

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 216

BY STATE AFFAIRS COMMITTEE

AN ACT

1 RELATING TO PHARMACISTS AND PHARMACIES; AMENDING SECTION
 2 37-3201, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE;
 3 AMENDING SECTION 54-1705, IDAHO CODE, TO PROVIDE A DEFINITION
 4 OF "CONSCIENCE"; AMENDING CHAPTER 17, TITLE 54, IDAHO CODE,
 5 BY THE ADDITION OF A NEW SECTION 54-1718A, IDAHO CODE, TO
 6 PROVIDE FREEDOM OF CONSCIENCE FOR PHARMACISTS, PHARMACIES
 7 AND INSTITUTIONS, TO PROVIDE IMMUNITY FROM LIABILITY, TO
 8 PROHIBIT DISCRIMINATION AND TO PROVIDE EXCEPTIONS; AMENDING
 9 SECTIONS 54-4702 AND 54-5110, IDAHO CODE, TO PROVIDE CORRECT CODE
 10 REFERENCES; AND PROVIDING SEVERABILITY.
 11

12 Be It Enacted by the Legislature of the State of Idaho:

13 SECTION 1. That Section 37-3201, Idaho Code, be, and the same is hereby amended to
 14 read as follows:

15 37-3201. DEFINITIONS. As used in this chapter:

- 16 (1) "Code imprint" means a series of letters or numbers assigned by the manufacturer or
- 17 distributor to a specific drug, or marks or monograms unique to the manufacturer or distributor
- 18 of the drug, or both;
- 19 (2) "Distributor" means a person who distributes for resale a drug in solid dosage form
- 20 under his own label even though he is not the actual manufacturer of the drug;
- 21 (3) "Solid dosage form" means capsules or tablets intended for oral use;
- 22 (4) "Legend drug" means any drug defined by section 54-1705(289), Idaho Code.

23 SECTION 2. That Section 54-1705, Idaho Code, be, and the same is hereby amended to
 24 read as follows:

25 54-1705. DEFINITIONS. In this chapter:

- 26 (1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.
- 27 (2) "Conscience" means the religious, moral or ethical principles held by any person.
- 28 (3) "Counseling" or "counsel" means the effective communication by the pharmacist of
- 29 information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic
- 30 outcomes by maximizing proper use of prescription medications and devices. Specific areas of
- 31 counseling shall include, but are not limited to:
 - 32 (a) Name and strength and description of the medication;
 - 33 (b) Route of administration, dosage, dosage form, continuity of therapy and refill
 - 34 information;
 - 35 (c) Special directions and precautions for preparation, administration, storage and use by
 - 36 the patient as deemed necessary by the pharmacist;

1 (d) Side effects or adverse effects and interactions and therapeutic contraindications that
 2 may be encountered, including their avoidance, which may interfere with the proper use
 3 of the medication or device as was intended by the prescriber, and the action required if
 4 they occur;

5 (e) Techniques for self-monitoring drug therapy; and

6 (f) Action to be taken in the event of a missed dose.

7 ~~(34)~~ "Deliver" or "delivery" means the actual, constructive or attempted transfer of a
 8 drug or device from one (1) person to another, whether or not for a consideration.

9 ~~(45)~~ "Device" means an instrument, apparatus, implement, machine, contrivance, implant,
 10 in vitro reagent or other similar related article including any component part or accessory which
 11 is:

12 (a) Recognized in the official United States Pharmacopoeia or official National
 13 Formulary, other drug compendia or any supplement to them;

14 (b) Intended for use in the diagnosis of disease or other conditions, or the cure,
 15 mitigation, treatment or prevention of disease in man or other animal;

16 (c) Intended to affect the structure or any function of the body of man or other animal,
 17 and which does not achieve any of its principal intended purposes through chemical
 18 action within or on the body of man or other animal, and which is not dependent upon
 19 being metabolized for the achievement of any of its principal intended purposes.

20 ~~(56)~~ "Dispense" or "dispensing" means the preparation and delivery of a prescription
 21 drug pursuant to a lawful order of a practitioner in a suitable container appropriately labeled
 22 for subsequent administration to or use by a patient or other individual entitled to receive the
 23 prescription drug.

24 ~~(67)~~ "Distribute" means the delivery of a drug other than by administering or dispensing.

25 ~~(78)~~ "Drug" means:

26 (a) Articles recognized as drugs in the official United States Pharmacopoeia, official
 27 National Formulary, official Homeopathic Pharmacopoeia, other drug compendia or any
 28 supplement to any of them;

29 (b) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of
 30 disease in man or other animal;

31 (c) Articles, other than food, intended to affect the structure or any function of the body
 32 of man or other animals; and

33 (d) Articles intended for use as a component of any articles specified in paragraph (a),
 34 (b) or (c) of this subsection.

35 ~~(89)~~ "Drug order" means a written order, in a hospital or other health care institution,
 36 for an ultimate user of any drug or device issued and signed by a practitioner, or an order
 37 transmitted by other means of communication from a practitioner, which is immediately
 38 reduced to writing by a pharmacist, registered nurse or other licensed health care practitioner
 39 authorized by the hospital or institution. The order shall contain the name and bed number of
 40 the patient, the name and strength or size of the drug or device, unless specified by individual
 41 institution policy or guideline, the amount to be dispensed, either in quantity or days, adequate
 42 directions for the proper use of the drug or device when it is administered to the patient, and
 43 the name of the prescriber.

44 ~~(910)~~ "Drug outlet" means all pharmacies, nursing homes, residential or assisted living
 45 facilities, convalescent homes, extended care facilities, drug abuse treatment centers, penal
 46 institutions, hospitals, family planning clinics, retail stores, wholesalers, manufacturers and mail

1 order vendors with facilities located in this state which are engaged in dispensing, delivery or
 2 distribution of drugs and drug manufacturers and wholesalers with facilities located outside the
 3 state, but doing business within this state.

4 (~~10~~1) "Extern" means a bona fide student enrolled in an approved college of pharmacy
 5 who has not received his first professional degree in pharmacy.

6 (~~11~~2) "Externship" means a structured practical experience program in pharmacy,
 7 approved by the board and administered by a college of pharmacy.

8 (~~12~~3) "Health care facility" means a health care facility as defined in section 54-1601,
 9 Idaho Code.

10 (~~13~~4) "Intern" means any person who has completed a course of study at an approved
 11 college of pharmacy, received the first professional degree in pharmacy and is registered with
 12 the board as an intern. Interns must register with the board prior to commencement of an
 13 internship program.

14 (~~14~~5) "Internship" means a postgraduate practical experience program under the
 15 supervision of a preceptor at a preceptor site.

16 (~~15~~6) "Investigational or new drug" means any drug which is limited by state or federal
 17 law to use under professional supervision of a practitioner authorized by law to prescribe or
 18 administer such drug.

19 (~~16~~7) "Labeling" means the process of preparing and affixing of a label to any drug
 20 container, exclusive however, of the labeling by a manufacturer, packer or distributor of a
 21 nonprescription drug or commercially packaged legend drug or device. Any such label shall
 22 include all information required by federal and state law or regulation.

23 (~~17~~8) "Manufacture" means the production, preparation, propagation, compounding,
 24 conversion or processing of a device or a drug, either directly or indirectly by extraction
 25 from substances of natural origin or independently by means of chemical synthesis or by a
 26 combination of extraction and chemical synthesis and includes any packaging or repackaging of
 27 the substance or labeling or relabeling of its container, except that this term does not include
 28 the preparation or compounding of a drug by an individual for his own use or the preparation,
 29 compounding, packaging or labeling of a drug:

30 (a) By a pharmacist or practitioner as an incident to his administering or dispensing of a
 31 drug in the course of his professional practice; or

32 (b) By a practitioner or by his authorization under his supervision for the purpose of or
 33 as an incident to research, teaching or chemical analysis and not for sale.

34 (~~18~~9) "Manufacturer" means a person who by compounding, cultivating, harvesting,
 35 mixing or other process, produces or prepares legend drugs, and includes persons who prepare
 36 such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other
 37 process, or who packages or repackages such drugs, but does not include pharmacists or
 38 practitioners in the practice of their profession.

39 (~~19~~20) "Nonprescription drugs" means medicines or drugs which may be sold without a
 40 prescription and which are prepackaged for use by the consumer and labeled in accordance with
 41 the requirements of the statutes and regulations of this state and the federal government.

42 (~~20~~1) "Person" means an individual, corporation, partnership, association or any other
 43 legal entity.

44 (~~21~~2) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care
 45 services intended to achieve outcomes related to the cure or prevention of a disease, elimination

1 or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in
2 the rules of the board.

3 (223) "Pharmacist" means an individual licensed by this state to engage in the practice of
4 pharmacy.

5 (234) "Pharmacy" means any facility, department or other place where prescriptions are
6 filled or compounded and are sold, dispensed, offered or displayed for sale, which has, as its
7 principal purpose, the dispensing of drug and health supplies intended for the general health,
8 welfare and safety of the public.

9 (245) "Practitioner" shall mean a physician, dentist, veterinarian, scientific investigator or
10 other person licensed in this state and permitted by such license to dispense, conduct research
11 with respect to or administer drugs in the course of professional practice or research in this
12 state.

13 (256) "Precursor" means a substance, other than a legend drug which is an immediate
14 chemical intermediate that can be processed or synthesized into a legend drug, and is used or
15 produced primarily for use in the manufacture of a legend drug by persons other than persons
16 licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the
17 state board of health and welfare, or licensed to practice pharmacy by the Idaho board of
18 pharmacy.

19 (267) "Preceptor" means a pharmacist licensed in the state and in good standing, who
20 supervises the internship training of a registered intern. The preceptor shall be actively
21 engaged in the practice of pharmacy on a full-time employment basis at a registered preceptor
22 site.

23 (278) "Preceptor site" means any training site for pharmacy interns and externs registered
24 with the board pursuant to board rule.

25 (289) "Prescription drug or legend drug" means a drug which, under federal law is
26 required, prior to being dispensed or delivered, to be labeled with one (1) of the following
27 statements:

- 28 (a) "Caution: Federal law prohibits dispensing without a prescription"; or
- 29 (b) "Rx Only"; or
- 30 (c) "Caution: Federal law restricts this drug to use by or on the order of a licensed
31 veterinarian";

32 or a drug which is required by any applicable federal or state law or regulation to be dispensed
33 on prescription only or is restricted to use by practitioners only.

34 (2930) "Prescription drug order" means a lawful written or verbal order of a practitioner
35 for a drug or device for an ultimate user of the drug or device, issued and signed by a
36 practitioner, or an order transmitted verbally from a practitioner or the practitioner's agent to a
37 pharmacist in a pharmacy, or transmitted verbally from a practitioner and immediately reduced
38 to writing by a licensed practical nurse or licensed professional nurse in a health care facility
39 for a patient or resident of such facility.

40 (301) "Prospective drug review" includes, but is not limited to, the following activities:

- 41 (a) Evaluation of the prescription or medication order for:
 - 42 (i) Known allergies;
 - 43 (ii) Rational therapy contraindications;
 - 44 (iii) Reasonable dose and route of administration; and
 - 45 (iv) Reasonable directions for use.
- 46 (b) Evaluation of the prescription or medication order for duplication of therapy.

1 (c) Evaluation of the prescription or medication order for interactions:

- 2 (i) Drug-drug;
3 (ii) Drug-food; and
4 (iii) Drug-disease.

5 (d) Evaluation of the prescription or medication order for proper utilization:

- 6 (i) Over or under utilization; and
7 (ii) Abuse/misuse.

8 (3+2) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders,
9 invoices, statements, patient medication charts or files, computerized records or other written
10 indicia, documents or objects which are used in any way in connection with the purchase, sale
11 or handling of any drug or device.

12 (323) "Sale" means every sale and includes:

- 13 (a) Manufacturing, processing, transporting, handling, packaging or any other production,
14 preparation or repackaging;
15 (b) Exposure, offer, or any other proffer;
16 (c) Holding, storing or any other possession;
17 (d) Dispensing, giving, delivering or any other supplying; and
18 (e) Applying, administering or any other usage.

19 (334) "Warehouseman" means a person who stores legend drugs for others and who has
20 no control over the disposition of such drugs except for the purpose of such storage.

21 (345) "Wholesaler" means a person engaged in the business of distributing legend drugs
22 that he himself has not produced or prepared, to persons included in any of the classes named
23 in subsection (2)(a) through (f) of section 54-1734, Idaho Code.

24 SECTION 3. That Chapter 17, Title 54, Idaho Code, be, and the same is hereby amended
25 by the addition thereto of a NEW SECTION, to be known and designated as Section 54-1718A,
26 Idaho Code, and to read as follows:

27 54-1718A. FREEDOM OF CONSCIENCE FOR PHARMACISTS, PHARMACIES
28 AND INSTITUTIONS. (1) No person shall be required to provide for any pharmaceutical care
29 or drug that violates his or her conscience.

30 (2) No person shall be civilly, criminally or administratively liable for declining to
31 dispense or distribute pharmaceutical care or a drug or drugs that violate his or her conscience.

32 (3) It shall be unlawful to discriminate against any person based upon his or her
33 declining to dispense or distribute pharmaceutical care or a drug or drugs that violate his or her
34 conscience.

35 (4) The provisions of this section do not allow a pharmacist, pharmacy or institution to
36 refuse to provide pharmaceutical care or a drug because of the patient's race, color, religion, sex
37 or national origin.

38 SECTION 4. That Section 54-4702, Idaho Code, be, and the same is hereby amended to
39 read as follows:

40 54-4702. DEFINITIONS. As used in this chapter:

41 (1) "Acupuncture" means that theory of health care developed from traditional and
42 modern Oriental medical philosophies that employs diagnosis and treatment of conditions of
43 the human body based upon stimulation of specific acupuncture points on meridians of the

1 human body for the promotion, maintenance, and restoration of health and for the prevention
 2 of disease. Therapies within the scope of acupuncture include manual, mechanical, thermal,
 3 electrical and electromagnetic treatment of such specific indicated points. Adjunctive therapies
 4 included in, but not exclusive to, acupuncture include herbal and nutritional treatments,
 5 therapeutic exercise and other therapies based on traditional and modern Oriental medical
 6 theory.

7 (2) "Board" means the Idaho state board of acupuncture.

8 (3) "NCCAOM" means "National Certification Commission for Acupuncture and
 9 Oriental Medicine."

10 (4) "Practice of acupuncture" means the insertion of acupuncture needles and use of
 11 similar devices and therapies, including application of moxibustion, to specific indicated points
 12 on the skin of the human body as indicated pursuant to traditional and modern theories of
 13 Oriental medicine. The "practice of acupuncture" does not include:

14 (a) surgery; or

15 (b) prescribing, dispensing or administering any prescription drug or legend drug as
 16 defined in section 54-1705(289), Idaho Code.

17 SECTION 5. That Section 54-5110, Idaho Code, be, and the same is hereby amended to
 18 read as follows:

19 54-5110. NATUROPATHIC MEDICAL FORMULARY COUNCIL
 20 ESTABLISHED. There is hereby established a naturopathic medical formulary
 21 council, which is separate and distinct from the board, to be composed of seven (7) members.
 22 Two (2) members shall be naturopathic physicians licensed under this chapter, appointed
 23 by the board of naturopathic medical examiners. Three (3) members shall be pharmacists
 24 licensed under chapter 17, title 54, Idaho Code, appointed by the board of naturopathic medical
 25 examiners from a list of nominees provided by the Idaho state board of pharmacy. Two (2)
 26 members shall be physicians licensed under chapter 18, title 54, Idaho Code, appointed by the
 27 board of naturopathic medical examiners from a list of nominees provided by the Idaho state
 28 board of medicine. The initial council shall be appointed as follows: One (1) naturopathic
 29 physician shall be appointed for a one (1) year term; one (1) physician licensed under chapter
 30 18, title 54, Idaho Code, and one (1) pharmacist shall be appointed for a two (2) year term;
 31 and two (2) pharmacists, one (1) naturopathic physician and one (1) physician licensed under
 32 chapter 18, title 54, Idaho Code, shall be appointed for a three (3) year term. Thereafter, the
 33 term of office shall be three (3) years. A quorum shall consist of five (5) members and shall be
 34 required for any vote to be taken. It shall be the duty of the naturopathic medical formulary
 35 council to establish a formulary for use by naturopathic physicians, and immediately upon
 36 adoption or revision of the formulary, the council shall transmit the approved formulary to the
 37 board, which shall adopt the formulary by temporary rule. The formulary will be reviewed
 38 annually by the council, or at any time at the request of the board. The formulary list may
 39 not go beyond the scope of prescription medicines and medical devices covered by approved
 40 naturopathic medical education and training and existing naturopathic medical formularies,
 41 or board-approved continuing education. The naturopathic medical formulary shall not
 42 include medicines and devices that are inconsistent with the training provided by approved
 43 naturopathic medical colleges. Nothing herein shall allow a naturopathic physician to dispense,
 44 administer or prescribe any prescription drug as defined in section 54-1705(289), Idaho Code,

1 or medical device unless such prescription drug or medical device is specifically included in
2 the naturopathic medical formulary.

3 SECTION 6. The provisions of this act are hereby declared to be severable and if any
4 provision of this act or the application of such provision to any person or circumstance is
5 declared invalid for any reason, such declaration shall not affect the validity of the remaining
6 portions of this act.