

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 181 Session of 2013

INTRODUCED BY GREENLEAF, STACK, ERICKSON, FOLMER, VULAKOVICH,
FONTANA, SOLOBAY, WAUGH, BRUBAKER, COSTA AND EICHELBERGER,
JANUARY 16, 2013

REFERRED TO CONSUMER PROTECTION AND PROFESSIONAL LICENSURE,
JANUARY 16, 2013

AN ACT

1 Amending the act of September 27, 1961 (P.L.1700, No.699),
2 entitled "An act relating to the regulation of the practice
3 of pharmacy, including the sales, use and distribution of
4 drugs and devices at retail; and amending, revising,
5 consolidating and repealing certain laws relating thereto,"
6 further providing for refusal to grant and revocation and
7 suspension of licenses; and providing for the donation of
8 unused prescription drugs.

9 The General Assembly of the Commonwealth of Pennsylvania

10 hereby enacts as follows:

11 Section 1. Section 5(a)(9) of the act of September 27, 1961
12 (P.L.1700, No.699), known as the Pharmacy Act, amended June 1,
13 2010 (P.L.201, No.29), is amended to read:

14 Section 5. Refusal to Grant, Revocation and Suspension.--(a)
15 The board shall have the power to refuse, revoke or suspend the
16 license of any pharmacist upon proof satisfactory to it that the
17 pharmacist:

18 * * *

19 (9) Is guilty of grossly unprofessional conduct. The
20 following acts on the part of a pharmacist are hereby declared

1 to constitute grossly unprofessional conduct of a pharmacist:

2 (i) Willfully deceiving or attempting to deceive the State
3 Board of Pharmacy or its agents with respect to any material
4 matter under investigation by the board;

5 (ii) Advertising of prices for drugs and pharmaceutical
6 services to the public which does not conform to Federal laws or
7 regulations;

8 (iii) The public assertion or implication of professional
9 superiority in the practice of pharmacy;

10 (iv) The engaging by any means in untrue, false, misleading
11 or deceptive advertising of drugs or devices;

12 (v) Paying rebates to physicians or any other persons, or
13 the entering into any agreement with a medical practitioner or
14 any other person for the payment or acceptance of compensation
15 in any form for the recommending of the professional services of
16 either party;

17 (vi) The entering into of any agreement with a licensed
18 medical practitioner for the compounding or dispensing of secret
19 formula (coded), prescriptions;

20 (vii) The misbranding or adulteration of any drug or device
21 and the sale, distribution or dispensing of any misbranded or
22 adulterated drug or device as defined in the act of April 14,
23 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug,
24 Device and Cosmetic Act";

25 (viii) Engaging in the sale or purchase of drugs or devices
26 whose package bears the inscription "sample" or "not for
27 resale";

28 (ix) Displaying or permitting the display of his certificate
29 of licensure and biennial registration document in a pharmacy of
30 which he is not the proprietor or in which he is not employed;

1 (x) Any holder of a biennial pocket registration card who
2 fails to have the card available for inspection by an authorized
3 agent when he is practicing;

4 (xi) The acceptance back and redistribution of any unused
5 drug, or a part thereof, except as authorized under section 9.5,
6 after it has left the premises of any pharmacy, whether issued
7 by mistake or otherwise, unless it is in the original sealed
8 container with the name, lot number and expiration date on the
9 original intact manufacturer's label. The pharmacy shall
10 maintain records of all such returns, and a full refund shall be
11 given to the original purchaser, including a third-party payor;

12 (xii) Accepting employment as a pharmacist, or share or
13 receive compensation in any form arising out of, or incidental
14 to, his professional activities from any medical practitioner or
15 any other person or corporation in which one or more medical
16 practitioners have a proprietary or beneficial interest
17 sufficient to permit them to exercise supervision or control
18 over the pharmacist in his professional responsibilities and
19 duties, except that a pharmacist may be employed by a physician
20 for the purpose of the management of drug therapy and receive
21 appropriate compensation for such employment, but not engage in
22 retail dispensing while in health care practice within the
23 context of such employment;

24 (xiii) Accepting employment as a pharmacist, or share or
25 receive compensation in any form arising out of, or incidental
26 to, his professional activities from any person who orders said
27 pharmacist, directly or indirectly, to engage in any aspect of
28 the practice of pharmacy in contravention of any provision of
29 this act, except that a pharmacist may be employed by a
30 physician for the purpose of the management of drug therapy and

1 receive appropriate compensation for such employment, but not
2 engage in retail dispensing while in the health care practice
3 within the context of such employment;

4 (xiv) Entering into an arrangement with a medical
5 practitioner who is licensed to issue prescriptions for the
6 purpose of directing or diverting patients to or from a
7 specified pharmacy or restraining a patient's freedom of choice
8 to select a pharmacy, except that this shall not be construed to
9 prohibit a pharmacist from entering into a written agreement or
10 written collaborative agreement with a licensed physician which
11 authorizes the management of drug therapy.

12 * * *

13 Section 2. The act is amended by adding a section to read:

14 Section 9.5. Donation of Unused Prescription Drugs.--(a)
15 The Department of Health, the board and the Health Care Cost
16 Containment Council shall jointly develop and implement a pilot
17 program consistent with public health and safety through which
18 unused prescription drugs, other than drugs that are controlled
19 dangerous substances, may be transferred from long-term care
20 nursing facilities, as defined in section 802.1 of the act of
21 July 19, 1979 (P.L.130, No.48), known as the "Health Care
22 Facilities Act," to pharmacies operated by the Commonwealth for
23 the purpose of distributing the prescription drugs to residents
24 who are medically indigent.

25 (b) The Department of Health, the board, the Health Care
26 Cost Containment Council, the State Board of Medicine and the
27 State Board of Osteopathic Medicine shall review and evaluate
28 the program no later than eighteen months after its
29 implementation and shall submit a report and any recommendations
30 to the Governor, the President pro tempore of the Senate, the

1 Speaker of the House of Representatives and the chairmen of the
2 appropriate legislative committees.

3 (c) The Department of Health, the board and the Health Care
4 Cost Containment Council shall promulgate rules and establish
5 procedures necessary to implement the program established by
6 this section. The rules and procedures shall provide:

7 (1) For a formulary for the medications to be distributed
8 pursuant to the program.

9 (2) For the protection of the privacy of the individual for
10 whom the medication was originally prescribed.

11 (3) For the integrity and safe storage and safe transfer of
12 the medication, which may include, but shall not be limited to,
13 limiting the drugs made available through the program to those
14 that were originally dispensed by unit dose or an individually
15 sealed dose or which remain in intact packaging.

16 (4) For the tracking of and accountability for the
17 medications.

18 (5) For other matters necessary for the implementation of
19 the program.

20 (d) In accordance with the rules and procedures of a program
21 established pursuant to this section, the resident of a nursing
22 facility or the representative or guardian of a resident may
23 donate unused prescription drugs, other than prescription drugs
24 that are controlled dangerous substances or prescription drugs
25 that can only be dispensed to a patient registered with the drug
26 manufacturer in accordance with Food and Drug Administration
27 requirements, for dispensation to residents who are medically
28 indigent.

29 (e) No long-term care nursing facility, physician,
30 pharmacist and other health care professional shall be subject

1 to liability for participation in the program established by
2 this section when acting within the scope of practice of his
3 license and in good faith compliance with the rules promulgated
4 pursuant to this section.

5 (f) For purposes of this section, "persons who are medically
6 indigent" means persons who have no health insurance or who
7 otherwise lack reasonable means to purchase prescribed
8 medications.

9 Section 3. This act shall take effect in 60 days.