CHAPTER 151

PHARMACY

151.01 DEFINITIONS.

Subdivision 1. **Words, terms, and phrases.** Unless the language or context clearly indicates that a different meaning is intended, the following words, terms, and phrases, for the purposes of this chapter, shall be given the meanings subjoined to them.

Subd. 2. **Pharmacy.** The term "pharmacy" means a drug store or other established place regularly registered by the state board of pharmacy, in which prescriptions, drugs, medicines, chemicals, and poisons are compounded, dispensed, vended, or sold at retail.

Subd. 3. **Pharmacist.** The term "pharmacist" means a natural person licensed by the state board of pharmacy to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons.

Subd. 4. **Assistant pharmacist.** The term "assistant pharmacist" means a natural person licensed as such by the state board of pharmacy prior to January 1, 1930, to prepare, compound, dispense, and sell drugs, medicines, chemicals, and poisons in a pharmacy having a pharmacist in charge.

Subd. 5. **Drug.** The term "drug" means all medicinal substances and preparations recognized by the United States pharmacopoeia and national formulary, or any revision thereof, and all substances and preparations intended for external and internal use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal, and all substances and preparations, other than food, intended to affect the structure or any function of the body of man or other animal.

Subd. 6. **Medicine.** The term "medicine" means any remedial agent that has the property of curing, preventing, treating, or mitigating diseases, or that is used for that purpose.

Subd. 7. **Poisons.** The term "poisons" means any substance which, when introduced into the system, directly or by absorption, produces violent, morbid, or fatal changes, or which destroys living tissue with which it comes in contact.

Subd. 8. **Chemical.** The term "chemical" means all medicinal or industrial substances, whether simple or compound, or obtained through the process of the science and art of chemistry, whether of organic or inorganic origin.

Subd. 9. **Board or state board of pharmacy.** The term "board" or "state board of pharmacy" means the Minnesota state board of pharmacy.

Subd. 10. **Secretary.** The term "secretary" means the secretary of the Minnesota state board of pharmacy.

Subd. 11. **Person.** The term "person" includes every individual, copartnership, corporation, or association.

Subd. 12. **Wholesale.** The term "wholesale" means and includes any sale for the purpose of resale.

Subd. 13. **Commercial purposes.** The phrase "commercial purposes" means the ordinary purposes of trade, agriculture, industry, and commerce, exclusive of the practices of medicine and pharmacy.

Subd. 14. **Manufacturing.** The term "manufacturing" except in the case of bulk compounding, prepackaging or extemporaneous compounding within a pharmacy, means and includes the production, quality control and standardization by mechanical, physical, chemical, or pharmaceutical means, packing, repacking, tableting, encapsulating, labeling, relabeling, filling or by any other process, of all drugs, medicines, chemicals, or poisons, without exception, for medicinal purposes.

Subd. 15. **Pharmacist intern.** The term "pharmacist intern" means (1) a natural person satisfactorily progressing toward the degree in pharmacy required for licensure, or (2) a graduate of the University of Minnesota college of pharmacy, or other pharmacy college approved by the board, who is registered by the state board of pharmacy for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist, or (3) a qualified applicant awaiting examination for licensure.

Subd. 16. **Prescription.** The term "prescription" means a signed written order, or an oral order reduced to writing, given by a practitioner licensed to prescribe drugs for patients in the course of his practice, issued for an individual patient and containing the following: the date of issue, name and address of the patient, name and quantity of the drug prescribed, directions for use, and the name and address of the prescriber.

Subd. 17. **Legend drug.** "Legend drug" means a drug which is required by federal law to bear the following statement, "Caution: Federal law prohibits dispensing without prescription."

Subd. 18. **Label.** "Label" means a display of written, printed, or graphic matter upon the immediate container of any drug or medicine; and a requirement made by or under authority of Laws 1969, Chapter 933 that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such drug or medicine, or is easily legible through the outside container or wrapper.

Subd. 19. **Package.** "Package" means any container or wrapping in which any drug or medicine is enclosed for use in the delivery or display of that article to retail purchasers, but does not include:

(a) shipping containers or wrappings used solely for the transportation of any such article in bulk or in quantity to manufacturers, packers, processors, or wholesale or retail distributors;

(b) shipping containers or outer wrappings used by retailers to ship or deliver any such article to retail customers if such containers and wrappings bear no printed matter pertaining to any particular drug or medicine.

Subd. 20. **Labeling.** "Labeling" means all labels and other written, printed, or graphic matter (a) upon a drug or medicine or any of its containers or wrappers, or (b) accompanying such article.

Subd. 21. **Federal act.** "Federal act" means the federal food, drug, and cosmetic act, 21 U.S.C. Section 301, et seq., as amended.

Subd. 22. **Pharmacist in charge.** "Pharmacist in charge" means a duly licensed pharmacist in the state of Minnesota who has been designated in accordance with the rules and regulations of the state board of pharmacy to assume professional responsibility for the operation of the pharmacy in compliance with the requirements and duties as established by the board in its rules and regulations.

Subd. 23. **Practitioner.** "Practitioner" means a licensed doctor of medicine, licensed doctor of osteopathy duly licensed to practice medicine, licensed doctor of dentistry, licensed podiatrist, or licensed veterinarian.

Subd. 24. **Brand name.** "Brand name" means the registered trademark name given to a drug product by its manufacturer, labeler or distributor.

Subd. 25. **Generic name.** "Generic name" means the established name or official name of a drug or drug product.

Subd. 26. **Finished dosage form.** "Finished dosage form" means that form of a drug which is or is intended to be dispensed or administered to the patient and requires no further manufacturing or processing other than packaging, reconstitution, or labeling.

History: *1937 c 354 s 1; 1961 c 394 s 1; 1967 c 377 s 1,2; 1969 c 933 s 1-7; 1973 c 639 s 1,2; 1975 c 101 s 1 (5808-1)*

151.02 STATE BOARD OF PHARMACY.

The Minnesota state board of pharmacy shall consist of two public members as defined by section 214.02 and five pharmacists actively engaged in the practice of pharmacy in this state. Each of said pharmacists shall have had at least five consecutive years of practical experience as a pharmacist immediately preceding his appointment.

History: *1937 c 354 s 2; 1973 c 638 s 27; 1976 c 239 s 58 (5808-2)*

151.03 MEMBERSHIP.

Members of the board shall be appointed by the governor. Membership terms, compensation of members, removal of members, the filling of membership vacancies, and fiscal year and reporting requirements shall be as provided in sections 214.07 to 214.09. The provision of staff, administrative services and office space; the review and processing of complaints; the setting of board fees; and other provisions relating to board operations shall be as provided in chapter 214 and Laws 1976, Chapter 222, Sections 2 to 7. Any pharmacist on the board who, during his incumbency, ceases to be actively engaged in the practice of pharmacy in this state shall be automatically disqualified from membership.

History: *1937 c 354 s 3; 1973 c 638 s 28; 1975 c 136 s 29; 1976 c 149 s 32; 1976 c 222 s 80 (5808-3)*

151.04 RECOMMENDED NAMES.

The Minnesota state pharmaceutical association may recommend five names for each pharmacist to be appointed.

History: *1937 c 354 s 4; 1973 c 638 s 29 (5808-4)*

151.05 ELECTION OF OFFICERS.

The board shall annually elect one of its members as president and one of its members as vice-president, and a pharmacist, who may or may not be a member, as secretary.

History: *1937 c 354 s 5 (5808-5)*

151.06 POWERS AND DUTIES.

Subdivision 1. The board of pharmacy shall have the power and it shall be its duty:

(1) To regulate the practice of pharmacy;

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

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

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

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

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

(a) Fraud or deception in connection with the securing of such license or registration;

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

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

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

(e) Unprofessional conduct or conduct endangering public health;

(f) Gross immorality;

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

(h) Conviction of theft of drugs, or the unauthorized use, possession, or sale thereof;

(i) Violation of any of the provisions of this chapter or any of the rules or regulations of the state board of pharmacy;

(j) In the case of a pharmacy license, operation of such pharmacy without a pharmacist present and on duty;

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

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

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

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

Subd. 2. The provisions of subdivision 1 shall apply to an individual owner or sole proprietor and shall also apply to the following:

(1) In the case of a partnership, each partner thereof;

(2) In the case of an association, each member thereof;

(3) In the case of a corporation, each officer or director thereof and each shareholder owning 30 percent or more of the voting stock of such corporation.

Subd. 2a. Each pharmacy shall post and maintain in a conspicuous place a list easily read by consumers which shall contain the names and current prices of the 60 prescription drugs most frequently dispensed by such pharmacy based upon the dollar volume of sales. Each pharmacy shall also, upon request, including requests by telephone, provide to consumers who possess a prescription for any drug, the current price of such drug.

Subd. 3. The board shall comply with the provisions of chapter 14, before it fails to issue, renew, suspends, or revokes any license or registration issued under this chapter.

Subd. 4. Any license or registration which has been suspended or revoked may be reinstated by the board provided the holder thereof shall pay all costs of the proceedings resulting in the suspension or revocation, and, in addition thereto, pay a fee set by the board.

History: *1937 c 354 s 6; 1941 c 78 s 1; 1955 c 847 s 16; 1969 c 933 s 8; 1973 c 722 s 2; 1975 c 136 s 30; 1976 c 222 s 81,82; 1982 c 424 s 130 (5808-6)*

151.061 UNFAIR PRICE DISCRIMINATION.

Subdivision 1. Any person doing business in this state and engaged in the distribution (other than at retail) of any prescription drugs, who shall discriminate between purchasers by selling prescription drugs at a lower price or rate to one purchaser or association of purchasers than offered to another purchaser or association of purchasers within this state (other than at retail) after making allowance for the difference, if any, in the grade, quality, or quantity, and after equalizing the distance from the point of distribution and freight costs therefrom, shall be guilty of unfair discrimination. Unfair discrimination occurs when quantity discounts are not reasonably based on actual cost savings to all like purchasers. Unfair discrimination shall embrace any scheme of special rebates, collateral contracts, or any device of any nature which in substance violates the provisions of this subdivision. Nothing in this subdivision shall apply to purchases for their own use by schools, colleges, universities, public libraries, churches, hospitals or charitable institutions not operated for profit.

Subd. 2. Any person injured by unfair discrimination as defined in subdivision 1 may bring a civil action and recover damages, together with costs and disbursements, including reasonable attorney's fees, and receive other equitable relief as determined by the court. The remedies provided by this section are cumulative and shall not be construed as restricting any remedy which is otherwise available.

History: *1973 c 722 s 1*

151.07 MEETINGS; EXAMINATION FEE.

The board shall meet at times as may be necessary and as it may determine to examine applicants for licensure and to transact its other business, giving reasona-

ble notice of all examinations by mail to known applicants therefor. The secretary shall record the names of all persons licensed by the board, together with the grounds upon which the right of each to licensure was claimed. The fee for examination shall be in such amount as the board may determine, which fee may in the discretion of the board be returned to applicants not taking the examination.

History: *1937 c 354 s 7; 1953 c 76 s 1; 1961 c 394 s 2; 1975 c 136 s 31; 1976 c 222 s 83 (5808-7)*

151.08 [Repealed, 1975 c 136 s 77]

151.09 [Repealed, 1976 c 222 s 209]

151.10 QUALIFICATIONS OF APPLICANTS.

To be entitled to examination by the board as a pharmacist the applicant shall be of good moral character, at least 18 years of age, and shall be a graduate of the college of pharmacy of the University of Minnesota or of a college or school of pharmacy in good standing of which the board shall be the judge and shall have completed internship requirements as prescribed by the board.

History: *1937 c 354 s 10; 1941 c 78 s 2; 1973 c 639 s 3; 1973 c 725 s 20; 1976 c 222 s 84 (5808-10)*

151.101 INTERNSHIP.

The board may license as an intern any natural person who has satisfied the board that he is of good moral character, not physically or mentally unfit, and who has successfully completed the educational requirements for intern licensure prescribed by the board. The board shall prescribe standards and requirements for internship training but may not require more than one year of such training.

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

History: *1969 c 933 s 9; 1973 c 639 s 4; 1976 c 222 s 85*

151.11 REGISTERED ASSISTANT PHARMACIST TO CONTINUE IN CERTAIN CASES.

It shall be lawful for all persons duly registered as assistant pharmacists prior to January 1, 1930, to act as a licensed assistant pharmacist and nothing herein shall prevent such persons from taking the examination for pharmacists upon proper application and payment of the examination fee.

History: *1937 c 354 s 11; 1976 c 222 s 86 (5808-11)*

151.12 RECIPROCITY; LICENSURE.

The board may in its discretion grant licensure without examination to any pharmacist licensed by the board of pharmacy or a similar board of another state which accords similar recognition to licensees of this state; provided, the requirements for licensure in such other state are in the opinion of the board equivalent to those herein provided. The fee for licensure shall be in such amount as the board may determine by rule.

History: *1937 c 354 s 12; 1961 c 394 s 4; 1973 c 639 s 5; 1976 c 222 s 87 (5808-12)*

151.13 RENEWAL FEE; CONTINUING EDUCATION.

Subdivision 1. Every person licensed by the board shall pay to the board a renewal fee to be fixed by it. The board may promulgate by rule a charge to be

assessed for the delinquent payment of a fee. It shall be unlawful for any such person who refuses or fails to pay such renewal fee to practice pharmacy in this state. Every certificate and license shall expire at the time therein prescribed.

Subd. 2. The board shall appoint an advisory task force on continuing education, consisting of not more than ten members, to study continuing education programs and requirements and to submit its report and recommendations to the board. The task force shall expire, and the compensation and removal of members shall be as provided in section 15.059.

History: *1937 c 354 s 13; 1961 c 394 s 5; 1969 c 486 s 1; 1973 c 655 s 1; 1976 c 222 s 88 (5808-13)*

151.14 REINSTATEMENTS.

Any person who has been licensed by the board and has defaulted in the payment of the renewal fee may be reinstated within two years of such default without examination, upon payment of the arrears and upon compliance with the provisions of section 151.13, subdivision 2.

History: *1937 c 354 s 14; 1973 c 655 s 2; 1976 c 222 s 89 (5808-14)*

151.15 COMPOUNDING DRUGS UNLAWFUL UNDER CERTAIN CONDITIONS.

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

No proprietor of a pharmacy shall permit the compounding or dispensing of prescriptions except by a pharmacist, or by an assistant pharmacist, or by a pharmacist intern under the personal supervision of a pharmacist; or the vending or selling at retail of drugs, medicines, chemicals, or poisons in his pharmacy except under the personal supervision of a pharmacist or of an assistant pharmacist in the temporary absence of the pharmacist.

History: *1937 c 354 s 16; 1967 c 377 s 3 (5808-16)*

151.16 VIOLATION A GROSS MISDEMEANOR.

Every person who violates any of the provisions of section 151.15, when the death of a human being results from such violation shall be guilty of a gross misdemeanor. This section is supplementary to existing laws relating to homicide and not a repeal thereof.

History: *1937 c 354 s 17 (5808-17)*

151.17 UNLAWFUL USE OF "PHARMACIST."

It shall be unlawful for any person to falsely assume or pretend to the title of pharmacist.

History: *1937 c 354 s 18 (5808-18)*

151.18 UNLAWFUL TO USE MISLEADING NAME.

It is unlawful for any person to carry on, conduct, or transact a retail business under a name which contains as a part thereof the words "drugs," "drug store," "pharmacy," "medicine," "apothecary," or "chemist shop," or any abbreviation, translation, extension, or variation thereof; or in any manner by advertisement, circular, or poster, sign or otherwise, describe or refer to the place of business conducted by such person by such term, abbreviation, translation, extension, or variation unless the place so conducted is a pharmacy.

History: *1937 c 354 s 19 (5808-19)*

151.19 REGISTRATION OF PHARMACIES; LICENSE, FEE.

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

History: *1937 c 354 s 20; 1953 c 76 s 3; 1961 c 394 s 6; 1969 c 486 s 2; 1976 c 222 s 90 (5808-20)*

151.20 [Repealed, 1969 c 933 s 22]

151.21 SUBSTITUTION.

Subdivision 1. Except as provided in subdivision 2, it shall be unlawful for any pharmacist, assistant pharmacist, or pharmacist intern who dispenses prescriptions, drugs, and medicines to substitute an article different from the one ordered, or deviate in any manner from the requirements of an order or prescription without the approval of the prescriber.

Subd. 2. A pharmacist who receives a prescription for a brand name legend drug may, with the written or verbal consent of the purchaser, dispense any drug having the same generic name as the brand name drug prescribed if the prescriber has not written in his own handwriting "dispense as written" or "D.A.W." on the prescription or, when an oral prescription is given, has not expressly indicated the prescription is to be dispensed as communicated. A pharmacist who receives a prescription marked "D.A.W." or "dispense as written", or an oral prescription indicating that the prescription is to be dispensed as communicated, may substitute for the prescribed brand name drug a generically equivalent drug product which is manufactured in the same finished dosage form having the same active ingredients and strength by the same manufacturer as the prescribed brand name drug. A pharmacist may also substitute pursuant to the oral instructions of the prescriber. A pharmacist may not substitute a generically equivalent drug product unless, in the pharmacist's professional judgment, the substituted drug is therapeutically equivalent and interchangeable to the prescribed drug. A pharmacist shall notify the purchaser if he is dispensing a drug other than the brand name drug prescribed.

Subd. 3. A pharmacist dispensing a drug under the provisions of subdivision 2 shall not dispense a drug of a higher retail price than that of the brand name drug prescribed. Any difference between acquisition cost to the pharmacist of the drug dispensed and the brand name drug prescribed shall be passed on to the purchaser.

History: *1937 c 354 s 22; 1969 c 933 s 10; 1975 c 101 s 2 (5808-22)*

151.211 RECORDS OF PRESCRIPTIONS.

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

History: *1969 c 933 s 11; 1973 c 639 s 6*

151.212 LABEL OF PRESCRIPTION DRUG CONTAINERS.

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

Subd. 2. **Controlled substances.** In addition to the requirements of subdivision 1, when the use of any drug containing a controlled substance, as defined in chapter 152, or any other drug determined by the board, either alone or in conjunction with alcoholic beverages, may impair the ability of the user to operate a motor vehicle, the board shall require by rule that notice be prominently set forth on the label or container. Rules promulgated by the board shall specify exemptions from this requirement when there is evidence that the user will not operate a motor vehicle while using the drug.

History: *1969 c 933 s 12; 1975 c 101 s 3; 1975 c 356 s 1; 1976 c 338 s 5*

151.213 COPIES OF PRESCRIPTIONS.

Prescriptions on file in a pharmacy are not a public record. A person having custody of or access to such prescription orders shall not divulge the contents thereof or provide a copy thereof to anyone except to:

(1) The patient for whom the prescription was issued, his agent, or another pharmacist acting on behalf of the patient or his agent;

(2) The licensed practitioner who issued the prescription;

(3) The licensed practitioner who is then treating the patient;

(4) A member, inspector, or investigator of the board or any federal, state, county, or municipal officer whose duty it is to enforce the laws of this state or the United States relating to drugs and who is engaged in a specific investigation involving a designated person or drug;

(5) An agency of government charged with the responsibility of providing medical care for the patient;

(6) An insurance carrier or attorney on receipt of written authorization signed by the patient or his legal representative, authorizing the release of such information;

(7) Any person duly authorized by a court order.

Such copies furnished shall bear on the face thereof the statement "Copy for information only," and may be filed to account for the dispensing of a drug only if such dispensing is authorized in writing or orally by the prescriber and communicated to the pharmacist dispensing and filing such copy.

History: *1969 c 933 s 13*

151.22 LIABILITY FOR QUALITY OF DRUGS.

Every pharmacist in charge or proprietor of a pharmacy shall be responsible for the quality of all drugs, medicines, chemicals, and poisons procured for use and sold therein, except proprietary medicines or other articles sold in the original package of the manufacturer.

History: *1937 c 354 s 23; 1969 c 933 s 14 (5808-23)*

151.23 POISONS MUST BE LABELED.

It shall be unlawful for any person to sell at retail any poison without affixing to the package or receptacle containing the same a label conspicuously bearing the word "poison," and the name and the business address of the seller, and satisfying

himself that such poison is to be legitimately used. This section shall not apply to the sale of poison on a physician's written prescription or in the original package of the manufacturer.

History: *1937 c 354 s 24 (5808-24)*

151.24 SALE OF POISONS MUST BE RECORDED.

It shall be unlawful:

(1) For any person, either on his own behalf or while in the employ of another, to sell or give away any poison, as designated by the board, without first recording in a book to be kept for that purpose with an indelible pencil or ink the date, the name and address of the person to whom, and the amount and kind of poison, delivered, except when such poison is sold on the written prescription of a physician;

(2) To give a false name to be recorded;

(3) For any person having custody of any such record book to refuse to produce it on demand for the inspection of any authorized agent of the board or other duly authorized officer.

History: *1937 c 354 s 25 (5808-25)*

151.25 LICENSURE OF MANUFACTURERS OR WHOLESALERS; FEE; PROHIBITIONS.

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

History: *1937 c 354 s 26; 1953 c 76 s 4; 1961 c 394 s 7; 1973 c 639 s 7; 1976 c 222 s 91 (5808-26)*

151.26 EXCEPTIONS.

Subdivision 1. Nothing in this chapter shall subject a person duly licensed in this state to practice medicine, dentistry, or veterinary medicine, to inspection by the state board of pharmacy, nor to prevent him from compounding or using drugs, medicines, chemicals, or poisons in his practice, nor prevent one duly licensed to practice medicine from furnishing to a patient such drugs, medicines, chemicals, or poisons as he deems proper in the treatment of such patient.

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

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

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

Subd. 2. [Repealed, 1973 c 639 s 11]

History: *1937 c 354 s 27; 1953 c 76 s 5; 1969 c 627 s 1; 1971 c 192 s 1; 1973 c 639 s 8; 1Sp1981 c 4 art 1 s 82 (5808-27)*

151.27 EXPENSES.

The expenses of administering sections 151.01 to 151.40 shall be paid from the appropriations made to the state board of pharmacy.

History: *1937 c 354 s 28; 1973 c 638 s 30; 1976 c 222 s 92 (5808-28)*

151.28 BOARD MAY TURN OVER FUNDS FOR ADVANCEMENT OF SCIENCE OF PHARMACY.

The board may each year turn over to the Minnesota state pharmaceutical association for the advancement of the science and art of pharmacy, out of the annual fees collected by it, such sum as it may deem advisable, not to exceed $1 for each pharmacist and assistant pharmacist who shall have paid his renewal fee during such year. The association shall annually report to the board on the conditions of pharmacy in the state.

History: *1937 c 354 s 29 (5808-29)*

151.29 VIOLATION A MISDEMEANOR.

Any person violating any of the provisions of this chapter, or rules and regulations hereunder, shall be guilty of a misdemeanor, unless otherwise provided.

History: *1937 c 354 s 30 (5808-30)*

151.30 COUNTY ATTORNEY TO PROSECUTE.

It shall be the duty of the county attorney of the county wherein any offense under this chapter is committed to prosecute the offender, except that when offenses hereunder are committed in cities of the first class it shall be the duty of the city attorney thereof to prosecute the offender. Such prosecutor is authorized to examine the books of any manufacturer or wholesale dealer within the state for the purpose of acquiring information to aid in the prosecution.

History: *1937 c 354 s 31 (5808-31)*

151.31 REGISTERED PHARMACISTS OR ASSISTANTS MAY REREGISTER.

Persons who, at the time of the enactment of this chapter, hold certificates of registration as pharmacists, or assistant pharmacists, granted by the board shall not be required to register under this chapter, but shall apply for and secure annual renewals thereof, as provided in this chapter, and in all other respects be amenable to the provisions of this chapter.

History: *1937 c 354 s 32 (5808-32)*

151.32 CITATION.

The title of sections 151.01 to 151.32 shall be the pharmacy law of 1937.

History: *1937 c 354 s 35 (5808-35)*

151.33 CARELESS DISTRIBUTION OF DRUGS.

Subdivision 1. **Prohibited.** No person, directly or indirectly, by agent or otherwise, shall scatter, distribute, or give away any samples of any medicine, drugs, or medical compounds, salve, or liniment of any kind unless the same is delivered into the hands of an adult person, or mailed to such persons through the regular mail service.

Subd. 2. **Penalty.** Any person violating any provision of this section shall be guilty of a misdemeanor.

History: *1905 c 33 s 1,2; 1971 c 23 s 15 (10275, 10276)*

151.34 PROHIBITED ACTS.

It shall be unlawful to:

(1) Manufacture, sell or deliver, hold or offer for sale any drug that is adulterated or misbranded;

(2) Adulterate or misbrand any drug;

(3) Receive in commerce any drug that is adulterated or misbranded, and to deliver or proffer delivery thereof for pay or otherwise;

(4) Refuse to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by this chapter;

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

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

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

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

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

(10) Conduct a pharmacy without a pharmacist in charge.

History: *1969 c 933 s 15; 1971 c 25 s 35*

151.35 DRUGS, ADULTERATION.

A drug shall be deemed to be adulterated:

(1) if it consists in whole or in part of any filthy, putrid or decomposed substance; or if it has been produced, prepared, packed, or held under unsanitary conditions whereby it may have been rendered injurious to health, or whereby it may have been contaminated with filth; or if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice as required under the federal act to assure that such drug is safe and has the identity, strength, quality, and purity characteristics, which it purports or is represented to possess; or, its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of the federal act, or it is a color additive, the intended use of which in or on drugs is for the purposes of coloring only, and is unsafe within the meaning of the federal act;

(2) if it purports to be or is represented as a drug the name of which is recognized in the United States pharmacopoeia or the national formulary, and its strength differs from, or its quality or purity falls below, the standard set forth therein. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those prescribed under authority of the federal act. No drug defined in the United States pharmacopoeia or the national formulary shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label;

(3) if it is not subject to the provisions of paragraph (2) of this section and its strength differs from, or its purity or quality differs from that which it purports or is represented to possess;

(4) if any substance has been mixed or packed therewith so as to reduce its quality or strength, or substituted wholly or in part therefor.

History: *1969 c 933 s 16*

151.36 DRUGS, MISBRANDING.

A drug shall be deemed to be misbranded:

(1) if its labeling is false or misleading in any particular;

(2) if in package form and not dispensed pursuant to a prescription unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor, (b) a statement of identity, and (c) an accurate statement of the net quantity of the contents in terms of weight, measure, or numerical count, provided, however, that under (c) of this paragraph reasonable variations shall be permitted, and exceptions as to small packages shall be allowed in accordance with the federal act;

(3) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it to be read and understood by the ordinary individual under customary conditions of purchase and use;

(4) if it otherwise fails to meet the labeling requirements of the federal act.

History: *1969 c 933 s 17*

151.361 MANUFACTURER DISCLOSURE.

Subdivision 1. The manufacturer, packager, or distributor of any human use legend drug sold, delivered, or offered for sale in the state of Minnesota after January 1, 1976 must have printed on the label on the immediate container of the drug the name and address of the manufacturer of the finished dosage form of the drug.

Subd. 2. (a) No legend drug in solid oral dosage form may be manufactured, packaged or distributed for sale in this state after January 1, 1983 unless it is clearly marked or imprinted with a symbol, number, company name, words, letters, national drug code or other mark uniquely identifiable to that drug product. An identifying mark or imprint made as required by federal law or by the federal Food and Drug Administration shall be deemed to be in compliance with this section.

(b) The board of pharmacy may grant exemptions from the requirements of this section on its own initiative or upon application of a manufacturer, packager, or distributor indicating size or other characteristics which render the product impractical for the imprinting required by this section.

(c) The provisions of clauses (a) and (b) shall not apply to any of the following:

(1) Drugs purchased by a pharmacy, pharmacist, or licensed wholesaler prior to January 1, 1983, and held in stock for resale.

(2) Drugs which are manufactured by or upon the order of a practitioner licensed by law to prescribe or administer drugs and which are to be used solely by the patient for whom prescribed.

Subd. 3. Failure to comply with the requirements of this section shall subject a drug to embargo in accordance with section 151.38.

History: *1975 c 101 s 4; 1981 c 206 s 1*

151.37 LEGEND DRUGS, WHO MAY PRESCRIBE, POSSESS.

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

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

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

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

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

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

Subd. 7. Nothing in this chapter shall prohibit the possession of a legend drug by a person for his own use when it has been dispensed to him pursuant to a written or oral prescription by a practitioner.

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

(a) deceit, misrepresentation, or subterfuge;

(b) using a false name;

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

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

History: *1969 c 933 s 18; 1973 c 639 s 9; 1974 c 369 s 1; 1976 c 222 s 93,94; 1976 c 338 s 6*

151.38 EMBARGOES.

(1) Whenever a duly authorized agent of the board finds or has probable cause to believe that any drug or medicine is adulterated, or so misbranded as to be dangerous or fraudulent, or is being sold, delivered, or offered for sale in violation of section 151.361, he shall affix thereto an appropriate marking, giving notice that the article is, or is suspected of being, adulterated, misbranded or sold, delivered, or offered for sale in violation of section 151.361 and has been embargoed, and warning that it is unlawful for any person to remove or dispose of the embargoed article by sale or otherwise without permission from the agent or the court.

(2) When an embargoed article has been found by the agent to be adulterated or misbranded, or is being sold, delivered, or offered for sale in violation of section 151.361, the board shall, within 30 days, petition the district court in whose jurisdiction the article is embargoed for an order of condemnation. When an embargoed article is not so found by the agent he shall remove the marking.

(3) If the court finds that an embargoed article is adulterated or misbranded, or is being sold, delivered, or offered for sale in violation of section 151.361, the article shall be destroyed at the expense of the claimant thereof, who shall also pay all court costs and fees, storage and other proper expenses. If the adulteration or misbranding, or lack of manufacturer disclosure as required by section 151.361 can be corrected by proper labeling or processing of the article, or by filing the proper documents with the court, the court, after the costs, fees, and expenses have been paid and a sufficient bond has been executed, may order that the article be delivered to the claimant for labeling, processing or filing under supervision of an agent of the board. The expense of the supervision shall be paid by claimant. The bond shall be returned to the claimant on the representation to the court by the board that the article is no longer in violation of this chapter and that the expenses of supervision have been paid.

History: *1969 c 933 s 19; 1975 c 101 s 5*

151.39 DISTRESSED DRUGS.

Subdivision 1. Distressed drugs shall mean drugs or medicines which have been subjected to accident, fire, flood, adverse temperatures, or other physical influences which could affect the potency, quality, purity, or efficacy of such drug or medicine could otherwise cause the drug or medicine to be adulterated or misbranded within the meaning of the provisions of this chapter.

Subd. 2. No person shall sell, barter, vend, give away, or exchange distressed drugs until the board has determined that such drugs are not adulterated or misbranded within the meaning of this chapter.

Subd. 3. Every person who owns or has under his control distressed drugs shall immediately notify the board of the existence of such drugs and the location thereof and the board shall promptly cause an inspection and examination to be made of such drugs.

Subd. 3a. No person may import distressed drugs into this state without notification to the board of the source, destination, kind and quantity of such drugs. Such drugs may not be sold or offered for sale without written approval of the board. The board shall grant such approval when the applicant has clearly demonstrated that such distressed drugs were inspected on the site within a reasonable period after the occurrence set forth in subdivision 1 by an agency of the foreign state satisfactory to the board and the furnishing of a written certification by such agency in such form as is satisfactory to the board indicating that there is no reasonable cause to believe the drugs are not adulterated or misbranded. Nothing herein shall be construed to prevent the board from exerting its authority and rights set forth in section 151.38 after such drugs have entered this state.

Subd. 4. The board shall, within 30 days of such notification, indicate whether or not it has probable cause to believe that such drugs are adulterated or misbranded within the meaning of this chapter. If the board determines that no such probable cause exists, it shall furnish the owner or person having control of such drugs a written certificate to that effect. If the board has probable cause to believe that the drugs are adulterated or misbranded, it shall follow the procedure set forth in section 151.38.

History: *1969 c 933 s 20; 1971 c 24 s 14; 1973 c 639 s 10*

151.40 POSSESSION AND SALE OF HYPODERMIC SYRINGES AND NEEDLES.

It shall be unlawful for any person to possess, have under his control, manufacture, sell, furnish, dispense, or otherwise dispose of hypodermic syringes or needles or any instrument or implement which can be adapted for subcutaneous injections, except by the following persons when acting in the course of their practice or employment: licensed practitioners, registered pharmacies and their employees or agents, licensed pharmacists, licensed doctors of veterinary medicine or their assistants, registered nurses, registered medical technologists, medical interns, licensed drug wholesalers, their employees or agents, licensed hospitals, licensed nursing homes, bona fide hospitals where animals are treated, licensed morticians, syringe and needle manufacturers, their dealers and agents, persons engaged in animal husbandry, clinical laboratories, persons engaged in bona fide research or education or industrial use of hypodermic syringes and needles provided such persons cannot use hypodermic syringes and needles for the administration of drugs to human beings unless such drugs are prescribed, dispensed, and administered by a person lawfully authorized to do so, persons who administer drugs pursuant to an order or direction of a licensed doctor of medicine or of a licensed doctor of osteopathy duly licensed to practice medicine.

History: *1969 c 933 s 21; 1976 c 222 s 95*

151.41 SALE OF DIMETHYL SULFOXIDE.

Subdivision 1. **Bond.** Any person not licensed or registered by the board of pharmacy pursuant to sections 151.01 to 151.40 and this section, as a pharmacist or pharmacy, or not licensed to practice medicine by the board of medical

examiners pursuant to sections 147.01 to 147.33, selling or offering for sale at retail in Minnesota dimethyl sulfoxide in quantities of 64 fluid ounces or less shall file with the commissioner of health a bond with corporate surety, cash, or United States government bonds in the sum of $15,000, made payable to the state of Minnesota.

Subd. 2. **Exempt sales.** Provisions of this section shall not apply to legend drugs as defined in section 151.01, subdivision 17; to industrial dimethyl sulfoxide designed for use as a commercial cleaner or solvent and sold in quantities larger than 64 fluid ounces; or to dimethyl sulfoxide intended for veterinary medicine use.

Subd. 3. **Labeling requirements.** Except when dispensed upon the prescription of a physician, no container of dimethyl sulfoxide containing 64 fluid ounces or less shall be sold or offered for sale unless the labeling states at least the following:

(a) quantity;

(b) concentration of product;

(c) vehicle or diluent;

(d) indications for use approved by the food and drug administration of the United States department of health and human services;

(e) recommended dosages;

(f) statement of side effects;

(g) contraindications for use;

(h) antidote in case of accidental ingestion;

(i) name of the manufacturer.

Failure to comply with these requirements shall mean the drug is deemed to be misbranded.

Subd. 4. **Violation.** Violation of this section shall result in forfeiture of the bond and subject the product to embargo under section 151.38.

History: *1981 c 323 s 2*

NOTE: This section is repealed by Laws 1981, Chapter 323, Section 4 effective June 30, 1983.