West's New Mexico Statutes Annotated Currentness
Chapter 61. Professional and Occupational Licenses (Refs & Annos)
Article 11. Pharmacy (Refs & Annos)

§ 61-11-1. Short title

Chapter 61, Article 11 NMSA 1978 may be cited as the “Pharmacy Act”.

§ 61-11-1.1. Legislative findings; purpose of act

A. The legislature finds that the practice of pharmacy in New Mexico is a professional practice affecting the public health, safety and welfare and is subject to regulation and control in the public interest. The legislature finds further that it is a matter of public interest and concern that the practice of pharmacy as defined in the Pharmacy Act merit and receive the confidence of the public, and that only qualified persons be permitted to engage in the practice of pharmacy so that the quality of drugs and related devices distributed in New Mexico is ensured.

B. The purpose of the Pharmacy Act is to promote, preserve and protect the public health, safety and welfare by and through the effective control and regulation of the practice of pharmacy, including the licensure of pharmacists and pharmacist interns and registration of pharmacy technicians; the licensure, control and regulation of all sites or persons, in or out of state, who distribute, manufacture or sell drugs or devices used in the dispensing and administration of drugs in New Mexico; and the regulation and control of such other materials as may be used in the diagnosis, treatment and prevention of injury, illness or disease of a patient or other person.

§ 61-11-2. Definitions

As used in the Pharmacy Act:

A. “administer” means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion or any other means as a result of an order of a licensed practitioner;

B. “board” means the board of pharmacy;

C. “compounding” means preparing, mixing, assembling, packaging or labeling a drug or device as the result of a licensed practitioner's prescription or for the purpose of, or as an incident to, research, teaching or chemical analysis and not for sale or dispensing. “Compounding” also includes preparing drugs or devices in anticipation of a prescription based on routine, regularly observed prescribing patterns;

D. “confidential information” means information in the patient's pharmacy records accessed, maintained by or transmitted to the pharmacist or communicated to the patient as part of patient counseling and may be released only to the patient or as the patient directs; or to those licensed practitioners and other authorized health care professionals as defined by regulation of the board when, in the pharmacist's professional judgment, such release is necessary to protect the patient's health and well-being; or to such other persons authorized by law to receive such information, regardless of whether such information is on paper, preserved on microfilm or stored on electronic media;

E. “consulting pharmacist” means a pharmacist whose services are engaged on a routine basis by a hospital or other health care facility and who is responsible for the distribution, receipt and storage of drugs according to the state and federal regulations;

F. “custodial care facility” means a nursing home, retirement care, mental care or other facility that provides extended health care;

G. “dangerous drug” means a drug that is required by an applicable federal or state law or rule to be dispensed pursuant to a prescription or is restricted to use by licensed practitioners; or that is required by federal law to be labeled with any of the following statements prior to being dispensed or delivered:

(1) “Caution: federal law prohibits dispensing without prescription.”;

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

(3) “RX only”;

H. “device” means an instrument, apparatus, implement, machine, contrivance, implant or similar or related article, including a component part or accessory, that is required by federal law to bear the label, “Caution: federal or state law requires dispensing by or on the order of a physician.”;

I. “dispense” means the evaluation and implementation of a prescription, including the preparation and delivery of a drug or device to a patient or patient's agent in a suitable container appropriately labeled for subsequent administration to or use by a patient;

J. “distribute” means the delivery of a drug or device other than by administering or dispensing;

K. “drug” means:

(1) an article recognized as a drug in any official compendium or its supplement that is designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment or prevention of disease in

humans or other animals;

(2) an article intended for use in the diagnosis, cure, mitigation, treatment or prevention of diseases in humans or other animals;

(3) an article, other than food, that affects the structure or any function of the body of humans or other animals; and

(4) an article intended for use as a component of an article described in Paragraph (1), (2) or (3) of this subsection;

L. “drug regimen review” includes an evaluation of a prescription and patient record for:

(1) known allergies;

(2) rational therapy contraindications;

(3) reasonable dose and route of administration;

(4) reasonable directions for use;

(5) duplication of therapy;

(6) drug-drug interactions;

(7) adverse drug reactions; and

(8) proper use and optimum therapeutic outcomes;

M. “electronic transmission” means transmission of information in electronic form or the transmission of the exact visual image of a document by way of electronic equipment;

N. “hospital” means an institution that is licensed as a hospital by the department of health;

O. “labeling” means the process of preparing and affixing a label to any drug container exclusive of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged prescription drug or device; and which label includes all information required by federal or state law or

regulations adopted pursuant to federal or state law;

P. “licensed practitioner” means a person engaged in a profession licensed by any state, territory or possession of the United States who, within the limits of his license, may lawfully prescribe, dispense or administer drugs for the treatment of a patient's condition;

Q. “manufacturing” means the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis and includes packaging or repackaging, labeling or relabeling and the promotion and marketing of such drugs or devices. “Manufacturing” also includes the preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed practitioners or other persons;

R. “nonprescription drugs” means non-narcotic medicines or drugs that may be sold without a prescription and are prepackaged for use by a consumer and are labeled in accordance with the laws and regulations of the state and federal governments;

S. “nonresident pharmacy” means any pharmacy located outside New Mexico that ships, mails or delivers, in any manner, drugs into New Mexico;

T. “patient counseling” means the oral communication by the pharmacist of information to a patient or his agent or caregiver regarding proper use of a drug or device;

U. “person” means an individual, corporation, partnership, association or other legal entity;

V. “pharmaceutical care” means the provision of drug therapy and other patient care services related to drug therapy intended to achieve definite outcomes that improve a patient's quality of life, including identifying potential and actual drug-related problems, resolving actual drug-related problems and preventing potential drug-related problems;

W. “pharmacist” means a person who is licensed as a pharmacist in this state;

X. “pharmacist in charge” means a pharmacist who accepts responsibility for the operation of a pharmacy in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs and who is personally in full and actual charge of the pharmacy and its personnel;

Y. “pharmacy” means a licensed place of business where drugs are compounded or dispensed and pharmaceutical care is provided;

Z. “pharmacist intern” means a person licensed by the board to train under a pharmacist;

AA. “pharmacy technician” means a person who is registered to perform repetitive tasks not requiring the professional judgment of a pharmacist;

BB. “practice of pharmacy” means the evaluation and implementation of a lawful order of a licensed practitioner; the dispensing of prescriptions; the participation in drug and device selection or drug administration that has been ordered by a licensed practitioner, drug regimen reviews and drug or drug-related research; the administering or prescribing of dangerous drug therapy; the provision of patient counseling and pharmaceutical care; the responsibility for compounding and labeling of drugs and devices; the proper and safe storage of drugs and devices; and the maintenance of proper records;

CC. “prescription” means an order given individually for the person for whom prescribed, either directly from a licensed practitioner or his agent to the pharmacist, including electronic transmission or indirectly by means of a written order signed by the prescriber, that bears the name and address of the prescriber, his license classification, the name and address of the patient, the name and quantity of the drug prescribed, directions for use and the date of issue;

DD. “significant adverse drug event” means a drug-related incident that may result in harm, injury or death to the patient; and

EE. “wholesale drug distributor” means a person engaged in the wholesale distribution of prescription drugs, including manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, manufacturer's warehouses, distributor's warehouses, chain drug warehouses, wholesale drug warehouses, independent wholesale drug traders and retail pharmacies that conduct wholesale distribution.

§ 61-11-3. Criminal offender's character evaluation

The provisions of the Criminal Offender Employment Act shall govern any consideration of criminal records required or permitted by the Pharmacy Act.

§ 61-11-4. Board created; members; qualifications; terms; vacancies; removal

A. There is created the “board of pharmacy”. The board shall be administratively attached to the regulation and licensing department. The board consists of nine members, each of whom shall be a citizen of the United States and a resident of New Mexico.

B. Five members shall be pharmacists appointed by the governor for staggered terms of five years each from lists submitted to the governor by the New Mexico pharmaceutical association, which lists contain the names of two pharmacists residing in each of the five pharmacy districts. Appointments of pharmacist members shall

be made for five years or less each and made in such a manner that the term of one pharmacist member expires on July 1 of each year. One pharmacist member shall be appointed from each pharmacy district. A pharmacist member of the board shall have been actively engaged in the pharmaceutical profession in this state for at least three years immediately prior to his appointment and shall have had a minimum of eight years of practical experience as a pharmacist. A vacancy shall be filled by appointment by the governor for the unexpired term from lists submitted by the New Mexico pharmaceutical association to the governor. Pharmacist members shall reside in the district from which they are appointed.

C. Three members of the board shall be appointed by the governor to represent the public. The public members of the board shall not have been licensed as pharmacists or have any significant financial interest, whether direct or indirect, in the profession regulated. A vacancy in a public member's term shall be filled by appointment by the governor for the unexpired term. Initial appointments of public members shall be made for staggered terms of five years or less and made in such a manner that not more than two public members' terms shall expire on July 1 of each year.

D. One member of the board shall be a pharmacist appointed at large from a list submitted to the governor by the New Mexico society of health systems pharmacists. The member shall be appointed by the governor to a term of five years. A vacancy in the member's term shall be filled by appointment by the governor for the unexpired term from a list submitted to the governor by the New Mexico society of health systems pharmacists.

E. There are created five pharmacy districts as follows:

(1) northeast district, which shall be composed of the counties of Colfax, Guadalupe, Harding, Los Alamos, Mora, Quay, Rio Arriba, Sandoval, San Miguel, Santa Fe, Taos, Torrance and Union;

(2) northwest district, which shall be composed of the counties of McKinley, San Juan, Valencia and Cibola;

(3) central district, which shall be composed of the county of Bernalillo;

(4) southeast district, which shall be composed of the counties of Chaves, Curry, De Baca, Eddy, Lea and Roosevelt; and

(5) southwest district, which shall be composed of the counties of Catron, Dona Ana, Grant, Hidalgo, Lincoln, Luna, Otero, Sierra and Socorro.

F. A board member shall not serve more than two full terms, consecutive or otherwise.

G. A board member failing to attend three consecutive regular meetings is automatically removed as a member of the board.

H. The governor may remove a member of the board for neglect of a duty required by law, for incompetency or for unprofessional conduct and shall remove a board member who violates a provision of the Pharmacy Act.

§ 61-11-5. Board meetings; quorum; officers; bonds; expenses

A. The board shall annually elect a chairman, vice chairman and secretary-treasurer from its membership.

B. The board shall meet at least once every three months. Special meetings may be called by the chairman and shall be called upon the written request of two or more members of the board. Notification of special meetings shall be made by certified mail unless the notice is waived by the entire board and noted in the minutes. Notice of all regular meetings shall be made by regular mail at least ten days prior to the meeting, and copies of the minutes of all meetings shall be mailed to each board member within forty-five days after any meeting.

C. A majority of the board constitutes a quorum.

D. Members of the board shall be reimbursed as provided in the Per Diem and Mileage Act and shall receive no other compensation, perquisite or allowance.

§ 61-11-6. Powers and duties of board

A. The board shall:

(1) adopt, amend or repeal rules and regulations necessary to carry out the provisions of the Pharmacy Act in accordance with the provisions of the Uniform Licensing Act;

(2) provide for examinations of applicants for licensure as pharmacists;

(3) provide for the issuance and renewal of licenses for pharmacists;

(4) require and establish criteria for continuing education as a condition of renewal of licensure for pharmacists;

(5) provide for the issuance and renewal of licenses for pharmacist interns and for their training, supervision and discipline;

(6) provide for the licensing of retail pharmacies, nonresident pharmacies, wholesale drug distributors, drug manufacturers, hospital pharmacies, nursing home drug facilities, industrial and public health clinics and all

places where dangerous drugs are stored, distributed, dispensed or administered and provide for the inspection of the facilities and activities;

(7) enforce the provisions of all laws of the state pertaining to the practice of pharmacy and the manufacture, production, sale or distribution of drugs or cosmetics and their standards of strength and purity;

(8) conduct hearings upon charges relating to the discipline of a registrant or licensee or the denial, suspension or revocation of a registration or a license in accordance with the Uniform Licensing Act;

(9) cause the prosecution of any person violating the Pharmacy Act, the New Mexico Drug, Device and Cosmetic Act or the Controlled Substances Act;

(10) keep a record of all proceedings of the board;

(11) make an annual report to the governor;

(12) appoint and employ, in the board's discretion, a qualified person who is not a member of the board to serve as executive director and define the executive director's duties and responsibilities; except that the power to deny, revoke or suspend any license or registration authorized by the Pharmacy Act shall not be delegated by the board;

(13) appoint and employ inspectors necessary to enforce the provisions of all acts under the administration of the board, which inspectors shall be pharmacists and have all the powers and duties of peace officers;

(14) provide for other qualified employees necessary to carry out the provisions of the Pharmacy Act;

(15) have the authority to employ a competent attorney to give advice and counsel in regard to any matter connected with the duties of the board, to represent the board in any legal proceedings and to aid in the enforcement of the laws in relation to the pharmacy profession and to fix the compensation to be paid to the attorney; provided, however, that the attorney shall be compensated from the money of the board, including that provided for in Section 61-11-19 NMSA 1978;

(16) register and regulate qualifications, training and permissible activities of pharmacy technicians;

(17) provide a registry of all persons licensed as pharmacists or pharmacist interns in the state;

(18) adopt rules and regulations that prescribe the activities and duties of pharmacy owners and pharmacists in the provision of pharmaceutical care, emergency prescription dispensing, drug regimen review and patient counseling in each practice setting;

(19) adopt, after approval by the New Mexico board of medical examiners and the board of nursing, rules and protocols for the prescribing of dangerous drug therapy, including vaccines and immunizations, and the appropriate notification of the primary or appropriate physician of the person receiving the dangerous drug therapy; and

(20) have the authority to authorize emergency prescription dispensing.

B. The board may:

(1) delegate its authority to the executive director to issue temporary licenses as provided in Section 61-11-14 NMSA 1978;

(2) provide by regulation for the electronic transmission of prescriptions; and

(3) delegate its authority to the executive director to authorize emergency prescription dispensing procedures during civil or public health emergencies.

§ 61-11-6.1. Criminal background checks

A. The board may adopt rules that provide for criminal background checks for all new licensees to include:

(1) requiring criminal history background checks of applicants for licensure pursuant to the Pharmacy Act;

(2) requiring applicants for licensure to be fingerprinted;

(3) providing for an applicant who has been denied licensure to inspect or challenge the validity of the background check record;

(4) establishing a fingerprint and background check fee not to exceed seventy-five dollars ($75.00) to be paid by the applicant; and

(5) providing for submission of an applicant's fingerprint cards to the federal bureau of investigation to conduct a national criminal history background check and to the department of public safety to conduct a state criminal history check.

B. Arrest record information received from the department of public safety and the federal bureau of investigation shall be privileged and shall not be disclosed to persons not directly involved in the decision affecting the applicant.

C. Electronic live fingerprint scans may be used when conducting criminal history background checks.

§ 61-11-6.2. Prior authorization request form; development

A. On or before January 1, 2014, the board shall jointly develop with the insurance division of the public regulation commission a uniform prior authorization form that, notwithstanding any other provision of law, a prescribing practitioner in the state shall use to request prior authorization for coverage of prescription drugs. The uniform prior authorization form shall:

(1) not exceed two pages;

(2) be made electronically available on the web site of the insurance division and on the web site of each health insurer, plan or health maintenance organization that uses the form;

(3) be developed with input received from interested parties pursuant to at least one public meeting; and

(4) take into consideration the following:

(a) any existing prior authorization forms that the federal centers for medicare and medicaid services or the human services department has developed; and

(b) any national standards pertaining to electronic prior authorization for prescription drugs.

B. As used in this section, “prescribing practitioner” means a person that is licensed or certified to prescribe and administer drugs that are subject to the New Mexico Drug, Device and Cosmetic Act.

§ 61-11-7. Drug dispensation; limitations

A. The Pharmacy Act does not prohibit:

(1) any hospital or state or county institution or clinic without the services of a staff pharmacist from acquiring and having in its possession any dangerous drug for the purpose of dispensing if it is in a dosage form suitable for dispensing and if the hospital, institution or clinic employs a consulting pharmacist, and if the consulting pharmacist is not available, the withdrawal of any drug from stock by a licensed professional nurse on the order of a licensed practitioner in such amount as needed for administering to and treatment of his patient;

(2) the extemporaneous preparation by a licensed professional nurse on the order of a licensed practitioner of simple solutions for injection when the solution may be prepared from a quantity of drug that has been

prepared previously by a pharmaceutical manufacturer or pharmacist and obtained by a hospital, institution or clinic in a form suitable for the preparation of the solution;

(3) the sale of non-narcotic, nonpoisonous or nondangerous nonprescription medicines or preparations by nonregistered persons or unlicensed stores when sold in their original containers;

(4) the sale of drugs intended for veterinary use; provided that if such drugs bear the legend: “caution: federal law restricts this drug to use by or on the order of a licensed veterinarian”, the drug may be sold or distributed only as provided in Subsection A of Section 26-1-15 NMSA 1978, by a person possessing a license issued by the board pursuant to Subsection B of Section 61-11-14 NMSA 1978;

(5) the sale to or possession or administration of topical ocular pharmaceutical agents by licensed optometrists who have been certified by the board of optometry for the use of such agents;

(6) the sale to or possession or administration of oral pharmaceutical agents as authorized in Subsection A of Section 61-2-10.2 NMSA 1978 by licensed optometrists who have been certified by the board of optometry for the use of such agents;

(7) pharmacy technicians from providing assistance to pharmacists;

(8) a pharmacist from prescribing dangerous drug therapy, including vaccines and immunizations, under rules and protocols adopted by the board after approval by the New Mexico board of medical examiners and the board of nursing; or

(9) a pharmacist from exercising his professional judgment in refilling a prescription for a prescription drug, unless prohibited by another state or federal law, without the authorization of the prescribing licensed practitioner, if:

(a) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

(b) the pharmacist is unable to contact the licensed practitioner after reasonable effort;

(c) the quantity of prescription drug dispensed does not exceed a seventy-two-hour supply;

(d) the pharmacist informs the patient or the patient's agent at the time of dispensing that the refill is being provided without such authorization and that authorization of the licensed practitioner is required for future refills; and

(e) the pharmacist informs the licensed practitioner of the emergency refill at the earliest reasonable time.

B. All prescriptions requiring the preparation of dosage forms or amounts of dangerous drugs not available in the stock of a hospital, institution or clinic or a prescription requiring compounding shall be either compounded or dispensed only by a pharmacist.

§ 61-11-8. Drug records to be kept

Records shall be kept by all persons licensed pursuant to the Pharmacy Act of all dangerous drugs, their receipt, withdrawal from stock and use or other disposal. The records shall be open to inspection by the board or its agents, and the licensee shall be responsible for the maintenance of the records in proper form.

§ 61-11-9. Qualifications for licensure as a pharmacist by examination

A. An applicant for licensure as a pharmacist by examination shall:

(1) have reached the age of majority and not be addicted to the use of drugs or alcohol;

(2) be a graduate of a school or college of pharmacy approved by the board;

(3) have not less than one year of experience under the direction of a pharmacist in accordance with the programs of supervised training established by regulation of the board;

(4) pass an examination approved by the board; and

(5) pass an examination approved by the board, which examination shall be based on federal and state drug laws and regulations.

B. Any person who is a graduate of a foreign school of pharmacy may be eligible for licensure as a pharmacist upon successful completion of an equivalency examination program approved by the board.

C. The board shall issue a license when the applicant's application has been filed with and approved by the board and the applicant has paid the required fees and has met the requirements of this section.

§ 61-11-9.1. Surety bonds

A. The board may require surety bonds or other equivalent means of security, as approved by the board, that are provided by a third party such as insurance, an irrevocable letter of credit or funds deposited in a trust

account or financial institution, to secure payment for any administrative or judicial penalties that may be imposed by the board or the state and for any penalties or costs required by board rule or disciplinary action.

B. Surety bonds or other equivalent means of security as approved by the board and required in this section shall apply to initial applicants or renewal applicants as a condition for obtaining or maintaining licensure as a nonresident pharmacy or wholesale drug distributor.

C. The board shall set by rule the amount and conditions of the surety bond or other equivalent means of security authorized in this section.

D. The board may waive the surety bond or other requirements of this section if it determines that it is in the best interest of the public to do so. Such waivers may be granted under conditions established by board rule.

E. Manufacturers distributing their own products that have been licensed or approved by the food and drug administration and pharmacy warehouses that are engaged only in intracompany transfers are exempt from this section.

F. A separate surety bond or other equivalent means of security is not required for each company's separate locations or for affiliated companies or groups when such separate locations or affiliated companies or groups are required to apply for or renew their wholesale distributor license with the board.

§ 61-11-10. Reciprocal licensure

The board may issue a license, with or without examination, to a person who:

A. is licensed as a pharmacist by examination in another state that under equivalent conditions will grant reciprocal licensure to persons licensed as pharmacists by examination in this state; and

B. produces evidence satisfactory to the board that he has the age, education, experience and qualifications required of applicants for licensure by examination under the provisions of the Pharmacy Act. Any person who was registered by examination in another state prior to May 20, 1940 is required to satisfy only those requirements in existence in this state at the time he was registered in the other state.

§ 61-11-11. Pharmacist intern; qualifications for licensure

The classification of pharmacist intern is established. An applicant for licensure as a pharmacist intern shall:

A. be not less than eighteen years of age and not be addicted to the use of drugs or alcohol;

B. have satisfactorily completed not less than thirty semester hours or the equivalent thereof in a school or college of pharmacy approved by the board; and

C. meet other requirements established by regulation of the board.

§ 61-11-11.1. Pharmacy technician; qualifications; duties

A. The classification of pharmacy technician is established. An applicant for registration as a pharmacy technician shall:

(1) be at least eighteen years of age and not addicted to drugs or alcohol;

(2) complete initial training as required by regulations of the board that includes on-the-job and related education commensurate with the tasks to be performed by the pharmacy technician; and

(3) if the potential duties of the pharmacy technician will include the preparation of sterile products, complete an additional one hundred hours of experiential training as required by regulations of the board.

B. Permissible activities for pharmacy technicians under the supervision of a pharmacist include:

(1) the preparation, mixing, assembling, packaging and labeling of medications;

(2) processing routine orders of stock supplies;

(3) preparation of sterile products;

(4) filling of a prescription or medication order that entails counting, pouring, labeling or reconstituting medications; and

(5) tasks assigned by the supervising pharmacist that do not require his professional judgment.

C. The supervising pharmacist shall observe and direct the pharmacy technician to a sufficient degree to assure the accurate completion of the activities of the pharmacy technician and shall provide a final check of all aspects of the prepared product and document the final check before dispensing.

D. The supervising pharmacist shall be responsible for the tasks performed by the pharmacist technician and subject to discipline for failure to appropriately supervise the performance of the pharmacist technician.

§ 61-11-12. License fees

A. An applicant for licensure as a pharmacist or pharmacist intern or registration as a pharmacy technician shall pay the following fees, which fees shall not be returnable:

(1) for initial licensure as a pharmacist, a fee set by the board not to exceed four hundred dollars ($400); provided that if the applicant fails a portion of an examination, reexamination is subject to the same fee as the first examination;

(2) for initial licensure as a pharmacist intern, a fee not to exceed twenty-five dollars ($25.00); and

(3) for initial registration as a pharmacy technician, a fee not to exceed twenty-five dollars ($25.00).

B. The board shall issue a license or registration to each successful applicant and enter his name and pertinent information in the registry maintained by the board.

C. Every registration or license shall have the seal of the board affixed and be signed by the board chairman.

§ 61-11-13. Renewal; revocation

A. The renewal date for each licensee shall be the last day of the licensee's birth month, as set by rule of the board. Any person who intends to continue practice shall file an application for renewal prior to that date and pay the renewal fee set by the board in an amount not to exceed one hundred fifty dollars ($150) per year; provided, however, the board shall prorate any renewal fee charged for any period of less than a full year. The license of a pharmacist failing to renew his license on or before the date set by the board shall automatically expire, and the license shall not be reinstated except upon reapplication and payment of a one hundred dollar ($100) reinstatement fee and all delinquent renewal fees.

B. A pharmacist ceasing to be engaged in the practice of pharmacy for such period as the board determines, but not less than twelve months, is deemed to be inactive and shall have his license renewal so marked. A pharmacist having an inactive status shall not be reinstated to active status without either an examination or the presentation of evidence satisfactory to the board that he has taken some form of internship or continuing education relevant to the practice of pharmacy, or both, immediately prior to his application for reinstatement. Pharmacists regularly engaged in teaching in an approved school or college of pharmacy, servicing, manufacturing, inspecting or other phases of the pharmaceutical profession are in active status for the purposes of this subsection.

C. Application for renewal of a pharmacist's license shall be made on forms prescribed and furnished by the board and shall indicate whether the renewal applied for will be an active or inactive license. The application, together with the renewal fee, shall be filed with the board.

D. Application for renewal of a pharmacist's license shall be accompanied by proof satisfactory to the board that the applicant has completed continuing education requirements established pursuant to Section 61-11-6 NMSA 1978.

E. An application for renewal of a certificate of registration as a pharmacy technician or license as a pharmacist intern shall be filed with the board on forms prescribed and furnished by the board and shall be accompanied by a renewal fee not to exceed twenty-five dollars ($25.00) per year.

➡ § 61-11-14. Pharmacy licensure; wholesale drug distribution business licensure; requirements; fees; revocation

A. Any person who desires to operate or maintain the operation of a pharmacy or who engages in a wholesale drug distribution business in this state shall apply to the board for the proper license and shall meet the requirements of the board and pay the fee for the license and its renewal.

B. The board shall issue the following classes of licenses that shall be defined and limited by regulation of the board:

(1) retail pharmacy;

(2) nonresident pharmacy;

(3) wholesale drug distributor;

(4) drug manufacturer;

(5) hospital pharmacy;

(6) industrial health clinic;

(7) community health clinic;

(8) department of health public health offices;

(9) custodial care facility;

(10) home care services;

(11) emergency medical services;

(12) animal control facilities;

(13) wholesaler, retailer or distributor of veterinary drugs bearing the legend: “caution: federal law restricts this drug to use by or on the order of a licensed veterinarian”. Such drugs may be sold or dispensed by any person possessing a retail pharmacy license, wholesale drug distributor's license or drug manufacturer's license issued by the board, without the necessity of acquiring an additional license for veterinary drugs;

(14) returned drugs processors;

(15) drug research facilities;

(16) drug warehouses;

(17) contact lens sellers;

(18) medicinal gas repackagers; and

(19) medicinal gas sellers.

C. Every application for the issuance or biennial renewal of:

(1) a license for a retail pharmacy, nonresident pharmacy, hospital pharmacy or drug research facility shall be accompanied by a fee set by the board in an amount not to exceed three hundred dollars ($300) per year;

(2) a license for a wholesale drug distributor, drug manufacturer or drug warehouse shall be accompanied by a fee not to exceed one thousand dollars ($1,000) per year;

(3) a license for a custodial care facility or a returned drugs processor business shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200) per year; and

(4) a license for an industrial health clinic; a community health clinic; a department of health public health office; home care services; emergency medical services; animal control facilities; or wholesaler, retailer or distributor of veterinary drugs shall be accompanied by a fee set by the board in an amount not to exceed two hundred dollars ($200) per year.

D. If it is desired to operate or maintain a pharmaceutical business at more than one location, a separate

license shall be obtained for each location.

E. Each application for a license shall be made on forms prescribed and furnished by the board.

F. Any person making application to the board for a license to operate a facility or business listed in Subsection B of this section in this state shall submit to the board an application for licensure indicating:

(1) the name under which the business is to be operated;

(2) the address of each location to be licensed and the address of the principal office of the business;

(3) in the case of a retail pharmacy, the name and address of the owner, partner or officer or director of a corporate owner;

(4) the type of business to be conducted at each location;

(5) a rough drawing of the floor plan of each location to be licensed;

(6) the proposed days and hours of operation of the business; and

(7) other information the board may require, including a criminal background check and financial history, provided that manufacturers distributing their own products that have been licensed or approved by the food and drug administration shall be exempt from criminal background check and financial history requirements pursuant to this section.

G. After preliminary approval of the application for a license for any facility or business listed in Paragraphs (1) through (8) and (10) through (19) of Subsection B of this section, a request for an inspection, together with an inspection fee not to exceed two hundred dollars ($200), shall be submitted to the board for each business location, and an inspection shall be made of each location by the board or its agent.

H. Following a deficiency-free inspection, the executive director of the board may issue a temporary license to the applicant. The temporary license shall expire at the close of business on the last day of the next regular board meeting.

I. Licenses, except temporary licenses provided pursuant to Subsection H of this section, issued by the board pursuant to this section are not transferable and shall expire on the expiration date set by the board unless renewed. Any person failing to renew a license on or before the expiration date set by the board shall not have the license reinstated except upon reapplication and payment of a reinstatement fee set by the board in an amount not to exceed one hundred dollars ($100) and all delinquent renewal fees.

J. The board, after notice and a refusal or failure to comply, may suspend or revoke any license issued under the provisions of the Pharmacy Act at any time examination or inspection of the operation for which the license was granted discloses that the operation is not being conducted according to law or regulations of the board.

K. Pharmaceutical sales representatives who carry dangerous drugs shall provide the board with a written statement from the representative's employer that describes the employer's policy relating to the safety and security of the handling of dangerous drugs and to the employer's compliance with the federal Prescription Drug Marketing Act of 1987. Pharmaceutical sales representatives are not subject to the licensing provisions of the Pharmacy Act.

§ 61-11-14.1. Nonresident pharmacy licensure; toll-free telephone service

A. Any person making application to the board for a nonresident pharmacy license shall submit to the board an application for licensure that discloses the following information:

(1) the address of the principal office of the nonresident pharmacy and the names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs to residents of this state. A report containing this information shall be made on an annual basis and within thirty days after any change of office location, corporate officer or pharmacist in charge;

(2) that the nonresident pharmacy complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is a resident, as well as with requests for information made by the board pursuant to this section;

(3) that the nonresident pharmacy maintains, at all times, a valid license, permit or registration to operate the pharmacy in compliance with the laws of the state in which it is a resident;

(4) a copy of the most recent inspection report resulting from an inspection of the nonresident pharmacy conducted by the regulatory or licensing agency of the state in which it is a resident; and

(5) that the nonresident pharmacy maintains its records of controlled substances or dangerous drugs that are dispensed to patients in this state so that the records are readily retrievable.

B. A nonresident pharmacy licensed under this section shall provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the nonresident pharmacy who has access to the patient's records. A nonresident pharmacy shall provide the toll-free telephone service during its regular hours of operation, but not less than six days a week and for a minimum of forty hours a week. The toll-free telephone number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

C. Nothing in this section shall be construed to authorize the dispensing of contact lenses by nonresident pharmacies.

§ 61-11-15. Pharmacies; sale of drugs; supervision requirements

A. An owner of a pharmacy shall not:

(1) fail to place a pharmacist in charge;

(2) intentionally or fraudulently adulterate or cause to be adulterated or misbrand or cause to be misbranded any drugs compounded, sold or offered for sale in the pharmacy;

(3) alone or through any other person, permit the compounding of prescriptions or the selling of dangerous drugs in the owner's place of business except by a pharmacist, pharmacist intern or pharmacy technician;

(4) alone or through any other person, sell, offer for sale, compound or dispense dangerous drugs without being a pharmacist, pharmacist intern or pharmacy technician; provided that veterinary drugs bearing the legend: “caution: federal law restricts this drug to use by or on the order of a licensed veterinarian” may be sold, offered for sale or distributed by persons holding a license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978; or

(5) operate a pharmacy without the appropriate license.

B. An owner of a pharmacy shall provide to a consumer or the attorney general the current retail price for a prescription drug in any dosage or quantity when a consumer or the attorney general requests that information by phone, electronic device or otherwise. If a consumer requests the current retail prices for more than five prescription drugs at one time, the owner shall provide the information to the consumer no more than five days after the request is made; provided that the consumer:

(1) requests the information in writing;

(2) has a valid prescription for all the drugs for which the information is requested; and

(3) has made no more than three separate requests to the owner for the current retail prices for more than five prescription drugs within a six-month period.

C. Whenever an applicable law, rule or regulation requires or prohibits action by a pharmacy, responsibility for the violation shall be that of the owner and the pharmacist in charge.

D. As used in this section, “current retail price” means the cash price for a prescription drug charged to a consumer who has no prescription drug coverage.

§ 61-11-16. Pharmacies; equipment required

There shall be kept in every pharmacy, subject to review or testing by the board or its authorized agents, such references and equipment as the board may designate by regulation.

§ 61-11-17. Display of license

Every person shall have his license or registration and the license for the operation of the business conspicuously displayed in the pharmacy or place of business to which it applies or in which he is employed.

§ 61-11-18. State license; actions authorized

The board shall license department of health clinics and other health facilities of the department where dangerous drugs are stored, distributed or dispensed. All such clinics or other health facilities of the department are subject to the provisions of the Pharmacy Act.

§ 61-11-18.1. Reports to board

Any person licensed under Article 61, Chapter 11 NMSA 1978 shall report in writing the occurrence of any of the following events to the board within fifteen days of discovery:

A. permanent closing of a licensed premises;

B. change of ownership, management, location or pharmacist in charge;

C. theft or loss of drugs or devices;

D. conviction of an employee for violating any federal or state drug laws;

E. theft, destruction or loss of records required by federal or state law to be maintained;

F. occurrences of significant adverse drug events, as defined by regulations of the board;

G. dissemination of confidential information or personally identifiable information to a person other than a

person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive such information; and

H. other matters or occurrences as the board may require by regulation.

§ 61-11-18.2. Audit of pharmacy records

A. As used in this section, “entity” means a managed care company, insurance company, third-party payor or the representative of the managed care company, insurance company or third-party payor.

B. An audit of the records of a pharmacy by an entity shall be conducted in accordance with the following criteria:

(1) the entity conducting the initial on-site audit shall give the pharmacy notice at least two weeks prior to conducting the initial on-site audit for each audit cycle;

(2) an audit that involves clinical or professional judgment shall be conducted by or in consultation with a pharmacist;

(3) a clerical or record-keeping error, regarding a required document or record, shall not necessarily constitute fraud but such a claim:

(a) may be subject to recoupment; and

(b) shall not be subject to criminal penalties without proof of intent to commit fraud;

(4) a pharmacy may use the records of a hospital, physician or other authorized practitioner of the healing arts for drugs or medicinal supplies written or transmitted by any means of communication for purposes of validating the pharmacy record with respect to orders or refills of a dangerous drug or controlled substance;

(5) a finding of an overpayment or underpayment shall not be a projection based on the number of patients served having a similar diagnosis or on the number of similar orders or refills for similar drugs and recoupment of claims shall be based on the actual overpayment or underpayment unless the entity demonstrates a statistically justifiable method of projection or the projection for overpayment or underpayment is part of a settlement as agreed to by the pharmacy;

(6) each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the entity;

(7) a pharmacy shall be allowed at least twenty-one business days, with reasonable extensions allowed, following receipt of the preliminary audit report in which to produce documentation to address any discrepancy found during an audit;

(8) the period covered by an audit shall not exceed two years, unless otherwise provided by contractual agreement, from the date the claim was submitted to or adjudicated by an entity or unless it conflicts with state or federal law;

(9) an audit shall not be initiated or scheduled during the first five calendar days of a month due to the high volume of prescriptions filled during that time unless otherwise consented to by the pharmacy;

(10) the preliminary audit report shall be delivered to the pharmacy within one hundred twenty days, with reasonable extensions allowed, after conclusion of the audit, and the final report shall be delivered to the pharmacy within six months after receipt of the preliminary audit report or final appeal, as provided for in Subsection C of this section, whichever is later;

(11) the audit criteria set forth in this subsection shall apply only to audits of claims submitted for payment after July 1, 2007; and

(12) notwithstanding any other provision in this subsection, the entity conducting the audit shall not use the accounting practice of extrapolation in calculating recoupments or penalties for audits.

C. Recoupment of any disputed funds shall occur after final internal disposition of the audit, including the appeals process set forth in Subsection D of this section. Should the identified discrepancy for an individual audit exceed twenty-five thousand dollars ($25,000), future payments to the pharmacy may be withheld pending finalization of the audit.

D. Each entity conducting an audit shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity. If, following the appeal, the entity finds that an unfavorable audit report or any portion of the audit is unsubstantiated, the entity shall dismiss the audit report or the unsubstantiated portion of the report of the audit without the necessity of any further proceedings.

E. This section does not apply to any investigative audit that involves probable or potential fraud, willful misrepresentation.

§ 61-11-19. Fund established; disposition; method of payment

A. There is established in the state treasury the “pharmacy fund”.

B. All funds received by the board and all money collected under the Pharmacy Act or any other act administered by the board shall be deposited with the state treasurer for credit to the pharmacy fund.

C. Payments from the pharmacy fund shall be made upon warrants of the secretary of finance and administration on vouchers issued in accordance with the budget approved by the department of finance and administration.

D. Amounts paid into the pharmacy fund prior to October 1, 2005 pursuant to Paragraph (2) of Subsection C of Section 61-11-14 NMSA 1978 are appropriated to the board for a prescription drug program serving persons pursuant to the Medical Insurance Pool Act; provided that the board enters into an arrangement with a state agency or a state-created entity for the operation of the program.

E. All amounts paid into the pharmacy fund shall only be used for the purpose of meeting necessary expenses incurred in the enforcement of the purposes of the Pharmacy Act and any other acts administered by the board, the duties imposed thereby and the promotion of pharmacy education and standards in this state. All money unused at the end of the fiscal year shall remain in the pharmacy fund for use in accordance with the provisions of the Pharmacy Act.

F. All funds that may have accumulated to the credit of the pharmacy fund shall be continued for use by the board in administration of the Pharmacy Act.

§ 61-11-20. Disciplinary proceedings; Uniform Licensing Act

A. In accordance with the Uniform Licensing Act, the board may deny, withhold, suspend or revoke any registration or license held or applied for under the Pharmacy Act upon grounds that the licensee or applicant:

(1) is guilty of gross immorality or dishonorable or unprofessional conduct as defined by regulation of the board;

(2) is convicted of a violation of any federal law relating to controlled substances, any federal food and drug law or any federal law requiring the maintenance of drug records;

(3) is guilty of a violation of the Controlled Substances Act, the Pharmacy Act or the New Mexico Drug, Device and Cosmetic Act;

(4) is addicted to the use of dangerous drugs or narcotic drugs of any kind;

(5) is habitually intemperate;

(6) is guilty of knowingly or fraudulently adulterating or misbranding or causing to be adulterated or misbranded any drugs;

(7) is guilty of procuring or attempting to procure licensure as a pharmacist or pharmacist intern, registration as a pharmacy technician or licensure for a pharmacy or pharmaceutical business in this state for himself or another by knowingly making or causing to be made false representations to the board;

(8) is unfit or unable to practice pharmacy by reason of a physical or mental disease or disability as determined by the board and based on competent medical authority, during the period of such disability;

(9) fails to maintain any drug records required by any federal law resulting in the condemnation of any drugs in his possession or control;

(10) is convicted of any felony;

(11) has furnished false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;

(12) has had any drug manufacturer or wholesale drug distributor license suspended or revoked;

(13) has obtained any remuneration for professional services by fraud, misrepresentation or deception;

(14) has dealt with drugs or devices that he knew or should have known were stolen;

(15) has purchased or received a drug or device from a source other than a person or pharmacy licensed pursuant to the Pharmacy Act, unless otherwise provided in that act, the Controlled Substances Act or the New Mexico Drug, Device and Cosmetic Act;

(16) is a wholesale drug distributor other than a pharmacy and dispenses or distributes drugs or devices directly to a patient;

(17) has violated any rule or regulation adopted by the board pursuant to the Pharmacy Act; or

(18) has divulged or revealed confidential information or personally identifiable information to a person other than a person authorized by the provisions of the Pharmacy Act or regulations adopted pursuant to that act to receive such information.

B. Disciplinary proceedings may be instituted by any person, shall be by sworn complaint and shall conform

with the provisions of the Uniform Licensing Act. Any party to the hearing may obtain a copy of the hearing record upon payment of costs for the copy.

C. The board may modify any prior order of revocation, suspension or refusal to issue a license of a pharmacist or a pharmacist intern or registration of a pharmacy technician but only upon a finding by the board that there no longer exist any grounds for disciplinary action; provided that any cessation of the practice of pharmacy for twelve months or more shall require the pharmacist to undergo additional education, internship or examination as the board determines necessary.

§ 61-11-21. Licensing of pharmacists and pharmacies required

A. Unless he is a pharmacist or is exempted under the Pharmacy Act, no person shall sell at retail any dangerous drug, compound any prescription or acquire and possess any dangerous drug without its being prescribed.

B. No person shall conduct or operate a place used for the retail sale, compounding or dispensing of drugs or prescriptions or a place represented by a sign or by advertisement to have a business name or specialization that includes the words “pharmacist”, “pharmacy”, “apothecary”, “apothecary shop”, “chemist's shop”, “drug store”, “drugs”, “druggist”, “drug sundries”, “prescriptions” or any combination of these or any other words of similar import or by an insignia or device that might indicate to the public that the place is a pharmacy unless the place is licensed by the board under the Pharmacy Act.

C. No person shall permit anyone in his employ or under his supervision, except a pharmacist, pharmacist intern or pharmacy technician, to compound, dispense, label or otherwise prepare prescriptions.

D. The provisions of Subsections A, B and C of this section shall not apply to a person possessing a license issued pursuant to Subsection B of Section 61-11-14 NMSA 1978 for the sale or distribution of veterinary drugs bearing the legend: “caution: federal law restricts this drug to use by or on the order of a licensed veterinarian”; provided that the possessors of such a license may only sell or distribute such drugs on the order of a licensed veterinarian and may not represent their place of business by a sign or advertisement that includes the words “pharmacist”, “pharmacy”, “apothecary”, “apothecary shop”, “chemist's shop”, “drug store”, “drugs”, “druggist”, “drug sundries”, “prescriptions” or any combination of these or any words of similar import or by an insignia or device that might indicate to the public that the place is a pharmacy.

§ 61-11-22. Exemptions from act

A. The Pharmacy Act does not apply to licensed practitioners in this state in supplying to their patients any drug if the licensed practitioner is practicing his profession and does not keep a pharmacy, advertised or otherwise, for the retailing of dangerous drugs.

B. The Pharmacy Act does not prevent:

(1) the personal administration of drugs carried by a licensed practitioner in order to supply the immediate needs of his patients; or

(2) the sale of non-narcotic proprietary preparations.

§ 61-11-23. Construction of laws relating to drugs

A. The Pharmacy Act does not amend or repeal any of the laws that govern the manufacture, sale or distribution of controlled substances.

B. The Pharmacy Act does not amend or repeal the New Mexico Drug, Device and Cosmetic Act.

§ 61-11-24. Violations; penalties

A. It is a misdemeanor for any person to:

(1) practice or attempt to practice pharmacy without a current license from the board;

(2) use the title of registered pharmacist unless he is licensed as such pursuant to the Pharmacy Act;

(3) procure or attempt to procure licensure as a pharmacist or to procure a license for a pharmacy for himself or another by making or causing to be made false representations to the board;

(4) allow any other person in his employ or under his supervision to compound or dispense prescriptions unless he is a pharmacist, pharmacist intern or pharmacy technician in accordance with the Pharmacy Act or exempted from the provisions of that act; or

(5) own, operate or maintain a pharmacy, hospital pharmacy, clinic, custodial care facility or drug distribution business unless licensed to do so pursuant to the Pharmacy Act.

B. A person convicted pursuant to Subsection A of this section shall be sentenced pursuant to the provisions of Section 31-19-1 NMSA 1978.

§ 61-11-25. Power to enjoin violations

In addition to the remedies provided in the Pharmacy Act, the board may apply to the district court for a temporary or permanent injunction restraining any person from violating any provision of the Pharmacy Act irrespective of whether or not there exists an adequate remedy at law.

§ 61-11-26. Licensure under previous law

Any person or place of business licensed as a pharmacist, pharmacist intern or pharmacy under any prior laws of this state whose license is valid on the effective date of the Pharmacy Act shall be held to be licensed under the provisions of the Pharmacy Act and entitled to renewal of this license as provided in the Pharmacy Act.

§ 61-11-27. Transfer of funds

All money that has accumulated to the credit of the board under any previous law shall be continued for use by the board in the administration of the Pharmacy Act and any other laws being administered by the board.

§ 61-11-28. Uniform Licensing Act

The board is subject to all the provisions of the Uniform Licensing Act.

§ 61-11-29. Termination of agency life; delayed repeal

The board of pharmacy is terminated on July 1, 2015 pursuant to the Sunset Act. The board shall continue to operate according to the provisions of the Pharmacy Act until July 1, 2016. Effective July 1, 2016, the Pharmacy Act is repealed.

END OF DOCUMENT