

# PHARMACY LAWS OF NORTH CAROLINA

## *Current as of March 2010*

### Chapter 90

#### MEDICINE AND ALLIED OCCUPATIONS

##### Article 4A.

##### North Carolina Pharmacy Practice Act.

#### § 90-85.2. Legislative findings.

The General Assembly of North Carolina finds that mandatory licensure of all who engage in the practice of pharmacy is necessary to insure minimum standards of competency and to protect the public from those who might otherwise present a danger to the public health, safety and welfare. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### § 90-85.3. Definitions.

- (a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion or other means.
- (b) "Board" means the North Carolina Board of Pharmacy.
- (b1) "Clinical pharmacist practitioner" means a licensed pharmacist who meets the guidelines and criteria for such title established by the joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and is authorized to enter into drug therapy management agreements with physicians in accordance with the provisions of G.S. 90-18.4.
- (c) "Compounding" means taking two or more ingredients and combining them into a dosage form of a drug, exclusive of compounding by a drug manufacturer, distributor, or packer.
- (d) "Deliver" means the actual, constructive or attempted transfer of a drug, a device, or medical equipment from one person to another.
- (e) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article including any component part or accessory, whose label or labeling bears the statement "Caution: federal law requires dispensing by or on the order of a physician." The term does not include:
  - (1) Devices used in the normal course of treating patients by health care facilities and agencies licensed under Chapter 131E or Article 2 of Chapter 122C of the General Statutes;
  - (2) Devices used or provided in the treatment of patients by medical doctors, dentists, physical therapists, occupational therapists, speech pathologists, optometrists, chiropractors, podiatrists, and nurses licensed under Chapter 90 of the General Statutes, provided they do not dispense devices used to administer or dispense drugs.
- (f) "Dispense" means preparing and packaging a prescription drug or device in a container and labeling the container with information required by State and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a patient is "dispensing". Providing quantities of unit dose prescription drugs for subsequent administration is "dispensing".
- (g) "Drug" means:
  - (1) Any article recognized as a drug in the United States Pharmacopeia, or in any other drug compendium or any supplement thereto, or an article recognized as a drug by the United States Food and Drug Administration;
  - (2) Any article, other than food or devices, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
  - (3) Any article, other than food or devices, intended to affect the structure or any function of the body of man or other animals; and
  - (4) Any article intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection.
- (h) "Emancipated minor" means any person under the age of 18 who is or has been married or who is or has been a parent; or whose parents or guardians have surrendered their rights to the minor's services and earnings as

well as their right to custody and control of the minor's person; or who has been emancipated by an appropriate court order.

(i) "Health care provider" means any licensed health care professional; any agent or employee of any health care institution, health care insurer, health care professional school; or a member of any allied health profession.

(j) "Label" means a display of written, printed or graphic matter upon the immediate or outside container of any drug.

(k) "Labeling" means preparing and affixing a label to any drug container, exclusive of labeling by a manufacturer, packer or distributor of a nonprescription drug or a commercially packaged prescription drug or device.

(l) "License" means a license to practice pharmacy including a renewal license issued by the Board.

(1 1) "Medical equipment" means any of the following items that are intended for use by the consumer in the consumer's place of residence:

- (1) A device.
- (2) Ambulation assistance equipment.
- (3) Mobility equipment.
- (4) Rehabilitation seating.
- (5) Oxygen and respiratory care equipment.
- (6) Rehabilitation environmental control equipment.
- (7) Diagnostic equipment.
- (8) A bed prescribed by a physician to treat or alleviate a medical condition.

The term "medical equipment" does not include (i) medical equipment used or dispensed in the normal course of treating patients by or on behalf of home care agencies, hospitals, and nursing facilities licensed under Chapter 131E of the General Statutes or hospitals or agencies licensed under Article 2 of Chapter 122C of the General Statutes; (ii) medical equipment used or dispensed by professionals licensed under Chapters 90 or 93D of the General Statutes, provided the professional is practicing within the scope of that professional's practice act; (iii) upper and lower extremity prosthetics and related orthotics; or (iv) canes, crutches, walkers, and bathtub grab bars.

(1 2) "Mobile pharmacy" means a pharmacy that meets all of the following conditions:

- (1) Is either self-propelled or moveable by another vehicle that is self-propelled.
- (2) Is operated by a nonprofit corporation.
- (3) Dispenses prescription drugs at no charge or at a reduced charge to persons whose family income is less than two hundred percent (200%) of the federal poverty level and who do not receive reimbursement for the cost of the dispensed prescription drugs from Medicare, Medicaid, a private insurance company, or a governmental unit.

(m) "Permit" means a permit to operate a pharmacy, deliver medical equipment, or dispense devices, including a renewal license issued by the Board.

(n) "Person" means an individual, corporation, partnership, association, unit of government, or other legal entity.

(o) "Person in loco parentis" means the person who has assumed parental responsibilities for a child.

(p) "Pharmacist" means a person licensed under this Article to practice pharmacy.

(q) "Pharmacy" means any place where prescription drugs are dispensed or compounded.

(q1) "Pharmacy personnel" means pharmacists and pharmacy technicians.

(q2) "Pharmacy technician" means a person who may, under the supervision of a pharmacist, perform technical functions to assist the pharmacist in preparing and dispensing prescription medications.

(r) "Practice of pharmacy" means the responsibility for: interpreting and evaluating drug orders, including prescription orders; compounding, dispensing and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services. A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses and significant problems of drugs and devices; assess, record and report adverse drug and device reactions; take and record patient histories relating to drug and device therapy; monitor, record and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31. A pharmacist who has received special training may be authorized and permitted to administer drugs pursuant to a specific prescription order in accordance with rules adopted by each of the Boards of Pharmacy, the Board of Nursing, and the North Carolina Medical Board. The rules shall be designed to ensure the safety and health of the patients for whom such drugs are administered. An approved clinical pharmacist practitioner may collaborate with physicians in determining the appropriate health care for a patient, subject to the provisions of G.S. 90-18.4.

(s) "Prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement:

"Caution: Federal law prohibits dispensing without prescription."

(t) "Prescription order" means a written or verbal order for a prescription drug, prescription device, or pharmaceutical service from a person authorized by law to prescribe such drug, device, or service. A prescription order includes an order entered in a chart or other medical record of a patient.

(u) "Unit dose medication system" means a system in which each dose of medication is individually packaged in a properly sealed and properly labeled container. (1981 (Reg. Sess., 1982), c. 1188, s. 1; 1983, c. 196, ss. 1-3; 1991, c. 578, s. 1; 1993 (Reg. Sess., 1994), c. 692, s. 2; 1995, c. 94, s. 24; 1999-246, s. 1; 1999-290, ss. 4, 5; 2001-375, s. 1; 2002-159, s. 37.)

#### **§ 90-85.4. North Carolina Pharmaceutical Association.**

The North Carolina Pharmaceutical Association, and the persons composing it, shall continue to be a body politic and corporate under the name and style of the North Carolina Pharmaceutical Association, and by that name have the right to sue and be sued, to plead and be impleaded, to purchase and hold real estate and grant the same, to have and to use a common seal, and to do any other things and perform any other acts as appertain to bodies corporate and politic not inconsistent with the Constitution and laws of the State. (1881, c. 355, s. 1; Code, s. 3135; Rev., s. 4471; C.S., s. 6650; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### **§ 90-85.5. Objective of Pharmaceutical Association.**

The objective of the Association is to unite the pharmacists of this State for mutual aid, encouragement, and improvement; to encourage scientific research, develop pharmaceutical talent and to elevate the standard of professional thought. (1881, c. 355, s. 2; Code, s. 3136; Rev., s. 4472; C.S., s. 6651; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1991, c. 125, s. 1.)

#### **§ 90-85.6. Board of Pharmacy; creation; membership; qualification of members.**

(a) Creation. – The responsibility for enforcing the provisions of this Article and the laws pertaining to the distribution and use of drugs is vested in the Board. The Board shall adopt reasonable rules for the performance of its duties. The Board shall have all of the duties, powers and authorities specifically granted by and necessary for the enforcement of this Article, as well as any other duties, powers and authorities that may be granted from time to time by other appropriate statutes. The Board may establish a program for the purpose of aiding in the recovery and rehabilitation of pharmacists who have become addicted to controlled substances or alcohol, and the Board may use money collected as fees to fund such a program.

(b) Membership. – The Board shall consist of six members, one of whom shall be a representative of the public, and the remainder of whom shall be pharmacists.

(c) Qualifications. – The public member of the Board shall not be a health care provider or the spouse of a health care provider. He shall not be enrolled in a program to prepare him to be a health care provider. The public member of the Board shall be a resident of this State at the time of his appointment and while serving as a Board member. The pharmacist members of the Board shall be residents of this State at the time of their appointment and while serving as Board members. (1905, c. 108, ss. 5-7, 9; Rev., ss. 4473, 4475; 1907, c. 113, s. 1; C.S., ss. 6652, 6654; 1945, c. 572, s. 1; 1981, c. 717, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1997-177, s. 1.)

#### **§ 90-85.7. Board of Pharmacy; selection; vacancies; commission; term; per diem; removal.**

(a) The Board of Pharmacy shall consist of six persons. Five of the members shall be licensed as pharmacists within this State and shall be elected and commissioned by the Governor as hereinafter provided. Pharmacist members shall be chosen in an election held as hereinafter provided in which every person licensed to practice pharmacy in North Carolina and residing in North Carolina shall be entitled to vote. Each pharmacist member of said Board shall be elected for a term of five years and until his successor shall be elected and shall qualify. Members chosen by election under this section shall be elected upon the expiration of the respective terms of the members of the present Board of Pharmacy. No pharmacist shall be nominated for membership on said Board, or shall be elected to membership on said Board, unless, at the time of such nomination, and at the time of such election, he is licensed to practice pharmacy in North Carolina. In case of death, resignation or removal from the State of any pharmacist member of said Board, the pharmacist members of the Board shall elect in his place a pharmacist who meets the criteria set forth in this section to fill the unexpired term.

One member of the Board shall be a person who is not a pharmacist and who represents the interest of the public at large. The Governor shall appoint this member.

All Board members serving on June 30, 1989, shall be eligible to complete their respective terms. No member appointed or elected to a term on or after July 1, 1989, shall serve more than two complete consecutive five-year

terms. The Governor may remove any member appointed by him for good cause shown and may appoint persons to fill unexpired terms of members appointed by him.

It shall be the duty of a member of the Board of Pharmacy, within 10 days after receipt of notification of his appointment and commission, to appear before the clerk of the superior court of the county in which he resides and take and subscribe an oath to properly and faithfully discharge the duties of his office according to law.

(b) All nominations and elections of pharmacist members of the Board shall be conducted by the Board of Pharmacy, which is hereby constituted a Board of Pharmacy Elections. Every pharmacist with a current North Carolina license residing in this State shall be eligible to vote in all elections. The list of pharmacists shall constitute the registration list for elections. The Board of Pharmacy Elections is authorized to make rules and regulations relative to the conduct of these elections, provided such rules and regulations are not in conflict with the provisions of this section and provided that notice shall be given to all pharmacists residing in North Carolina. All such rules and regulations shall be adopted subject to the procedures of Chapter 150B of the General Statutes of North Carolina. From any decision of the Board of Pharmacy Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Chapter 150B of the General Statutes.

(c) All rules, regulations, and bylaws of the North Carolina Board of Pharmacy so far as they are not inconsistent with the provisions of this Article, shall continue in effect.

(d) Notwithstanding G.S. 93B-5, Board members shall receive as compensation for their services per diem not to exceed one hundred dollars (\$100.00) for each day during which they are engaged in the official business of the Board. (1905, c. 108, ss. 5-7; Rev., s. 4473; C.S., s. 6652; 1981, c. 717, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1983, c. 196, s. 4; 1989, c. 118; 1989 (Reg. Sess., 1990), c. 825.)

#### **§ 90-85.8. Organization.**

The Board shall elect from its members a president, vice-president, and other officers as it deems necessary. The officers shall serve one-year terms and until their successors have been elected and qualified. (1905, c. 108, s. 8; Rev., s. 4474; C.S., s. 6653; 1923, c. 82; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### **§ 90-85.9. Meetings.**

The Board shall meet at least twice annually for the purpose of administering examinations and conducting other business. Four Board members constitute a quorum. The Board shall keep a record of its proceedings, a register of all licensed persons, and a register of all persons to whom permits have been issued. The Board shall report, in writing, annually to the Governor and the presiding officer of each house of the General Assembly. (1905, c. 108, s. 8; Rev., s. 4474; C.S., s. 6653; 1923, c. 82; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### **§ 90-85.10. Employees; Executive Director.**

The Board shall employ as Executive Director a pharmacist to serve as a full-time employee of the Board. The Executive Director shall serve as secretary and treasurer of the Board and shall perform administrative functions as authorized by the Board. The Board shall have the authority to employ other personnel as it may deem necessary to carry out the requirements of this Article. (1905, c. 108, s. 9; Rev., s. 4475; 1907, c. 113, s. 1; C.S., s. 6654; 1945, c. 572, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### **§ 90-85.11. Compensation of employees.**

The Board shall determine the compensation of its employees. Employees shall be reimbursed for all necessary expenses incurred in the performance of their official duties. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### **§ 90-85.11A. Acquisition of real property; equipment; liability insurance.**

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase, rent, or lease equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees. (2001-407, s. 1.)

#### **§ 90-85.12. Executive Director to make investigations and prosecute.**

(a) Upon receiving information concerning a violation of this Article that is a threat to the public safety, health, or welfare, the Executive Director shall promptly conduct an investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing. If the Executive Director receives information concerning a violation of this Article that does not pose a threat to the public safety, health, or welfare,

the Executive Director may conduct an investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing.

(b) In all prosecutions of unlicensed persons for the violation of any of the provisions of this Article, a certificate signed under oath by the Executive Director shall be competent and admissible evidence in any court of this State that the person is not licensed, as required by law. (1905, c. 108, s. 11; Rev., s. 4477; C.S., s. 6656; 1923, c. 74, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 2005-402, s. 1.2.)

**§ 90-85.13. Approval of schools and colleges of pharmacy.**

The Board shall approve schools and colleges of pharmacy upon a finding that students successfully completing the course of study offered by the school or college can reasonably be expected to practice pharmacy safely and properly. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

**§ 90-85.14. Practical experience program.**

The Board shall issue regulations governing a practical experience program. These regulations shall assure that the person successfully completing the program will have gained practical experience that will enable him to safely and properly practice pharmacy. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

**§ 90-85.15. Application and examination for licensure as a pharmacist; prerequisites.**

(a) Any person who desires to be licensed as a pharmacist shall file an application with the Executive Director on the form furnished by the Board, verified under oath, setting forth the applicant's name, age, the place at which and the time that he has spent in the study of pharmacy, and his experience in compounding and dispensing prescriptions under the supervision of a pharmacist. The applicant shall also appear at a time and place designated by the Board and submit to an examination as to his qualifications for being licensed. The applicant must demonstrate to the Board his physical and mental competency to practice pharmacy.

(b) On or after July 1, 1982, all applicants shall have received an undergraduate degree from a school of pharmacy approved by the Board. Applicants shall be required to have had up to one year of experience, approved by the Board, under the supervision of a pharmacist and shall pass the required examination offered by the Board. Upon completing these requirements and upon paying the required fee, the applicant shall be licensed.

(c) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection. (1905, c. 108, s. 13; Rev., ss. 4479, 4480; 1915, c. 165; C.S., s. 6658; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94; 1971, c. 481; 1981, c. 717, s. 4; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1983, c. 196, s. 5; 2002-147, s. 8.)

**§ 90-85.15A. Pharmacy technicians.**

(a) Registration. – A registration program for pharmacy technicians is established for the purposes of identifying those persons who are employed as pharmacy technicians. The Board must maintain a registry of pharmacy technicians that contains the name of each pharmacy technician, the name and location of the pharmacy in which the pharmacy technician works, the pharmacist-manager who employs the pharmacy technician, and the dates of that employment. The Board must register a pharmacy technician who pays the fee required under G.S. 90-85.24 and completes a required training program. A pharmacy technician must register with the Board within 30 days after the date the pharmacy technician completes a training program conducted by the pharmacy technician's pharmacist-manager. The registration must be renewed annually by paying a registration fee.

(b) Responsibilities of Pharmacist-Manager. – A pharmacist-manager may hire a person who has a high school diploma or equivalent or is currently enrolled in a program that awards a high school diploma or equivalent to work as a pharmacy technician. Pursuant to G.S. 90-85.21, a pharmacist-manager must notify the Board within 30 days of the date the pharmacy technician began employment. The pharmacist-manager must provide a training program for a pharmacy technician that includes pharmacy terminology, pharmacy calculations, dispensing systems

and labeling requirements, pharmacy laws and regulations, record keeping and documentation, and the proper handling and storage of medications. The requirements of a training program may differ depending upon the type of employment. The training program must be provided and completed within 180 days of the date the pharmacy technician began employment unless the pharmacy technician is registered with the Board. If the pharmacy technician is registered with the Board, then the completion of the training program is optional at the discretion of the pharmacist-manager.

(c) **Supervision.** – A pharmacist may not supervise more than two pharmacy technicians unless the pharmacist-manager receives written approval from the Board. The Board may not allow a pharmacist to supervise more than two pharmacy technicians unless the additional pharmacy technicians have passed a nationally recognized pharmacy technician certification board exam, or its equivalent, that has been approved by the Board. The Board must respond to a request from a pharmacist-manager to allow a pharmacist to supervise more than two pharmacy technicians within 60 days of the date it received the request. The Board must respond to the request in one of three ways:

- (1) Approval of the request.
- (2) Approval of the request as amended by the Board.
- (3) Disapproval of the request. A disapproval of a request must include a reasonable explanation of why the request was not approved.

(d) **Disciplinary Action.** – The Board may, in accordance with Chapter 150B of the General Statutes and rules adopted by the Board, issue a letter of reprimand or suspend, restrict, revoke, or refuse to grant or renew the registration of a pharmacy technician if the pharmacy technician has done one or more of the following:

- (1) Made false representations or withheld material information in connection with registering as a pharmacy technician.
- (2) Been found guilty of or plead guilty or nolo contendere to a felony involving the use or distribution of drugs.
- (3) Indulged in the use of drugs to an extent that it renders the pharmacy technician unfit to assist a pharmacist in preparing and dispensing prescription medications.
- (4) Developed a physical or mental disability that renders the pharmacy technician unfit to assist a pharmacist in preparing and dispensing prescription medications.
- (5) Willfully violated any provision of this Article or rules adopted by the Board governing pharmacy technicians.

(e) **Exemption.** – This section does not apply to pharmacy students who are enrolled in a school of pharmacy approved by the Board under G.S. 90-85.13.

(f) **Rule-Making Authority.** – The Board may adopt rules necessary to implement this section. (2001–375, s. 2.)

#### **§ 90-85.16. Examination.**

The license examination shall be given by the Board at least twice each year. The Board shall determine the subject matter of each examination and the place, time and date for administering the examination. The Board shall also determine which persons have passed the examination. The examination shall be designed to determine which applicants can reasonably be expected to safely and properly practice pharmacy. (1905, c. 108, s. 13; Rev., ss. 4479, 4480; 1915, c. 165; C.S., s. 6658; 1921, c. 52; 1933, c. 206, ss. 1, 2; 1935, c. 181; 1937, c. 94; 1971, c. 481; 1981, c. 717, s. 4; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### **§ 90-85.17. License renewal.**

In accordance with Board regulations, each license to practice pharmacy shall expire on December 31 and shall be renewed annually by filing with the Board on or after December 1 an application for license renewal furnished by the Board, accompanied by the required fee. It shall be unlawful to practice pharmacy more than 60 days after the expiration date without renewing the license. All licensees shall give the Board notice of a change of mailing address or a change of place of employment within 30 days after the change. The Board may require licensees to obtain up to 30 hours of continuing education every two years from Board-approved providers as a condition of license renewal, with a minimum of 10 hours required per year. (2005-402, s. 4.)

#### **§ 90-85.18. Approval of continuing education programs.**

The Board shall approve providers of continuing education programs upon finding that the provider is competent to and does offer an educational experience designed to enable those who successfully complete the program to more safely and properly practice pharmacy. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### **§ 90-85.19. Reinstatement.**

Whenever a pharmacist who has not renewed his license for five or more years seeks to renew or reinstate his license, he must appear before the Board and submit evidence that he can safely and properly practice pharmacy. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

**§ 90-85.20. Licensure without examination.**

(a) The Board may issue a license to practice pharmacy, without examination, to any person who is licensed as a pharmacist in another jurisdiction if the applicant shall present satisfactory evidence of possessing the same qualifications as are required of licensees in this State, that he was licensed by examination in such other jurisdiction, and that the standard of competence required by such other jurisdiction is substantially equivalent to that of this State at that time. The Board must be satisfied that a candidate for licensure has a satisfactory understanding of the laws governing the practice of pharmacy and distribution of drugs in this State.

(b) Repealed by Session Laws 1991, c. 125, s. 2. (1905, c. 108, s. 16; Rev., s. 4482; C.S., s. 6660; 1945, c. 572, s. 2; 1971, c. 468; 1977, c. 598; 1981, c. 717, ss. 6, 7; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1983, c. 196, ss. 6, 7; 1991, c. 125, s. 2.)

**§ 90-85.21. Pharmacy permit.**

(a) In accordance with Board regulations, each pharmacy in North Carolina shall annually register with the Board on a form provided by the Board. The application shall identify the pharmacist-manager of the pharmacy and all pharmacy personnel employed in the pharmacy. All pharmacist-managers shall notify the Board of any change in pharmacy personnel within 30 days of the change. In addition to identifying the pharmacist-manager, a pharmacy may identify a pharmacy permittee's designated agent that the Board shall notify of any investigation of the pharmacy or a pharmacist employed by the pharmacy. The notice shall include the specific reason for the investigation and be given prior to the initiation of any disciplinary proceedings.

(a1) A mobile pharmacy shall register annually with the Board in the manner prescribed in subsection (a) of this section, and the registration shall be renewed annually. A mobile pharmacy shall be considered a single pharmacy and shall not be required to pay a separate registration fee for each location but shall pay the annual registration fee prescribed in G.S. 90-85.24. A mobile pharmacy shall provide the Board with the address of every location from which prescription drugs will be dispensed by the mobile pharmacy.

(b) Each physician who dispenses prescription drugs, for a fee or other charge, shall annually register with the Board on the form provided by the Board, and with the licensing board having jurisdiction over the physician. Such dispensing shall comply in all respects with the relevant laws and regulations that apply to pharmacists governing the distribution of drugs, including packaging, labeling, and record keeping. Authority and responsibility for disciplining physicians who fail to comply with the provisions of this subsection are vested in the licensing board having jurisdiction over the physician. The form provided by the Board under this subsection shall be as follows:

Application For Registration  
With The Pharmacy Board  
As A Dispensing Physician

1. Name and Address of Dispensing Physician

2. Affix Dispensing Label Here

3. Physician's North Carolina License Number \_\_\_\_\_

4. Are you currently practicing in a professional association registered with the North Carolina Medical Board?  
\_\_\_\_\_ Yes \_\_\_\_\_ No. If yes, enter the name and registration number of the professional corporation:

\_\_\_\_\_

5. I certify that the information is correct and complete.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

(1927, c. 28, s. 1; 1953, c. 183, s. 2; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1987, c. 687; 1995, c. 94, s. 25; 1999-246, s. 2; 2001-375, s. 3; 2005-427, s. 1.)

**§ 90-85.21A. Applicability to out-of-state operations.**

(a) Any pharmacy operating outside the State which ships, mails, or delivers in any manner a dispensed legend drug into this State shall annually register with the Board on a form provided by the Board. In order to satisfy the registration requirements of this subsection, a pharmacy shall certify that the pharmacy employs a pharmacist who is responsible for dispensing, shipping, mailing, or delivering dispensed legend drugs into this State or in a state approved by the Board and has met requirements for licensure equivalent to the requirements for licensure in this State. In order for the pharmacy's certification of the pharmacists to be valid, a pharmacist shall agree in writing, on a form approved by the Board, to be subject to the jurisdiction of the Board, the provisions of this Article, and the rules adopted by the Board. If the Board revokes this certification, the pharmacy shall no longer have authority to dispense, ship, mail, or deliver in any manner a dispensed legend drug into this State.

(b) Any pharmacy subject to this section shall at all times maintain a valid unexpired license, permit, or registration necessary to conduct such pharmacy in compliance with the laws of the state in which such pharmacy is located. No pharmacy operating outside the State may ship, mail, or deliver in any manner a dispensed legend drug into this State unless such drug is lawfully dispensed by a licensed pharmacist in the state where the pharmacy is located.

(c) The Board shall be entitled to charge and collect not more than five hundred dollars (\$500.00) for original registration of a pharmacy under this section, and for renewal thereof, not more than two hundred dollars (\$200.00), and for reinstatement thereof, not more than two hundred dollars (\$200.00).

(d) The Board may deny a nonresident pharmacy registration upon a determination that the pharmacy has a record of being formally disciplined in its home state for violations that relate to the compounding or dispensing of legend drugs and presents a threat to the public health and safety.

(e) Except as otherwise provided in this subsection, the Board may adopt rules to protect the public health and safety that are necessary to implement this section. Notwithstanding G.S. 90-85.6, the Board shall not adopt rules pertaining to the shipment, mailing, or other manner of delivery of dispensed legend drugs by pharmacies required to register under this section that are more restrictive than federal statutes or regulations governing the delivery of prescription medications by mail or common carrier. A pharmacy required to register under this section shall comply with rules adopted pursuant to this section.

(f) The Board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of this section. (1993, c. 455, s. 1; 1998-212, s. 12.3B(b); 2004-199, s. 25; 2005-402, s. 3.)

#### **§ 90-85.21B. Unlawful practice of pharmacy.**

It shall be unlawful for any person, firm, or corporation not licensed or registered under the provisions of this Article to:

- (1) Use in a trade name, sign, letter, or advertisement any term, including "drug", "pharmacy", "prescription drugs", "prescription", "Rx", or "apothecary", that would imply that the person, firm, or corporation is licensed or registered to practice pharmacy in this State.
- (2) Hold himself or herself out to others as a person, firm, or corporation licensed or registered to practice pharmacy in this State. (2003-284, s. 10.8D.)

#### **§ 90-85.22. Device and medical equipment permits.**

(a) Devices. – Each place, whether located in this State or out-of-state, where devices are dispensed or delivered to the user in this State shall register annually with the Board on a form provided by the Board and obtain a device permit. A business that has a current pharmacy permit does not have to register and obtain a device permit. Records of devices dispensed in pharmacies or other places shall be kept in accordance with rules adopted by the Board.

(b) Medical Equipment. – Each place, whether located in this State or out-of-state, that delivers medical equipment to the user of the equipment in this State shall register annually with the Board on a form provided by the Board and obtain a medical equipment permit. A business that has a current pharmacy permit or a current device permit does not have to register and obtain a medical equipment permit. Medical equipment shall be delivered only in accordance with requirements established by rules adopted by the Board.

(c) This section shall not apply to either of the following:

- (1) A pharmaceutical manufacturer registered with the Food and Drug Administration.
- (2) A wholly owned subsidiary of a pharmaceutical manufacturer registered with the Food and Drug Administration. (1981 (Reg. Sess., 1982), c. 1188, s. 1; 1993 (Reg. Sess., 1994), c. 692, s. 1; 2001-339, s. 1.)

#### **§ 90-85.23. License and permit to be displayed.**

Every pharmacist-manager's license, every permit, and every current renewal shall be conspicuously posted in the place of business owned by or employing the person to whom it is issued. The licenses and every last renewal of

all other pharmacists employed in the pharmacy must be readily available for inspection by agents of the Board. Failure to display any license or permit and the most recent renewal shall be a violation of this Article and each day that the license or permit or renewal is not displayed shall be a separate and distinct offense. (1905, c. 108, ss. 18, 26; Rev., ss. 3651, 4485; C.S., s. 6663; 1921, c. 68, s. 3; 1953, c. 1051; 1981 (Reg. Sess., 1982), c. 1188, s. 1.)

**§ 90-85.24. Fees collectible by Board.**

- (a) The Board of Pharmacy shall be entitled to charge and collect not more than the following fees:
- (1) For the examination of an applicant for license as a pharmacist, two hundred dollars (\$200.00), plus the cost of the test material;
  - (2) For renewing the license as a pharmacist, one hundred thirty-five dollars (\$135.00);
  - (3) For reinstatement of a license as a pharmacist, one hundred thirty-five dollars (\$135.00);
  - (4) For annual registration of a pharmacy technician, thirty dollars (\$30.00);
  - (5) For reinstatement of a registration of a pharmacy technician, thirty dollars (\$30.00);
  - (6) For licenses without examination as provided in G.S. 90-85.20, original, six hundred dollars (\$600.00);
  - (7) For original registration of a pharmacy, five hundred dollars (\$500.00), and renewal thereof, two hundred dollars (\$200.00);
  - (8) For reinstatement of the registration of a pharmacy, two hundred dollars (\$200.00);
  - (9) For annual registration as a dispensing physician under G.S. 90-85.21(b), seventy-five dollars (\$75.00);
  - (10) For reinstatement of registration as a dispensing physician, seventy-five dollars (\$75.00);
  - (11) For annual registration as a dispensing physician assistant under G.S. 90-18.1, seventy-five dollars (\$75.00);
  - (12) For reinstatement of registration as a dispensing physician assistant, seventy-five dollars (\$75.00);
  - (13) For annual registration as a dispensing nurse practitioner under G.S. 90-18.2, seventy-five dollars (\$75.00);
  - (14) For reinstatement of registration as a dispensing nurse practitioner, seventy-five dollars (\$75.00);
  - (15) For registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), thirty-five dollars (\$35.00);
  - (16) For a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars (\$25.00);
  - (17) For original registration to dispense devices, deliver medical equipment, or both, five hundred dollars (\$500.00);
  - (18) For renewal of registration to dispense devices, deliver medical equipment, or both, two hundred dollars (\$200.00);
  - (19) For reinstatement of a registration to dispense devices, deliver medical equipment, or both, two hundred dollars (\$200.00).

(b) All fees under this section shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of pharmacists or before any license or permit, or any renewal or reinstatement thereof, may be issued by the Board. (1905, c. 108, s. 12; Rev., s. 4478; C.S., s. 6657; 1921, c. 57, s. 3; 1945, c. 572, s. 3; 1953, c. 183, s. 1; 1965, c. 676, s. 1; 1973, c. 1183; 1981, c. 72; c. 717, s. 3; 1981 (Reg. Sess., 1982), c. 1188, s. 2; 1983, c. 196, s. 8; 1987, c. 260; 1987 (Reg. Sess., 1988), c. 1039, s. 4; 1993 (Reg. Sess., 1994), c. 692, s. 3; 1997-231, s. 1; 2001-375, s. 4; 2005-402, s. 2.)

**§ 90-85.25. Disasters and emergencies.**

(a) In the event of an occurrence which the Governor of the State of North Carolina has declared a disaster or when the Governor has declared a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under G.S. 14-288.12, 14-288.13, or 14-288.14, or to protect the public health, safety, or welfare of its citizens under G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of drugs, devices, and professional services to the public.

(b) The pharmacist in charge of a pharmacy shall report within 10 days to the Board any disaster, accident, theft, or emergency which may affect the strength, purity, or labeling of drugs and devices in the pharmacy. (1981 Reg. Sess., 1982), c. 1188, s. 1; 1998-212, s. 12.3B(a).)

**§ 90-85.26. Prescription orders preserved.**

(a) Every pharmacist-manager of a pharmacy shall maintain for at least three years the original of every prescription order and refill compounded or dispensed at the pharmacy except for prescription orders recorded in a patient's medical record. An automated data processing system may be used for the storage and retrieval of refill information for prescriptions pursuant to the regulations of the Board. A pharmacist-manager may comply with this section by capturing and maintaining an electronic image of a prescription order or refill. An electronic image of a prescription order or refill shall constitute the original prescription order, and a hard copy of the prescription order or refill is not required to be maintained. If a pharmacist-manager elects to maintain prescription orders by capturing electronic images of prescription orders or refills, the pharmacy's computer system must be capable of maintaining, printing, and providing, upon a request by the Board, all of the information required by this Chapter or rules adopted pursuant to this Chapter within 48 hours of such a request.

(b) Every pharmacy permittee's designated agent shall maintain documentation of alleged medication errors and incidents described in G.S. 90-85.47(e)(1) for which the pharmacy permittee has knowledge. (1905, c. 108, s. 21; Rev., s. 4490; C.S., s. 6666; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 2005-427, s. 2; 2007-248, s. 1.)

#### **§ 90-85.26A. Clinical pharmacist practitioners subcommittee.**

The North Carolina Board of Pharmacy shall appoint and maintain a subcommittee of the Board consisting of four licensed pharmacists to work jointly with the subcommittee of the North Carolina Medical Board to develop rules to govern the provision of drug therapy management by clinical pharmacist practitioners and to determine reasonable fees to accompany an application for approval or renewal of such approval as provided in G.S. 90-6. The rules developed by this subcommittee shall govern the performance of acts by clinical pharmacist practitioners and shall become effective when they have been adopted by both Boards. (1999-290, s. 6.)

#### **§ 90-85.27. Definitions.**

As used in G.S. 90-85.28 through G.S. 90-85.31:

- (1) "Equivalent drug product" means a drug product which has the same established name, active ingredient, strength, quantity, and dosage form, and which is therapeutically equivalent to the drug product identified in the prescription;
- (2) "Established name" has the meaning given in section 502(e)(3) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 352(e)(3);
- (3) "Good manufacturing practice" has the meaning given it in Part 211 of Chapter 1 of Title 21 of the Code of Federal Regulations;
- (4) "Manufacturer" means the actual manufacturer of the finished dosage form of the drug;
- (4a) "Narrow therapeutic index drugs" means those pharmaceuticals having a narrowly defined range between risk and benefit. Such drugs have less than a twofold difference in the minimum toxic concentration and minimum effective concentration in the blood or are those drug product formulations that exhibit limited or erratic absorption, formulation-dependent bioavailability, and wide inpatient pharmacokinetic variability that requires blood-level monitoring. Drugs identified as having narrow therapeutic indices shall be designated by the North Carolina Secretary of Health and Human Services upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board, as narrow therapeutic index drugs and shall be subject to the provisions of G.S. 90-85.28(b1). The North Carolina Board of Pharmacy shall submit the list of narrow therapeutic index drugs to the Codifier of Rules, in a timely fashion for publication in January of each year in the North Carolina Register.
- (5) "Prescriber" means anyone authorized to prescribe drugs pursuant to the laws of this State. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3; 1983, c. 196, s. 9; 1997-76, s. 1; 1997-443, s. 11A.118(b).)

#### **§ 90-85.28. Selection by pharmacists permissible; prescriber may permit or prohibit selection; price limit on selected drugs.**

(a) A pharmacist dispensing a prescription for a drug product prescribed by its brand name may select any equivalent drug product which meets the following standards:

- (1) The manufacturer's name and the distributor's name, if different from the manufacturer's name, shall appear on the label of the stock package;
- (2) It shall be manufactured in accordance with current good manufacturing practices;
- (3) Effective January 1, 1982, all oral solid dosage forms shall have a logo, or other identification mark, or the product name to identify the manufacturer or distributor;

- (4) The manufacturer shall have adequate provisions for drug recall; and
  - (5) The manufacturer shall have adequate provisions for return of outdated drugs, through his distributor or otherwise.
- (b) The pharmacist shall not select an equivalent drug product if the prescriber instructs otherwise by one of the following methods:
- (1) A prescription form shall be preprinted or stamped with two signature lines at the bottom of the form which read:
 

"_____	"_____
Product Selection Permitted	Dispense as Written"

 On this form, the prescriber shall communicate his instructions to the pharmacist by signing the appropriate line.
  - (2) In the event the preprinted or stamped prescription form specified in (b)(1) is not readily available, the prescriber may handwrite "Dispense as Written" or words or abbreviations of the same meaning on a prescription form.
  - (3) When ordering a prescription orally, the prescriber shall specify either that the prescribed drug product be dispensed as written or that product selection is permitted. The pharmacist shall note the instructions on the file copy of the prescription and retain the prescription form for the period prescribed by law.
- (b1) A prescription for a narrow therapeutic index drug shall be refilled using only the same drug product by the same manufacturer that the pharmacist last dispensed under the prescription, unless the prescriber is notified by the pharmacist prior to the dispensing of another manufacturer's product, and the prescriber and the patient give documented consent to the dispensing of the other manufacturer's product. For purposes of this subsection, the term "refilled" shall include a new prescription written at the expiration of a prescription which continues the patient's therapy on a narrow therapeutic index drug.
- (c) The pharmacist shall not select an equivalent drug product unless its price to the purchaser is less than the price of the prescribed drug product. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3; 1997-76, s. 2.)

#### **§ 90-85.29. Prescription label.**

The prescription label of every drug product dispensed shall contain the brand name of any drug product dispensed, or in the absence of a brand name, the established name. The prescription drug label of every drug product dispensed shall:

- (1) Contain the discard date when dispensed in a container other than the manufacturer's original container. The discard date shall be the earlier of one year from the date dispensed or the manufacturer's expiration date, whichever is earlier, and
- (2) Not obscure the expiration date and storage statement when the product is dispensed in the manufacturer's original container.

As used in this section, "expiration date" means the expiration date printed on the original manufacturer's container, and "discard date" means the date after which the drug product dispensed in a container other than the original manufacturer's container shall not be used. Nothing in this section shall impose liability on the dispensing pharmacist or the prescriber for damages related to or caused by a drug product that loses its effectiveness prior to the expiration or disposal date displayed by the pharmacist or prescriber. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3; 1993, c. 529, s. 7.5.)

#### **§ 90-85.30. Prescription record.**

The pharmacy file copy of every prescription shall include the brand or trade name, if any, or the established name and the manufacturer of the drug product dispensed. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3.)

#### **§ 90-85.31. Prescriber and pharmacist liability not extended.**

The selection of an equivalent drug product pursuant to this Article shall impose no greater liability upon the pharmacist for selecting the dispensed drug product or upon the prescriber of the same than would be incurred by either for dispensing the drug product specified in the prescription. (1979, c. 1017, s. 1; 1981 (Reg. Sess., 1982), c. 1188, s. 3.)

#### **§ 90-85.32. Rules pertaining to filling, refilling, transfer, and mail or common-carrier delivery of prescription orders.**

(a) Except as otherwise provided in this section, the Board may adopt rules governing the filling, refilling and transfer of prescription orders not inconsistent with other provisions of law regarding the distribution of drugs

and devices. The rules shall assure the safe and secure distribution of drugs and devices. Prescriptions marked PRN shall not be refilled more than one year after the date issued by the prescriber unless otherwise specified.

(b) Notwithstanding G.S. 90-85.6, the Board shall not adopt rules pertaining to the shipment, mailing, or other manner of delivery of dispensed legend drugs that are more restrictive than federal statutes or regulations governing the delivery of prescription medications by mail or common carrier. (1981 (Reg. Sess., 1982), c. 1188, s. 1; 1998-212, s. 12.3B(c).)

**§ 90-85.33. Unit dose medication systems.**

The Board may adopt regulations governing pharmacists providing unit dose medication systems. The regulations shall ensure the safe and proper distribution of drugs in the patient's best health interests. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

**§ 90-85.34. Unique pharmacy practice.**

Consistent with the provisions of this Article, the Board may regulate unique pharmacy practices including, but not limited to, nuclear pharmacy and clinical pharmacy, to ensure the best interests of patient health and safety. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

**§ 90-85.34A. Public health pharmacy practice.**

(a) A registered nurse in a local health department clinic may dispense prescription drugs and devices, other than controlled substances as defined in G.S. 90-87, under the following conditions:

- (1) The registered nurse has training acceptable to the Board in the labeling and packaging of prescription drugs and devices;
- (2) Dispensing by the registered nurse shall occur only at a local health department clinic;
- (3) Only prescription drugs and devices contained in a formulary recommended by the Department of Health and Human Services and approved by the Board shall be dispensed;
- (4) The local health department clinic shall obtain a pharmacy permit in accordance with G.S. 90-85.21;
- (5) Written procedures for the storage, packaging, labeling and delivery of prescription drugs and devices shall be approved by the Board; and
- (6) The pharmacist-manager, or another pharmacist at his direction, shall review dispensing records at least weekly, provide consultation where appropriate, and be responsible to the Board for all dispensing activity at the local health department clinic.

(b) This section is applicable only to prescriptions issued on behalf of persons receiving local health department clinic services and issued by an individual authorized by law to prescribe drugs and devices.

(c) This section does not affect the practice of nurse practitioners pursuant to G.S. 90-18.2 or of physician assistants pursuant to G.S. 90-18.1. (1985, c. 359; 1989 (Reg. Sess., 1990), c. 1004, s. 2; 1997-443, s. 11A.22.)

**§ 90-85.35. Availability of patient records.**

Pharmacists employed in health care facilities shall have access to patient records maintained by those facilities when necessary for the pharmacist to provide pharmaceutical services. The pharmacist shall make appropriate entries in patient records. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

**§ 90-85.36. Availability of pharmacy records.**

(a) Except as provided in subsections (b) and (c) below, written prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and any person having custody of or access to the prescription orders may divulge the contents or provide a copy only to the following persons:

- (1) An adult patient for whom the prescription was issued or a person who is legally appointed guardian of that person;
- (2) An emancipated minor patient for whom the prescription order was issued or a person who is the legally appointed guardian of that patient;
- (3) An unemancipated minor patient for whom the prescription order was issued when the minor's consent is sufficient to authorize treatment of the condition for which the prescription was issued;
- (4) A parent or person in loco parentis of an unemancipated minor patient for whom the prescription order was issued when the minor's consent is not sufficient to authorize treatment for the condition for which the prescription is issued;
- (5) The licensed practitioner who issued the prescription;
- (6) The licensed practitioner who is treating the patient for whom the prescription was issued;

- (7) A pharmacist who is providing pharmacy services to the patient for whom the prescription was issued;
- (8) Anyone who presents a written authorization for the release of pharmacy information signed by the patient or his legal representative;
- (9) Any person authorized by subpoena, court order or statute;
- (10) Any firm, association, partnership, business trust, corporation or company charged by law or by contract with the responsibility of providing for or paying for medical care for the patient for whom the prescription order was issued;
- (11) A member or designated employee of the Board;
- (12) The executor, administrator or spouse of a deceased patient for whom the prescription order was issued;
- (13) Researchers and surveyors who have approval from the Board. The Board shall issue this approval when it determines that there are adequate safeguards to protect the confidentiality of the information contained in the prescription orders and that the researchers or surveyors will not publicly disclose any information that identifies any person; or
- (14) The person owning the pharmacy or his authorized agent.

(b) A pharmacist may disclose any information to any person only when he reasonably determines that the disclosure is necessary to protect the life or health of any person.

(c) Records required to be kept by G.S. 90-93(d) (Schedule V) are not public records and shall be disclosed at the pharmacist's discretion. (1905, c. 108, s. 21; Rev., s. 4490; C.S., s. 6666; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1991, c. 125, s. 3.)

#### **§ 90-85.37. Embargo.**

Notwithstanding any other provisions of law, whenever an authorized representative of the Board has reasonable cause to believe that any drug or device presents a danger to the public health, he shall affix to the drug or device a notice that the article is suspected of being dangerous to the public health and warning all persons not to remove or dispose of the article. Whenever an authorized representative of the Board has reasonable cause to believe that any drug or device presents a danger to the public health and that there are reasonable grounds to believe that it might be disposed of pending a judicial resolution of the matter, he shall seize the article and take it to a safe and secure place. When an article has been embargoed under this section, the Board shall, as soon as practical, file a petition in Orange County District Court for a condemnation order for such article. If the judge determines after hearing, that the article is not dangerous to the public health, the Board shall direct the immediate removal of the tag or other marking, and where appropriate, shall direct that the article be returned to its owner. If the judge finds the article is dangerous to the public health, he shall order its destruction at the owner's expense and under the Board's supervision. If the judge determines that the article is dangerous to the public health, he shall order the owner of the article to pay all court costs, reasonable attorney's fees, storage fees, and all other costs incident to the proceeding. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### **§ 90-85.38. Disciplinary authority.**

(a) The Board may, in accordance with Chapter 150B of the General Statutes, issue a letter of reprimand or suspend, restrict, revoke, or refuse to grant or renew a license to practice pharmacy, or require licensees to successfully complete remedial education if the licensee has done any of the following:

- (1) Made false representations or withheld material information in connection with securing a license or permit.
- (2) Been found guilty of or plead guilty or nolo contendere to any felony in connection with the practice of pharmacy or the distribution of drugs.
- (3) Indulged in the use of drugs to an extent that renders the pharmacist unfit to practice pharmacy.
- (4) Made false representations in connection with the practice of pharmacy that endanger or are likely to endanger the health or safety of the public, or that defraud any person.
- (5) Developed a physical or mental disability that renders the pharmacist unfit to practice pharmacy with reasonable skill, competence and safety to the public.
- (6) Failed to comply with the laws governing the practice of pharmacy and the distribution of drugs.
- (7) Failed to comply with any provision of this Article or rules adopted by the Board.
- (8) Engaged in, or aided and abetted an individual to engage in, the practice of pharmacy without a license.
- (9) Been negligent in the practice of pharmacy.

(b) The Board, in accordance with Chapter 150B of the General Statutes, may suspend, revoke, or refuse to grant or renew any permit for the same conduct as stated in subsection (a).

(c) Any license or permit obtained through false representation or withholding of material information shall be void and of no effect. (1905, c. 108, ss. 17, 25; Rev., s. 4483; C.S., s. 6661; 1967, c. 807; 1973, c. 138; 1981, c. 412, s. 4; c. 717, s. 8; c. 747, s. 66; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1987, c. 827, s. 1; 2001-375, s. 5.)

#### **§ 90-85.39. Injunctive authority.**

The Board may apply to any court for an injunction to prevent violations of this Article or of any rules enacted pursuant to it. The court is empowered to grant the injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation. (1981 (Reg. Sess., 1982), c. 1188, s. 1.)

#### **§ 90-85.40. Violations.**

(a) It shall be unlawful for any owner or manager of a pharmacy or other place to allow or cause anyone other than a pharmacist to dispense or compound any prescription drug unless that person is a pharmacy technician or a pharmacy student who is enrolled in a school of pharmacy approved by the Board and is working under the supervision of a pharmacist.

(b) Every person lawfully authorized to compound or dispense prescription drugs shall comply with all the laws and regulations governing the labeling and packaging of such drugs by pharmacists.

(c) It shall be unlawful for any person not licensed as a pharmacist to compound or dispense any prescription drug, unless that person is a pharmacy technician or a pharmacy student who is enrolled in a school of pharmacy approved by the Board and is working under the supervision of a pharmacist.

(d) It shall be unlawful for any person to manage any place of business where devices are dispensed or sold at retail without a permit as required by this Article.

(d1) It is unlawful for a person to own or manage a place of business from which medical equipment is delivered without a permit as required by this Article.

(e) It shall be unlawful for any person without legal authorization to dispose of an article that has been embargoed under this Article.

(f) It shall be unlawful to violate any provision of this Article or of any rules or regulations enacted pursuant to it.

(g) This Article shall not be construed to prohibit any person from performing an act that person is authorized to perform pursuant to North Carolina law. Health care providers who are authorized to prescribe drugs without supervision are authorized to dispense drugs without supervision.

(h) A violation of this Article shall be a Class 1 misdemeanor. (1905, c. 108, ss. 4, 23, 24; Rev., ss. 3649, 3650, 4487; C.S., ss. 6667, 6668, 6669; 1921, c. 68, ss. 6, 7; Ex. Sess. 1924, c. 116; 1953, c. 1051; 1957, c. 617; 1959, c. 1222; 1981 (Reg. Sess., 1982), c. 1188, s. 1; 1993, c. 539, s. 621; 1994, Ex. Sess., c. 24, s. 14(c); 1993 (Reg. Sess., 1994), c. 692, s. 4; 2001-375, ss. 6, 7.)

#### **§ 90-85.41. Board agreements with special peer review organizations for impaired pharmacy personnel.**

(a) The North Carolina Board of Pharmacy may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with special impaired pharmacy personnel peer review organizations. Peer review activities to be covered by such agreements shall include investigation, review and evaluation of records, reports, complaints, litigation, and other information about the practices and practice patterns of pharmacy personnel licensed or registered by the Board, as such matters may relate to impaired pharmacy personnel. Special impaired pharmacy personnel peer review organizations may include a statewide supervisory committee and various regional and local components or subgroups.

(b) Agreements authorized under this section shall include provisions for the impaired pharmacy personnel peer review organizations to receive relevant information from the Board and other sources, conduct any investigation, review, and evaluation in an expeditious manner, provide assurance of confidentiality of nonpublic information and of the peer review process, make reports of investigations and evaluations to the Board, and to do other related activities for operating and promoting a coordinated and effective peer review process. The agreements shall include provisions assuring basic due process for pharmacy personnel that become involved.

(c) The impaired pharmacy personnel peer review organizations that enter into agreements with the Board shall establish and maintain a program for impaired pharmacy personnel licensed or registered by the Board for the purpose of identifying, reviewing, and evaluating the ability of those pharmacists to function as pharmacists, and pharmacy technicians to function as pharmacy technicians, and to provide programs for treatment and rehabilitation. The Board may provide funds for the administration of these impaired pharmacy personnel peer review programs. The Board shall adopt rules to apply to the operation of impaired pharmacy personnel peer review programs, with provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii) procedures for receipt and

use of information of suspected impairment; (iv) procedures for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation, posttreatment support, and performance; (vi) reports of individual cases to the Board; (vii) periodic reporting of statistical information; and (viii) assurance of confidentiality of nonpublic information and of the peer review process.

(d) Upon investigation and review of a pharmacist licensed by the Board, or a pharmacy technician registered with the Board, or upon receipt of a complaint or other information, an impaired pharmacy personnel peer review organization that enters into a peer review agreement with the Board shall report immediately to the Board detailed information about any pharmacist licensed or pharmacy technician registered by the Board, if:

- (1) The pharmacist or pharmacy technician constitutes an imminent danger to the public or himself or herself.
- (2) The pharmacist or pharmacy technician refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence.
- (3) It reasonably appears that there are other grounds for disciplinary action.

(e) Any confidential patient information and other nonpublic information acquired, created, or used in good faith by an impaired pharmacy personnel peer review organization pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case. No person participating in good faith in an impaired pharmacy personnel peer review program developed under this section shall be required in a civil case to disclose any information (including opinions, recommendations, or evaluations) acquired or developed solely in the course of participating in the program.

(f) Impaired pharmacy personnel peer review activities conducted in good faith pursuant to any program developed under this section shall not be grounds for civil action under the laws of this State, and the activities are deemed to be State directed and sanctioned and shall constitute "State action" for the purposes of application of antitrust laws. (1999-81, s. 1; 2001-375, s. 8.)

§ 90-85.42. Reserved for future codification purposes.

§ 90-85.43. Reserved for future codification purposes.

**§ 90-85.44. Drug, Supplies, and Medical Device Repository Program established.**

(a) Definitions. – As used in this section unless the context clearly requires otherwise, the following definitions apply:

- (1) Board. – As defined in G.S. 90-85.3.
- (2) Dispense. – As defined in G.S. 90-85.3.
- (3) Drug. – As defined in G.S. 90-85.3.
- (4) Eligible donor. – The following are eligible donors under the Program:
  - a. A patient or the patient's family member.
  - b. A manufacturer, wholesaler, or supplier of drugs, supplies, or medical devices.
  - c. A pharmacy, free clinic, hospital, or a hospice care program.
- (5) Eligible patient. – An uninsured or underinsured patient who meets the eligibility criteria established by the Board, free clinic, or pharmacy.
- (6) Free clinic. – A private, nonprofit, community-based organization that provides health care services at little or no charge to low-income, uninsured, and underinsured persons through the use of volunteer health care professionals.
- (7) Medical device. – A device as defined in G.S. 90-85.3(e).
- (8) Pharmacist. – As defined in G.S. 90-85.3.
- (9) Pharmacy. – As defined in G.S. 90-85.3.
- (10) Practitioner. – A physician or other provider of health services licensed or otherwise permitted to distribute, dispense, or administer drugs, supplies, or medical devices.
- (11) Program. – The Drug, Supplies, and Medical Device Repository Program established under this act.
- (12) Supplies. – Supplies associated with or necessary for the administration of a drug.

(b) Program Purpose. – The Board shall establish and administer the Program. The purpose of the Program is to allow an eligible donor to donate unused drugs, supplies, and medical devices to uninsured and underinsured patients in this State. The unused drugs, supplies, and medical devices shall be donated to a free clinic or pharmacy that elects to participate in the Program. A free clinic that receives a donated unused drug, supplies, or medical device under the Program may distribute the drug, supplies, or medical device to another free clinic or pharmacy for use under the Program.

(c) Requirements of Participating Pharmacists or Free Clinics. – A pharmacist may accept and dispense drugs, supplies, and medical devices donated to the Program to eligible patients if all of the following requirements are met:

- (1) The drug, supplies, or medical device is in the original, unopened, sealed, and tamper-evident packaging or, if packaged in single-unit doses, the single-unit dose packaging is unopened.
- (2) The pharmacist has determined that the drug, supplies, or medical device is safe for redistribution.
- (3) The drug bears an expiration date that is later than six months after the date that the drug was donated.
- (4) The drug, supplies, or medical device is not adulterated or misbranded, as determined by a pharmacist.
- (5) The drug, supplies, or medical device is prescribed by a practitioner for use by an eligible patient and is dispensed by a pharmacist.

(d) Fee. – A participating pharmacist or free clinic shall not resell a drug, supplies, or a medical device donated to the Program. A pharmacist or free clinic may charge an eligible patient a handling fee to receive a donated drug, supplies, or medical device, which shall not exceed the amount specified in rules adopted by the Board.

(e) Program Participation Voluntary. – Nothing in this section requires a free clinic or pharmacy to participate in the Program.

(f) Eligible Patient. – The Board shall establish eligibility criteria for individuals to receive donated drugs, supplies, or medical devices. Board eligibility criteria shall provide that individuals meeting free clinic or pharmacy eligibility criteria are eligible patients. Dispensing shall be prioritized to patients who are uninsured or underinsured. Dispensing to other patients shall be permitted if an uninsured or underinsured patient is not available.

(g) Rules. – The Board shall adopt rules necessary for the implementation of the Program. Rules adopted by the Board shall provide for the following:

- (1) Requirements for free clinics and pharmacies to accept and dispense donated drugs, supplies, and medical devices pursuant to the Program, including eligibility criteria, confidentiality of donors, and standards and procedures for a free clinic or pharmacy to accept and safely store and dispense donated drugs, supplies, and medical devices.
- (2) The amount of the maximum handling fee that a free clinic or pharmacy may charge for distributing or dispensing donated drugs, supplies, or medical devices.
- (3) A list of drugs, supplies, and medical devices, arranged either by category or by individual drug, supply, or medical device, that the Program will accept for dispensing.

(h) Immunity. – The following limited immunities apply under the Program:

- (1) Unless a pharmaceutical manufacturer exercises bad faith, the manufacturer is not subject to criminal or civil liability for injury, death, or loss to a person or property for matters related to the donation, acceptance, or dispensing of a drug or medical device manufactured by the manufacturer that is donated by any person under the Program, including liability for failure to transfer or communicate product or consumer information or the expiration date of the donated drug or medical device.
- (2) The following individuals or entities are immune from civil liability for an act or omission that causes injury to or the death of an individual to whom the drug, supplies, or medical device is dispensed under the Program, and no disciplinary action may be taken against a pharmacist or practitioner as long as the drug, supplies, or medical device is donated in accordance with the requirements of this section:
  - a. A pharmacy or free clinic participating in the Program.
  - b. A pharmacist dispensing a drug, supplies, or medical device pursuant to the Program.
  - c. A practitioner administering a drug, supplies, or medical devices pursuant to the Program.
  - d. An eligible donor who has donated a drug, supplies, or a medical device pursuant to the Program. (2009-423, s. 2.)

#### Article 4B.

#### Pharmacy Quality Assurance Protection Act.

#### § 90-85.45. Legislative intent.

It is the intent of the General Assembly to require pharmacy quality assurance programs to further contribute to and enhance the quality of health care and reduce medication errors in this State by facilitating a process for the continuous review of the practice of pharmacy. (2005-427, s. 3.)

**§ 90-85.46. Definitions.**

The following definitions shall apply in this Article:

- (1) Board. – The North Carolina Board of Pharmacy.
- (2) Pharmacy quality assurance program. – A program pertaining to one of the following:
  - a. A pharmacy association created under G.S. 90-85.4 or incorporated under Chapter 55A of the General Statutes that evaluates the quality of pharmacy services and alleged medication errors and incidents and makes recommendations to improve the quality of pharmacy services.
  - b. A program established by a person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21(a) to evaluate the quality of pharmacy services and alleged medication errors and incidents and make recommendations to improve the quality of pharmacy services.
  - c. A quality assurance committee or medical or peer review committee established by a health care provider licensed under this Chapter or a health care facility licensed under Chapter 122C, 131D, or 131E of the General Statutes that includes evaluation of the quality of pharmacy services and alleged medication errors and incidents and makes recommendations to improve the quality of pharmacy services. (2005-427, s. 3.)

**§ 90-85.47. Pharmacy quality assurance program required; limited liability; discovery.**

(a) Every person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21(a), shall establish or participate in a pharmacy quality assurance program as defined under G.S. 90-85.46(2), to evaluate the following:

- (1) The quality of the practice of pharmacy.
- (2) The cause of alleged medication errors and incidents.
- (3) Pharmaceutical care outcomes.
- (4) Possible improvements for the practice of pharmacy.
- (5) Methods to reduce alleged medication errors and incidents.

(b) There shall be no monetary liability on the part of, or no cause of action for damages arising against, any member of a duly appointed pharmacy quality assurance program or any pharmacy or pharmacist furnishing information to a pharmacy quality assurance program or any person, including a person acting as a witness or incident reporter to or investigator for a pharmacy quality assurance program, for any act or proceeding undertaken or performed within the scope of the functions of the pharmacy quality assurance program.

(c) This section shall not be construed to confer immunity from liability on any professional association, pharmacy or pharmacist, or health care provider while performing services other than as a member of a pharmacy quality assurance program or upon any person, including a person acting as a witness or incident reporter to or investigator for a pharmacy quality assurance program, for any act or proceeding undertaken or performed outside the scope of the functions of the pharmacy quality assurance program. Except as provided in subsection (a) or (b) of this section, where a cause of action would arise against a pharmacy, pharmacist, or an individual health care provider, the cause of action shall remain in effect.

(d) The proceedings of a pharmacy quality assurance program, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1 or G.S. 58-2-100 and shall not be subject to discovery or introduction into evidence in any civil action, administrative hearing or Board investigation against a pharmacy, pharmacist, pharmacy technician, a pharmacist manager or a permittee or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action, administrative hearing or Board Investigation results from matters that are the subject of evaluation and review by the pharmacy quality assurance program. No person who was in attendance at a meeting of the pharmacy quality assurance program shall be required to testify in any civil action, administrative hearing or Board investigation as to any evidence or other matters produced or presented during the proceedings of the pharmacy quality assurance program or as to any findings, recommendations, evaluations, opinions, or other actions of the pharmacy quality assurance program or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the pharmacy quality assurance program. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or

considered during proceedings of the pharmacy quality assurance program. A member of the pharmacy quality assurance program may testify in a civil or administrative action but cannot be asked about the person's testimony before the pharmacy quality assurance program or any opinions formed as a result of the pharmacy quality assurance program. Nothing in this subsection shall preclude:

- (1) A pharmacy, pharmacist, pharmacy technician, or other person or any agent or representative of a pharmacy, pharmacist, pharmacy technician or other person participating on a pharmacy quality assurance program may use otherwise privileged, confidential information for legitimate internal business or professional purposes of the pharmacy quality assurance program.
- (2) A pharmacy, pharmacist, pharmacy technician, other person participating on the committee, or any person or organization named as a defendant in a civil action, a respondent in an administrative proceeding, or a pharmacy, pharmacist, or pharmacy technician subject to a Board investigation as a result of participation in the pharmacy quality assurance program may use otherwise privileged, confidential information in the pharmacy quality assurance program or person's own defense. A plaintiff in the civil action or the agency in the administrative proceeding may disclose records or determinations of or communications to the pharmacy quality assurance program in rebuttal to information given by the defendant, respondent, or pharmacist subject to Board investigation.

(e) Upon the Board providing written notice to the pharmacy permittee's designated agent under G.S. 90-85.21(a) and pharmacist of an investigation against the pharmacist, including the specific reason for the Board investigation, the pharmacy permittee's designated agent shall compile and provide documentation within 10 days of the receipt of the notice of any alleged medication error or incident committed by the pharmacist in the 12 months preceding the receipt of the notice, that the pharmacy permittee has knowledge of, when:

- (1) The alleged medication error or incident resulted in any of the following:
  - a. A visit to a physician or an emergency room attributed to the alleged medication incident or error.
  - b. Hospitalization requiring an overnight stay or longer.
  - c. A fatality.
- (2) The Board has initiated a disciplinary proceeding against the pharmacist as a result of the investigation. Unless the documentation relates to an alleged medication error or incident that was specifically the cause of the investigation, the Board may review the documentation only after the Board has made findings of fact and conclusions of law pursuant to G.S. 150B-42(a) and may use the documentation in determining the remedial action the pharmacist shall undergo as part of the disciplinary action imposed by the Board. The documentation shall be released only to the Board or its designated employees pursuant to this subsection and shall not otherwise be released except as required by law.

The documentation provided to the Board shall not include the proceedings and records of a pharmacy quality assurance program or information prepared by the pharmacy solely for consideration by or upon request of a pharmacy quality assurance program.

(f) Nothing in this section shall preclude the Board from obtaining information concerning a specific alleged medication error or incident that is the subject of a Board investigation resulting from a complaint to the Board. (2005-427, s. 3.)

## PERTINENT PART—STATUTES—MEDICINE AND ALLIED OCCUPATIONS

### § 90-8.2. Appointment of subcommittees.

...(b) The North Carolina Medical Board shall appoint and maintain a subcommittee of four licensed physicians to work jointly with a subcommittee of the North Carolina Board of Pharmacy to develop rules to govern the performance of medical acts by clinical pharmacist practitioners, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars (\$100.00) and for renewal of approval not to exceed fifty dollars (\$50.00). Rules recommended by the subcommittee shall be adopted in accordance with Chapter 150B of the General Statutes by both the North Carolina Medical Board and the North Carolina Board of Pharmacy and shall not become effective until adopted by both Boards. The North Carolina Medical Board shall have responsibility for ensuring compliance with these rules. (C.S., s. 6610; 1921, c. 47, s. 5; Ex. Sess. 1921, c. 44, s. 2; 1973, c. 92, s. 2; 1981, c. 665, s. 1; 1983, c. 53; 1995, c. 94, s. 9; c. 405, s. 2; 1999-290, s. 1; 2007-346, s. 7; 2007-418, s. 3.)

**§ 90-18 c...(3a) Practicing without license; practicing defined; penalties.**

*(Effective July 1, 2000)* The provision of drug therapy management by a licensed pharmacist engaged in the practice of pharmacy pursuant to an agreement that is physician, pharmacist, patient, and disease specific when performed in accordance with rules and rules developed by a joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and approved by both Boards. Drug therapy management shall be defined as: (i) the implementation of predetermined drug therapy which includes diagnosis and product selection by the patient's physician; (ii) modification of prescribed drug dosages, dosage forms, and dosage schedules; and (iii) ordering tests; (i), (ii), and (iii) shall be pursuant to an agreement that is physician, pharmacist, patient, and disease specific. (...1999-290, s. 1)

**§ 90-18.1 Limitations on physician assistants.**

- (a) Any person who is licensed under the provisions of G.S. 90-11 to perform medical acts, tasks, and functions as an assistant to a physician may use the title "physician assistant". Any other person who uses the title in any form or holds out to be a physician assistant or to be so licensed, shall be deemed to be in violation of this Article.
- (b) Physician assistants are authorized to write prescriptions for drugs under the following conditions:
- (1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to write prescriptions with such limitations as the Board may determine to be in the best interest of patient health and safety.
  - (2) The physician assistant holds a current license issued by the Board.
  - (3) The North Carolina Medical Board has assigned an identification number to the physician assistant which is shown on the written prescription.
  - (4) The supervising physician has provided to the physician assistant written instructions about indications and contraindications for pre- scribing drugs and a written policy for periodic review by the physician of the drugs prescribed.
- (c) Physician assistants are authorized to compound and dispense drugs under the following conditions:
- (1) The function is performed under the supervision of a licensed pharmacist.
  - (2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.
  - (3) The physician assistant holds a current license issued by the Board.
- (d) Physician assistants are authorized to order medications, tests and treatments in hospitals, clinics, nursing homes, and other health facilities under the following conditions:
- (1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to order medications, tests, and treatments with such limitations as the Board may determine to be in the best interest of patient health and safety.
  - (2) The physician assistant holds a current license issued by the Board.
  - (3) The supervising physician has provided to the physician assistant written instructions about ordering medications, tests, and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, test, or treatment is ordered.
  - (4) The hospital or other health facility has adopted a written policy, approved by the medical staff after consultation with the nursing administration, about ordering medications, tests, and treatments, including procedures for verification of the physician assistants' orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.
- (e) Any prescription written by a physician assistant or order given by a physician assistant for medications, tests, or treatments shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant and the supervising physician shall be responsible for authorizing the prescription or order.
- (f) Any registered nurse or licensed practical nurse who receives an order from a physician assistant for medications, tests, or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician. (1975, c. 627; 1977, c. 904, s. 1; 1977, 2<sup>nd</sup> Sess., c. 1194, s. 1; 1995, c. 94, s. 20; 1997-511, s. 5.)

**§ 90-18.2. Limitations on nurse practitioners.**

- (a) Any nurse approved under the provisions of G.S. 90-18(14) to perform medical acts, tasks or functions may use the title "nurse practitioner." Any other person who uses the title in any form or holds out to be a nurse practitioner or to be so approved, shall be deemed to be in violation of this Article.

- (b) Nurse practitioners are authorized to write prescriptions for drugs under the following conditions:
- (1) The North Carolina Medical Board and Board of Nursing have adopted regulations developed by a joint subcommittee governing the approval of individual nurse practitioners to write prescriptions with such limitations as the boards may determine to be in the best interest of patient health and safety;
  - (2) The nurse practitioner has current approval from the boards;
  - (3) The North Carolina Medical Board has assigned an identification number to the nurse practitioner which is shown on the written prescription; and
  - (4) The supervising physician has provided to the nurse practitioner written instructions about indications and contraindications for pre- scribing drugs and a written policy for periodic review by the physician of the drugs prescribed.
- (c) Nurse practitioners are authorized to compound and dispense drugs under the following conditions:
- (1) The function is performed under the supervision of a licensed pharmacist; and
  - (2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.
- (d) Nurse practitioners are authorized to order medications, tests and treatments in hospitals, clinics, nursing homes and other health facilities under the following conditions:
- (1) The North Carolina Medical Board and Board of Nursing have adopted regulations developed by a joint subcommittee governing the approval of individual nurse practitioners to order medications, tests and treatments with such limitations as the boards may determine to be in the best interest of patient health and safety;
  - (2) The nurse practitioner has current approval from the boards;
  - (3) The supervising physician has provided to the nurse practitioner written instructions about ordering medications, tests and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, test or treatment is ordered; and
  - (4) The hospital or other health facility has adopted a written policy, approved by the medical staff after consultation with the nursing administration, about ordering medications, tests and treatments, including procedures for verification of the nurse practitioner's orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.
- (e) Any prescription written by a nurse practitioner or order given by a nurse practitioner for medications, tests or treatments shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner and such supervising physician shall be responsible for authorizing such prescription or order.
- (f) Any registered nurse or licensed practical nurse who receives an order from a nurse practitioner for medications, tests or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician. (1977, 2<sup>nd</sup> Sess., c. 1194, s. 2; 1995, c. 94, s. 21.)

**§ 90-18.4. (Effective July 1, 2000) Limitations on clinical pharmacist practitioners.**

- (a) Any pharmacist who is approved under the provisions of G.S.-90- 18(c)(3a) to perform medical acts, tasks, and functions may use the title "clinical pharmacist practitioner". Any other person who uses the title in any form or holds himself or herself out to be a clinical pharmacist practitioner or to be so licensed shall be deemed to be in violation of this Article.
- (b) Clinical pharmacist practitioners are authorized to implement predetermined drug therapy, which includes diagnosis and product selection by the patient's physician, modify prescribed drug dosages, dosage forms, and dosage schedules, and to order laboratory tests pursuant to a drug therapy management agreement that is physician, pharmacist, patient, and disease specific under the following conditions:
- (1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules developed by a joint subcommittee governing the approval of individual clinical pharmacist practitioners to practice drug therapy management with such limitations that the Boards determine to be in the best interest of patient health and safety.
  - (2) The clinical pharmacist practitioner has current approval from both Boards.
  - (3) The North Carolina Medical Board has assigned an identification number to the clinical pharmacist practitioner, which is shown on written prescriptions written by the clinical pharmacist practitioner.
  - (4) The drug therapy management agreement prohibits the substitution of a chemically dissimilar drug product by the pharmacist for the product prescription by the physician without the explicit consent of the physician and includes a policy for periodic review by the physician of the drugs modified pursuant to the agreement or changed with the consent of the physician.

(c) Clinical pharmacist practitioners in hospitals and other health facilities that have an established pharmacy and therapeutics committee or similar group that determines the prescription drug formulary or other list of drugs to be utilized in the facility and determines procedures to be followed when considering a drug for inclusion on the formulary and procedures to acquire a nonformulary drug for a patient may order medications and tests under the following conditions:

- (1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules governing the approval of individual clinical pharmacist practitioners to order medications and tests with such limitations as the Boards determine to be in the best interest of patient health and safety.
- (2) The clinical pharmacist practitioner has current approval from both Boards.
- (3) The supervising physician has provided to the clinical pharmacist practitioner written instructions for ordering, changing or substituting drugs, or ordering tests with provision for review of the order by the physician within a reasonable time, as determined by the Boards, after the medication or tests are ordered.
- (4) The hospital or health facility has adopted a written policy, approved by the medical staff after consultation with nursing administrators, concerning the ordering of medications and tests, including procedures for verification of the clinical pharmacist practitioner's orders by nurses and other facility employees and such other procedures that are in the best interest of patient health and safety.
- (5) Any drug therapy order written by a clinical pharmacist practitioner or order for medications or tests shall be deemed to have been authorized by the physician approved by the Boards as the supervisor of the clinical pharmacist practitioner and the supervising physician shall be responsible for authorizing the prescription order.

(d) Any registered nurse or licensed practical nurse who receives a drug therapy order from a clinical pharmacist practitioner for medications or tests is authorized to perform that order in the same manner as if the order was received from a licensed physician. (1999-290, s. 3.)

***End of Pertinent Part—Statutes—Medicine and Allied Occupations***

**PERTINENT PART—STATUTE & RULES—NC CONTROLLED SUBSTANCES ACT & REGULATIONS**

**§ 90-87. Definitions.**

As used in this Article:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:
  - a. A practitioner (or, in his presence, by his authorized agent), or
  - b. The patient or research subject at the direction and in the presence of the practitioner.
- (2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.
- (3) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice or its successor agency.
  - (a) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (4) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor included in Schedules I through VI of this Article.
- (5) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through VI of this Article.
- (5a) "Controlled substance analogue" means a substance
  - (i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II;
  - (ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or
  - (iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; and does not include (i) a controlled substance; (ii) any substance for which there is an approved new drug application; (iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under § 355 of Title 21 of the United States Code to the extent conduct with respect to such substance is pursuant to such exemption; or (iv) any substance to the extent not intended for human consumption

before such an exemption takes effect with respect to that substance. The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to subdivision 802(34) or 802(35) of Title 21 of the United States Code does not preclude a finding pursuant to this subdivision that the chemical is a controlled substance analogue.

- (6) "Counterfeit controlled substance" means:
- a. A controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports, or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser, or
  - b. Any substance which is by any means intentionally represented as a controlled substance. It is evidence that the substance has been intentionally misrepresented as a controlled substance if the following factors are established:
    1. The substance was packaged or delivered in a manner normally used for the illegal delivery of controlled substances.
    2. Money or other valuable property has been exchanged or requested for the substance, and the amount of that consideration was substantially in excess of the reasonable value of the substance.
    3. The physical appearance of the tablets, capsules or other finished product containing the substance is substantially identical to a specified controlled substance.
- (7) "Deliver" or "delivery" means the actual constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
- (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- (9) "Dispenser" means a practitioner who dispenses.
- (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- (11) "Distributor" means a person who distributes.
- (12) "Drug" means (a) substances recognized in the official United States Pharmacopeia, official Homeopathic Pharmacopeia of the United States, or official National Formulary, or any supplement to any of them; (b) substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; (c) substances (other than food) intended to affect the structure or any function of the body of man or other animals; and (d) substances intended for use as a component of any article specified in (a), (b), or (c) of this subdivision; but does not include devices or their components, parts, or accessories.
- (13) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from use of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.
- (14) "Immediate precursor" means a substance which the Commission has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.
- (a) The term "isomer" means, except as used in G.S.90-87(17)(d), G.S. 90-89(c), G S. 90-90(a)(4), and G. S. 90-95(h)(3), the optical isomer. As used in G.S. 90-89(c) the term "isomer" means the optical, position, or geometric isomer. As used in G.S. 90-87(17)(d), G.S. 90-90(a)(4), and G.S. 90-95(h)(3) the term "isomer" means the optical isomer or diastereoisomer.
- (15) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance by any means, whether directly or indirectly, artificially or naturally, or by extraction from substances of a natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; and "manufacture" further includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:
- a. By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or
  - b. By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale.

- (16) "Marijuana" means all parts of the plant of the genus *Cannabis*, whether growing or not, the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.
- (17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis.
- Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
  - Any salt compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause (a), but not including the isoquinoline alkaloids of opium.
  - Opium poppy and poppy straw.
  - Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
- (18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under G.S. 90-88, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.
- (19) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.
- (20) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- (21) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- (22) "Practitioner" means:
- A physician, dentist, optometrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.
  - A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.
- (23) "Prescription" means:
- A written order or other order which is promptly reduced to writing for a controlled substance as defined in this Article, or for a preparation, combination, or mixture thereof, issued by a practitioner who is licensed in this State to administer or prescribe drugs in the course of his professional practice; or issued by a practitioner serving on active duty with the armed forces of the United States or the United States Veterans Administration who is licensed in this or another state or Puerto Rico, provided the order is written for the benefit of eligible beneficiaries of armed services medical care, a prescription does not include an order entered in a chart or other medical record of a patient by a practitioner for the administration of a drug; or
  - A drug or preparation, or combination, or mixture thereof furnished pursuant to a prescription order.
- (24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
- (25) "Registrant" means a person registered by the Commission to manufacture, distribute, or dispense any controlled substance as required by this Article.
- (26) "State" means the State of North Carolina.
- (27) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use, or for the use of a member of his household, or for administration to an animal owned by him or by a member of his household (1971, c. 919, s.1; 1973, c. 476, s. 128; C. 540, ss. 2-4; c. 1358, ss. 1,15; 1977, c. 482, s. 6; 1981, c. 51, ss. 8, 9; c. 75, s. 1; c. 732; 1985, c. 491; 1987, c. 105, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 1030, s. 21; 1197-456, s. 27; 2003-249, s.2.)

**§ 90-88. Authority to control.**

(a) The Commission may add, delete, or reschedule substances within Schedules I through VI of this Article on the petition of any interested party, or its own motion. In every case the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding, deleting or rescheduling a controlled substance within Schedules I through VI of this Article, except as provided in subsection (d) of this section. A petition by the Commission, the North Carolina Department of Justice, or the North Carolina Board of Pharmacy to add, delete, or reschedule a controlled substance within Schedules I through VI of this Article shall be placed on the agenda, for consideration, at the next regularly scheduled meeting of the Commission, as a matter of right.

(a1) In making a determination regarding a substance, the Commission shall consider the following:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;
- (7) The potential of the substance to produce psychic or physiological dependence liability; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the required factors, the Commission shall make findings with respect thereto and shall issue an order adding, deleting or rescheduling the substance within Schedules I through VI of this Article.

(c) If the Commission designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as specified by Chapter 150B of the General Statutes is required if the Commission makes a decision to similarly control a substance. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to Chapter 150B of the General Statutes within 180 days of its decision to object.

(e) The Commission shall exclude any nonnarcotic substance from the provisions of this Article if such substance may, under the federal Food, Drug and Cosmetic Act, lawfully be sold over-the-counter without prescription.

(f) Authority to control under this Article does not include distilled spirits, wine, malt beverages, or tobacco.

(g) The Commission shall similarly exempt from the provisions of this Article any chemical agents and diagnostic reagents not intended for administration to humans or other animals, containing controlled substances which either (i) contain additional adulterant or denaturing agents so that the resulting mixture has no significant abuse potential, or (ii) are packaged in such a form or concentration that the particular form as packaged has no significant abuse potential, where such substance was exempted by the Federal Bureau of Narcotics and Dangerous Drugs.

(h) Repealed by Session Laws 1987, c. 413, s. 4.

(i) The North Carolina Department of Health and Human Services shall maintain a list of all preparations, compounds, or mixtures which are excluded, exempted and excepted from control under any schedule of this Article by the United States Drug Enforcement Administration and/or the Commission. This list and any changes to this list shall be mailed to the North Carolina Board of Pharmacy, the State Bureau of Investigation and each district attorney of this State. (1971, c. 919, s. 1; 1973, c. 476, s. 128; cc. 524, 541; c. 1358, ss. 2, 3, 15; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 1987, c. 413, ss. 1-4; 1989, c. 770, s. 16; 1997-443, s. 11A.118(a); 2000-189, s. 4; 2001-487, s. 22.)

#### **§ 90-89. Schedule I controlled substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

- (1) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
- a. Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
  - b. Acetylmethadol.
  - c. Repealed by Session Laws 1987, c. 412, s. 2.
  - d. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
  - e. Allylprodine.
  - f. Alphacetylmethadol.
  - g. Alphameprodine.
  - h. Alphamethadol.
  - i. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).
  - j. Benzethidine.
  - k. Betacetylmethadol.
  - l. Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
  - m. Beta-hydroxy-3-methylfentanyl (N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
  - n. Betameprodine.
  - o. Betamethadol.
  - p. Betaprodine.
  - q. Clonitazene.
  - r. Dextromoramide.
  - s. Diampromide.
  - t. Diethylthiambutene.
  - u. Difenoxin.
  - v. Dimenoxadol.
  - w. Dimepheptanol.
  - x. Dimethylthiambutene.
  - y. Dioxaphetyl butyrate.
  - z. Dipipanone.
  - aa. Ethylmethylthiambutene.
  - bb. Etonitazene.
  - cc. Etoxidine.
  - dd. Furethidine.
  - ee. Hydroxypethidine.
  - ff. Ketobemidone.
  - gg. Levomoramide.
  - hh. Levophenacilmorphan.
  - ii. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
  - jj. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-piperidyl]-N-Phenylpropanamide).
  - kk. 3-Methylthiofentanyl (N-[3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
  - lo. Morphidine.
  - mm. Noracetylmethadol.
  - nn. Norlevorphanol.
  - oo. Normethadone.
  - pp. Norpipanone.
  - qq. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl]-propanamide).
  - rr. Phenadoxone.
  - ss. Phenampromide.
  - tt. 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
  - uu. Phenomorphan.
  - vv. Phenoperidine.
  - ww. Piritamide.
  - xx. Proheptazine.
  - yy. Properidine.
  - zz. Propiram.
  - aaa. Racemoramide.

- bbb. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide.
  - ccc. Tilidine.
  - ddd. Trimeperidine.
- (2) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Acetorphine.
  - b. Acetyldihydrocodeine.
  - c. Benzylmorphine.
  - d. Codeine methylbromide.
  - e. Codeine-N-Oxide.
  - f. Cyrenorphine.
  - g. Desomorphine.
  - h. Dihydromorphine.
  - i. Etorphine (except hydrochloride salt).
  - j. Heroin.
  - k. Hydromorphanol.
  - l. Methyldesorphine.
  - m. Methyldihydromorphine.
  - n. Morphine methylbromide.
  - o. Morphine methylsulfonate.
  - p. Morphine-N-Oxide.
  - q. Myrophine.
  - r. Nicocodeine.
  - s. Nicomorphine.
  - t. Normorphine.
  - u. Pholcodine.
  - v. Thebacon.
  - w. Drotebanol.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. 3, 4-methylenedioxyamphetamine.
  - b. 5-methoxy-3, 4-methylenedioxyamphetamine.
  - c. 3, 4-Methylenedioxymethamphetamine (MDMA).
  - d. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA).
  - e. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA).
  - f. 3, 4, 5-trimethoxyamphetamine.
  - g. Alpha-ethyltryptamine. Some trade or other names: etryptamine, Monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.
  - h. Bufotenine.
  - i. Diethyltryptamine.
  - j. Dimethyltryptamine.
  - k. 4-methyl-2, 5-dimethoxyamphetamine.
  - l. Ibogaine.
  - m. Lysergic acid diethylamide.
  - n. Mescaline.
  - o. Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
  - p. N-ethyl-3-piperidyl benzilate.
  - q. N-methyl-3-piperidyl benzilate.

- r. Psilocybin.
  - s. Psilocin.
  - t. 2, 5-dimethoxyamphetamine.
  - u. 2, 5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
  - v. 4-bromo-2, 5-dimethoxyamphetamine.
  - w. 4-methoxyamphetamine.
  - x. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
  - y. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
  - z. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2- thienyl analog of phencyclidine, TPCP, TCP.
  - aa. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.
  - bb. Parahexyl.
  - cc. 4-Bromo-2, 5-Dimethoxyphenethylamine.
- (4) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:
- a. Mecloqualone.
  - b. Methaqualone.
  - c. Gamma hydroxybutyric acid; Some other names: GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.
- (5) Stimulants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:
- a. Aminorex. Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine.
  - b. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.
  - c. Fenethylamine.
  - d. Methcathinone. Some trade or other names: 2-(methylamino)propiofenone, alpha-(methylamino)propiofenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylaminopropiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL- 464, AL-422, AL-463, and UR1432.
  - e. (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine\_ (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).
  - f. N,N-dimethylamphetamine. Some other names: N,N,alpha-trimethylbenzeneethanamine; N,N,alpha-trimethylphenethylamine.
  - g. N-ethylamphetamine. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 844; c. 1358, ss. 4, 5, 15; 1975, c. 443, s. 1; c. 790; 1977, c. 667, s. 3; c. 891, s. 1; 1979, c. 434, s. 1; 1981, c. 51, s. 9; 1983, c. 695, s. 1; 1985, c. 172, ss. 1-3; 1987, c. 412, ss. 1-5; 1989 (Reg. Sess., 1990), c. 1040, s. 1; 1993, c. 319, ss. 1, 2; 1995, c. 186, ss. 1-3; c. 509, s. 135.1(c); 1997-456, ss. 12, 27; 1999-165, s. 1; 2000-140, s. 92.2(a).)

#### § 90-89.1. Treatment of controlled substance analogues.

A controlled substance analogue shall, to the extent intended for human consumption, be treated for the purposes of any State law as a controlled substance in Schedule I. (2003-249, s. 1.)

#### § 90-90. Schedule II Controlled Substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, currently accepted medical use in the United States, or

currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

- (1) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:
  - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, nalbuphine, dextrorphan, naloxone, naltrexone and nalmefene, and their respective salts, but including the following:
    1. Raw opium.
    2. Opium extracts.
    3. Opium fluid extracts.
    4. Powdered opium.
    5. Granulated opium.
    6. Tincture of opium.
    7. Codeine.
    8. Ethylmorphine.
    9. Etorphine hydrochloride.
    10. Hydrocodone.
    11. Hydromorphone.
    12. Metopon.
    13. Morphine.
    14. Oxycodone.
    15. Oxymorphone.
    16. Thebaine.
    17. Dihydroetorphine.
  - b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.
  - c. Opium poppy and poppy straw.
  - d. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
  - e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).
- (2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:
  - a. Alfentanil.
  - b. Alphaprodine
  - c. Anileridine.
  - d. Bezitramide
  - e. Carfentanil.
  - f. Dihydrocodeine.
  - g. Diphenoxylate.
  - h. Fentanyl.
  - i. Isomethadone.
  - j. Levo-alpha-acetylmethadol. Some trade or other names; levo-alpha-acetylmethadol, evomethadyl acetate, or LAAM.
  - k. Levomethorphan.
  - l. Levorphanol.
  - m. Metazocine.
  - n. Methadone.
  - o. Methadone-Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
  - p. Moramide-Intermediate, 2-methyl-3-morpholino- 1, 1 -diphenyl-propane-carboxylic acid.
  - q. Pethidine.
  - r. Pethidine-Intermediate-A, 4-cyano- 1 -methyl-4-phenylpiperidine.

- s. Pethidine-Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate.
  - t. Pethidine-Intermediate-C, 1-methyl -4-phenylpiperidine -4-carboxylic acid.
  - u. Phenazocine.
  - v. Piminodine.
  - w. Racemethorphan.
  - x. Racemorphan.
  - y. Romifentanil.
  - z. Sufentanil.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule.
- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
  - b. Phenmetrazine and its salts.
  - c. Methamphetamine, including its salts, isomers, and salts of isomers.
  - d. Methylphenidate.
  - e. Phenylacetone Some trade or other names: Phenyl-2-propanone. P2P; benzyl methyl ketone.
- (4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically exempted by the Commission or listed in another schedule:
- a. Amobarbital
  - b. Glutethimide
  - c. Repealed by Session Laws 1983, c. 695, s.2.
  - d. Pentobarbital
  - e. Phencyclidine
  - f. Phencyclidine immediate precursors:
    - a. 1 -Phenylcyclohexylamine
    - b. 1 -Piperidinocyclohexanecarbonitrile (PCC)
  - g. Secobarbital
- (5) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.
- a. Repealed by Session Law 2001-233, s.2(a),
  - b. Nabilone [Another name for nabilone: (+/-)-trans-3-( 1,1 -dimethylheptyl)-6, 6a,7,8, 10,10a-hexahydro-1 -hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one]. (1971, c 919, s.1, 1973, c. 476, s. 128: c. 540, s. 6; c. 1358, ss. 6, 15; 1975, c.443, s. 2; 1977, c. 667, s.3; c. 891, s.2; 1979, c. 434, s. 2; 1981, c. 51, s. 9; 1983, c. 695, s. 2; 1985, c. 172, ss. 4, 5; 1987, c. 105, s.3; c. 412, ss. 5A-7; 1989 (Reg. Sess., 1990), c. 1040, s. 2, 1993, c. 319, ss. 3,4; 1995, c. 186, s. 4; 1997-456,s. 27; 1999-165, s.2; 2001-233, ss.1,2(a).)

### § 90-91. Schedule III Controlled Substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

- (a) Repealed by Session Laws 1973, c. 540, s.5.
- (b) Any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:
  - 1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
  - 2. Chlorhexadol.
  - 3. Repealed by Session Laws 1993, c. 319 s. 5, effective July 9, 1993.
  - 4. Lysergic acid.
  - 5. Lysergic acid amide.
  - 6. Methyprylon.
  - 7. Sulfondiethylmethane.
  - 8. Sulfonethylmethane.

9. Sulphonmethane
- 9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro- 1,3,8-trimethylpyrazolo-[3,4-e] [1,4]-diazepin-7 (1H)-one. Fluprazapon.
10. Any compound, mixture or preparation containing:
- (i) Amobarbital.
  - (ii) Secobarbital.
  - (iii) Pentobarbital.
- or any salt thereof and one or more active ingredients which are not included in any other schedule.
11. Any suppository dosage form containing
- (i) Amobarbital.
  - (ii) Secobarbital.
  - (iii) Pentobarbital.
- or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.
12. Ketamine.
- (c) Nalorphine.
- (d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:
- 1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
  - 2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - 3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
  - 4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - 5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - 6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - 7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
  - 8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:
- 1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.
- (f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.
- (g) Notwithstanding the provisions of G S 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a non-pharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.
- (h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U S P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.
- (i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the ingredients are included therein

in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

- (j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.
1. Benzphetamine.
  2. Chlorphentermine.
  3. Clortermine.
  4. Repealed by Session Laws 1987, c. 412, s.10.
  5. Phendimetrazine.
- (k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:
1. Methandrostenolone,
  2. Stanozolol,
  3. Ethylestrenol,
  4. Nandrolone phenpropionate,
  5. Nandrolone deconoate,
  6. Testosterone propionate,
  7. Chorionic gonadotropin,
  8. Boldenone,
  9. Chiorotestosterone (4-chlorotestosterone),
  10. Clostebol,
  11. Dehydrochlormethyltestosterone,
  12. Dibydrostestosterone (4-dihydrotestosterone),
  13. Drostanolone,
  14. Fluoxymesterone,
  15. Formebolone (formebolone),
  16. Mesterolene,
  17. Methandienone,
  18. Methandranone,
  19. Methandriol,
  20. Methenolene,
  21. Methyltestosterone,
  22. Mibolerone,
  23. Nandrolene,
  24. Norethandrolene,
  25. Oxandrolone,
  26. Oxymesterone,
  27. Oxymetholone,
  28. Stanolone,
  29. Testolactone,
  30. Testosterone,
  31. Trenbolone, and
  32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.
- (l) Repealed by Session Laws 2001-233, s 3(a), effective June 21, 2001.
- (m) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act.
- (n) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names: (6aR-trans), -6a, 7, 8, 10a-tetrahydro-6, 6, 9-trimethyl-3-pentyl-6H-dibenzo [b,d] pyran-1-o1 or (-)-delta-9-(trans)-tetrahydrocannabinol]. (1971, c. 919, s.1; 1973, c. 476, s. 128; c. 540, s. 5; c. 1358, ss. 7, 15; 1975, c. 442; 1977, c. 667, s.3; 1979, c. 434, s. 3; 1981, c. 51,

s. 9; 1987, c. 412, ss. 8-10; 1987 (Reg. Sess., 1988), c. 1055; 1991, c. 413, s. 1; 1993, c. 319, s. 5. 1999-370, s.3; 2000-140, s. 92.2(b); 2001-233, ss.2(b), 3(a), 3(b).)

**§ 90-92. Schedule IV Controlled Substances.**

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule III of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule III of this Article. The following controlled substances are included in this schedule:

(1) Depressants.-Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

Depressants.-Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- a. Alprazolam.
- b. Barbital.
- c. Bromazepam.
- d. Camazepam.
- e. Chloral betaine.
- f. Chloral hydrate.
- g. Chlordiazepoxide.
- h. Clobazam.
- i. Clonazepam.
- j. Clorazepate.
- k. Clotiazepam.
- l. Cloxazolam.
- m. Delorazepam.
- n. Diazepam.
- o. Estazolam.
- p. Ethchlorvynol.
- q. Ethinamate.
- r. Ethyl loflazepate.
- s. Fludiazepam.
- t. Flunitrazepam.
- u. Flurazepam.
- v. Repealed by Session Laws 2000, c. 140, s.92.2(c), effective December 1, 2000
- w. Halazepam.
- x. Haloxazolam.
- y. Ketazolam.
- z. Loprazolam.
- aa. Lor zepain.
- bb. Lormetazepam.
- cc. Mebutamate.
- dd. Medazepam.
- ee. Meprobamate.
- ff. Methohexital.
- gg. Methylphenobarbital (mephobarbital).
- hh. Midazolam.
- ii. Nimetazepam.
- jj. Nitrazepam.
- kk. Nordiazepam.
- ll. Oxazepam.
- mm. Oxazolam.

nn. Paraldehyde.  
 oo. Petrichloral.  
 pp. Phenobarbital.  
 qq. Pinazepam.  
 rr. Prazepam.  
 ss. Quazepam  
 tt. Temazepam.  
 uu. Tetrazepam.  
 vv. Triazolam.  
 ww. Zolpidem.  
 xx. Zaleplon.

- (2) Any material, compound, mixture, or preparation which contains any of the following substances, including its salts, or isomers and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:
- Fenfluramine.
  - Pentazocine.
- (3) Stimulants.--Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- Diethylpropion.
  - Muzindol.
  - Pemoline (including organometallic complexes and chelates thereof).
  - Phentermine.
  - Cathine.
  - Fencamfamin.
  - Fenproporex.
  - Mefenorex.
  - Sibutramine.
  - Modafinil.
- (4) Other Substances.--Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:
- Dextropropoxyphene (Alpha-(plus)-4-dimethylamino- 1, 2-diphenyl-3-methyl-2-propionoxybutane)
  - Pipradrol.
  - SPA ((-)- 1 -dimethylamino-1, 2-diphenylethane).
  - Butorphanol.
- (5) Narcotic Drugs.--Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
- Not more than I milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
  - Buprenorphine.
- (b) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active, nonnarcotic, medicinal ingredients not having a stimulant or depressant effect on the central nervous system; provided, that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system. (1971, c. 919, s. 1; 1973, c. 476, s.128, c. 1358, ss. 8, 15; c. 1446, s.5, 1975, cc. 401, 819; 1977, c. 667, s.3; c. 891, s.3; 1979, c. 434, ss. 4-6; 1981, c. 51, s. 9; 1985, c. 172, ss. 6-8, 439, s. 1; 1987, c. 412, ss. 11, 12, 1993, c. 319, s..6; 1995, c. 509, s. 38; 1997-456, s. 27; 1997-501, s. 1; 1999-165, s.3; 2000-140, s.92.2(c); 2001-233,s. 4.)

### § 90-93. Schedule V Controlled Substances.

- (a) This schedule includes the controlled substances listed or to be listed by whatever of ficial name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within the schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule IV of

this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule IV of this Article. The following controlled substances are included in this schedule.

1. Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic alone:

- (i) Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.
- (ii) Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
- (iii) Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
- (iv) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
- (v) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
- (vi) Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

2. Repealed by Session Laws 1985, c. 172, s. 9.

3. Stimulants Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:

- a. Repealed by Session Laws 1993, c. 319, s. 7, effective July 9, 1993.
- b. Pyrovalerone.

(b) A Schedule V substance may be sold at retail without a prescription only by a registered pharmacist and no other person, agent or employee may sell a Schedule V substance even if under the direct supervision of a pharmacist.

(c) Notwithstanding the provisions of G.S. 90-93(b), after the pharmacist has fulfilled the responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of a Schedule V substance, may be completed by a non-pharmacist. A pharmacist may refuse to sell a Schedule V substance until he is satisfied that the product is being obtained for medicinal purposes only.

(d) A Schedule V substance may be sold at retail without a prescription only to a person at least 18 years of age. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification, including proof of age when appropriate, in order to purchase a Schedule V substance. The name and address obtained from such identification shall be entered in the record of disposition to consumers. (1971, c 919, s 1, 1973, c. 476, s.128; c. 1358, ss.9,15,1977, c 667, s.3, 1979, c 434, ss.7, 8; 1981, c. 51, s.9; 1985, c. 172, s.9; 1989 (Reg. Sess., 1990), c 1040, 5 3, 1993, c. 319, s. 7; 1997-456, s. 27.)

#### **§ 90-94. Schedule VI Controlled Substances.**

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that such substance comes within this schedule, the Commission shall find: no currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce psychic or physiological dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects.

The following controlled substances are included in this schedule:

- 1. Marijuana.
- 2. Tetrahydrocannabinols (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, s. 15; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 1997-456, s. 27.)

#### **§ 90-104. Records of registrants or practitioners.**

Each registrant or practitioner manufacturing, distributing, or dispensing controlled substances under this Article shall keep records and maintain inventories in conformance with the record-keeping and the inventory requirements of the federal law and shall conform to such rules and regulations as may be promulgated by the Commission. (1971, c 919, 5.1; 1977, c. 667, s. 3, 1981, c. 51, s. 9.)

#### **§ 90-105. Order forms.**

Controlled substances included in Schedules I and II of this Article shall be distributed only by a registrant or practitioner, pursuant to an order form. Compliance with the provisions of the Federal Controlled Substances Act or its successor respecting order forms shall be deemed compliance with this section. (1971, c. 919, s. 1.)

**§ 90-106. Prescriptions and labeling.**

- (a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedule II of this Article may be dispensed without the written prescription of a practitioner.
- (b) In emergency situations, as defined by rule of the Commission, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the dispensing agent. Prescriptions shall be retained in conformity with the requirements of G.S. 90-104. No prescription for a Schedule II substance may be refilled.
- (c) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedules III or IV, except paregoric, U.S.P., as provided in G.S. 90-91(e) 1, may be dispensed without a prescription, and oral prescriptions shall be promptly reduced to writing and filed with the dispensing agent. Such prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription.
- (d) No controlled substance included in Schedule V of this Article or paregoric, U.S.P., may be distributed or dispensed other than for a medical purpose.
- (e) No controlled substance included in Schedule VI of this Article may be distributed or dispensed other than for scientific or research purposes by persons registered under, or permitted by, this Article to engage in scientific or research projects.
- (f) No controlled substance shall be dispensed or distributed in this State unless such substance shall be in a container clearly labeled in accord with regulations lawfully adopted and published by the federal government or the Commission.
- (g) When a copy of a prescription for a controlled substance under this Article is given as required by G.S. 90-70, such copy shall be plainly marked: "Copy--for information only." Copies of prescriptions for controlled substances shall not be filled or refilled.
- (h) A pharmacist dispensing a controlled substance under this Article shall enter the date of dispensing on the prescription order pursuant to which such controlled substance was dispensed.
- (i) A manufacturer's sales representative may distribute a controlled substance as a complimentary sample only upon the written request of a practitioner. Such request must be made on each distribution and must contain the names and addresses of the supplier and the requester and the name and quantity of the specific controlled substance requested. The manufacturer shall maintain a record of each such request for a period of two years. (1971, c. 919, s. 1; 1973, c. 476, s. 128; c. 1358, s. 15; 1975, c. 572; 1977, c. 667, s. 3; 1981, c. 51, s. 9; 2007-248, s. 2.)

**§ 90-107. Prescriptions, stocks, etc., open to inspection by officials.**

Prescriptions, order forms and records, required by this Article, and stocks of controlled substances included in Schedules I through VI of this Article shall be open for inspection only to federal and State officers, whose duty it is to enforce the laws of this State or of the United States relating to controlled substances included in Schedules I through VI of this Article, and to authorized employees of the North Carolina Department of Health and Human Services. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge other than to other law-enforcement officials or agencies, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party. (1971, c. 919, s. 1; 1973, c. 1358, s. 13; 1977, c. 667, s. 3; 1997-443, s. 11A.118(a).)

**§ 90-108. Prohibited acts; penalties.**

(a) It shall be unlawful for any person:

- (1) Other than practitioners licensed under Articles 1, 2, 4, 6, 11, 12A of this Chapter to represent to any registrant or practitioner who manufactures, distributes, or dispenses a controlled substance under the provision of this Article that he is a licensed practitioner in order to secure or attempt to secure any controlled substance as defined in this Article or to in any way impersonate a practitioner for the purpose of securing or attempting to secure any drug requiring a prescription from a practitioner as listed above and who is licensed by this State;
- (2) Who is subject to the requirements of G.S. 90-101 or a practitioner to distribute or dispense a controlled substance in violation of G.S. 90-105 or 90-106;
- (3) Who is a registrant to manufacture, distribute, or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;
- (4) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or its successor;

- (5) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice or information required under this Article;
  - (6) To refuse any entry into any premises or inspection authorized by this Article;
  - (7) To knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of this Article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this Article;
  - (8) Who is a registrant or a practitioner to distribute a controlled substance included in Schedule I or II of this Article in the course of his legitimate business, except pursuant to an order form as required by G.S. 90-105;
  - (9) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;
  - (10) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;
  - (11) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Article, or any record required to be kept by this Article;
  - (12) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
  - (13) To obtain controlled substances through the use of legal prescriptions which have been obtained by the knowing and willful misrepresentation to or by the intentional withholding of information from one or more practitioners;
  - (14) Who is an employee of a registrant or practitioner and who is authorized to possess controlled substances or has access to controlled substances by virtue of his employment, to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use or to take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use any controlled substance which shall have come into his possession or under his care.
- (b) Any person who violates this section shall be guilty of a Class I misdemeanor. Provided, that if the criminal pleading alleges that the violation was committed intentionally, and upon trial it is specifically found that the violation was committed intentionally, such violations shall be a Class I felony. A person who violates subdivision (7) of subsection (a) of this section and also fortifies the structure, with the intent to impede law enforcement entry, (by barricading windows and doors) shall be punished as a Class I felon (1971, c. 919, s. 1; 1973, c. 1358, s.11; 1979, c. 760, s.5; 1983, c. 294, s. 7; c. 773; 1991 (Reg. Sess., 1992), c. 1041, s. 1; 1993, c. 539, s. 622; 1994 Ex. Sess., c.24, s.14(c).)

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"Article 5D.

"Control of Methamphetamine Precursors.

**§ 90-113.50. Title.**

This Article shall be known and may be cited as the "Methamphetamine Lab Prevention Act of 2005.

**§ 90-113.51. Definitions.**

- (a) For purposes of this Article, "pseudoephedrine product" means a product containing any detectable quantity of pseudoephedrine or ephedrine base, their salts or isomers, or salts of their isomers.
- (b) For purposes of this Article, a "retailer" means an individual or entity that is the general owner of an establishment where pseudoephedrine products are available for sale.
- (c) For purposes of this Article, the "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

**§ 90-113.52. Pseudoephedrine: restrictions on sales.**

- (a) A pseudoephedrine product in the form of a tablet, caplet, or gel cap shall not be offered for retail sale loose in bottles but shall be sold only in blister packages.

(b) Pseudoephedrine products shall not be offered for retail sale by self-service, but shall be stored and sold in the following manner: Any pseudoephedrine product in the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients shall be stored and sold behind a pharmacy counter.

(c) A pseudoephedrine product may be sold at retail without a prescription only to a person at least 18 years of age. The retailer shall require every retail purchaser of a pseudoephedrine product to furnish photo identification. If the retailer has reasonable grounds to believe that the prospective purchaser is under 18 years of age, the retailer shall require the prospective purchaser to furnish photo identification showing the date of birth of the person. The name and address of every purchaser shall be entered in a record of disposition of pseudoephedrine products to the consumer on a form approved by the Commission. The record of disposition shall also identify each pseudoephedrine product purchased, including the number of grams the product contains and the purchase date of the transaction. The retailer shall require that every purchaser sign the form attesting to the validity of the information. The form approved by the Commission shall be constructed so that it allows for entry of information in electronic format, including electronic signature. The form shall also be constructed and maintained so as to minimize disclosure of personal information to unauthorized persons and shall contain a statement in at least 10-point boldface type at the top of every page substantially similar to the following: "NORTH CAROLINA LAW STRICTLY PROHIBITS THE PURCHASE OF MORE THAN TWO PACKAGES OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE (3.6 GRAMS TOTAL) PER DAY, AND MORE THAN THREE PACKAGES (9 GRAMS TOTAL) OF CERTAIN PRODUCTS CONTAINING PSEUDOEPHEDRINE WITHIN A 30-DAY PERIOD. BY MY SIGNATURE, I ATTEST THAT THE INFORMATION I HAVE PROVIDED IN CONNECTION WITH THIS TRANSACTION IS TRUE AND CORRECT AND THAT THIS TRANSACTION DOES NOT EXCEED THE PURCHASE RESTRICTIONS. I ACKNOWLEDGE THAT KNOWING AND WILLFUL VIOLATION OF THE PURCHASE RESTRICTIONS OR THE FURNISHING OF FALSE INFORMATION IN CONNECTION THEREWITH MAY SUBJECT ME TO CRIMINAL PENALTIES." If the form attesting to the validity of this information is to be signed by the purchaser in electronic format, the retailer may choose to display in a clear and conspicuous manner the statement on a sign to be placed immediately adjacent to the device on which the electronic signature will be obtained, in lieu of including the full statement in electronic format. If the retailer chooses to display the statement on a sign rather than in electronic format, the retailer shall: (i) instruct the purchaser prior to signing to read the statement; and (ii) include on the form for signature contained in the electronic device a statement substantially similar to the following: "I have read, understand, and agree with the statement just shown to me concerning the requirements under State law pertaining to pseudoephedrine purchases." Display of the sign in this manner shall satisfy the signage requirements of G.S. 90-113.54.

(d) A retailer shall maintain a record of disposition of pseudoephedrine products to the consumer for a period of two years from the date of each transaction. A record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency. The records maintained by a retailer are privileged information and are not public records but are for the exclusive use of the retailer and law enforcement. The retailer may destroy the information after two years from the date of the transactions.

(e) This section does not apply to any pseudoephedrine product that is in the form of a liquid, liquid capsule, gel capsule, or pediatric product labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article. (2005-434, s. 1; 2006-186, s. 1.)

#### **§ 90-113.53. Pseudoephedrine transaction limits.**

(a) No person shall deliver or purchase, or attempt to deliver or purchase, in any single over-the-counter retail sale more than two packages containing a combined total of more than 3.6 grams of any pseudoephedrine products. This limit does not apply if the product is dispensed under a valid prescription.

(b) No person shall purchase at retail more than three packages containing a combined total of more than 9 grams of pseudoephedrine products within any 30-day period. This limit does not apply if the product is dispensed under a valid prescription.

(c) This section does not apply to any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article.

**§ 90-113.54. Posting of signs.**

A retailer shall post a sign or placard in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products are offered for sale substantially similar to the following: "North Carolina law strictly prohibits the purchase of more than two packages (3.6 grams total) of certain products containing pseudoephedrine per day, and more than three packages (9 grams total) of certain products containing pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these products which may be accessible to law enforcement officers.

**§ 90-113.55. Training of employees.**

A retailer shall require that employees of the establishment involved in the sale of pseudoephedrine products in the form of tablets or caplets, and any other pseudoephedrine product for which the Commission issues an order pursuant to G.S. 90-113.58 to subject the product to requirements under this Article, be trained in a program conducted by or approved by the Commission pursuant to G.S. 90-113.59.

**§ 90-113.56. Penalties.**

(a) If a retailer willfully and knowingly violates the provisions of G.S. 90-113.52, 90-113.53, or 90-113.54, the retailer shall be guilty of a Class A1 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. A retailer convicted of a third offense occurring on the premises of a single establishment shall be prohibited from making pseudoephedrine products available for sale at that establishment.

(b) Any purchaser or employee who willfully and knowingly violates G.S. 90-113.52(c) or G.S. 90-113.53 shall be guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense. This subsection shall not be construed to apply to bona fide innocent purchasers.

(c) A retailer who fails to train employees in accordance with G.S. 90-113.55, adequately supervise employees in transactions involving pseudoephedrine products, or reasonably discipline employees for violations of this Article shall be fined up to five hundred dollars (\$500.00) for the first violation, up to seven hundred fifty dollars (\$750.00) for the second violation, and up to one thousand dollars (\$1,000) for a third or subsequent violation of this section.

**§ 90-113.57. Immunity.**

A retailer or an employee of the retailer who, reasonably and in good faith, reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of pseudoephedrine products, or who refuses to sell a pseudoephedrine product to a person reasonably believed to be ineligible to purchase a pseudoephedrine product pursuant to this Article, is immune from civil liability for that conduct except in cases of willful misconduct. No retailer shall retaliate in any manner against any employee of the establishment for a report made in good faith to any law enforcement agency concerning alleged criminal activity related to the sale or purchase of pseudoephedrine products.

**§ 90-113.58. Commission authority to control pseudoephedrine products.**

(a) The Commission may add or delete a specific pseudoephedrine product from requirements of this Article on the petition of any interested party, or its own motion. In addition, the Commission may modify the specific storage, security, transaction limit, and record-keeping requirements applicable to a particular product upon such terms and conditions as they deem appropriate. In every case, the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding or deleting a product. A petition by the Commission or the North Carolina Department of Justice to add or delete a specific product from requirements of this Article shall be placed on the agenda for consideration at the next regularly scheduled meeting of the Commission, as a matter of right. In making a determination regarding a specific product, the Commission shall consider whether or not there is substantial evidence that the specific product would be used to manufacture methamphetamine in the State.

(b) In making a determination, the Commission shall make findings with respect thereto and shall issue an order adding or deleting the specific product from requirements of this Article. The order shall be published in the North Carolina Register at least 60 days prior to the time that the addition or deletion of a specific product from the requirements of this Article becomes effective.

(c) The Commission may adopt temporary and permanent rules in accordance with this section.

**§ 90-113.59. Commission development of employee training programs.**

The Commission shall develop training and education programs targeted for employees of establishments where pseudoephedrine products are available for sale and shall approve such programs for implementation by retailers. The Commission may also conduct employee training programs for retail establishments. The Commission may adopt temporary and permanent rules in this regard.

**§ 90-113.60. Preemption.**

This Article shall preempt all local ordinances or regulations governing the sale by a retailer of over-the-counter products containing pseudoephedrine."

**§ 106-145.2. Definitions.**

The following definitions apply in this Article:

...

(9) Prescription drug. – A human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C. § 353(b). Only for the purposes of the provisions of this Article, the term "prescription drug" shall include pseudoephedrine products as defined in G.S. 90-113.51 that may be dispensed without a prescription.

**§ 106-145.13. Submittal of reports by wholesale distributors of transactions involving pseudoephedrine products.**

Every 30 calendar days, a wholesale distributor of pseudoephedrine products licensed as provided in this Article shall submit a report electronically to the State Bureau of Investigation that accounts for all transactions involving pseudoephedrine products with persons or firms located within this State for the preceding month. The report shall be submitted on a form and in a manner approved by the State Bureau of Investigation. A wholesale distributor shall maintain each monthly report for a period of two years from the date of submittal to the State Bureau of Investigation. The records shall be readily available for inspection by an authorized official of a federal, State, or local law enforcement agency or the Department of Agriculture and Consumer Services. (2005-434, s. 3.)

**G.S. 15A-1340.16(d)** is amended by adding a new subdivision to read:

...

(16b) The offense is the manufacture of methamphetamine and was committed in a dwelling that is one of four or more contiguous dwellings.

...

**§ 66-254.1. Certain sales prohibited.**

No person who is described by G.S. 66-250(1), (2), (5), or (6) shall sell or offer to sell any product that meets any of the following criteria:

- (1) The product contains pseudoephedrine as the sole active ingredient or in combination with other active ingredients.
- (2) The product is a drug as defined by G.S. 106-121(6).

Any person who violates this section shall be guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense.

Article 5E.

North Carolina Controlled Substances Reporting System Act.

**§ 90-113.70. Short title.**

This Article shall be known and may be cited as the "North Carolina Controlled Substances Reporting System Act." (2005-276, s. 10.36(a).)

**§ 90-113.71. Legislative findings and purpose.**

- (a) The General Assembly makes the following findings:

- (1) North Carolina is experiencing an epidemic of poisoning deaths from unintentional drug overdoses.
- (2) Since 1997, the number of deaths from unintentional drug overdoses has increased threefold, from 228 deaths in 1997 to 690 deaths in 2003.
- (3) The number of unintentional deaths from illicit drugs in North Carolina has decreased since 1992 while unintentional deaths from licit drugs, primarily prescriptions, have increased.
- (4) Licit drugs are now responsible for over half of the fatal unintentional poisonings in North Carolina.
- (5) Over half of the prescription drugs associated with unintentional deaths are narcotics (opioids).
- (6) Of these licit drugs, deaths from methadone, usually prescribed as an analgesic for severe pain, have increased sevenfold since 1997.
- (7) Methadone from opioid treatment program clinics is a negligible source of the methadone that has contributed to the dramatic increase in unintentional methadone-related deaths in North Carolina.
- (8) Review of the experience of the 19 states that have active controlled substances reporting systems clearly documents that implementation of these reporting systems do not create a "chilling" effect on prescribing.
- (9) Review of data from controlled substances reporting systems help:
  - a. Support the legitimate medical use of controlled substances.
  - b. Identify and prevent diversion of prescribed controlled substances.
  - c. Reduce morbidity and mortality from unintentional drug overdoses.
  - d. Reduce the costs associated with the misuse and abuse of controlled substances.
  - e. Assist clinicians in identifying and referring for treatment patients misusing controlled substances.
  - f. Reduce the cost for law enforcement of investigating cases of diversion and misuse.
  - g. Inform the public, including health care professionals, of the use and abuse trends related to prescription drugs.

(b) This Article is intended to improve the State's ability to identify controlled substance abusers or misusers and refer them for treatment, and to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances. (2005-276, s. 10.36(a).)

#### **§ 90-113.72. Definitions.**

The following definitions apply in this Article:

- (1) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (2) "Controlled substance" means a controlled substance as defined in G.S. 90-87(5).
- (3) "Department" means the Department of Health and Human Services.
- (4) "Dispenser" means a person who delivers a Schedule II through V controlled substance to an ultimate user in North Carolina, but does not include any of the following:
  - a. A licensed hospital or long-term care pharmacy that dispenses such substances for the purpose of inpatient administration.
  - b. A person authorized to administer such a substance pursuant to Chapter 90 of the General Statutes.
  - c. A wholesale distributor of a Schedule II through V controlled substance.
- (5) "Ultimate user" means a person who has lawfully obtained, and who possesses, a Schedule II through V controlled substance for the person's own use, for the use of a member of the person's household, or for the use of an animal owned or controlled by the person or by a member of the person's household. (2005-276, s. 10.36(a).)

#### **§ 90-113.73. Requirements for controlled substances reporting system.**

(a) The Department shall establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Each dispenser shall submit the information in accordance with transmission methods and frequency established by rule by the Commission. The Department may issue a waiver to a dispenser that is unable to submit prescription information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required of electronically submitted data is submitted. The dispenser shall report the information required under this section on a monthly

basis for the first 12 months of the Controlled Substances Reporting System's operation, and twice monthly thereafter.

(b) The Commission shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

- (1) The dispenser's DEA number.
- (2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:
  - a. Full address, including city, state, and zip code,
  - b. Telephone number, and
  - c. Date of birth.
- (3) The date the prescription was written.
- (4) The date the prescription was filled.
- (5) The prescription number.
- (6) Whether the prescription is new or a refill.
- (7) Metric quantity of the dispensed drug.
- (8) Estimated days of supply of dispensed drug, if provided to the dispenser.
- (9) National Drug Code of dispensed drug.
- (10) Prescriber's DEA number. (2005-276, s. 10.36(a); 2005-345, s. 17.)

**§ 90-113.74. Confidentiality.**

(a) Prescription information submitted to the Department is privileged and confidential, is not a public record pursuant to G.S. 132-1, is not subject to subpoena or discovery or any other use in civil proceedings, and except as otherwise provided below may only be used for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. Except as otherwise provided by this section, prescription information shall not be disclosed or disseminated to any person or entity by any person or entity authorized to review prescription information.

(b) The Department may use prescription information data in the controlled substances reporting system only for purposes of implementing this Article in accordance with its provisions.

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

- (1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients.
- (2) An individual who requests the individual's own controlled substances reporting system information.
- (3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication and who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.
- (4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.
- (5) To a court pursuant to a lawful court order in a criminal action.
- (6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.
- (7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.

(d) The Department may provide data to public or private entities for statistical, research, or educational purposes only after removing information that could be used to identify individual patients who received prescription medications from dispensers.

(e) In the event that the Department finds patterns of prescribing medications that are unusual, the Department shall inform the Attorney General's Office of its findings. The Office of the Attorney General shall review the Department's findings to determine if the findings should be reported to the SBI for investigation of possible violations of State or federal law relating to controlled substances.

(f) The Department shall purge from the controlled substances reporting system database all information more than six years old. (2005-276, s. 10.36(a).)

**§ 90-113.75. Civil penalties; other remedies; immunity from liability.**

(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts to obtain information from the system in violation of a provision of this section or a rule adopted pursuant to this section shall be assessed a civil penalty not to exceed five thousand dollars (\$5,000) per violation. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes.

(b) In addition to any other remedies available at law, an individual whose prescription information has been disclosed in violation of this section may bring an action against any person or entity who has intentionally, knowingly, or negligently released confidential information or records concerning the individual for either or both of the following:

- (1) Nominal damages of one thousand dollars (\$1,000). In order to recover damages under this subdivision, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.
- (2) The amount of actual damages, if any, sustained by the individual.

(c) A health care provider licensed, or an entity permitted under this Chapter that, in good faith, makes a report or transmits data required by this Article is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of making the report or transmitting the data. (2005-276, s. 10.36(a).)

**§ 90-113.76. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules.**

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules necessary to implement this Article. (2005-276, s. 10.36(a).)

**END**

§ 90-412. Electronic medical records.

(a) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this State or any unit of State or local government may create and maintain medical records in an electronic format. The health care provider, facility, or governmental unit shall not be required to maintain a separate paper copy of the electronic medical record. A health care provider, facility, or governmental unit shall maintain electronic medical records in a legible and retrievable form, including adequate data backup.

(b) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this State or any unit of State or local government may permit authorized individuals to authenticate orders and other medical record entries by written signature, or by electronic or digital signature in lieu of a signature in ink. Medical record entries shall be authenticated by the individual who made or authorized the entry. For purposes of this section, "authentication" means identification of the author of an entry by that author and confirmation that the contents of the entry are what the author intended.

(c) The legal rights and responsibilities of patients, health care providers, facilities, and governmental units shall apply to records created or maintained in electronic form to the same extent as those rights and responsibilities apply to medical records embodied in paper or other media. This subsection applies with respect to the security, confidentiality, accuracy, integrity, access to, and disclosure of medical records. (1999-247, s. 2; 2007-248, s. 3.)

**HEALTH CARE PRACTITIONER IDENTIFICATION**

**§ 90-640. Identification badges required.**

(a) For purposes of this section, "health care practitioner" means an individual who is licensed, certified, or registered to engage in the practice of medicine, nursing, dentistry, pharmacy, or any related occupation involving the direct provision of health care to patients.

(b) When providing health care to a patient, a health care practitioner shall wear a badge or other form of identification displaying in readily visible type the individual's name and the license, certification, or registration held by the practitioner. If the identity of the individual's license, certification, or registration is commonly

expressed by an abbreviation rather than by full title, that abbreviation may be used on the badge or other identification.

- (c) The badge or other form of identification is not required to be worn if the patient is being seen in the health care practitioner's office and, the name and license of the practitioner can be readily determined by the patient from a posted license, a sign in the office, a brochure provided to patients, or otherwise.
- (d) Each licensing board or other regulatory authority for health care practitioners may adopt rules for exemptions from wearing a badge or other form of identification, or for allowing use of the practitioner's first name only, when necessary for the health care practitioner's safety or for therapeutic concerns.
- (e) Violation of this section is a ground for disciplinary action against the health care practitioner by the practitioner's licensing board or other regulatory authority. (1999-320, s. 1.)

## **NCAC 45.G DIVISION OF MENTAL HEALTH, DEVELOPMENTAL DISABILITIES AND SUBSTANCE ABUSE SERVICES—CONTROLLED SUBSTANCES DRUG REGULATORY—PERTINENT RULES**

### **SECTION .0300 - PRESCRIPTIONS**

#### **10A NCAC 26E .0301 PRESCRIPTION REQUIREMENTS GENERALLY**

Compliance with the prescription requirements of the federal law, including the requirements presented in Part 1306 of Title 21 of the Code of Federal Regulations, shall be deemed compliance under General Statute Chapter 90, Article 5.

*History Note:* Authority G.S. 90-100; 90-106; 143B-147;  
Eff. June 30, 1978;  
Amended Eff. August 1, 1987; July 1, 1982.

#### **10A NCAC 26E .0302 NONPRESCRIPTION REQUIREMENTS GENERALLY**

Compliance with the requirements for dispensing without prescriptions, of the federal law, including the requirements presented in Part 1306 of Title 21 of the Code of Federal Regulations shall be deemed compliance under General Statute Chapter 90, Article 5.

*History Note:* Authority G.S. 90-106;  
Eff. June 30, 1978.

#### **10A NCAC 26E .0304 HOSPITALS HAVING 24-HOUR PHARMACY SERVICE**

In those hospitals having 24-hour outpatient pharmacy service, all controlled substances dispensed to outpatients including emergency department patients must be dispensed by a pharmacist.

*History Note:* Authority G.S. 90-100; 143B-147(a)(5);  
Eff. June 30, 1978.

#### **10A NCAC 26E .0305 HOSPITALS NOT HAVING 24-HOUR PHARMACY SERVICE**

In those hospitals not having 24-hour outpatient pharmacy services or those hospitals having no outpatient pharmacy services, controlled substances dispensed to emergency department patients when the pharmacy service is closed shall follow this procedure:

- (1) All controlled substances shall be dispensed to a bona fide patient, or his agent, of the emergency room pursuant to the written or verbal order of a licensed practitioner who is registered with the Federal Drug Enforcement Administration to prescribe or dispense controlled substances.
- (2) The pharmacist designated by the hospital shall be responsible for developing and supervising a system of control and accountability of all controlled substances administered in or dispensed from the emergency department.
- (3) The hospital's emergency department committee (or like group or person responsible for policy in that department) in conjunction with the hospital pharmacy shall develop an emergency department formulary or controlled substances list of those controlled substances which may be

dispensed from the emergency department for patients receiving care in that department. This formulary or controlled substances list shall consist of controlled substances of the nature and type to meet the immediate need of emergency department patients, and quantities in each container shall be limited to not more than a 24-hour supply.

- (4) Such controlled substances shall be prepackaged in suitable safety closure containers and shall be appropriately pre-labeled (including necessary auxiliary labels) by the pharmacy so as to provide for all label information necessary for use as well as other information required by law.
- (5) At the time of delivery of the controlled substance, the physician, or physician assistant or a registered nurse under his direction shall appropriately complete the label and initial it.
- (6) A suitable and perpetual record of dispensing of these controlled substances shall be maintained in the emergency department. The pharmacist shall verify the correctness of this record at least once a week.
- (7) The dispenser shall sign the record of dispensing that is maintained in the emergency department to verify the controlled substance ordered.
- (8) When the controlled substances are delivered, the appropriately labeled, prepackaged container of the controlled substance shall be checked for correctness and given to the patient by the physician or by a person authorized to prescribe or dispense controlled substances pursuant to G.S. 90-18.1 or by a registered nurse or physician assistant under the supervision of the ordering physician.

*History Note:* Authority G.S. 90-100; 143B-147(a)(5);  
Eff. June 30, 1978;  
Amended Eff. May 1, 1990; January 14, 1981; September 15, 1980; September 30, 1978.

#### **.0307 PREPRINTED PRESCRIPTION BLANKS PROHIBITED**

The preprinting of or use of preprinted prescription blanks with the name of Schedule II through V Controlled Substances shall be prohibited.

*History Note Statutory Authority G.S. 90-100; 143B-147;*  
*Eff: April 1, 1983.*

#### **.0308 USE OF SYNTHETIC CANNABINOIDS IN SCHEDULE II**

Practitioners licensed pursuant to Chapter 90, Article 5, may dispense the following synthetic cannabinoids only as an antiemetic agent in cancer chemotherapy:

- (1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U. S. Food and Drug Administration approved drug product, and
- (2) Nabilone

*History Note. Statutory Authority G.S. 90-90; 90-100; 90-101(h), 143B-147;*  
*Eff: December 1, 1986;*  
*Amended Eff: December 1, /987.*

### **Chapter 93B.**

#### **Occupational Licensing Boards.**

##### **§ 93B-1. Definitions.**

As used in this Chapter:

"License" means any license (other than a privilege license), certificate, or other evidence of qualification which an individual is required to obtain before he may engage in or represent himself to be a member of a particular profession or occupation.

"Occupational licensing board" means any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses; "occupational licensing board" does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses. (1957, c. 1377, s. 1.)

##### **§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to report.**

(a) No later than October 31 of each year, each occupational licensing board shall file with the Secretary of State, the Attorney General, and the Joint Legislative Administrative Procedure Oversight Committee an annual report containing all of the following information:

- (1) The address of the board, and the names of its members and officers.

- (2) The number of persons who applied to the board for examination.
- (3) The number who were refused examination.
- (4) The number who took the examination.
- (5) The number to whom initial licenses were issued.
- (6) The number who applied for license by reciprocity or comity.
- (7) The number who were granted licenses by reciprocity or comity.
- (7a) The number of official complaints received involving licensed and unlicensed activities.
- (7b) The number of disciplinary actions taken against licensees, or other actions taken against nonlicensees, including injunctive relief.
- (8) The number of licenses suspended or revoked.
- (9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.
- (10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.
- (11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(b) No later than October 31 of each year, each occupational licensing board shall file with the Secretary of State, the Attorney General, the Office of State Budget and Management, and the Joint Legislative Administrative Procedure Oversight Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.

(c) The reports required by this section shall be open to public inspection.

(d) Failure of a board to comply with the reporting requirements of this section by October 31 of each year shall result in a suspension of the board's authority to expend any funds until such time as the board files the required reports. Suspension of a board's authority to expend funds under this subsection shall not affect the board's duty to issue and renew licenses or the validity of any application or license for which fees have been tendered in accordance with law. Each board shall adopt rules establishing a procedure for implementing this subsection and shall maintain an escrow account into which any fees tendered during a board's period of suspension under this subsection shall be deposited. (1957, c. 1377, s. 2; 1969, c. 42; 2006-70, s. 1; 2007-323, s. 23.2; 2009-125, s. 2.)

### **§ 93B-3. Register of persons licensed; information as to licensed status of individuals.**

Each occupational licensing board shall prepare a register of all persons currently licensed by the board and shall supplement said register annually by listing the changes made in it by reason of new licenses issued, licenses revoked or suspended, death, or any other cause. The board shall, upon request of any citizen of the State, inform the requesting person as to the licensed status of any individual. (1957, c. 1377, s. 3.)

### **§ 93B-4. Audit of Occupational Licensing Boards; payment of costs.**

The books, records, and operations of each occupational licensing board shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes.

The cost of all audits shall be paid from funds of the occupational licensing board audited. (1957, c. 1377, s. 4; 1965, c. 661; 1973, c. 1301; 1983, c. 913, s. 11.)

### **§ 93B-5. Compensation and employment of board members.**

(a) Board members shall receive as compensation for their services per diem not to exceed one hundred dollars (\$100.00) for each day during which they are engaged in the official business of the board.

(b) Board members shall be reimbursed for all necessary travel expenses in an amount not to exceed that authorized under G.S. 138-6(a) for officers and employees of State departments. Actual expenditures of board members in excess of the maximum amounts set forth in G.S. 138-6(a) for travel and subsistence may be reimbursed if the prior approval of the State Director of Budget is obtained and such approved expenditures are within the established and published uniform standards and criteria of the State Director of Budget authorized under G.S. 138-7 for extraordinary charges for hotels, meals, and convention registration for State officers and employees, whenever such charges are the result of required official business of the Board.

(c) Repealed by Session Laws 1981, c. 757, s. 2.

(d) Except as provided herein board members shall not be paid a salary or receive any additional compensation for services rendered as members of the board.

(e) Board members shall not be permanent, salaried employees of said board.

(f) Repealed by Session Laws 1975, c. 765, s. 1. (1957, c. 1377, s. 5; 1973, c. 1303, s. 1; c. 1342, s. 1; 1975, c. 765, s. 1; 1981, c. 757, ss. 1, 2; 1991 (Reg. Sess., 1992), c. 1011, s. 1.)

**§ 93B-6. Use of funds for lobbying prohibited.**

Occupational licensing boards shall not use any funds to promote or oppose in any manner the passage by the General Assembly of any legislation. (1973, c. 1302.)

**§ 93B-7. Rental of state-owned office space.**

Any occupational licensing board, which financially operates on the licensing fees charged and also occupies state-owned office space, shall pay rent, in a reasonable amount to be determined by the Governor, to the State for the occupancy of such space. (1973, c. 1300.)

**§ 93B-8. Examination procedures.**

(a) Each applicant for an examination given by any occupational licensing board shall be informed in writing or print of the required grade for passing the examination prior to the taking of such examination.

(b) Each applicant for an examination given by any occupational licensing board shall be identified, for purposes of the examination, only by number rather than by name.

(c) Each applicant who takes an examination given by any occupational licensing board, and does not pass such examination, shall have the privilege to review his examination in the presence of the board or a representative of the board. Except as provided in this subsection, an occupational licensing board shall not be required to disclose the contents of any examination or of any questions which have appeared thereon, or which may appear thereon in the future.

(d) Notwithstanding the provisions of this section, under no circumstances shall an occupational licensing board be required to disclose to an applicant questions or answers to tests provided by recognized testing organizations pursuant to contracts which prohibit such disclosures. (1973, c. 1334, s. 1; 1991, c. 360, s. 1.)

**§ 93B-9. Age requirements.**

Any other provision notwithstanding, no occupational licensing board may require that an individual be more than 18 years of age as a requirement for receiving a license. (1973, c. 1356.)

**§ 93B-10. Expiration of term of appointment of board member.**

A board member serving on an occupational and professional licensing board whose term of appointment has expired shall continue to serve until a successor is appointed and qualified. (1973, c. 1373, s. 1.)

**§ 93B-11. Interest from State Treasurer's Investment Program.**

Any interest earned by an occupational licensing board under G.S. 147-69.3(d) may be used only for the following purposes:

- (1) To reduce fees;
- (2) Improve services offered to licensees and the public; or
- (3) For educational purposes to benefit licensees or the public. (1983, c. 515, s. 2.)

**§ 93B-12. Information from licensing boards having authority over health care providers.**

(a) Every occupational licensing board having authority to license physicians, physician assistants, nurse practitioners, and nurse midwives in this State shall modify procedures for license renewal to include the collection of information specified in this section for each board's regular renewal cycle. The purpose of this requirement is to assist the State in tracking the availability of health care providers to determine which areas in the State suffer from inequitable access to specific types of health services and to anticipate future health care shortages which might adversely affect the citizens of this State. Occupational licensing boards shall collect, report, and update the following information:

- (1) Area of health care specialty practice;
- (2) Address of all locations where the licensee practices; and
- (3) Other information the occupational licensing board deems relevant to assisting the State in achieving the purpose set out in this section, including social security numbers for research purposes only in matching other data sources.

(b) Every occupational licensing board required to collect information pursuant to subsection (a) of this section shall report and update the information on an annual basis to the Department of Health and Human Services. The Department shall provide this information to programs preparing primary care physicians, physicians assistants,

and nurse practitioners upon request by the program and by the Board of Governors of The University of North Carolina. Information provided by the occupational licensing board pursuant to this subsection may be provided in such form as to omit the identity of the health care licensee. (1995, c. 507, s. 23A.4; 1996, 2nd Ex. Sess., c. 17, s. 16.4; 1997-443, s. 11A.118(a).)

**§ 93B-13. Revocation when licensing privilege forfeited for nonpayment of child support or for failure to comply with subpoena.**

(a) Upon receipt of a court order, pursuant to G.S. 50-13.12 and G.S. 110-142.1, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records, report the action within 30 days to the Department of Health and Human Services, and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court or the Department of Health and Human Services in an IV-D case that the licensee is no longer delinquent in child support payments, or, as applicable, that the licensee is in compliance with or is no longer subject to the subpoena that was the basis for the revocation.

(b) Upon receipt of notification from the Department of Health and Human Services that a licensee under an occupational licensing board's jurisdiction has forfeited the licensee's occupational license pursuant to G.S. 110-142.1, then the occupational licensing board shall send a notice of intent to revoke or suspend the occupational license of that licensee as provided by G.S. 110-142.1(d). If the license is revoked as provided by the provisions of G.S. 110-142.1, the revocation shall remain in effect until the board receives certification by the designated representative or the child support enforcement agency that the licensee is no longer delinquent in child support payments, or, as applicable, that the licensee is in compliance with or no longer subject to a subpoena that was the basis for the revocation.

(c) If at the time the court revokes a license pursuant to subsection (a) of this section, or if at the time the occupational licensing board revokes a license pursuant to subsection (b) of this section, the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction, and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 50-13.12 or G.S. 110-142.1 then the revocation period imposed by the occupational licensing board applies.

(d) Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked pursuant to subsection (a) or (b) of this section is no longer delinquent in child support payments, the occupational licensing board shall reinstate the license. Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked because of failure to comply with a subpoena is in compliance with or no longer subject to the subpoena, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee. (1995, c. 538, s. 1.3; 1997-433, s. 5.4; 1997-443, s. 11A.118(a); 1998-17, s. 1; 2003-288, s. 2.)

**§ 93B-14. Information on applicants for licensure.**

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only as follows:

- (1) To the State Child Support Enforcement Program of the Department of Health and Human Services upon its request and for the purpose of enforcing a child support order.
- (2) To the Department of Revenue for the purpose of administering the State's tax laws. (1997-433, s. 4.6; 1997-443, s. 11A-122; 1998-17, s. 1; 1998-162, s. 9.)

**§ 93B-15. Payment of license fees by members of the armed forces.**

An individual who is serving in the armed forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax. (1998-95, s. 8; 1999-337, s. 12.)

**§ 93B-16. Occupational board liability for negligent acts.**

(a) An occupational licensing board may purchase commercial insurance of any kind to cover all risks or potential liability of the board, its members, officers, employees, and agents, including the board's liability under Articles 31 and 31A of Chapter 143 of the General Statutes.

(b) Occupational licensing boards shall be deemed State agencies for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes, and board members and employees of occupational licensing boards shall be

considered State employees for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes. To the extent an occupational licensing board purchases commercial liability insurance coverage in excess of one hundred fifty thousand dollars (\$150,000) per claim for liability arising under Article 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-299.4 shall not apply. To the extent that an occupational licensing board purchases commercial insurance coverage for liability arising under Article 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-300.6(c) shall not apply.

(c) The purchase of insurance by an occupational licensing board under this section shall not be construed to waive sovereign immunity or any other defense available to the board, its members, officers, employees, or agents in an action or contested matter in any court, agency, or tribunal. The purchase of insurance by an occupational licensing board shall not be construed to alter or expand the limitations on claims or payments established in G.S. 143-299.2 or limit the right of board members, officers, employees, or agents to defense by the State as provided by G.S. 143-300.3. (2002-168, s. 1.)

## END OF CHAPTER

### Chapter 106 Agriculture.

#### Article 12. Food, Drugs & Cosmetics.

##### § 106-134. Drugs deemed misbranded.

A drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of G.S. 106-139 or 106-139.1 of this Article.
- (2) If in package form unless it bears a label containing
  - a. The name and place of business of the manufacturer, packer, or distributor; and
  - b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label, except as exempted with respect to this clause by G.S. 106-121(2a)c of this Article; provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.
- (3) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane; or any chemical derivative of such substances, which derivative has been by the Board after investigation, found to be, and by regulations under this Article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning – May be habit forming."
- (5) a. If it is a drug, unless:
  1. Its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula),
    - I. The established name (as defined in paragraph b of this subdivision) of the drug, if such there be, and
    - II. In case it is fabricated from two or more ingredients the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether

active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: Provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subdivision, shall apply only to prescription drugs; and

2. For any prescription drug the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of 1 II or 2 of this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the Board.
- b. As used in this subdivision (5), the term "established name," with respect to a drug or ingredient thereof, means:
1. The applicable official name designated pursuant to section 508 of the federal act, or
  2. If there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof, in such compendium, or
  3. If neither 1 nor 2 of this paragraph applies, then the common or usual name, if any, of such drug or of such ingredient:
- Provided further, that where 2 of this sub-subdivision applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.
- (6) Unless its labeling bears
- a. Adequate directions for use; and
  - b. Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of paragraph a of this subdivision, as applied to any drug or device, is not necessary for the protection of the public health, the Board of Agriculture shall promulgate regulations exempting such drug or device from such requirements.
- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the Board of Agriculture. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.
- (8) If it has been found by the Department of Agriculture and Consumer Services to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.
- (9)
- a. If it is a drug and its container is so made, formed, or filled as to be misleading; or
  - b. If it is an imitation of another drug; or
  - c. If it is offered for sale under the name of another drug.

- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.
- (11), (12) Repealed by Session Laws 1975, c. 614, s. 28.
- (13) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless:
  - a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act, and
  - b. Such certificate or release is in effect with respect to such drug.
- (14) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless
  - a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act, and
  - b. Such certificate or release is in effect with respect to such drug:  
 Provided, that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act. For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).
- (15) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of G.S. 106-132 of this Article.
- (16) In the case of any prescription drug distributed or offered for sale in this State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of
  - a. The established name, as defined in G.S. 106-134(5)b of this Article, printed prominently and in type at least half as large as that used for any trade or brand name thereof,
  - b. The formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act, and
  - c. Such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act.
- (17) If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.
- (18) If it is a drug and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970. (1939, c. 320, s. 15; 1949, c. 370; 1973, c. 831, s. 1; 1975, c. 614, ss. 25-28, 30; 1997-261, s. 33.)

**§ 106-134.1. Prescriptions required; label requirements; removal of certain drugs from requirements of this section.**

- (a) A drug intended for use by man which:
  - (1) Is a habit-forming drug to which G S 106-134(4) applies; or
  - (2) Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug in the course of his normal practice; or
  - (3) Is limited by an approved application under section 505 of the federal act to use under the professional supervision of a practitioner licensed by law to administer such drug; or
  - (4) Is a drug the label of which bears the statement "Caution Federal law prohibits dispensing without a prescription," shall be dispensed only
    - a. Upon a written prescription of a practitioner licensed by law in administer such drug, or authorized to issue orders pursuant to G.S 90-87(23)(a). provided that the written prescription must bear the printed or stamped name, address, telephone number and DEA number of the prescriber in addition to his legal signature, or
    - b. Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or

- c. By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. If any prescription for such drug does not indicate the times it may be refilled, if any, such prescription may not be refilled unless the pharmacist is subsequently authorized to do so by the practitioner. The act of dispensing a drug contrary to the provisions of this subdivision shall be deemed to be an act which results in a drug being misbranded while held for sale.
- (b) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of G.S. 106-134, except subsections (1), (9)b and c, (13) and (14), and the packaging requirements of subsections (7) and (8), if the drug bears an affixed label containing the name of the patient, the name and address of the pharmacy, the phrase "Filled by.." or "Dispensed by with the name of the practitioner who dispenses the prescription appearing in the blank, the serial number and date of the prescription or of its filling, the name of the prescriber , the directions for use, and unless otherwise directed by the prescriber of such drug, the name and strength of such drug. This exemption shall not apply to any drugs dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of subsection (a) of this section.
- Any tranquilizer or sedative dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be labeled by the pharmacist, if the prescriber so directs on the prescription, with a warning that: "The consumption of alcoholic beverages while on this medication can be harmful to your health."
- (c) The Board may, by regulation, remove drugs subject to G.S 106-134 (4) and G.S. 106-135 from the requirements of subsection (a) of this section when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued there under shall also, by regulations issued by the Board, be removed from the requirement of subsection (a).
- (d) A drug which is subject to subsection (a) of this section shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription." A drug to which subsection (a) of this section does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.
- (e) Nothing in this section shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classification of "controlled substances" as this term is defined in applicable Federal and State controlled substance acts. (1975, c. 614, s. 29; 1977, c. 421; 979,c. 626; 1981, c. 75, s. 2.)

## END OF CHAPTER

## CHAPTER 58 INSURANCE

### § 58-3-177. Uniform prescription drug identification cards.

- (a) Every health benefit plan that provides coverage for prescription drugs or devices and that issues a prescription drug card, shall issue to its insureds a uniform prescription drug identification card. The uniform prescription drug identification card shall contain the information listed in subdivisions (1) through (7) of this subsection in the following order beginning at the top left margin of the card:
- (1) The health benefit plan's name and/or logo.
  - (2) The American National Standards Institute assigned Issuer Identification Number.
  - (3) The processor control number.
  - (4) The insured's group number.
  - (5) The health benefit plan's card issuer identifier.
  - (6) The insured's identification number.
  - (7) The insured's name.
- (b) In addition to the information required under subsection (a), the uniform prescription drug card shall contain, in one of the lower-most elements on the back side of the card. the following information:
- (1)The health benefit plan's claims submission name and address.
  - (2)The health benefit plan's help desk telephone number and name.

Nothing in this section shall require a health benefit plan to violate a contractual agreement, service mark agreement, or trademark agreement.

- (c) A new uniform prescription drug identification card as required under subsection (a) of this section shall be issued annually by a health benefit plan if there has been any change in the insured's coverage in the previous 12 months. A change in the insured's coverage shall include, but is not limited to, the addition or deletion of a dependent of the insured covered by a health benefit plan.
- (d) Not later than January 1, 2003, the uniform prescription drug identification card provided under subsection (a) of this section shall contain one of the following mediums capable of the processing or adjudicating of a claim through electronic verification;
  - (1) A magnetic strip.
  - (2) A bar code.
  - (3) Any new technology available that is capable of processing or adjudicating a claim by electronic verification.
- (e) As used in this section, "health benefit plan" means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. "Health benefit plan" does not mean any of the following kinds of insurance:
  - (1) Accident.
  - (2) Credit.
  - (3) Disability income.
  - (4) Long-term or nursing home care.
  - (5) Medicare supplement.
  - (6) Specified disease
  - (7) Dental or vision.
  - (8) Coverage issued as a supplement to liability insurance.
  - (9) Workers' compensation
  - (10) Medical payments under automobile or homeowners.
  - (11) Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.
  - (12) Hospital income or indemnity.
- (f) This section shall not apply to an entity that has its own facility and employs or contracts with physicians, pharmacists, nurses, and other health care personnel, to the extent that the entity dispenses prescription drugs or devices from its own pharmacies to its employees and to enrollees of its health benefit plan. This section does not apply to a health benefit plan that issues a single identification card to its insureds for all services covered under the plan. (1999-343, s. 1.)

**§ 58-3-228. Coverage for extra prescriptions during a state of emergency or disaster.**

- (a) All health benefit plans as defined in G.S. 58-3-167, the State Health Plan for Teachers and State Employees, and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes, and other stand-alone prescription medication plans issued by entities that are licensed by the Department shall have, when an event described in subdivision (b)(1) of this section occurs and the requirements of subdivisions (b)(2) and (b)(3) of this section are satisfied, a procedure in place to waive time restrictions on filling or refilling prescriptions for medication if requested by the covered person or subscriber. The procedure shall include waiver or override of electronic "refill too soon" edits to pharmacies and shall include provision for payment to the pharmacy in accordance with the prescription benefit plan and applicable pharmacy provider agreement. The procedure shall enable covered persons or subscribers to:
  - (1) Obtain one refill on a prescription if there are authorized refills remaining, or
  - (2) Fill one replacement prescription for one that was recently filled, as prescribed or approved by the prescriber of the prescription that is being replaced and not contrary to the dispensing authority of the dispensing pharmacy.
- (b) All entities subject to this section shall authorize payment to pharmacies for any prescription dispensed in accordance with subsection (a) of this section regardless of the date upon which the prescription had most recently been filled by a pharmacist, if all of the following conditions apply:

- (1) The Commissioner issues a Bulletin Advisory notifying all insurance carriers licensed in this State of a declared state of disaster or state of emergency in North Carolina. The Department shall provide a copy of the Bulletin to the North Carolina Board of Pharmacy.
  - (2) The covered person requesting coverage of the refill or replacement prescription resides in a county that:
    - a. Is covered under a proclamation of state of disaster issued by the Governor or by a resolution of the General Assembly under G.S. 166A-6, or a declaration of major disaster issued by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; or
    - b. Is declared to be under a state of emergency in a proclamation issued by the Governor under G.S. 14-288.15.
  - (3) The prescription medication is requested within 29 days after the origination date of the conditions stated in subdivision (b)(1) of this section.
- (c) The time period for the waiver of prescription medication refills may be extended in 30-day increments by an order issued by the Commissioner. Additional refills still remaining on a prescription shall be covered by the insurer as long as consistent with the orders of the prescriber or authority of the dispensing pharmacy.
- (d) This section does not excuse or exempt an insured or subscriber from any other terms of the policy or certificate providing coverage for prescription medications.
- (e) Quantity limitations shall be consistent with the original prescription and the extra or replacement fill may recognize proportionate dosage use prior to the disaster.
- (f) No requirements additional to those under the pharmacy provider agreement or the prescription benefit plan may be placed upon the provider for coverage of the replacement fill or extra fill.
- (g) Nothing in this section is intended to affect the respective authority or scope of practice of prescribers or pharmacies. (2007-133, s. 1; 2007-323, s. 28.22A(o); 2007-345, s. 12.)

**§ 58-51-37. Pharmacy of choice.**

- (a) This section shall apply to all health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of North Carolina. This section shall also apply to insurance companies and health maintenance organizations that provide or administer coverages and benefits for prescription drugs. This section shall not apply to any entity that has its own facility, employs or contracts with physicians, pharmacists, nurses, and other health care personnel, and that dispenses prescription drugs from its own pharmacy to its employees and to enrollees of its health benefit plan, provided, however, this section shall apply to an entity otherwise excluded that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services. This section shall not apply to any federal program, clinical trial program, hospital or other health care facility licensed pursuant to Chapter 131E or Chapter 122C of the General Statutes, when dispensing prescription drugs to its patients.
- (b) As used in this section:
- (1) "Copayment" means a type of cost sharing whereby insured or covered persons pay a specified predetermined amount per unit of service with their insurer paying the remainder of the charge. The copayment is incurred at the time the service is used. The copayment may be a fixed or variable amount.
  - (2) "Contract provider" means a pharmacy granted the right to provide prescription drugs and pharmacy services according to the terms of the insurer.
  - (3) "Health benefit plan" is as that term is defined in G.S. 58-50-110(11).
  - (4) "Insurer" means any entity that provides or offers a health benefit plan.
  - (5) "Pharmacy" means a pharmacy registered with the North Carolina Board of Pharmacy.
- (c) The terms of a health benefit plan shall not:
- (1) Prohibit or limit a resident of this State, who is eligible for reimbursement for pharmacy services as a participant or beneficiary of a health benefit plan, from selecting a pharmacy of his or her choice when the pharmacy has agreed to participate in the health benefit plan according to the terms offered by the insurer;
  - (2) Deny a pharmacy the opportunity to participate as a contract provider under a health benefit plan if the pharmacy agrees to provide pharmacy services that meet the terms and requirements, including terms of reimbursement, of the insurer under a health benefit plan, provided that if the pharmacy is offered the opportunity to participate, it must participate or no provisions of G.S. 58-51-37 shall apply;
  - (3) Impose upon a beneficiary of pharmacy services under a health benefit plan any copayment, fee, or condition that is not equally imposed upon all beneficiaries in the same benefit category, class, or copayment level under the health benefit plan when receiving services from a contract provider;

- (4) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice of pharmacy. Monetary advantage or penalty includes higher copayment, a reduction in reimbursement for services, or promotion of one participating pharmacy over another by these methods.
  - (5) Reduce allowable reimbursement for pharmacy services to a beneficiary under a health benefit plan because the beneficiary selects a pharmacy of his or her choice, so long as that pharmacy has enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area; or
  - (6) Require a beneficiary, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy.
- (d) A pharmacy, by or through a pharmacist acting on its behalf as its employee, agent, or owner, may not waive, discount, rebate, or distort a copayment of any insurer, policy, or plan, or a beneficiary's coinsurance portion of a prescription drug coverage or reimbursement and if a pharmacy, by or through a pharmacist's acting on its behalf as its employee, agent or owner, provides a pharmacy service to an enrollee of a health benefit plan that meets the terms and requirements of the insurer under a health benefit plan, the pharmacy shall provide its pharmacy services to all enrollees of that health benefit plan on the same terms and requirements of the insurer A violation of this subsection shall be a violation of the Pharmacy Practice Act subjecting the pharmacist as a licensee to disciplinary authority of the North Carolina Board of Pharmacy pursuant to G.S. 90-85.38
- (e) At least 60 days before the effective date of any health benefit plan providing reimbursement to North Carolina residents for prescription drugs, which restricts pharmacy participation, the entity providing the health benefit plan shall notify, in writing, all pharmacies within the geographical coverage area of the health benefit plan, and offer to the pharmacies the opportunity to participate in the health benefit plan. All pharmacies in the geographical coverage area of the plan shall be eligible to participate under identical reimbursement terms for providing pharmacy services, including prescription drugs The entity providing the health benefit plan shall, through reasonable means, on a timely basis, and on regular intervals in order to effectuate the purposes of this section, inform the beneficiaries of the plan of the names and locations of pharmacies that are participating in the plan as providers of pharmacy services and prescription drugs. Additionally, participating pharmacies shall be entitled to announce their participation to their customers through a means acceptable to the pharmacy and the entity providing the health benefit plans. The pharmacy notification provisions of this section shall not apply when an individual or group is enrolled, but when the plan enters a particular county of the State.
- (f) If rebates or marketing incentives are allowed to pharmacies or other dispensing entities providing services or benefits under a health benefit plan, these rebates or marketing incentives shall be offered on an equal basis to all pharmacies and other dispensing entities providing services or benefits under a health benefit plan when pharmacy services, including prescription drugs, are purchased in the same volume and under the same terms of payment. Nothing in this section shall prevent a pharmaceutical manufacturer or wholesale distributor of pharmaceutical products from providing special prices, marketing incentives, rebates, or discounts to different purchasers not prohibited by federal and State antitrust laws.
- (g) Any entity or insurer providing a health benefit plan is subject to G.S 58-2-70. A violation of this section shall subject the entity providing a health benefit plan to the sanctions of revocation, suspension, or refusal to renew license in the discretion of the Commissioner pursuant to G.S. 58-3-100.
- (h) A violation of this section creates a civil cause of action for damages or injunctive relief in favor of any person or pharmacy aggrieved by the violation.
- (i) The Commissioner shall not approve any health benefit plan providing pharmaceutical services which does not conform to this section.
- (j) Any provision in a health benefit plan which is executed, delivered, or renewed, or otherwise contracted for in this State that is contrary to any provision of this section shall, to the extent of the conflict, be void.
- k) It shall be a violation of this section for any insurer or any person to provide any health benefit plan providing for pharmaceutical services to residents of this State that does not conform to the provisions of this section. (1993, c. 293, s. 1.)

**End of Section**