, upon application and hearing, issue a permit to maintain and operate a pharmacy to such persons, firms, or corporations as they deem qualified to conduct a pharmacy. The permit shall be issued to the pharmacy in the name of the corporation or the owner of the pharmacy. This permit, to be known as a pharmacy permit, shall certify that the designated pharmacist-in-charge has accepted the responsibility for the safe, effective operation of a pharmacy and compliance with all pharmacy and drug laws or regulations; that the premises named in the permit are a fit place to practice pharmacy including, but not limited to, the compounding and dispensing of medicines upon prescriptions and for the manufacture, sale, and distribution of drugs, medicines, and poisons; and that such premises and acts shall be under the direct supervision of a licensed pharmacist. The holder of a pharmacy permit may keep this pharmacy open at all hours for the compounding, dispensing, and sale of drugs and medicines provided that a pharmacist is present and on duty; except that in an institutional setting, in the absence of a pharmacist, a registered nurse, designated by the institution for this purpose, may enter and obtain from an institutional pharmacy such drugs as are needed in an emergency situation or as may otherwise be provided for in this chapter. The applicant for a pharmacy permit or a renewal thereof shall provide the board with all information it deems necessary for determining the applicant's qualifications to own and operate a pharmacy in the public interest.

II. All pharmacy permits shall expire when there is a change of ownership of the pharmacy or at midnight on December 31 of each year. Every pharmacy that wishes to continue to operate as such shall renew its permit annually as of January 1 or immediately when the permit expires for any other reason. It shall be deemed a violation of the provisions of this chapter for any pharmacy to be open or operated beyond the expiration date of its permit.

III. All applicants for a pharmacy permit shall pay a reasonable fee as established by the board for each original pharmacy permit and for each renewal thereof.

➡318:39 Application; Display.

Application for a permit shall be made in such manner and in such form as the board may determine. The permit shall at all times be exposed in a conspicuous place in the pharmacy for which it is issued.

Regulation of Pharmacies (Refs & Annos)

➡318:40 Unauthorized Practice of Pharmacy.

Except as provided by RSA 318:42, no person shall engage in the practice of pharmacy without first being licensed by the board. No person shall impersonate a pharmacist or falsely claim to be a pharmacist. No person owning, managing, or conducting any store, not being a licensed pharmacist or having one in his employ, shall exhibit within or outside of such store, or include in any advertisement, the words “drug store”, “pharmacy”, “apothecary”, “drug”, “drugs”, “medicine”, or “medicine shop”, or any combination of these terms or other words indicating that such store is a place where medicines are compounded or sold, or exhibit within or without his place of business or in connection with his business any show bottle or globe of colored glass or globe filled with colored liquid which creates the impression that prescription drugs are being offered for sale.

➡318:41 Books and Equipment.

Each pharmacy shall be equipped with those pharmaceutical utensils, technical equipment and professional references which the board deems necessary for the safe, effective practice of pharmacy. The prescribed equipment and references shall be open to the inspection of the board and its representatives. No pharmacy permit shall be issued or renewed until the pharmacy complies with the provisions of this section, and the board may suspend or revoke a pharmacy permit whenever the pharmaceutical utensils or equipment or the professional references fail to conform with the prescribed list.

➡318:42 Dealing in or Possessing Prescription Drugs.

It shall be unlawful for any person who is not a licensed pharmacist in a pharmacy registered in accordance with the provisions of this chapter to manufacture, compound, dispense, sell, offer for sale or have in possession any prescription drug as defined in RSA 318:1, XVII, provided that this section shall not prevent the following:

I. Persons from possessing prescription drugs dispensed to them pursuant to a lawful prescription or who are acting as an authorized agent for a person holding a lawful prescription. For purposes of this section, an authorized agent shall mean any person, including but not limited to a family member or caregiver, who has

the intent to deliver the prescription drug to the person to whom the prescription drugs are lawfully prescribed.

II. Physicians, dentists, optometrists, podiatrists, veterinarians, advanced practice registered nurses, naturopathic doctors, and physician assistants from possessing, compounding in accordance with RSA 318:14-a, personally administering, or distributing prescription drugs to meet the immediate medical needs of their patients. For advanced practice registered nurses and physician assistants, compounding shall be limited according to RSA 318:42, VIII.

(a) Nothing in this section shall prohibit the dispensing of noncontrolled prescription drugs by an authorized agent of a veterinarian for an animal under the agent's care, provided that the drugs were compounded by or under the supervision of the licensed veterinarian.

(b) Nothing in this section shall prohibit the dispensing or sale by an ophthalmologist of therapeutic contact lenses or the dispensing or sale by an optometrist of therapeutic contact lenses pursuant to RSA 327:6-a.

II-a. Midwives certified pursuant to RSA 326-D, from obtaining, possessing, or administering prescription drugs to meet the immediate medical needs of their patients. Such authority to obtain, possess, or administer shall be limited to those drugs listed in RSA 326-D:12. Nothing shall prohibit a pharmacist, in good faith, from selling and dispensing drugs listed in RSA 326-D:12 to midwives certified pursuant to RSA 326-D.

III. The sale of prescription drugs by licensed manufacturers or wholesalers to persons or entities legally authorized to possess such drugs.

IV. The possession of prescription drugs for such agricultural, technical, or industrial uses as may be approved by the board, the Federal Drug Enforcement Administration, or by other state or federal statutes or regulations.

V. The sale and distribution of nonprescription drugs as defined in RSA 318:1, XVIII by non-pharmacy retail stores and outlets. Retail stores and outlets engaging in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule shall be adopted by the board under this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist or under the supervision of a licensed pharmacist. The commissioner of the department of health and human services may make a determination that a specific product may only be dispensed upon a written prescription of a practitioner.

VI. The department of health and human services from possessing and distributing “biological drugs” to the public within the meaning of RSA 141-C:17.

VII. The dispensing of noncontrolled prescription drugs by registered nurses in clinics operated by or under contract with the department of health and human services, or by such nurses in clinics of nonprofit family

planning agencies under contract with the department of health and human services, provided that:

(a) The drugs are dispensed under a written protocol established by a licensed physician or by an advanced practice registered nurse, and approved by the department of health and human services which provides for responsible supervision over the activities in question and mentions the name of each registered nurse for whom the physician or advanced practice registered nurse is assuming supervisory responsibility. A written copy of the protocol showing the date it was approved by the department of health and human services shall be kept at the clinic at all times and shall be made available during any inspection conducted under RSA 318:8 .

(b) The drugs appear on the current formulary approved pursuant to RSA 326-B.

(c) The drugs are dispensed only to bona fide clients of the clinic for their personal needs pursuant to written eligibility criteria established by the department of health and human services.

(d) The clinic, except for clinics operated directly by the department of health and human services, possesses a current limited retail drug distributor's license under RSA 318:51-b.

(e) [Repealed].

VII-a. The possession and administration, with written parental authorization, of flu vaccine, immunizations, and mantoux tests for the purpose of disease prevention and tuberculosis screening by registered nurses employed or contracted by public school systems. The possession and administration of epinephrine for the emergency treatment of anaphylaxis by licensed practical nurses or registered nurses employed or contracted by public school systems.

VII-b. The management of medication therapy and administration of non- controlled prescription drugs including injectable medications, biologicals, and immunizations by qualified pharmacists pursuant to collaborative pharmacy practice agreements.

VIII. A registered nurse or physician assistant from:

(a) Making dilutions from concentrated solutions or pre-weighed or pre-measured packets.

(b) Adding prepared sterile additives.

(c) Entering an institutional pharmacy in an institutional setting specially designated for this purpose by the institution in the absence of a pharmacist to obtain those drugs needed in an emergency situation.

IX. A pharmacy student serving an internship from performing the duties of a pharmacist in the presence of, and under the direction and supervision of, a licensed pharmacist.

X. The possession, for emergency use only, by emergency medical care providers licensed under RSA 153-A of such noncontrolled prescription drugs as are specified by the state emergency medical services medical control board, with the concurrence of the pharmacy board, provided that there has been prior establishment of medical control for possession of such drugs. The emergency medical care provider may only administer such prescription drugs upon receipt of orders to do so from a supervising physician or an emergency/trauma advanced practice registered nurse. Such orders may be transmitted either directly or by telephone or by radio or by other communication medium, or by standing order of local medical control delineated in a protocol as defined in RSA 153-A.

XI. A nurse licensed under RSA 326-B who is an employee of a home health care or hospice agency licensed pursuant to RSA 151:2, and is acting in the course of his or her employment, from possessing such noncontrolled prescription drugs as are approved by the board of nursing and agreed upon jointly by the board of registration in medicine and the pharmacy board and from administering such preapproved noncontrolled prescription drugs according to written protocols approved annually by such employer's professional advisory committee which includes a physician licensed by the board of registration in medicine.

XII. A registered or certified pharmacy technician from performing functions and duties supervised by a licensed pharmacist as authorized by rules adopted by the board under RSA 541-A.

XII-a. A registered or certified pharmacy technician from performing transport for the authorized transfer of prescription drugs between pharmacies.

XIII. A nurse licensed under RSA 326-B, who is an employee of a home health care or hospice agency licensed pursuant to RSA 151:2 and is acting in the course of employment, from organizing the prescription and nonprescription drugs of clients into containers designed to aid clients in carrying out a prescriber's directions, provided that the organizing of drugs is documented in the client's nursing record and that the original prescription containers remain in the client's possession.

XIV. A nurse, licensed under RSA 326-B, who is an employee of a health facility, licensed by the state of New Hampshire, and acting in the course of his or her employment, from organizing the prescription and non-prescription drugs of clients into containers designed to aid clients in carrying out prescriber's directions; provided, that the organizing of the drugs is documented in the client's nursing record and that the original prescriptions will be kept at the facility or client's home and the medication container is set up on a weekly basis.

XV. The placement of automated pharmacy systems in long-term care facilities, hospices, and state correctional institutions, for the purpose of storage and dispensing of controlled and non-controlled prescription drugs under the supervision and control of a licensed pharmacist. Only pharmacies registered by

the Federal Drug Enforcement Administration may provide controlled substances for storage in and dispensing from automated pharmacy systems.

XVI. Law enforcement officers who are acting within the scope of their employment and official duties, from possessing prescription drugs for the purpose of collection, storage, and disposal of such prescription drugs, in conjunction with a pharmaceutical drug take-back program established pursuant to RSA 318-E.

XVII. Persons who possess prescription drugs pursuant to a lawful prescription or who are acting as an authorized agent for a person holding a lawful prescription, from delivering any unwanted or unused prescription drugs to law enforcement officers for the purpose of disposal of such prescription drugs in conjunction with a pharmaceutical drug take-back program established pursuant to RSA 318-E.

318:43 Original Packages.

[Repealed 1979, 155:34, eff. Aug. 5, 1979.]

318:44 Label.

[Repealed 1979, 155:35, eff. Aug. 5, 1979.]

318:45 Sales Permitted.

This chapter shall not prevent the sale of the following: alum, blue vitriol, borax, camphor gum, copperas, epsom salts, glauber salts, castor oil, oil of turpentine, sulphur, cottonseed oil, saltpetre, household ammonia, flavoring extracts, and unofficial chlorinated solutions.

318:46 Record Book.

The pharmacist in charge of a pharmacy shall at all times keep in the pharmacy a record book in which shall be entered all sales of the following, other than sales to physicians, dentists and veterinarians, and sales made upon a prescription of a physician, dentist, veterinarian, or advanced practice registered nurse: arsenous acid (arsenic trioxide), mercuric chloride, hydrocyanic acid, potassium cyanide, cyanide mixture, strychnine and its salts except in proper dosage in pill or tablet form.

318:47 Keeping and Inspection of Record.

The record required by RSA 318:46 shall show in parallel columns the date of sale, name of article sold, quantity of article sold, purpose for which it is to be used, the name or initials of the dispenser with the signature and address of the purchaser, and shall at all times during business hours be open for inspection by

any police officer, sheriff, city or town representative, or any representative of the board; and shall be preserved for a period of not less than 2 years from the date of the last entry made therein.

➡318:47-a Prescription Labels.

Whenever a pharmacist dispenses a noncontrolled drug pursuant to a prescription, he shall affix to the container in which such drug is dispensed a label showing at least the name and address of the pharmacy and the name or initials of the dispensing pharmacist or pharmacist-in-charge; the prescription identification number assigned by the pharmacy; the date dispensed; any directions as may be stated on the prescription; the name of the prescribing practitioner; the name of the patient; all pertinent auxiliary labels; and, unless otherwise indicated by the prescribing physician, dentist, veterinarian, or advanced practice registered nurse, the name, strength, and quantity of the drug dispensed. All drugs dispensed to a patient that have been filled using a centralized prescription processing system shall bear a label containing an identifiable code that provides a complete audit trail of the dispensing of the drug and pharmaceutical care activities. No person shall alter, deface, or remove any label so affixed. A compounded drug product shall also be labeled as provided in RSA 318:14-a, II. The compound drug product shall bear the label of the pharmacy responsible for compounding and dispensing the product directly to the patient for administration, and the prescription shall be filed at that pharmacy. Compounded prescription labels shall include the phrase “compounded per subscriber request” or a similar statement on the prescription label or through the use of an auxiliary label attached to the prescription container.

➡318:47-b Labeling Exemption.

Labeling requirements as specified in 318:47-a are exempted when medication is dispensed to institutionalized patients and as provided for under RSA 141-C:17.

➡318:47-c Prescriptions.

I. (a) A prescription may be written, oral, or electronically transmitted. All oral prescriptions shall be immediately reduced to writing by the pharmacist or authorized technician receiving the oral prescription and shall indicate at least the name of the patient; the name, strength, and quantity of the drug prescribed; any directions specified by the prescriber; the name of the practitioner prescribing the medication; the date the prescription was ordered; a statement that the prescription was presented orally; and the name of the pharmacist who took the oral order. The pharmacist who dispensed an original prescription shall indicate on the face of the prescription at least the assigned prescription identification number; the date of dispensing; the quantity actually dispensed; and his or her name or initials. The prescription shall be filed numerically by the assigned identification number for a period not less than 4 years. Such prescription files shall be open to inspection by the pharmacy board and its agents.

(b) A patient shall be entitled to receive a paper prescription instead of an oral or electronically transmitted prescription.

II. (a) A prescription that is electronically generated by a licensed prescriber, transmitted and received at the pharmacy by computer systems shall contain at least the name of the patient, the name, strength, and quantity of the drug prescribed, any directions specified by the prescriber, the name of the practitioner prescribing the medication, and shall be dated and signed using an electronic signature by the prescribing practitioner on the day issued. Such electronic signature shall be made in accordance with RSA 294-E.

(b) Electronic prescribing shall not interfere with a patient's freedom to choose a pharmacy.

(c) Electronic prescribing software shall not use any means or permit any other person to use any means, including, but not limited to, advertising, instant messaging, and pop-up ads, to influence or attempt to influence, through economic incentives or otherwise, the prescribing decision of a prescribing practitioner at the point of care. Such means shall not be triggered by or in specific response to the input, selection, or act of a prescribing practitioner or his or her agent in prescribing a certain pharmaceutical or directing a patient to a certain pharmacy.

(d) Electronic prescribing software may show information regarding a payor's formulary, co-payment, or benefit plan as long as nothing is designed to preclude or make more difficult the act of a prescribing practitioner or patient selecting any particular pharmacy or pharmaceutical.

(e) No person who has access to electronic prescription information solely by transmitting or facilitating the transmission of prescriptions between the licensed prescriber generating the prescription and the pharmacy receiving the prescription, or any intermediary, shall retain the prescription or any information it contains for longer than is mandated by federal or state law, after which time the prescription information shall be destroyed. No such person shall sell, use, or otherwise make available the prescription information for any purpose other than transmission of prescriptions, prescription refills, and clinical information displayed to the prescriber or pharmacist.

➡318:47-d Pharmacies; Substituting Generic Drugs.

Pharmacies, including mail-order pharmacies, may substitute generically equivalent drug products for all legend and non-legend prescriptions unless the prescribing practitioner handwrites “medically necessary” on each paper prescription, or uses electronic indications when transmitted electronically, or gives instructions when transmitted orally that the brand name drug product is medically necessary.

➡318:47-e Procedures for Dispensing Emergency Contraception.

I. In this section, “emergency contraception” means an elevated dose of hormones used to prevent pregnancy.

II. A pharmacist may initiate emergency contraception drug therapy in accordance with standardized procedures or protocols developed by the board, adopted pursuant to RSA 541-A, and an authorized prescriber

who is acting within his or her scope of practice.

III. Prior to performing any procedure authorized under this section, a pharmacist shall successfully complete emergency contraception drug therapy education and training in accordance with continuing education requirements established by the board. A pharmacist who has had sufficient recent education and training in emergency contraception may be exempted from the requirements of this section.

IV. For each emergency contraception drug therapy initiated pursuant to this section, the pharmacist shall provide each recipient of the emergency contraceptive drugs with a standardized fact sheet that includes, but is not limited to: the indications for the use of the drug, the appropriate method for using the drug, information on the importance of follow-up health care, and health care referral information. The board shall develop this fact sheet in consultation with the commissioner of the department of health and human services, the American College of Obstetricians and Gynecologists, and other relevant health care organizations.

V. Nothing in the section shall affect the requirements of existing law relating to maintaining the confidentiality of medical records.

VI. Nothing in this section shall limit the manner in which emergency contraception can be dispensed.

➡ 318:47-f Prescription Information to be Kept Confidential.

Records relative to prescription information containing patient-identifiable and prescriber-identifiable data shall not be licensed, transferred, used, or sold by any pharmacy benefits manager, insurance company, electronic transmission intermediary, retail, mail order, or Internet pharmacy or other similar entity, for any commercial purpose, except for the limited purposes of pharmacy reimbursement; formulary compliance; care management; utilization review by a health care provider, the patient's insurance provider or the agent of either; health care research; or as otherwise provided by law. Commercial purpose includes, but is not limited to, advertising, marketing, promotion, or any activity that could be used to influence sales or market share of a pharmaceutical product, influence or evaluate the prescribing behavior of an individual health care professional, or evaluate the effectiveness of a professional pharmaceutical detailing sales force. Nothing in this section shall prohibit the dispensing of prescription medications to a patient or to the patient's authorized representative; the transmission of prescription information between an authorized prescriber and a licensed pharmacy; the transfer of prescription information between licensed pharmacies; the transfer of prescription records that may occur in the event a pharmacy ownership is changed or transferred; care management educational communications provided to a patient about the patient's health condition, adherence to a prescribed course of therapy or other information about the drug being dispensed, treatment options, or clinical trials. Nothing in this section shall prohibit the collection, use, transfer, or sale of patient and prescriber de-identified data by zip code, geographic region, or medical specialty for commercial purposes. In addition to other appropriate remedies under this chapter, a violation of this section is an unfair or deceptive act or practice within the meaning of RSA 358-A:2. Any right or remedy set forth in RSA 358-A may be used to enforce the provisions of this section.

➡318:47-g Patient Assistance Program.

I. Following the close of each calendar year, any clearinghouse that provides information to New Hampshire residents about pharmaceutical manufacturers' patient assistance programs shall, to the extent that the clearinghouse collects such information, provide aggregate information to the commissioner of the department of health and human services relative to either:

(a) The number of people in New Hampshire who may qualify for any manufacturer or government program during the calendar year; or

(b) The number of patients served during the calendar year.

II. An individual company may provide additional information about the individual company's patient assistance program; however, the commissioner shall combine all information from all sources, including individual companies and the clearinghouse, and shall report only aggregate information to the public.

➡318:47-h Price of Filling Prescriptions.

I. A pharmacy benefits manager or insurer shall require a contracted pharmacy to charge an enrollee or insured person the pharmacy's usual and customary price of filling the prescription or the contracted copayment, whichever is less.

II. Once it has settled a claim for filling a prescription for an enrollee or insured person and notified the pharmacy of the amount the pharmacy benefits manager or insurer will pay to the pharmacy for that prescription, the pharmacy benefits manager or insurer shall not lower the amount to be paid to the pharmacy by the pharmacy benefits manager or the insurer for such settled claim; provided, however, that this paragraph shall not apply if the claim was submitted fraudulently or with inaccurate or misrepresented information.

Possession and Sale of Drugs and Devices for Administration of Drugs (Refs & Annos)

➡318:48 to 318:51 Repealed.

[Repealed 1963, 276:2, eff. July 1, 1963]

➡318:48 to 318:51 Repealed.

[Repealed 1963, 276:2, eff. July 1, 1963]

➡318:51-a Licensing of Manufacturers and Wholesalers Required.

I. No person shall manufacture legend drugs or controlled drugs as that term is defined in RSA 318-B:1, VI and no person as a wholesaler, distributor, or reverse distributor shall supply the same without first having obtained a license to do so from the board. Such license shall expire annually on June 30. An application together with a reasonable fee as established by the board shall be filed annually on or before July 1.

II. No license shall be issued under this section unless the applicant has furnished proof satisfactory to the board of pharmacy:

(a) That the applicant is of good moral character or, if that applicant is an association or corporation, that the managing officers are of good moral character.

(b) That the applicant has sufficient land, buildings, and such security equipment so as to properly carry on the business described in his application.

III. No license shall be granted to any person who has within 5 years been convicted of a violation of any law of the United States, or of any state, relating to drugs, as defined in this chapter or RSA 318-B, or to any person who is a drug-dependent person.

IV. Any person licensed pursuant to this section is subject to the provisions of RSA 318:29.

V. (a) The manufacturer, wholesaler, distributor, reverse distributor, or broker to which a license has been issued shall, within 30 days of any change of information supplied in the original application, notify the board.

(b) The notice required pursuant to subparagraph (a) shall contain:

(1) Current New Hampshire license number of the manufacturer, wholesaler, distributor, reverse distributor, or broker.

(2) Name of the manufacturer, wholesaler, distributor, reverse distributor, or broker, old and new, if applicable.

(3) Address of the manufacturer, wholesaler, distributor, reverse distributor, or broker, old and new, if applicable.

(4) Names, addresses, and titles of new corporate officers, partners, or owners.

(c) A new license shall be required for a change of ownership of an established manufacturer, wholesaler, distributor, reverse distributor, or broker to a successor business entity which results in a change in the controlling interest in the manufacturer, wholesaler, distributor, reverse distributor, or broker.

318:51-b Licensing of Limited Retail Drug Distributors Required.

I. No person shall operate as a limited retail drug distributor, as defined in RSA 318:1, VII-a, without first having obtained a license to do so from the board. Such license shall expire annually on June 30. An application together with a reasonable fee as established by the board shall be filed annually on or before July 1.

II. No license shall be issued under this section unless the applicant has furnished proof satisfactory to the board that:

(a) The applicant is of good moral character or, if that applicant is an association or corporation, that the managing officers are of good moral character.

(b) The applicant has sufficient space and security equipment as to properly carry on the business described in the application.

(c) The license granted by this chapter shall at all times be displayed in a conspicuous place in the facility for which it is issued.

(d) The applicant, other than a distributor of legend devices or medical gases, has a written contract with a pharmacist licensed in the state to serve as a consultant on all matters relating to the storage and dispensing of prescription drugs.

III. No license shall be granted to any person who has within 5 years been convicted of a violation of any law of the United States, or of any state, relating to drugs, as defined in this chapter or RSA 318-B, or to any person who is a drug-dependent person.

IV. Any person licensed pursuant to this section is subject to the provisions of RSA 318:29.

318:52 Hypodermics.

[Repealed 1971, 135:2, eff. July 20, 1971.]

318:52-a Fraud or Deceit.

It is unlawful to obtain or attempt to obtain a drug or device sold by prescription of a physician, dentist, optometrist, podiatrist, veterinarian, naturopathic doctor, physician assistant, or advanced practice registered nurse that bears a statement that it is to be dispensed or sold only by or on the prescription of a physician, dentist, optometrist, podiatrist, veterinarian, naturopathic doctor, physician assistant, or advanced practice registered nurse by:

I. Fraud, deceit, misrepresentation or subterfuge;

II. The forgery or alteration of a prescription or of any written order;

III. The concealment of a material fact;

IV. The use of a false name or the giving of a false address; or

V. Submission of an electronic or on-line medical history form that fails to establish a valid practitioner-patient relationship.

➡318:52-b Destruction of Used Instruments in Health Care Facilities.

It shall be unlawful for any possessor of a hypodermic syringe, needle, or any instrument adapted for the administration of controlled drugs, in health care facilities, to dispose of or discard any such instrument in any manner other than that provided in this section. Disposables which can cause injury, such as needles or syringes with needles, shall be placed intact in puncture resistant containers that are adapted with a secured lid which prevents easy access to the contents.

➡318:52-c Sale of Hypodermic Syringe.

I. (a) Hypodermic syringes, needles or any instrument adapted for the administration of drugs by injection shall not be sold except in registered pharmacies. No person shall sell, furnish, or give to any person, under 18 years of age, an instrument commonly known as a hypodermic syringe, hypodermic needle or any instrument adapted for the administration of drugs by injection without the written or oral prescription of a duly licensed physician, dentist, veterinarian, podiatrist, or advanced practice registered nurse. Such prescription shall contain the name and address of the patient, the date of the prescription, the description of the instrument prescribed, and the number of instruments prescribed.

(b) The following conditions shall apply to all purchases of hypodermic syringes or needles:

(1) Pharmacists shall provide to each purchaser at the time of purchase information regarding the safe disposal of hypodermic syringes or needles, including local disposal locations or a telephone number to call for such information, if appropriate.

(2) Pharmacists shall also provide purchasers with information on drug addiction treatment, including a local telephone number to get assistance, if appropriate.

(c) A purchaser shall not be sold more than 10 syringes or needles at any single purchase unless such

purchaser has a prescription for a bulk purchase.

(d) The commissioner of health and human services shall adopt rules, under RSA 541-A, relative to:

(1) The content, format, and distribution of any materials required under this paragraph.

(2) [Repealed.]

II. Public and nonpublic schools, including institutions of higher learning, shall be exempt from the requirement under paragraph I that such needles be sold only in registered pharmacies when the school is purchasing the syringes and needles for use in school science laboratory activities and assignments.

➡318:52-d Recording and Filing of Prescription.

Every person who dispenses, sells, furnishes, or gives away a hypodermic syringe or hypodermic needle or an instrument adapted for the administration of drugs by injection, upon the written or oral prescription of a duly licensed practitioner under RSA 318:52-c, shall record over such person's signature the date of sale or furnishing of the instrument and the number of instruments sold. This prescription shall be retained on file for a period of 4 years and shall be open to inspection by any public officer or employee engaged in the enforcement of RSA 318 or 318-B. A prescription filled in accordance with this section shall be sufficient authority, without the necessity of a renewal or reissuance, to permit subsequent sales or the furnishing of hypodermic syringes or hypodermic needles or instruments adapted for the administration of drugs by injection to the person to whom the prescription was issued for a period of one year from the date of its original issuance.

➡318:52-e Control or Possession of Hypodermic or Like Instruments Without Prescription Prohibited for Minors.

No person under 18 years of age shall have under such person's control or possess a hypodermic syringe, hypodermic needle, or any instrument adapted for the administration of drugs by injection, unless the person has received a written or oral prescription issued under RSA 318:52-c. For the purpose of this subdivision, no such prescription shall be valid which has been outstanding for more than one year.

➡318:53, 318:54 Repealed.

[Repealed 1963, 276:2, eff. July 1, 1963]

➡318:53, 318:54 Repealed.

[Repealed 1963, 276:2, eff. July 1, 1963]

Penalty

➡318:55 Fines and Imprisonment; Penalties.

I. Any person violating the provisions of this chapter, except as otherwise provided, shall be guilty of a misdemeanor if a natural person, or guilty of a felony if any other person.

II. In addition to the penalties under paragraph I, the board may impose a civil penalty not to exceed $5,000 per violation upon any person who willfully or repeatedly violates any provision of this chapter.

III. For any order issued in resolution of a disciplinary proceeding before the board, the board may require that any licensee, permittee, registrant, or certificate holder found guilty of a charge involving any drug law or rule to pay to the board a sum not to exceed the reasonable cost of investigation and prosecution of the proceeding. The sum shall not exceed $5,000. The costs to be assessed shall be fixed by the board and any sums recovered shall be paid to the state treasurer for deposit in the general fund.

Unused Prescription Drug Program

➡318:56 Unused Prescription Drug Program Established.

There is established the unused prescription drug program for the purpose of allowing the donation of unused prescription drugs and medical devices to uninsured or underinsured individuals. The program shall be administered by the New Hampshire pharmacy board.

➡318:57 Definitions.

In this subdivision:

I. “Board” means the New Hampshire pharmacy board.

II. “Medical device” means an instrument, apparatus, implement, machine, or similar article, or any attachment or component part thereof, that has been prescribed by a physician or other authorized health care practitioner.

III. “Patient” means a person to whom a drug or a medical device has been prescribed, that patient's authorized representative, or the executor or administrator of the patient's estate.

IV. “Prescription drug” means a drug as defined in RSA 318:1, XVII, excluding any controlled drug as defined in RSA 318-B:1, VI.

V. “Program” means the unused prescription drug program.

318:58 Donating, Accepting, and Redispensing Unused Drugs.

I. Any patient, or other person or entity authorized to possess prescription drugs and medical devices pursuant to RSA 318, including manufacturers and wholesalers licensed under RSA 318:51-a or other law, including any nursing home or long-term care facility licensed under RSA 151 or any correctional facility, may donate unused prescription drugs and medical devices to the program.

II. Any person authorized to dispense prescription drugs and medical devices pursuant to RSA 318 or other law may redispense such drugs and devices for the purposes of the program.

III. The following facilities and services may accept donations of unused prescription drugs and medical devices for the program:

(a) Any pharmacy as defined in RSA 318:1, XI;

(b) Any hospital, nursing home, hospice, or outpatient clinic licensed pursuant to RSA 151;

(c) New Hampshire hospital, Glencliff home, New Hampshire veterans home, and the state and county correctional facilities; and

(d) Any licensed prescriber of prescription drugs pursuant to RSA 318:42, II.

III-a. Any facility authorized to accept prescription drugs and devices for the program may temporarily store the drugs and devices appropriately but separately from the usual storage of such drugs and devices for the sole purpose of redispensing to individuals as provided in this section.

IV. The following prescription drugs and medical devices may be accepted and redispensed through the program; provided, that they have not been in the possession of the patient or other member of the public:

(a) Unused prescription drugs, including manufacturer's samples, that have not reached their expiration date, are contained in unopened unit dose or other tamper-evident packaging, and show no evidence of contamination; and

(b) Medical devices that have not been opened or adulterated.

V. Unused prescription drugs and medical devices may not be resold, but the facility or service redispensing such drug or device may charge a handling fee for the service not to exceed $15.

VI. A facility or service may redispense unused prescription drugs and medical devices under the program to uninsured or underinsured persons as defined by the board, but redispensing to other patients is permitted if no uninsured or underinsured person is available.

VII. Participation in the program shall be voluntary and individuals in the program shall be informed that the prescription drugs and medical devices have been redispensed.

318:59 Rulemaking.

The board shall, not later than December 31, 2010, adopt rules, pursuant to RSA 541-A, for the program relative to:

I. Standards and procedures for the donation, acceptance, storage, and redispensing of unused prescription drugs and medical devices.

II. Eligibility of individuals to receive unused drugs.

III. The maximum allowable handling fee for redispensing drugs and devices.

IV. Content and format of all forms required under this subdivision.

V. Further definition of persons and entities which may donate unused prescription drugs and medical devices.

318:60 Limited Immunity.

I. Accepting or dispensing of a prescription drug manufactured by the prescription drug manufacturer that is donated by any entity pursuant to this subdivision shall not subject a prescription drug manufacturer to criminal or civil liability for injury, death, or loss to person or property for failure to transfer or communicate product or consumer information or the expiration date of the donated prescription drug, or for damages related to improper storage of the donated prescription drug or use after the expiration date. Except as provided in this section, nothing in this subdivision shall in any way limit liability that would have existed under the original prescription.

II. Pharmacies, pharmacists, and other persons or entities acting in good faith, participating in the unused prescription drug program, and students and faculty of medical and pharmacy education institutions, with respect to the duties they perform as part of the program, shall not be subject to criminal or civil liability for injury, death, or loss to person or property for damages related to improper storage of the donated prescription drug or use after the expiration date, provided they comply with rules adopted by the board.

Pharmacy Rights During Audit

➡318:61 Definition.

In this subdivision, “responsible party” means the entity responsible for payment of claims for health care services other than the individual to whom the health care services were rendered or that individual's guardian or legal representative.

➡318:62 Pharmacy Rights During Audit.

Notwithstanding any other provision of law, whenever a managed care company, insurance company, third-party payer, or any entity that represents a responsible party conducts an audit of the records of a pharmacy, the pharmacy has a right to all of the following:

I. To have at least 7 days' advance notice of the initial on-site audit for each audit cycle. A pharmacy that requests an additional 7 days prior to the commencement of an audit shall be granted 7 additional days.

II. To have any audit that involves clinical judgment be done with a pharmacist who is licensed and is employed or working under contract with the auditing entity.

III. Not to have clerical or record-keeping errors, including typographical errors, scrivener's errors, and computer errors, on a required document or record, in the absence of any other evidence, deemed fraudulent. This subdivision does not prohibit recoupment of fraudulent payments.

IV. If required under the terms of the contract, to have the auditing entity provide a pharmacy, upon request, all records related to the audit in an electronic format or contained in digital media.

V. To have the properly documented records of a hospital or any person authorized to prescribe controlled substances for the purpose of providing medical or pharmaceutical care for their patients transmitted by any means of communication in order to validate a pharmacy record with respect to a prescription or refill for a controlled substance or narcotic drug, in compliance with state laws.

VI. If an on-site audit is conducted for a reason other than an identified problem, the audit shall be limited to no more than 250 selected prescriptions and the third party plan or audit company must provide a masked list

of prescriptions to the pharmacy to assist in preparation. The list is considered masked if the last 2 numbers of the prescription are marked with an “X.” This procedure allows the pharmacy to pull the book the audited prescription is in, however it does not allow the pharmacy to pull the specific prescription audited. Additionally, all of the invoices for actual dispensed prescriptions, with prices redacted, may be obtained from the pharmacy's wholesaler or distributor upon approval from the pharmacy.

VII. To be subject to no more than 2 audits in one calendar year, unless fraud or misrepresentation is reasonably suspected.

VIII. Except for cases of Food and Drug Administration regulation or drug manufacturer safety programs, to be free of recoupments based on any of the following unless defined within the billing requirements set forth in the pharmacy provider manual:

(a) Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the pharmacy board or by the provider manual or contract.

(b) A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the board.

IX. To be audited under the same standards and parameters as other similarly situated pharmacies audited by the same entity.

X. To have the period covered by an audit limited to 24 months from the date a claim was submitted to, or adjudicated by, a managed care company, an insurance company, a third-party payer, or any entity that represents responsible parties, unless a longer period is permitted by a federal plan under federal law.

XI. Not to be subject to the initiation or scheduling of audits during the first 5 calendar days of any month for any pharmacy that averages in excess of 600 prescriptions per week due to the high volume of prescriptions filled during that time and for patient care considerations, without the express consent of the pharmacy. The pharmacy shall cooperate with the auditor to establish an alternate date should the audit fall within the days excluded.

XII. Not to have the accounting practice of extrapolation used in calculating recoupments or penalties for audits, unless otherwise required by federal requirements or federal plans.

XIII. The auditor shall not include dispensing fees in the calculations of overpayments unless the prescription is considered a misfill. A misfill shall be defined as a prescription not dispensed, a medication error, a prescription whereby the prescriber denied authorization, or where an extra dispensing fee was charged.

XIV. (a) Auditors shall only have access to previous audit reports on a particular pharmacy if the previous

audit was conducted by the same entity, except as required for compliance with state or federal law.

(b) Additionally, pharmacies subject to an audit may use the following records at the time of the audit to validate a claim for a prescription, refill, or change in a prescription:

(1) Electronic or physical copies of records of a health care facility, or a health care provider with prescribing authority.

(2) Any prescription that complies with state law.

318:63 Mandatory Appeals Process.

I. Each entity that conducts an audit of a pharmacy shall establish an appeals process under which a pharmacy may appeal an unfavorable audit report to the entity.

II. If, following the appeal, the entity finds that an unfavorable audit report or any portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the unsubstantiated portion of the audit report without any further proceedings unless outlined in the contract.

III. Each entity conducting an audit shall provide a copy, if required under contractual terms, of the audit findings to the plan sponsor after completion of any appeals process.

318:64 Pharmacy Audit Recoupments.

I. Recoupments of any disputed funds shall occur only after final internal disposition of an audit, including the appeals process, unless fraud or misrepresentation is reasonably suspected or the discrepant amount exceeds $10,000.

II. Recoupment on an audit shall be refunded to the responsible party as contractually agreed upon by the parties.

III. The entity conducting the audit may charge or assess the responsible party, directly or indirectly, based on amounts recouped if both of the following conditions are met:

(a) The responsible party and the entity conducting the audit have entered into a contract that explicitly states the percentage charge or assessment to the responsible party.

(b) A commission or other payment to an agent or employee of the entity conducting the audit is not based,

directly or indirectly, on amounts recouped.

318:65 Audit Information and Reports.

An audit report shall be delivered to the pharmacy within 75 days, unless otherwise agreed to, after the conclusion of the audit. A pharmacy shall be allowed at least 30 days, unless otherwise agreed to, following receipt of the audit report to appeal any discrepancy found in the audit. A final audit report shall be delivered to the pharmacy within 90 days, unless otherwise agreed to, after receipt of the appeal. A charge-back, recoupment, or other penalty may not be assessed until the appeal process has been exhausted and the final report issued except as specified in RSA 318:64. Except as provided by state or federal law or contract, audit information may not be shared. Auditors may have access only to previous audit reports on a particular pharmacy conducted by that same entity.

318:66 Applicability.

This subdivision shall not apply to any audit, review, or investigation that is based on suspected or alleged fraud, willful misrepresentation, or abuse. Nothing in this subdivision shall apply to claims that were paid for in part or in whole by Medicare or Medicaid program funds.

END OF DOCUMENT