

ENROLLED ACT NO. 88, SENATE

FIFTY-NINTH LEGISLATURE OF THE STATE OF WYOMING
2007 GENERAL SESSION

AN ACT relating to the Wyoming Pharmacy Act; revising the composition of the board of pharmacy and member eligibility as specified; revising pharmacy license fees as specified; revising qualifications for licensure by examination and by reciprocity; authorizing summary suspensions of licensees by the board; providing qualifications for foreign trained pharmacy interns; authorizing disciplinary actions against pharmacy interns; revising licensing requirements for drug distributors as specified; authorizing denial, suspension, revocation or summary suspension of drug distributor licenses; authorizing civil penalties against drug distributors and pharmacy technicians as specified; providing for reciprocal licensing of nonresident drug distributors; revising minimum requirements for telepharmacies; amending grounds for disciplinary action against pharmacy technicians; conforming provisions; repealing obsolete provisions; amending definitions; providing definitions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 33-24-101(b)(iv)(A) and (D), 33-24-102(a), 33-24-103, 33-24-112(a)(iv), (v) and by creating a new paragraph (vi), 33-24-116, 33-24-122(a)(intro) and by creating a new subsection (c), 33-24-134(a) and (e), 33-24-135(a) and by creating a new subsection (e), 33-24-136(a), 33-24-145(a) and (b), 33-24-152(e)(i) and (ii), 33-24-153(a), (b) and by creating new subsections (g) through (r), 33-24-156(b)(i) and 33-24-301(f)(intro), (iii), (iv), by creating a new paragraph (v) and (h) are amended to read:

33-24-101. Short title; definitions.

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(b) As used in this act:

(iv) "Unprofessional conduct" means:

(A) Dispensing a drug or brand of drug in filling a prescription which differs from that specified by the prescription, without authority of the issuer of the prescription, regarding the patient's name, drug, strength, quantity, directions or number of authorized refills;

(D) Employing directly or indirectly any student, any unlicensed pharmacy technician or any ~~suspended or~~ unlicensed pharmacist to practice pharmacy unless authorized by ~~law~~ this act;

33-24-102. State board of pharmacy; generally.

(a) There is created a state board of pharmacy whose duty is to carry out the purposes and to enforce the provisions of this act. The board shall consist of ~~three (3)~~ seven (7) voting members consisting of four (4) pharmacists, one (1) physician, one (1) dentist or veterinarian and one (1) member of the public and ~~three (3)~~ one (1) ex officio ~~members~~ pharmacy technician, who shall be appointed by the governor, by and with the advice and consent of the senate. Members of the now existing board of pharmacy shall continue in office as voting members as if regularly appointed under this act. Their terms shall expire in accordance with their original appointments and be filled in accordance with the provisions of W.S. 28-12-101. ~~The three (3) ex officio members shall be respectively: a licensed practicing physician, a licensed practicing dentist and a licensed practicing doctor of veterinary medicine, who have had at least five (5) years of active private practice in the state before their appointment.~~ The ex officio ~~members~~ member shall have no

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vote and shall have no part of licensing procedures or license suspension or revocation actions. ~~The ex officio members shall correlate the interprofessional relationships in the uses, proposed uses and distribution of drugs insofar as the three (3) professions represented have direct interest.~~

33-24-103. State board of pharmacy; qualifications of members; limitation on terms; prohibited affiliations.

~~(a) No person~~ A pharmacist who is currently licensed as provided in this article and actively engaged in the practice of pharmacy in Wyoming shall be eligible to be a voting member of the board of pharmacy who has not if the pharmacist is a United States citizen and resident of Wyoming and at the time of appointment has been legally qualified to practice, and who has not been engaged in the active practice of pharmacy in the state continuously for at least five (5) continuous years. immediately prior to membership, who does not at the time of his appointment hold a certificate entitling him to practice pharmacy in the state, who is not a citizen of the United States and a resident of Wyoming, and who does not actively practice pharmacy in Wyoming throughout his term.

(b) A dentist, physician or veterinarian who is currently licensed pursuant to chapter 15, 25 or 30 of this title shall be eligible to be a voting member of the board of pharmacy if the dentist, physician or veterinarian is a United States citizen and resident of Wyoming and at the time of appointment has been licensed to practice and engaged in the active practice of dentistry, medicine or veterinary medicine in this state continuously for at least five (5) years.

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(c) A person shall be eligible for appointment as a voting member of the board representing the public if at the time of appointment the person is a United States citizen and resident of Wyoming and at the time of appointment has resided in this state continuously for at least five (5) years.

(d) A pharmacy technician licensed pursuant to article 3 of this chapter and actively practicing as a pharmacy technician in Wyoming shall be eligible to be an ex officio member of the board if the person is a United States citizen and a resident of this state and at the time of appointment has been employed as a pharmacy technician in Wyoming continuously for at least five (5) years.

(e) No member shall be appointed to, or serve, more than two (2) successive terms.

(f) No member shall be connected with a school or college of pharmacy in a professional or executive capacity.

(g) The term of any person appointed to the board pursuant to subsections (a) through (d) of this section shall expire immediately if the person no longer meets the eligibility criteria specified in the subsection under which the person was appointed.

33-24-112. Fees for examinations, reexaminations, license renewals and registration renewals; late fees.

(a) The board shall determine each year the fees to be collected for examinations, reexaminations, license renewals and registration renewals based upon annual normal operating expenses, including late fees to be collected for

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failure to pay a license or renewal fee by the deadline established by the board, provided that:

(iv) ~~Pharmacy~~ Licenses and renewals for manufacturers or distributors of oxygen shall not exceed one hundred dollars (\$100.00); ~~and~~

(v) Late fees for licenses and renewals shall not exceed three hundred dollars (\$300.00); ~~and~~ and

(vi) Drug distributor licenses and renewals shall not exceed one thousand dollars (\$1,000.00).

33-24-116. Qualifications of applicants for licensure as a pharmacist by examination.

(a) Any ~~adult, of good moral character and temperate habits, who has been graduated and admitted a degree of bachelor of science in pharmacy, or equivalent, from a college or university accredited by the national association of boards of pharmacy or the state board of pharmacy, who has served as an intern pharmacist in accordance with this act, and except as hereinafter provided,~~ person seeking licensure by examination to practice pharmacy in this state may make application in writing to the board. ~~to be examined by it with reference to the applicant's qualifications to practice pharmacy. Each applicant shall attest to the applicant's qualifications under oath and internship service shall be substantiated by affidavits of the preceptors. The~~ applicant shall:

(i) Submit an application in the form and containing information as prescribed by the board;

(ii) Have attained the age of majority;

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(iii) Be of good moral character;

(iv) Have graduated and received the first professional undergraduate degree from a college or school of pharmacy that has been approved by the board or have graduated from a foreign college of pharmacy. Graduates from a foreign college of pharmacy shall have completed a transcript verification program, taken and passed a college of pharmacy equivalency exam and completed a communication ability test as provided in board regulations;

(v) Have completed an internship or other program that has been approved by the board or demonstrated to the board's satisfaction experience in the practice of pharmacy which meets or exceeds the minimum internship requirements specified in board regulations;

(vi) Have successfully passed an examination or examinations approved by the board;

(vii) Pay the fees specified in board regulations for the examination and any related materials;

(viii) ~~In addition, applicants for a pharmacist license under this act shall~~ Provide the board with fingerprints, necessary fees and other information required to perform a criminal history record background check as provided for by W.S. 7-19-201. The board may delay issuing a license pending its receipt of the information from the background check.

33-24-122. Revocation or suspension of license and registration; letter of admonition; summary suspension; administrative penalties; probation; grounds.

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(a) The license and registration of any pharmacist may be revoked or suspended by the board of pharmacy or the board may issue a letter of admonition, refuse to issue or renew any license or require successful completion of a rehabilitation program or issue a summary suspension for any of the following causes:

(c) The board may summarily suspend the license of any person holding a pharmacist license without a hearing if the board finds probable cause to believe that there is imminent danger to the public health or safety. The board may meet by telephone to consider summarily suspending a license if a quorum of the board is not available to meet in person under exigent circumstances. Summary suspension shall occur if the board determines there is probable cause to believe that continued practice by the licensee constitutes an imminent danger to the public health or safety. Proceedings for a disciplinary hearing shall be instituted simultaneously with the summary suspension. If the board does not commence the disciplinary hearing within thirty (30) days of the suspension order, the suspension shall be automatically vacated. At the written request of the suspended licensee in order to prepare for a hearing, the thirty (30) day period may be extended and the temporary suspension continued for an additional period not to exceed thirty (30) days.

33-24-134. Reciprocity.

(a) The board, in its sole discretion, may register license as a pharmacist in this state without examination, any citizen-person who proposes to practice pharmacy in this state who is duly registered-licensed by examination in some other state., ~~provided such person shall appear personally before the board and answer reasonable questions relating to his professional background and achievements,~~

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~~shall pay the application fee therefor, and shall produce evidence satisfactory to the board of having had the required secondary and professional education, training and internship, and is possessed of good character and morals and temperate habits demanded of other applicants for registration under this act.~~ An applicant for a license pursuant to this section shall:

(i) Submit a written application in the form and containing information as prescribed by the board;

(ii) Meet the qualifications specified in W.S. 33-24-116(a)(ii) through (iv);

(iii) Have engaged in the practice of pharmacy for a period of at least one (1) year or have met the requirements of W.S. 33-24-116(a)(v) within one (1) year immediately preceding the date of application;

(iv) Have been a licensed pharmacist by examination in another state;

(v) Submit evidence that the applicant's license to practice pharmacy in any other state has not been suspended, revoked or otherwise restricted for any reason other than nonrenewal or the failure to obtain the required continuing education credits;

(vi) Pay the fees specified in board regulations for licensure by reciprocity;

(vii) Provide the board with fingerprints, necessary fees and other information required to perform a criminal history record background check as provided for by W.S. 7-19-201. The board may delay issuing a license

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pending its receipt of the information from the background check;

(viii) Have passed an examination regarding applicable federal and state statutes and regulations relating to the practice of pharmacy in Wyoming.

(e) The board may issue a temporary pharmacist license, provided the applicant ~~has submitted to the board an official application including payment of fees for registration by reciprocity and~~ has met those requirements in paragraphs (i) through (vii) of subsection (a) of this section as well as other requirements established by the board. A temporary pharmacist license shall not be effective for a period of more than six (6) months from the date of issuance and shall not be renewed. The board may charge a fee not to exceed twenty-five dollars (\$25.00) for issuance of a temporary pharmacist license. A pharmacist with a temporary license may be disciplined as provided by W.S. 33-24-122 and 33-24-123.

33-24-135. Internship.

(a) The internship or practical experience requirement for registration as a pharmacist in this state shall consist of no more than two thousand (2,000) and no less than one thousand two hundred (1,200) hours experience in a pharmacy or related setting. Hours shall be accumulated after the completion of the first professional year in an approved college or school of pharmacy or, for those applicants who have graduated from a foreign college of pharmacy, completed a transcript verification program, taken and passed a college of pharmacy equivalency exam program and completed a communication ability test as provided in board regulations. Hours of internship experience accumulated may be determined by the board.

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(e) The board may issue a letter of admonition or suspend or revoke a pharmacy intern's license for any:

(i) Willful violation of any provision of this chapter or the Wyoming Controlled Substances Act of 1971;

(ii) Willful violation of any rule or regulation promulgated pursuant to this chapter or the Wyoming Controlled Substances Act of 1971;

(iii) Conviction of a felony or misdemeanor involving moral turpitude;

(iv) Action which threatens the public health, safety or welfare; or

(v) Knowing submission of false or misleading information to the board in the application for an initial or renewal license.

33-24-136. Filing written memorandum of prescription; labels generally; prescription defined; counseling and patient profiles.

(a) Every person who prepares, compounds, processes, packages or repackages, dispenses, fills or sells or offers for sale, at retail or in connection with operation of a health care facility, any prescription, shall place the written memorandum of the prescription in a separate file marked and kept for that purpose, and shall affix a label to the container in which the prescribed substance is dispensed bearing the name and address of the pharmacy and ~~registration number~~ initials of the dispensing pharmacist, or of the preceptor if the dispenser is an intern, the date on which the prescription is filed in the pharmacy's files,

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the name of the person who prescribed the substance, the name of the patient or customer for whom the prescription was made and directions for use by the patient as directed on the prescription by the prescriber.

33-24-145. Powers and duties of agents, inspectors and board members.

(a) The board, its agents and inspectors may specially, but not exclusively, examine and inspect all activities in this state undertaken in compliance with W.S. 33-24-101 through ~~33-24-203~~ 33-24-301 which appear to be contrary to or in violation of W.S. 33-24-101 through ~~33-24-203~~ 33-24-301, to procure enforcement and to check for violations and provide for enforcement of related federal laws and regulations. The inspectors may also determine if practitioners' records are adequately kept in a manner reflecting professional responsibility and may provide legislative recommendations if records are not found to be adequately maintained.

(b) The board, its agents and inspectors shall examine and inspect drug manufacturers, distributors and wholesalers, licensed pursuant to W.S. 33-24-153. ~~The examinations and inspections shall be conducted for the purposes and requirements of the Prescription Drug Marketing Act of 1987, 21 U.S.C. 353.~~

33-24-152. Nonresident pharmacy registration; requirements for registration; fees; renewal; denial, letter of admonition, administrative penalty, revocation or suspension; advertising.

(e) The board may deny, suspend, revoke or refuse to renew a license issued under this section, may issue a letter of admonition to a nonresident pharmacy licensee and

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may assess an administrative penalty, not to exceed two thousand dollars (\$2,000.00) per violation, against a nonresident pharmacy licensee on any of the following grounds:

(i) Failure to comply with any requirement of the pharmacy practice act of the state of domicile or the Wyoming Controlled Substances Act. Upon a determination by the board's executive director that the pharmacy practice act of the state of domicile is less protective of the public than the provisions of this act and could endanger the public health, safety or welfare, the executive director before any adverse action pursuant to this paragraph shall provide notice of the noncompliance to the nonresident pharmacy and afford a reasonable opportunity to cure the noncompliance;

(ii) Failure to comply with rules and regulations of the board or regulatory body of the jurisdiction in which the pharmacy is located. Upon a determination by the board's executive director that the rules and regulations of the state of domicile are less protective of the public than the provisions of the board's rules and regulations and could endanger the public health, safety or welfare, the executive director before any adverse action pursuant to this paragraph shall provide notice of the noncompliance to the nonresident pharmacy and afford a reasonable opportunity to cure the noncompliance;

33-24-153. Manufacturer or wholesaler registration; requirements for registration; bonds or other security; fees; renewal; denial, revocation or suspension; record keeping; summary orders; administrative penalties; definitions.

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(a) ~~Every manufacturer, distributor, wholesaler or pharmacy who sells or distributes dangerous drugs in this state shall obtain a drug distributor's license for each location from the board.~~ Every wholesale distributor who engages in the distribution of prescription drugs in this state shall obtain from the board a drug distributor's license for each distribution location. In addition, every nonresident wholesale distributor who ships prescription drugs into this state shall be licensed by the licensing authority in the state in which the distributor resides. For manufacturers engaged in wholesale distribution of prescription drugs in this state, the provisions of this section that are more stringent than those required by the United States food and drug administration shall not apply. This section shall not apply to commercial operators resident pharmacies registered under W.S. 33-24-113, nonresident pharmacies registered under W.S. 33-24-152 or to individuals practicing medicine as defined by W.S. 33-26-102(a)(xi)(B) and (E).

(b) Applications for a drug distributor's license under this section shall be made on a form furnished by the board. ~~The board may require information necessary to carry out the purposes of this section.~~ By January 1, 2009, current license holders and applicants for licensure under this section shall provide the board with fingerprints, necessary fees and other information required to perform a criminal history record background check as provided for by W.S. 7-19-201 for the designated representative for each wholesale drug distributor site.

(g) By January 1, 2009, the board shall require every drug distributor license holder and applicant to submit a bond in the amount of one hundred thousand dollars (\$100,000.00), or other security acceptable to the board such as an irrevocable letter of credit or deposit in a

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trust account or financial institution, payable to a fund established by the board pursuant to paragraph (h) of this section. The purpose of the bond or other security shall be to secure payment of any fines or penalties imposed by the board and any fees and costs incurred by the board regarding the drug distributor's license which are authorized under state law and which remain unpaid thirty (30) days after liability for the payment is final. The board shall release the bond or security one (1) year after the distributor's license ceases to be valid. The bond or security shall cover all facilities operated by the applicant and licensed by the board. The board may waive the requirement of a bond or other security if:

(i) The drug distributor has previously obtained a comparable bond or other security for the purpose of licensure in another state where the wholesaler possesses a valid license in good standing; or

(ii) The drug distributor is a publicly held company.

(h) The board shall establish a fund, separate from its other accounts, for the deposit of amounts submitted in lieu of a bond pursuant to subsection (g) of this section.

(j) The board shall require each person engaged in wholesale distribution of prescription drugs to establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of the drugs. The records shall include pedigrees for all prescription drugs that are or ever have been distributed outside the normal distribution channel as established by board regulations.

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(k) The board shall issue an order to cease distribution of a prescription drug if the board finds that there is probable cause that:

(i) A drug distributor has:

(A) Violated a provision of this section;

or

(B) Falsified a pedigree or sold, distributed, transferred, manufactured, repackaged, handled or held a counterfeit prescription drug intended for human or animal use.

(ii) The prescription drug at issue as a result of a violation in paragraph (k)(i)(B) of this section could cause serious adverse health consequences or death; and

(iii) Other procedures would result in unreasonable delay in responding to the dangers posed by the prescription drug at issue.

(m) An order issued by the board pursuant to subsection (k) of this section shall provide the person subject to the order with an opportunity for an informal hearing, to be held not later than ten (10) working days after the date of the issuance of the order, on the actions required by the order. If, after providing an opportunity for a hearing, the board determines that inadequate grounds exist to support the actions required by the order, the board shall vacate the order.

(n) The board may deny, suspend, revoke or refuse to renew a license issued under this section, may issue a letter of admonition and may assess an administrative penalty not to exceed those penalties established in

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paragraph (o) of this section for any of the following acts:

(i) Failure to obtain a license in accordance with this section or operating without a valid license when a license is required;

(ii) The sale, distribution or transfer of a prescription drug to a person who is not authorized to receive the prescription drug under the law of the jurisdiction in which the person receives the prescription drug;

(iii) Failure to obtain, pass or authenticate a pedigree as required by this section or board rules;

(iv) Providing the board with false or fraudulent records or making false or fraudulent statements regarding the provisions of this section or board rules;

(v) Obtaining or attempting to obtain a prescription drug by fraud, deceit or misrepresentation, or engaging in fraud or misrepresentation in the distribution of a prescription drug;

(vi) Except for the wholesale distribution by manufacturers of a prescription drug that has been delivered into commerce pursuant to an application approved by the United States food and drug administration, the adulteration, misbranding or counterfeiting of any prescription drug;

(vii) The receipt of any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit, or

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the delivery or proffered delivery of such drug whether for pay or otherwise; and

(viii) The adulteration, mutilation, destruction, obliteration or removal of all or any part of the labeling of a prescription drug or the commission of any other act with respect to a prescription drug that results in the prescription drug being misbranded.

(o) The board may assess an administrative penalty for a violation of subsection (n) of this section as follows:

(i) If a person unknowingly engages in the wholesale distribution of prescription drugs and acts in violation of subsection (n) of this section, the person may be assessed an administrative penalty not to exceed fifty thousand dollars (\$50,000.00);

(ii) If a person knowingly engages in wholesale distribution of prescription drugs in violation of subsection (n) of this section, the person may be assessed an administrative penalty not to exceed five hundred thousand dollars (\$500,000.00).

(p) The board is authorized to contract with a private person or entity to inspect and accredit drug distributors. Any proprietary information obtained during the accreditation process shall remain confidential and privileged. The board shall provide by rule and regulation for the administrative review of any decision denying accreditation.

(q) The board may license by reciprocity a drug distributor that is licensed in another state if:

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(i) The requirements of the distributor's domiciliary state are determined by the board to be substantially equivalent to the requirements of this state for licensing of drug distributors; or

(ii) The applicant is accredited by a third party approved by the board.

(r) For purposes of this section:

(i) "Designated representative" means an individual designated by a wholesale drug distributor and who is actively involved in and aware of the actual daily operation of the wholesale drug distributor at the wholesaler's licensed location;

(ii) "Pedigree" means a document or electronic file containing recorded information regarding each distribution of any given prescription drug.

33-24-156. Telepharmacy practice authorized.

(b) Telepharmacies shall include the following minimum features:

(i) Storage, security and dispensing of prescription drugs in unit of issue packages or through a mechanical system which dispenses tablets or capsules from an enclosed and lockable cabinet directly into a prescription vial and prints and applies a prescription label to the vial;

33-24-301. Pharmacy technicians; licensing; definitions; revocation or suspension of license; letter of admonition; information required for background checks.

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(f) The board may issue a letter of admonition or suspend or revoke a pharmacy technician's license or the board may assess an administrative penalty against that person not to exceed one thousand dollars (\$1,000.00) for each violation for any:

(iii) Action which threatens the public health, safety or welfare;~~or~~

(iv) Conviction of a felony or misdemeanor involving moral turpitude;~~or~~ or

(v) Knowing submission of false or misleading information to the board in the application for a license or renewal of a license.

(h) An applicant for a pharmacy technician license or a pharmacy technician-in-training permit shall provide the board with fingerprints, fees and other information necessary for a criminal history record background check as authorized by W.S. 7-19-201. The board may delay issuance of a license or permit pending the receipt of the information from the applicant's background check.

Section 2. W.S. 33-24-134(b) through (d) and 33-24-153(d) are repealed.

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Section 3. This act is effective July 1, 2007.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the Senate.

Chief Clerk