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THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1135 Session of 1985

INTRODUCED BY BELL, PETERSON, MOORE AND REIBMAN, OCTOBER 4, 1985

SENATOR BELL, CONSUMER PROTECTION AND PROFESSIONAL LICENSURE, AS AMENDED, OCTOBER 23, 1985

AN ACT

Amending the act of September 27, 1961 (P.L.1700, No.699), entitled "An act relating to the regulation of the practice of pharmacy, including the sales, use and distribution of drugs and devices at retail; and amending, revising, consolidating and repealing certain laws relating thereto," reestablishing the State Board of Pharmacy; providing for its composition, powers and duties; changing provisions relating to the issuance of licenses and the revocation and suspension of licenses; providing for fees; providing for penalties; and making repeals.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Section 2 of the act of September 27, 1961 (P.L.1700, No.699), known as the Pharmacy Act, is amended to read:

Section 2. Definitions.--As used in this act:

(1) "Person" includes individual, partnership, corporation [and], association or any other legal entity.

(2) "Board" means the [Pennsylvania] State Board of Pharmacy.

(2.1) "Dispense" or "dispensing" means the preparation of a

prescription or non-prescription drug in a suitable container approximately labeled for subsequent administration to or use by a patient or other individual entitled to receive the drug.

(3) "Drugs" mean--

(i) Articles recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary or its successor.

(ii) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals.

(iii) Articles (other than food) intended to affect the structure or any function of the body of man or other animals.

(iv) Articles intended for use as a component of any articles specified in subclauses (i), (ii) or (iii), but not including devices or their component parts or accessories.

(4) "Official compendium" shall mean the current revisions of the Pharmacopoeia of the United States, Homeopathic Pharmacopoeia of the United States and National Formulary or its successor.

(5) [The term "device" means instruments, apparatus and contrivances, including their components, parts and accessories, intended (i) for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals, or (ii) to affect the structure or any function of the body of man or other animals.]

"Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory, which is required under Federal or State law to be prescribed by a practitioner and dispensed by a pharmacist.

(6) [The term] "Federal act" means the Federal Food, Drug and Cosmetic Act (Title 21, USC 301 et seq., 52 Stat. 1040 et seq.).

(7) ["Narcotic drug," "dangerous drug," "nonproprietary drug"--]"Controlled substance" means any drug designated as such under the provisions of [the Drug, Device and Cosmetic Act of Pennsylvania.] the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

(7.1) Non-proprietary drug" means a drug containing any quantity of any controlled substance or any drug which is required by any applicable Federal or State law to be dispensed only by prescription.

(7.2) "Proprietary drug" shall mean non-prescription, non-narcotic medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in accordance with the requirements of the statutes and regulations of this State and the Federal Government.

(8) "Prescription" means a written or oral order [for drugs] issued by a duly licensed medical practitioner in the course of his professional practice for a controlled substance, other drug or device or medication which is dispensed for use by a consumer, but shall not include, an order for a controlled substance, other drug or device or medication which is to be dispensed for administration to a bed patient in ~~an institution~~ A HOSPITAL. <—— <——

(8.1) "Emergency prescription" means a refill of a prescription which is essential to the continuation of therapy in a chronic condition, for which the refill has not been authorized, and for which the pharmacist notifies, within seventy-two hours, the prescriber that an emergency prescription

has been dispensed.

(9) "Medical practitioner" means a physician, dentist, veterinarian or other [person] individual duly authorized and licensed by law to prescribe drugs.

(10) "Pharmacist" means [a person] an individual duly licensed by the State Board of Pharmacy to engage in the practice of pharmacy.

(11) "Practice of pharmacy" means the practice of that profession concerned with the art and science of the evaluation of prescription orders and the preparing, compounding and dispensing of drugs and devices, whether dispensed on the prescription of a medical practitioner or legally dispensed or [sold directly to the ultimate consumer] provided to a consumer, and shall include the proper and safe storage and distribution of drugs, the maintenance of proper records [therefor], ~~including individual medication records,~~ the participation in drug selection and drug utilization reviews, and the responsibility of relating information as required concerning such drugs and medicines and their therapeutic values and uses in the treatment and prevention of disease: Provided, however, That "practice of pharmacy" shall not include the operations of a manufacturer or [wholesaler] distributor as defined in [the Drug, Device and Cosmetic Act.] "The Controlled Substance, Drug, Device and Cosmetic Act."

(12) "Pharmacy" means every place properly [licensed] issued a permit by the Board of Pharmacy where [the practice of pharmacy is conducted] drugs, devices and diagnostic agents for human or animal consumption are stored, dispensed or compounded. The term "pharmacy" shall not include the operations of a manufacturer or distributor as defined in "The Controlled

Substance, Drug, Device and Cosmetic Act." In an institution, "pharmacy" refers to the organized pharmacy service in the institution under the direct supervision of a licensed pharmacist.

(13) The words "drug" and "devices" shall not include surgical or dental instruments or laboratory materials, gas and oxygen, therapy equipment, X-ray apparatus or therapeutic equipment, their component parts or accessories, or equipment, instruments, apparatus or contrivances used to render such articles effective in medical, surgical or dental treatment, or for use or consumption in or for mechanical, industrial, manufacturing or scientific applications or purposes[, nor shall the word "drug" include any article or mixture covered by the Pesticide Act of 1957, nor medicated feed intended for and used exclusively as a feed for animals other than man].

Section 2. Section 3 of the act, amended November 1, 1979 (P.L.454, No.91), November 26, 1982 (P.L.755, No.210) and May 2, 1985 (P.L.26, No.12), is amended to read:

Section 3. Licensing of Pharmacists.--(a) The State Board of Pharmacy may license as a pharmacist any person who has filed an application therefor, subscribed by the person under oath or affirmation, containing such information as the board may by regulation require, and who--

(1) Is not less than twenty-one years of age and is a citizen of the United States;

(2) Has satisfied the board that he is of good moral and professional character, [that he will properly carry out the duties and responsibilities required of a pharmacist] that he has not been convicted of a drug or alcohol-related felony or misdemeanor, and that he is not unfit or unable to practice

pharmacy by reason of the extent or manner of his use of alcoholic beverages[, narcotic drugs or dangerous drugs] or controlled substances or by reason of a physical or mental disability;

(3) Holds a Bachelor of Science or advanced degree in pharmacy granted by a school or college of pharmacy which is accredited by the American Council of Pharmaceutical Education or its successor;

(4) [Has completed the internship requirements as prescribed by the board pursuant to this act] Has completed an internship or other program which has been approved by the board or has demonstrated to the board's satisfaction experience in the practice of pharmacy which meets or exceeds the minimum internship requirements of the board;

(5) Has satisfactorily passed such examinations given by the board.

(6) Has not been convicted of a felonious act prohibited by the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country. An applicant's statement on the application declaring the absence of a conviction shall be deemed satisfactory evidence of the absence of a conviction, unless the board has some evidence to the contrary.

(b) The State Board of Pharmacy shall, at least once in every six months, examine in the practice of pharmacy all pharmacy interns, who have completed their educational requirements, who shall make applications for said examination pursuant to regulations promulgated by the board. [The said

examination shall consist of two parts: the first part being a theoretical examination, the second part consisting of a practical examination which shall be given to all pharmacy interns who have satisfactorily completed their internship requirements.] The administration of examinations shall be performed in accordance with the provisions of section 812.1 of the act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929." In case of failure at a first examination, the applicant shall have within two years the privilege of a second and third examination. In case of failure in a third examination, the applicant shall have the privilege of examination only after satisfactorily completing additional preparation as directed and approved by the board.

(c) To insure proficiency in the practical aspects of pharmacy, the board shall, by regulation, prescribe internship requirements which must be satisfactorily completed prior to issuance of a pharmacist license. The board shall specify the period of time [of not less than six months nor more than one year and when] and in what manner the internship shall be served, and shall include an internship program in conformity with those standards established by the board by regulation.

(d) The board may, by regulation, accept in lieu of the experience as a registered pharmacy intern as herein required other equivalent experience obtained prior to January 1, [1962] 1985.

(e) Any person enrolled or accepted as a student of pharmacy in an accredited [college shall, before the commencement] pharmacy degree program may, upon completion of his [third] second year of college, file with the State Board of Pharmacy an application for registration as a pharmacy intern in which said

application he shall be required to furnish such information as the board may, by regulation, prescribe and, simultaneously with the filing of said application, shall pay to the board a fee [of ten dollars ($10)] established by the board through regulation. All certificates issued to pharmacy interns shall be valid for a period not exceeding six years from the date of issue exclusive of time spent in the military service.

(f) To assure adequate practical instruction, pharmacy internship experience as required under this act shall be obtained by employment in any licensed pharmacy under the direct supervision of a pharmacist meeting the requirements [promulgated by regulation of the board, and] established by the board through regulation. Pharmacy internship experience shall include such instruction in the practice of pharmacy as the board by regulation shall prescribe.

[(g) All pharmacy apprentice certificates shall, within one year from the effective date of this act, be returned to the board and, upon receipt thereof, the board shall issue therefor a pharmacy intern certificate.

(h)] (g) The board may, without examination, license as a pharmacist any [person] individual who, at the time of filing application therefor, is licensed as a pharmacist in any other state, territory or possession of the United States: Provided, That the said [person] individual shall produce evidence satisfactory to the board of having had the required secondary and professional education and training, including internship, and is possessed of good character and morals as required of applicants for [registration] licensure under the provisions of this act: Provided, That [persons] individuals of good character and morals who have become [registered] licensed as pharmacists

by examination in other states prior to the time this act takes effect shall be required to satisfy only the requirements which existed in this Commonwealth at the time they became licensed in such other states: Further provided, That the state in which said [person] individual is licensed shall under similar conditions grant reciprocal [registration] licensure as pharmacist without examination to pharmacists duly licensed by examination in this Commonwealth. Every application under this subsection shall be accompanied by a fee [of fifty dollars ($50)] established by the board through regulation for the application and expense of investigation by the [Pennsylvania] State Board of Pharmacy. A fee [of twenty-five dollars ($25)] established by the board through regulation shall be paid for the [registration] license and certificate prior to its approval and issuance by the board.

[(i)] (h) Each pharmacy intern applying for examination shall pay to the State Board of Pharmacy an examination fee [of fifteen dollars ($15)] established by the board through regulation. Upon passing the required examinations and complying with all the rules and regulations of the board and the provisions of this act, the board shall grant the applicant [registration] licensure as a pharmacist and issue to him a certificate qualifying him to enter into the practice of pharmacy. Said certificate shall not be issued until a fee [of twenty dollars ($20)] established by the board through regulation shall be paid to the board.

[(j)] (i) The board shall provide for, regulate and require all [persons registered] individuals licensed as pharmacists or assistant pharmacists to renew their [registration] license biennially, and shall prescribe the form of such registration

and information required to be submitted by all applicants, including proof of continuing education. Unless the board shall have given ten days' previous notice to the applicant for renewal of [registration] licensure of objections to the renewal of his license based upon failure to meet the requirements of this act or a final conviction of or plea of guilty or nolo contendere of any charge based upon the laws of the United States or of this Commonwealth relating to the practice of pharmacy[, narcotics or dangerous drugs] or controlled substances, the license of a licensee shall be renewed when the applicant shall file with the board his application accompanied by a biennial [registration] license fee [of five dollars ($5)] established by the board through regulation.

[(k)] (j) An additional fee [not to exceed twenty-five dollars ($25)] established by the board through regulation shall be paid for late [registration] licensure renewal of a pharmacist.

[(l)] (k) Assistant pharmacist--(1) Any [person] individual duly [registered] licensed as an assistant pharmacist prior to the date of this act may continue to act as such.

(2) From the date of this act, no [person] individual who is not already licensed as an assistant pharmacist shall be so licensed.

Section 3. The act is amended by adding sections to read:

Section 3.1. Continuing Pharmacy Education.--The board shall develop and adopt rules and regulations necessary to establish an accredited program of continuing pharmaceutical education. The board shall have the authority to:

(1) Define, upon approval of the Professional Licensure Committee of the House of Representatives and the Consumer

Protection and Professional Licensure Committee of the Senate, the requirement for continuing education in conjunction with the educational community, pharmaceutical associations and private entities within one year of the enactment of this amendatory act.

(2) Accredit programs of continuing education offered through the educational system, pharmaceutical associations and private entities within one year of the enactment of this amendatory act. Any existing program of continuing education, approved by the American Council of Pharmaceutical Education, may be utilized for the purposes of this section.

(3) Effective with 1988 renewals, refuse to renew the license of a pharmacist until the pharmacist submits proof to the board that he has satisfactorily completed an accredited program of continuing professional education during the previous licensing period to help assure his or her continued competence to engage in the practice of pharmacy.

(4) Adopt rules and regulations necessary to carry out the stated objectives and purposes and to enforce this section, which shall include the methods of determining accredited programs and any fees as the board shall determine.

Section 3.2. Reporting of Multiple Licensure.--Any licensed pharmacist of this Commonwealth who is also licensed to practice pharmacy in any other state, territory or country shall report this information to the board on the biennial registration application. Any disciplinary action taken in other states must be reported to the board on the biennial registration application. Multiple licensure will be noted on the pharmacist's record and such state, territory or county will be notified of any disciplinary actions taken against said

pharmacist in this Commonwealth.

Section 4. Sections 4, 5 and 6 of the act are amended to read:

Section 4. [Licensing of Pharmacies] Permit to Conduct a Pharmacy.--(a) The State Board of Pharmacy shall [license] issue a permit to any person to conduct a pharmacy who has filed an application therefor, subscribed by the applicant under oath or affirmation, and containing such information as the board may require, and whose proposed pharmacy complies with all requirements of this act, including the following:

(1) [Possesses a copy of the latest revision of the Pharmacopoeia of the United States, the latest edition of the National Formulary, and, if homeopathic remedies are compounded or dispensed, a copy of the latest revision of the Homeopathic Pharmacopoeia, the current supplements to them, and such other pharmaceutical equipment, reference books, professional and technical equipment as the board may by regulation establish] Has the necessary reference books, current supplements to these reference books and the professional equipment, technical equipment and other pharmaceutical equipment to meet the needs of the practice of pharmacy for the area and type of practice;

(2) Has sufficient physical facilities, including equipment, size, space and sanitation for adequately distributing and dispensing drugs and devices consonant with the protection of the public health, safety and welfare as the board may by regulation establish;

(3) Contains a suitable book or file in which shall be preserved, for a period of not less than [five] two years, every prescription compounded or dispensed therein;

(3.1) Adheres to the following requirements for transferring

prescriptions between pharmacies in Pennsylvania:

(i) The prescription is for a drug which is lawfully refillable.

(ii) The drug is not a Schedule II controlled substance.

(iii) An original or new prescription is not required from the prescriber by law.

(iv) The pharmacist transferring the prescription cancels the original prescription in his records and indicates on the prescription records to whom the prescription was transferred, including the name of the pharmacy, the date of transfer and the name or initials of the transferring pharmacist.

(v) The pharmacist receiving the transferred prescription:

(A) Notes on the prescription that it is a transferred prescription.

(B) Records all of the following on the prescription records in addition to other information required by law.

(I) Date of issuance of original prescription.

(II) Date of original filing of prescription.

(III) Original number of refills authorized on prescription.

(IV) Complete refill record from original prescription.

(V) Number of valid refills remaining.

(C) Notes the location and file number of the original prescription.

(D) Notes the name of the pharmacy and pharmacist from whom the prescription was transferred.

~~(3.2) Maintains individual medication profiles in accordance with this clause. The board shall develop a model individual medication profile, whose contents shall include:~~ <—

~~(i) The family name and the first name of the consumer for whom the medication is intended.~~

~~(ii) The consumer's address and telephone number.~~

~~(iii) An indication of the consumer's age group defined as an infant, child or adult.~~

~~(iv) The original date the medication is dispensed pursuant to the receipt of a physician's prescription.~~

~~(v) The number or designation identifying the prescription.~~

~~(vi) The prescriber's name.~~

~~(vii) The name, strength and quantity of the drug dispensed.~~

~~(viii) The initials of the dispensing pharmacist and the date of dispensing the medication as a renewal or refill, if said initials and such date are not recorded on the back of the original prescription.~~

~~The board shall further promulgate rules and regulations to establish the model individual medication profile within one year of the effective date of this amendatory act. The board shall conduct at least one public hearing to solicit input from the public and all interested parties prior to the promulgation of the rules and regulations. Implementation of the individual medication profile shall be mandatory thirty-six months following the effective date of this amendatory act. Said profiles shall be kept in the strictest of confidence between the pharmacist, prescribing physician and patient. Said profiles and any information contained therein shall not be revealed to anyone without the permission of the consumer. Nothing contained in this section shall prevent the sharing of information between pharmacies owned by the same person, partnership or corporation. The board may, by regulation, make necessary revisions after the implementation of this policy. A consumer may receive a copy of his or her individual medication profiles, upon request, without payment of any additional charge by the consumer.~~

(3.2) FOLLOWING A PERIOD OF THREE YEARS AFTER THE EFFECTIVE DATE OF THIS ACT, THE BOARD SHALL CONDUCT A STUDY TO DETERMINE THE NEED FOR LEGISLATIVE ENACTMENT OF THE MANDATORY MAINTENANCE OF INDIVIDUAL MEDICATION PROFILES BY PHARMACISTS AND SUBMIT A REPORT OF ITS FINDINGS, WITHIN ONE YEAR, TO THE HOUSE PROFESSIONAL LICENSURE COMMITTEE AND THE CONSUMER PROTECTION AND PROFESSIONAL LICENSURE COMMITTEE OF THE SENATE. <—

(4) Has insured that a pharmacist duly [registered] licensed in Pennsylvania shall be in charge of said pharmacy at all times that the pharmacy is open;

(5) Complies with the regulations of the board setting up minimum requirements regarding adequate facilities for safe storage of drugs, and protection from theft of or improper access to [dangerous drugs and narcotics] controlled substances, equipment for compounding and dispensing of prescriptions, and size, space and sanitation requirements of pharmacies;

(6) If an individual or partnership is the applicant, that the individual or copartner if not a pharmacist, has not previously been found or pleaded guilty or nolo contendere to any crime concerning the practice of pharmacy or involving moral turpitude; or if a pharmacist, that he is presently licensed by the board; if an association that no director or officer or if a corporation that no director, officer or person having a beneficial interest [in] of more than ten per centum of the stock has been found or pleaded guilty or nolo contendere to said crimes or had a pharmacy or pharmacist's license revoked or renewal refused, for cause.

(b) All applicants shall be of good moral and professional character: in determining this qualification, the board may take into consideration among other things the conduct and operation

of other pharmacies conducted by said applicant.

(c) Every pharmacy shall, at all times when open, be under the constant direct and personal supervision and management of a pharmacist duly [registered]licensed in Pennsylvania who shall have personal supervision of not more than one pharmacy at the same time.

(d) All licenses and permits issued under the provisions of this act shall be displayed in a conspicuous place in the pharmacy for which it was issued.

(e) Separate applications and permits shall be required for each [establishment] pharmacy, and each permit shall be issued bearing the name of the pharmacist who will be in charge of [the] that pharmacy and who will be responsible for all operations involving the practice of pharmacy in that pharmacy.

(f) All [registrations prior to approval] applications for a permit to conduct a pharmacy shall be accompanied by an initial registration fee of fifty dollars ($50). The board shall renew each permit for the succeeding biennium unless the board shall have given ten days' previous notice to the applicant for renewal of [registration] the permit of objections to the renewal [of registration] based upon a finding or plea of guilty or nolo contendere by the [registrant] applicant, its partners, or officers, to a violation of any of the laws of the United States or of this Commonwealth relating to the practice of pharmacy[, narcotics or dangerous drugs] or to the enforcement of controlled substances, upon payment of a fee [of ten dollars ($10)] established by the board by regulation for each pharmacy[, and such]. Such application for renewal shall be made on or before September 1 of each odd-numbered year.

(g) All [licenses] permits granted under this section,

unless sooner revoked or suspended, shall expire on the date set forth therein: Provided, however, That the board may promulgate regulations authorizing the application by a personal representative of a deceased [licensee] grantee for an extension of deceased [licensee's permit] grantee's permit for a period not to exceed one year from date of death.

(h) No person shall operate or advertise a pharmacy until the person has been granted a pharmacy permit by the board.

(i) The full name or names of the proprietor, or if a partnership, the partners, or if an association or a corporation, the name of the pharmacist manager, must be conspicuously displayed [so as to be visible from the exterior of] in the pharmacy along with any corporate association or duly registered fictitious name.

(j) The board may promulgate regulations in accordance with the above requirements and, in addition, shall have the power to promulgate rules and regulations governing standards of practice and operation of pharmacies including, but not limited to, rules and regulations governing the method of advertising, promotion and standards for [filling and refilling] dispensing prescriptions, such regulations to be designed to insure methods of operation and conduct which protect the public health, safety and welfare and prevent practices or operations which may tend to lower professional standards of conduct, so as to endanger the public health and welfare.

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

(1) [His] Procured a personal license [was procured] through

fraud, misrepresentation or deceit;

(2) [He has] Has been found guilty, pleaded guilty [or], entered a plea of nolo contendere, or has received probation without verdict, disposition in lieu of trail or an accelerated rehabilitative disposition in the disposition of felony charges, to any offense in connection with the practice of pharmacy or involving moral turpitude before any court of record of any jurisdiction;

(3) [He is] Is unfit to practice pharmacy because of [habitual] intemperance in the use of alcoholic beverages, [narcotics, dangerous drugs] controlled substances or any other substance which impairs the intellect and judgment to such an extent as to impair the performance of professional duties;

(4) [He is] Is unfit or unable to practice pharmacy by reason of a physical or mental disease or disability; has been convicted of a felonious act prohibited by the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or convicted of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country. An applicant's statement on the application declaring the absence of a conviction shall be deemed satisfactory evidence of the absence of a conviction unless the board has some evidence to the contrary. In enforcing this clause, the board shall, upon probable cause, have authority to complete a pharmacist to submit to a mental or physical examination by physicians approved by the board. Failure of a pharmacist to submit to such examination when directed by the board, unless such failure is due to circumstances beyond his or her control, shall constitute an admission of the allegations against him or her, consequent upon

which a default and final order may be entered without the taking of testimony or presentation of evidence. A pharmacist affected under this clause shall at reasonable intervals be afforded an opportunity to demonstrate that he or she can resume a competent practice of pharmacy with reasonable skill and safety to patients.

(5) [His] Has had a license to practice pharmacy issued by any other properly constituted licensing authority of any other state [has been] suspended or revoked;

(6) [He has] Has violated or knowingly permitted the violation of any provision of this act or regulation of the board;

(7) [He has engaged in the practice of pharmacy with an unlicensed person or has] Has knowingly allowed any unlicensed person to take charge of a pharmacy or engage in the compounding, distribution or dispensing of prescriptions[, dangerous drugs or narcotics, except a pharmacy intern in the presence of and under the immediate] or controlled substances, except pharmacy interns or such other authorized personnel, who, consistent with proper pharmaceutical practices, may assist the pharmacist in the pharmacy under the direct and immediate personal supervision of a licensed pharmacist;

(8) [He has] Has compounded, dispensed, sold or caused the compounding, dispensing or sale of any drug or device which contains more or less than the proportionate quantity of ingredient or ingredients specified by the person who prescribed such drug or device or which is of a brand or trade name other than that specified by the person prescribing such brand or trade name product or which contains an ingredient or ingredients of a brand or trade name other than that specified

by the person prescribing such drug or device, unless the consent of the prescriber is first obtained to each such specific prescription: Provided, however, That nothing herein shall be construed to prevent the addition of such inert ingredients as may be required in the art of compounding, preparing, mixing or otherwise producing drugs or devices. This restrictive clause shall not apply to proper substituting of generically equivalent drugs as stipulated under the act of November 24, 1976 (P.L.1163, No.259), referred to as the Generic Equivalent Drug Law, nor to reductions in quantities which are dispensed in accordance with limits imposed by virtue of the consumer's membership in a third party plan;

(9) [He is] Is guilty of grossly unprofessional conduct. The following acts on the part of a pharmacist are hereby declared to constitute grossly unprofessional conduct of a pharmacist:

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

(ii) [The advertising to the public of prices for prescriptions, dangerous or non-proprietary drugs, or any reference to the price of said drugs or prescriptions either specifically or as a percentile of prevailing prices;] Advertising of prices for drugs and pharmaceutical services to the public which does not conform to Federal laws or regulations;

(iii) The public assertion or implication of professional superiority in the [compounding of prescriptions] practice of pharmacy;

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

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

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

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

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

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

(x) Any holder of a [license or certificate to fail to display same while actually engaged in the practice of pharmacy] biennial pocket registration card who fails to have the card available for inspection by an authorized agent when he is practicing;

(xi) The acceptance back and redistribution of any unused drug, or a part thereof, after it has left the premises of any pharmacy, whether issued by mistake or otherwise, ~~unless it is in the original sealed unit dose or manufacturer's sealed container~~ UNLESS IT IS IN THE ORIGINAL SEALED CONTAINER WITH THE <—

NAME, LOT NUMBER AND EXPIRATION DATE ON THE ORIGINAL INTACT MANUFACTURER'S LABEL. THE PHARMACY SHALL MAINTAIN RECORDS OF ALL SUCH RETURNS AND A FULL REFUND SHALL BE GIVEN TO THE ORIGINAL PURCHASER, INCLUDING A THIRD PARTY PAYOR;

(xii) To accept employment as a pharmacist, or share or receive compensation in any form arising out of, or incidental to, his professional activities from any medical practitioner or any other person or corporation in which one or more medical practitioners have a proprietary or beneficial interest sufficient to permit them to exercise supervision or control over the pharmacist in his professional responsibilities and duties;

(xiii) To accept employment as a pharmacist, or share or receive compensation in any form arising out of, or incidental to, his professional activities from any person who orders said pharmacist, directly or indirectly, to engage in any aspect of the practice of pharmacy in contravention of any provision of this act.

(10) Has had a license to practice pharmacy suspended, revoked or refused, or received other disciplinary action by the proper pharmacist licensing authority of another state, territory or country.

(11) Has acted in such a manner as to present an immediate and clear danger to the public health or safety.

(b) The board shall have the power to revoke or suspend the permit of any pharmacy upon proof satisfactory to it that:

(1) The [license] permit was procured through fraud, misrepresentation or deceit;

(2) The holder or partner or officer thereof has violated any of the provisions of this act or regulations of the board

applicable to him or any provision of [the Drug, Device and Cosmetic Act] "The Controlled Substance, Drug, Device and Cosmetic Act" or the Federal act, or has ordered a pharmacist in his employ to engage in any aspect of the practice of pharmacy in contravention of any provisions of the aforesaid acts or regulations thereunder;

(3) The holder thereof sold, dispensed or caused or allowed to be sold or dispensed any [narcotic drug, dangerous drug] controlled substance or non-proprietary drug, except by a licensed pharmacist;

(4) The holder thereof, after issuance of a permit, fails to continue to comply with all requirements of section 4 hereof;

(5) Upon the suspension or revocation of a license of a pharmacist employed by said [person] individual, it is shown that the illegal acts of the pharmacist were within the knowledge or should have been within the knowledge of the permit holder, partner or officer.

Section 6. State Board of Pharmacy.--[(a) The State Board of Pharmacy, hereinafter designated as the "board," established by section 415, act of April 9, 1929 (P.L.177, No.175), known as "The Administrative Code of 1929," is continued.

(b) The board shall consist of the Superintendent of Public Instruction, ex officio, and five members who shall be citizens of Pennsylvania and registered as pharmacists in Pennsylvania for a period of at least ten years previous to their appointment, and must at the time of appointment be engaged in the practice of pharmacy.

(c) The Governor shall, upon the expiration of the term of office of any member, appoint a person with the above-specified qualifications for a term of six years, or until a successor is

appointed and qualified. Vacancies shall be filled in like manner. A list of at least six persons with the above specified qualifications may be submitted to the Governor by the executive committee of the Pennsylvania Pharmaceutical Association.

(d) No person may serve more than two terms as a member of said board.

(e) Three members of the board shall constitute a quorum for the transaction of all business, except as otherwise specified in this act.

(f) The board shall meet prior to December 30 of each year for the purpose of organizing for the following year. At such organization meeting, the board shall elect a chairman and a vice-chairman for the ensuing calendar year. The board shall meet at least once every thirty days at the board offices and at such other times and places as the chairman deems necessary. The members of the board shall be paid by the Department of Public Instruction thirty dollars ($30) per diem in addition to expenses incurred when actually engaged in official meeting or otherwise in the performance of their official duties as directed by the chairman.

(g) The board shall elect an administrative secretary who shall not be a member of the board but who shall be a pharmacist duly licensed in Pennsylvania. Upon the approval of the Governor, said secretary shall be installed and shall serve during the pleasure of the board. Said secretary shall receive compensation of nine thousand five hundred dollars ($9500) per year from the Department of Public Instruction. The secretary shall be a full-time employe of the Department of Public Instruction, and shall:

(1) Be responsible for the administration of all

professional and public affairs as directed by the board;

(2) Report to and proceed with the instructions of the board;

(3) Carry out all policies and instructions emanating from said board;

(4) Make, keep and be in charge of all records and record books required to be kept by the board, including a register of all registrants who are required to be registered;

(5) Attend to the correspondence of the board and perform all other duties as the board may require;

(6) Receive and receipt for all fees collected under provisions of this act.] (a) Beginning with any vacancies existing on the effective date of this act, and as terms expire or vacancies occur thereafter, the State Board of Pharmacy shall consist of the Commissioner of Professional and Occupational Affairs, two persons representing the public at large, and five persons from among the most skillful pharmacists in Pennsylvania, who are not teachers or instructors in any educational institution teaching pharmacy. Two pharmacists shall be appointed from independent retail pharmacies, two pharmacists shall be appointed who are employes of retail chain pharmacies which operate five or more pharmacies licensed within this Commonwealth and one pharmacist shall be appointed from an acute care institutional pharmacy. Each pharmacist appointee must have been registered as a pharmacist for at least five years immediately preceding their appointment.

(b) The terms of each professional and public member of the board shall be six years, or until a successor has been appointed and qualified, but not longer than six months beyond the six-year period. In the event that any of said members shall

die or resign OR OTHERWISE BECOMES DISQUALIFIED during his or her term, a successor shall be appointed in the same way and with the same qualifications and shall hold office for the unexpired term. No member shall be eligible to serve more than two consecutive terms. <—

(c) A majority of the members of the board serving in accordance with law shall constitute a quorum for purposes of conducting the business of the board. A member may not be counted as a part of a quorum or vote on any issue unless he or she is physically in attendance at the meeting.

(d) The board shall select annually a chairman from among its professional members.

(e) The board shall select an executive secretary, who need not be a member of the board, but who shall be a registered pharmacist. The executive secretary shall be paid such compensation as determined by the board, after consultation with the Commissioner of Occupational and Professional Affairs. The executive secretary shall establish guidelines and information, with the concurrence of the board, for the training of inspectors within the Department of State who are responsible for inspecting pharmacies, and shall perform such other duties as the board may require.

(f) Each member of the board, except the Commissioner of Professional and Occupational Affairs shall receive sixty dollars ($60) per diem when actually attending to the work of the board. Members shall also receive the amount of reasonable traveling, hotel and other necessary expenses incurred in the performance of their duties in accordance with Commonwealth regulations.

(g) The board is subject to evaluation, review and

termination within the time and in the manner provided in the act of December 22, 1981 (P.L.508, No.142), known as the "Sunset Act."

(h) A member of the board who fails to attend three consecutive meetings shall forfeit his or her seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the member, finds that the member should be excused from a meeting because of illness or the death of a family member.

(i) A public member who fails to attend TWO CONSECUTIVE <—
statutorily mandated training seminars in accordance with section ~~21 of the act of November 26, 1978 (P.L.1223, No.292),~~ <—
813(E) OF THE ACT OF APRIL 9, 1929 (P.L.177, NO.175), KNOWN AS <—
"THE ADMINISTRATIVE CODE OF 1929," shall forfeit his seat unless the Commissioner of Professional and Occupational Affairs, upon written request from the public member, finds that the public member should be excused from a meeting because of illness or the death of a family member.

(j) The board shall meet at least once every two months, and at such additional times as may be necessary to conduct the business of the board.

[(h)] (k) The board shall have the power, and it shall be its duty:

(1) To regulate the practice of pharmacy;

(2) To prepare, grade and administer or to determine the nature of and supervise the grading and administration of examinations for all applicants for pharmacists' licenses;

(3) To examine, inspect and investigate all applications and all applicants for [registration] licensure as pharmacists, pharmacies or registration as pharmacy interns and to grant

certificates of licensure or registration to all applicants whom it shall judge to be properly qualified;

(4) To [employ inspectors, chemists and other agents to assist it for any purpose which it may deem necessary] prepare position descriptions, employe inspectors who shall be licensed pharmacists and employ appropriate consultants to assist it for any purposes which it may deem necessary, provided that the board may not delegate any of its final decisionmaking responsibilities to any consultant;

(5) To investigate or cause to be investigated all violations of the provisions of this act in its regulations and to cause prosecutions to be instituted in the courts upon advice from the Attorney General;

(6) To make or order inspections of all pharmacies **[**and**]**, except health care facilities, as defined in the act of July 19, 1979 (P.L.130, No.48), known as the "Health Care Facilities Act," and which are periodically inspected by the Department of Health in accordance with the standards in this act and the board's regulations promulgated thereto: Provided, That the Department of Health shall forward a copy of their inspection report to the board noting any violations of the act~~,~~: AND, PROVIDED FURTHER, THAT IF A VIOLATION IS REPORTED, THE BOARD SHALL HAVE THE POWER TO INSPECT SUCH PHARMACIES AND TAKE APPROPRIATE ACTION AS SPECIFIED IN THIS ACT; AND TO MAKE OR ORDER INSPECTIONS OF other places in which drugs or devices are stored, held, compounded, dispensed or sold to [the ultimate] a consumer, to take and analyze any drugs or devices and to seize and condemn any drugs or devices which are adulterated, misbranded or stored, held, dispensed, distributed or compounded in violation of the provisions of this act or the provisions of

[the Drug, Device and Cosmetic Act] the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act";

(7) To conduct hearings for the revocation or suspension of licenses, permits or registrations, with the approval of the [Attorney General] Office of General Counsel, for which hearings the board shall have the power to subpoena witnesses;

(8) To assist the regularly constituted enforcement agencies of this Commonwealth in enforcing all laws pertaining to drugs, [narcotics] controlled substances, and practice of pharmacy;

(9) To promulgate rules and regulations to effectuate the purposes of this act and to regulate the distribution of drugs and devices and the practice of pharmacy for the protection and promotion of the public health, safety and welfare.

[(i)] (l) The powers and duties of the board, as enumerated in subsection [(h)] (k) of this section, shall not be applicable to manufacturers and [wholesalers] distributors as defined in [the Drug, Device and Cosmetic Act] "The Controlled Substance, Drug, Device and Cosmetic Act" or to their operations as such.

(m) The board shall have the authority to issue subpoenas, upon application of an attorney responsible for representing the Commonwealth in disciplinary matters before the board, for the purpose of investigating alleged violations of the disciplinary provisions administered by the board. The board shall have the power to subpoena witnesses, to administer oaths, to examine witnesses or to take such testimony or compel the production of such books, records, papers and documents as it may deem necessary or proper in, and pertinent to, any proceeding, investigation, or hearing, held or had by it. Medical records may not be subpoenaed without consent of the patient or without

order of a court of competent jurisdiction on a showing that the records are reasonably necessary for the conduct of the investigation. The court may impose such limitations on the scope of the subpoena as are necessary to prevent unnecessary intrusion in patient confidential information. The board is authorized to apply to Commonwealth Court to enforce its subpoenas.

Section 5. Section 7 of the act, is amended and the section is amended by adding subsections to read:

Section 7. Hearings and Suspensions.--(a) (1) Upon refusal of the board to issue any license, permit or certificate, written notice of the grounds supporting such decision shall be given to the applicant, either personally or by registered or certified mail, return receipt requested, and the board shall accord the applicant opportunity of a hearing, upon written request received within fifteen days from the date of the giving of said written notice.

(2) The board may, upon its own motion, and shall, promptly, upon the verified complaint in writing of any person setting forth specifically the wrongful act or acts complained of, investigate any alleged violations of this act by any persons, and shall have the power temporarily to suspend or permanently to revoke licenses theretofore issued by the department under the provisions of this act at any time when, after due proceedings as hereinafter provided, it shall find the holder thereof to have been guilty of any violation of the provisions of this act.

(b) Such hearings, appeals from, and rulings resulting therefrom, unless otherwise provided herein, shall be in accordance with the provisions of the "Administrative Agency

Law."

(c) A majority of the board shall designate the member or members to be present at each hearing. Subsequent to each hearing, the notes of testimony shall be transcribed and a copy of the transcription shall be given to each member of the board who shall review same prior to voting thereon. All decisions shall be reached by a majority vote of the entire board. The board shall, by regulation, establish and publish procedural rules concerning the conduct of hearings.

(d) [(1)] The board shall maintain in its office a private docket or other record in which it shall record, from time to time as made, the rulings or decisions upon all complaints filed with it, and all investigations instituted by it in the first instance upon or in connection with which any such hearing shall have been had or in which the licensee charged shall have made no defense. The board shall also give immediate notice, in writing, of such ruling or decision to the licensee affected thereby and as well, where the investigation shall have been instituted by complaint filed, to the party or parties by whom the complaint was made. If such ruling shall be to the prejudice of or shall injuriously affect the licensee, the board shall also state in said notice the date upon which the said ruling or decision shall become effective. If the licensee cannot at such time be found, his whereabouts being then unknown, such notice may be given by the board by advertisement inserted in one issue of a newspaper of general circulation published within the county where was located the principal office of the licensee as designated in the license. When any revocation or suspension shall become final, the board shall publish notice thereof in one issue of one or more newspapers of general circulation

published within the county in which the licensee was practicing or engaged in the practice of pharmacy at the time of such revocation or suspension.

(d.1) A license issued under this act may be temporarily suspended under circumstances as determined by the board to be an immediate and clear danger to the public health and safety. The board shall issue an order to that effect without a hearing, but upon due notice, to the licensee concerned at his last known address, which shall include a written statement of all allegations against the licensee. The provisions of subsection (b) shall not apply to temporary suspension. The board shall thereupon commence formal action to suspend, revoke and restrict the license of the person concerned as otherwise provided for in this act. All actions shall be taken promptly and without delay. Within thirty days following the issuance of an order temporarily suspending a license, the board shall conduct or cause to be conducted, a preliminary hearing to determine that there is a prima facie case supporting the suspension. The licensee whose license has been temporarily suspended may be present at the preliminary hearing and may be represented by counsel, cross-examine witnesses, inspect physical evidence, call witnesses, offer evidence and testimony and make a record of the proceedings. If it is determined that there is not a prima facie case, the suspended license shall be immediately restored. The temporary suspension shall remain in effect until vacated by the board, but in no event longer than one hundred eighty days.

(d.2) A license issued under this act shall automatically be suspended upon the legal commitment to an institution of a licensee because of mental incompetency from any cause upon

filing with the board a certified copy of such commitment, conviction of a felony under the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act," or conviction of an offense under the laws of another jurisdiction, which if committed in Pennsylvania, would be a felony under "The Controlled Substance, Drug, Device and Cosmetic Act." As used in this section the term "conviction" shall include a judgment, an admission of guilt or a plea of nolo contendere. Automatic suspension under this subsection shall not be stayed pending any appeal of a conviction. Restoration of such license shall be made as hereinafter provided in the case of revocation or suspension of such license.

(d.3) The board, with the approval of the Commissioner of Professional and Occupational Affairs, shall appoint and fix the compensation of a professional consultant who is a licensee of the board with education and experience in the identification, treatment and rehabilitation of persons with physical or mental impairments. Such consultant shall be accountable to the board and shall act as a liaison between the board and treatment programs, such as alcoholics anonymous, narcotics anonymous, psychological counseling, impaired professional support groups, approved by the board and which provide services to licensees under this act.

(d.4) The board may defer and ultimately dismiss any of the types of corrective action set forth in this act for an impaired professional so long as the professional is progressing satisfactorily in an approved treatment program, provided that the provisions of this subsection shall not apply to a professional convicted of a felonious act prohibited by "The

Controlled Substance, Drug, Device and Cosmetic Act," or the conviction of a felony relating to a controlled substance in a court of law of the United States or any other state, territory or country. An approved program provider shall, upon request, disclose to the consultant all information in its possession regarding an impaired professional in treatment.

(d.5) An impaired professional who enrolls in an approved treatment program, shall ~~request a voluntary suspension of his or her license or~~, IF NECESSARY, agree to a limitation of his or her ability to practice. Failure to do so disqualifies the professional from the impaired professional program and shall activate an immediate investigation and disciplinary proceeding by the board.

(d.6) If, in the opinion of the consultant after consultation with the provider, an impaired professional, who is enrolled in an approved treatment program has not progressed satisfactorily, the consultant shall disclose to the board all information in its possession regarding said professional; and such disclosure shall constitute the basis for instituting proceedings to suspend or revoke the license or certificate of said professional.

(d.7) An approved program provider who makes a disclosure under this subsection shall not be subject to civil liability for such disclosure or its consequences.

(d.8) Any hospital or health care facility, ~~licensee, certificate holder,~~ peer or colleague who knows or has evidence that a professional has an addictive disease, is diverting a controlled substance, or is mentally or physically incompetent to carry out the duties of his or her license or certificate shall make or cause to be made a report to the board: PROVIDED,

THAT ANY PERSON OR FACILITY WHO ACTS IN A TREATMENT CAPACITY TO AN IMPAIRED PHARMACIST IN AN APPROVED TREATMENT PROGRAM IS EXEMPT FROM THE MANDATORY REPORTING REQUIREMENTS OF THIS SUBSECTION. Any person or facility who reports pursuant to this section in good faith and without malice shall be immune from any civil or criminal liability arising from such report. Failure to provide such report within a reasonable time from receipt of knowledge of impairment shall subject the person or facility to a fine not to exceed one thousand dollars ($1,000). The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure).

Section 6. The act is amended by adding sections to read:

Section 7.1. Reinstatement of License, Certificate or Registration.--Unless ordered to do so by Commonwealth Court or an appeal therefrom, the board shall not reinstate the license, certificate or registration of a person to practice pharmacy pursuant to this act which has been revoked. Any person whose license, certificate or registration has been revoked may apply for reinstatement, after a period of at least five years, but must meet all of the licensing qualifications of this act for the license applied for, to include the examination requirement, if he or she desires to practice at any time after such revocation.

Section 7.2. Surrender of Suspended or Revoked License.--The board shall require a person whose license or registration has been suspended or revoked, to return in such manner as the board directs, the license or registration. Failure to do so, and upon conviction thereof, shall be a misdemeanor of the third degree.

Section 7. Section 8 of the act is amended to read:

Section 8. Unlawful Acts.--It shall be unlawful for:

(1) Any person to procure or attempt to procure a license, permit or certificate for himself or for any other person by making or causing to be made any false representations.

(2) Any person not duly licensed as a pharmacist, pursuant to section 3 hereof, to engage in the practice of pharmacy, including the preparing, compounding, dispensing, selling or distributing at retail to any person any drug, except by a pharmacy intern or such other authorized personnel under the direct and immediate personal supervision of a pharmacist: Provided, however, That nothing herein shall be construed to prevent a duly licensed medical practitioner from dispensing, compounding or otherwise giving any drug to his own patients after diagnosis or treatment of said patient, if such compounding, preparing and dispensing is done by said licensee himself, nor shall anything herein prevent any person from selling or distributing at retail household remedies or proprietary medicines when the same are offered for sale or sold in the original packages which have been put up ready for sale to consumers, provided household remedies or proprietary medicines shall not include any [narcotic drug, dangerous drug] controlled substances or non-proprietary drug under [the Drug, Device and Cosmetic Act.] the act of April 14, 1972 (P.L.233, No.64), known as "The Controlled Substance, Drug, Device and Cosmetic Act."

(2.1) Any pharmacist to dispense an emergency prescription, unless:

(i) The pharmacist first attempts to obtain an authorization from the authorized prescriber and cannot obtain the

authorization.

(ii) The drug which is the subject of the refill is not a controlled dangerous substance.

(iii) The drug which is the subject of the refill is essential to the maintenance of life.

(iv) The drug which is the subject of the refill is essential to the continuation of therapy in chronic conditions, and, in the pharmacist's professional judgment, the interruption of the therapy reasonably might produce an undesirable health consequence, be detrimental to the patient's welfare or cause physical or mental discomfort.

(v) The pharmacist enters on the back of the prescription or on another appropriate, uniformly maintained and readily retrievable record, the date and quantity of the refill, and, in addition, the pharmacist signs the refill.

(vi) The pharmacist provides only one refill of the prescription and the quantity of that refill is in conformity with the prescribed directions for use, but limited to a seventy-two hour emergency supply.

(vii) Within seventy-two hours of dispensing the refill, the pharmacist notifies the prescriber that an emergency prescription has been dispensed.

(3) Any unlicensed person to operate or conduct, or to have charge of or to supervise any pharmacy, for a violation of this section, the owner of said pharmacy shall be equally liable as principal.

(4) Any person [representing] to represent himself to be licensed under this act when in fact he is not.

(5) Any person to knowingly prevent or refuse to permit any member of the board, or its duly authorized agents, to enter a

pharmacy or any other place where drugs or devices are kept, stored, dispensed or distributed to [the ultimate] a consumer, for the purpose of lawful inspection or other purposes in accordance with the provisions of this act and regulations pursuant thereto.

(6) Any person whose license, permit or certificate has been revoked, suspended or refused renewal to fail to deliver the license permit or certificate to the board upon demand.

(7) Any person to sell at auction drugs or devices in bulk or in open or unopened packages, unless such sale has been approved in advance by the board and unless such sale shall be under the personal supervision of a licensed pharmacist appointed by the board and whose fee shall be paid by the seller thereof.

(8) Any person, firm or corporation to use the title "pharmacist", "assistant pharmacist", "druggist", "apothecary", except a person duly licensed as a pharmacist in Pennsylvania, or any person to conduct or transact business under a name which contains as part thereof the words "drug store", "pharmacy", "drugs", "medicine store", "medicines", "drug shop", "apothecary", "pharmaceutical", "homeopathic", "homeopathy", or any term having a similar meaning, or in any manner by advertisement, display of show globes or otherwise describe or refer to the place of the conducted business or person, unless the place is a pharmacy duly [licensed] issued a permit by the State Board of Pharmacy.

(9) Any person who buys, sells or causes to be sold or offers for sale any drug or device which bears or which package bears, or originally did bear, the inscription "sample" or "not for resale" or "for investigational or experimental use only" or

other similar words, except where a cost is incurred in the bona fide acquisition of an investigational or experimental drug.

(10) Any person using to his own advantage or revealing to anyone other than the board, its duly authorized representatives, or to the courts, when relevant to any judicial proceeding under this act, any information acquired under authority of this act or concerning any method or process which is a trade secret.

(11) Any pharmacist or owner of a pharmacy advertising or promoting [dangerous drugs, narcotics or drugs containing either by name or prices therefor to the general public] prices for drug and pharmaceutical service to the public which do not conform to Federal laws or regulations.

(12) Any person who knowingly and willfully forges or counterfeits upon any goods, wares or merchandise the private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise, or keeps in possession or conceals any goods, wares or merchandise bearing forged or counterfeited private stamps or labels of any mechanic or manufacturer, with intent to defraud the purchasers or manufacturers of any goods, wares or merchandise, or keeps in control, custody or possession any punch plate, stone or other thing in the likeness of any punch plate or stone designated for the printing or imprinting of the private stamps or labels of any mechanic or manufacturer, or who vends any goods, wares or merchandise having thereon any forged or counterfeited stamps or labels purporting to be the stamps or labels of any mechanic or manufacturer, knowing the same to be forged or counterfeited, without disclosing the fact to the purchaser.

(13) Any person by himself or through another to procure or attempt to procure for himself or another any drug:

(i) by fraud, deceit, misrepresentation or subterfuge;

(ii) by the forgery or alteration of a prescription or any written order;

(iii) by the concealment of a material fact;

(iv) by use of a false statement in any prescription, order or report.

(14) Any person to advertise the filling or refilling of prescriptions for any consumer or patient in Pennsylvania if said person is not licensed under this act or the said prescription is not filled or refilled in a pharmacy licensed by the board.

(14.1) Any medical practitioner to have a proprietary or beneficial interest sufficient to permit him to exercise supervision or control over the pharmacist in his professional responsibilities and duties.

(15) Any person who violates any of the provisions of this section 8 is guilty of a misdemeanor, and upon conviction thereof, shall be sentenced to undergo imprisonment for not more than one year or pay a fine of not more than five thousand dollars ($5000), or both, and for each subsequent offense, shall be sentenced to undergo imprisonment of not more than three years or to pay a fine of not more than fifteen thousand dollars ($15,000), or both.

(15.1) In addition to any other civil remedy or criminal penalty provided for in this act, the board, by a vote of the majority of the maximum number of the authorized membership of the board as provided by law, or by a vote of the majority of the duly qualified and confirmed membership of a minimum of four

members, whichever is greater, may levy a civil penalty of up to one thousand dollars ($1,000) on any current licensee who violates any provision of this act or on any person who practices pharmacy without being properly licensed to do so under this act. The board shall levy this penalty only after affording the accused party the opportunity for a hearing, as provided in Title 2 of the Pennsylvania Consolidated Statutes (relating to administrative law and procedure). The board shall, within one year after the effective date of this act, adopt guidelines setting forth the amounts and circumstances for which a fine or civil penalty may be imposed. No fines or civil penalty may be imposed in accordance with this subsection until the board has adopted the required guidelines.

Section 8. The act is amended by adding sections to read:

Section 8.1. Injunction.--It shall be unlawful for any person to practice or attempt to offer to practice pharmacy, as defined in this act, without having at the time of so doing a valid, unexpired, unrevoked or unsuspended license issued under this act. The unlawful practice of pharmacy as defined in this act may be enjoined by the courts on petition of the board or by the Commissioner of Professional and Occupational Affairs. In any such proceeding it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found guilty of the unlawful practice of pharmacy, the court shall enjoin him or her from so practicing unless and until he or she has been duly licensed. Procedure in such cases shall be the same as in any other injunction suit. The remedy by injunction hereby given is in addition to any other civil or criminal prosecution and punishment.

Section 8.2. Setting of Fees and Disposition of Fees, Fines

and Civil Penalties.--(a) All fees required under this act shall be fixed by the board by regulation and shall be subject to the act of June 25, 1982 (P.L.633, No.181), known as the "Regulatory Review Act." If the revenues raised by fees, fines and civil penalties imposed under this act are not sufficient to meet expenditures over a two-year period, the board shall increase those fees by regulation so that the projected revenues will meet or exceed projected expenditures.

(b) If the Bureau of Professional and Occupational Affairs determines that the fees established by the board under subsection (a) are inadequate to meet the minimum enforcement efforts required by this act, then the bureau after consultation with the board and subject to the "Regulatory Review Act," shall increase the fees by regulation in an amount that adequate revenues are raised to meet the required enforcement effort.

(c) All fees, fines and civil penalties imposed in accordance with this act shall be paid into the Professional Licensure Augmentation Account.

Section 8.3. Reports of the Board.--(a) The board shall submit annually to the Department of State an estimate of the financial requirements of the board for its administrative, investigative, legal and miscellaneous expenses.

(b) The board shall submit annually to the House and Senate Appropriations Committees, fifteen days after the Governor has submitted his budget to the General Assembly, a copy of the budget request for the upcoming fiscal year which the board previously submitted to the department.

(c) The board shall submit annually a report to the Professional Licensure Committee of the House of Representatives and to the Consumer Protection and Professional Licensure

Committee of the Senate a description of the types of complaints received, status of cases, board action which has been taken and the length of time from the initial complaint to final board resolution.

Section 9. This act, with respect to the State Board of Pharmacy, shall constitute the legislation required to reestablish an agency pursuant to the act of December 22, 1981 (P.L.508, No.142), known as the Sunset Act.

Section 10. (a) Section 413 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

(b) All other acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 11. The presently confirmed members of the State Board of Pharmacy constituted under section 413 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, as of December 31, 1985, shall continue to serve as board members until their present terms of office expire.

Section 12. Each rule and regulation of the board in effect on December 31, 1985, not inconsistent with this act, shall remain in effect after such date until repealed or amended by the board. EACH FEE OF THE BOARD IN EFFECT ON DECEMBER 31, 1985, <— AND NOT INCONSISTENT WITH THIS ACT, SHALL REMAIN IN EFFECT AFTER SUCH DATE UNTIL REPEALED OR AMENDED BY THE BOARD OR THE COMMISSIONER.

Section 13. Any person who holds a valid license issued by the State Board of Pharmacy under the act of September 27, 1961 (P.L.1700, No.699), known as The Pharmacy Act, relating to the practice of pharmacy prior to the effective date of this amendatory act shall, on and after the effective date hereof, be

deemed to be licensed by the State Board of Pharmacy as provided for in this amendatory act.

Section 14. This act shall take effect January 1, 1986, except that the amendments to section 6, relating to members of the board, shall be implemented as vacancies arise.