

**FREQUENTLY ASKED QUESTIONS ABOUT S.L. 2011-349,
AN ACT TO DIRECT PHARMACIES TO REQUIRE PHOTO IDENTIFICATION
PRIOR TO DISPENSING CERTAIN CONTROLLED SUBSTANCES**

ISSUED: NOVEMBER 29, 2011

UPDATE: JANUARY 5, 2012 (Questions 3 and 11)

UPDATE: FEBRUARY 20, 2012 (Question 3)

UPDATE: MARCH 6, 2012 (Questions 3, 5 and 12)

UPDATE: MARCH 7, 2012 (Question 12)

UPDATE: MARCH 13, 2012 (New Question 20)

1. **Why did the Board pass this law?** The Board did not pass this law. It is a statute passed by the North Carolina General Assembly during the 2011 Session.

2. **For which controlled substances is photo identification required prior to dispensing?** NCGS § 90-106.1 imposes an identification prior to dispensing all Schedule II controlled substances and “Schedule III controlled substances listed in subdivisions 1 through 8 of G.S. 90-91(d).” Those subdivisions list the “combination” Schedule III controlled substances – i.e., Vicodin and the like.

3. **What is an acceptable form of identification?** The statute states that only four types of identification are acceptable: a driver’s license, a special identification card issued by the North Carolina Department of Motor Vehicles, a military identification, and a passport. This requirement is likely to pose access problems for a number of patient populations.

January 5, 2012 Update

- A number of pharmacists have inquired whether employee identification badges meet this requirement. No. As noted, the statute recognizes four, and only four, government-issued identification documents.

- Several pharmacists have asked whether the pharmacist must personally review the identification. No. The statute places responsibility for reviewing and documenting proper identification on “the pharmacy.” Accordingly, other pharmacy staff (e.g., technicians or cashiers) may review and document the identification. Both the pharmacy permit and pharmacist manager are, of course, responsible for ensuring that the statute’s requirements are being met.

February 20, 2012 Update

- Pharmacists have inquired whether a foreign national's identification is acceptable. With respect to a passport, yes. The statute specifies that a "government-issued" passport is an acceptable identification, and the statute does not state that the passport must be "U.S.-government issued." Similarly, the statutory language does not appear to exclude a foreign-government issued driver's license or military identification from eligibility, so long as it is current, has a photograph of the holder, and has an identifying number. The "special identification card" option, however, is limited to a "special identification card" issued by the North Carolina Department of Motor Vehicles.

March 6, 2012 Update

- Board staff has received more questions about identification from foreign nationals. The February 20 update above discussed that issue. Some pharmacists have asked about identifications issued by the Mexican Consulate. Such identifications are not a "driver's license," "passport," or "military identification" and thus do not satisfy the statutory requirement. Other pharmacists have asked about "green cards" issued by the U.S. government. Such identifications are, of course, "government issued" and they include a photograph and an identification number. Nonetheless, "green cards" are not a "driver's license," "passport," or "military identification." Board staff is acutely aware of the access problem this limitation creates for certain patient populations.
4. **May a pharmacist accept an expired identification?** No. The statute specifies that the identification be "unexpired." This requirement is likely to pose particular access problems for elderly patients.
5. **If a patient lacks an unexpired identification that meets the statutory requirement, may someone else obtain the prescription?** Yes. The statute specifies that "[n]othing . . . shall be deemed to require that the person seeking the dispensation and the person to whom the prescription is issued be the same person." If a patient lacking the requisite identification is able to convince a friend or family member to present their identification, that person may receive the prescription on behalf of the patient. The identification of the person receiving the prescription must be documented.

March 6, 2012 Update

- Pharmacists have asked whether the statute allows a pharmacist, technician, or other pharmacy employee (such as a delivery person) to provide an identification and facilitate delivery of a covered prescription drug to a patient who lacks the requisite

identification. Nothing in the statute prohibits this practice. Board staff recommends, as noted in Question 6 below, that pharmacies document the patient's designation of the pharmacist, technician or other pharmacy employee as an authorized "pick up person." Board staff notes further that a pharmacist, technician, or other pharmacy employee providing identification in this way be fully aware that his/her identification is being recorded for multiple controlled substance prescriptions.

6. **Does the "other person picking up the prescription" provision raise patient privacy issues?** Potentially. If the patient for whom the prescription was issued is not present at pick-up, questions could arise as to whether person picking up is authorized by the patient to do so. Board staff recommends that pharmacists ask patients to designate authorized "pick up persons" and document that authorization in the patient profile or other appropriate record.

7. **When a patient who presented identification for initial dispensing returns for a refill, and the pharmacist knows it is the same person seeking the refill, does the pharmacist have to again obtain and record the identification?** Board staff believes the answer to this question is "no." There is no apparent purpose served by requiring a second presentation and recording of an identification in this circumstance. Nor does repeat identification check in this circumstance appear to be compelled by the North Carolina Controlled Substance Act's definition of "dispense."

8. **What if one person drops off a prescription for filling and another arrives to pick up the prescription? From whom must the pharmacist obtain the requisite identification?** Board staff interprets the "person seeking dispensation" under the statute to be the person who arrives to pick up the prescription or to whom the prescription is delivered (see question #9 below).

9. **If a pharmacy provides delivery service, must delivery personnel obtain and record the identification information at the time of delivery?** Yes.

10. **How can an out-of-state pharmacy that provides mail-service-only prescription services to North Carolina patients comply with this identification requirement?** The statute, on its face, does not apply to out-of-state pharmacies. It applies strictly and exclusively to "each pharmacy holding a valid permit pursuant to G.S. 90-85.21." G.S. 90-85.21 sets forth the permit requirements for "each pharmacy in North Carolina." G.S. 90-85.21A, a separate statutory section and not a subsection of 90-85.21, sets forth the permit requirement for "any pharmacy operating outside the State."

11. **ADDED JANUARY 5, 2012. Must an in-state pharmacy that provides mail-service prescriptions to North Carolina patients or out-of-state patients comply with this**

identification requirement? As noted above, the controlled substance ID check does not, on its face, apply to out-of-state pharmacies that ship covered controlled substances to patients in North Carolina.

The statute does not explicitly exempt in-state pharmacies that provide mail delivery of covered controlled substances from the ID check. Plainly, however, in-state pharmacies shipping covered controlled substances by mail could not comply with the ID check requirement. Board staff does not believe that the General Assembly intended to prohibit in-state pharmacies from engaging in the same mail-delivery services that out-of-state pharmacies may engage in.

Accordingly, Board staff will not pursue disciplinary action against a North Carolina pharmacy that provides mail-order delivery of Schedule II or covered Schedule III medications to patients. When asked to interpret a statute, a court will avoid creating an absurd result. Board staff believes that interpreting this statute to create a requirement for in-state pharmacies (but not out-of-state pharmacies) that would be impossible to satisfy is an absurd result. Staff at the Drug Control Unit agrees with Board staff's view on this matter.

12. Does this statute apply when dispensing to patients in hospitals or other health care facilities? No. The statute excludes dispensing in “health care facilities, as that term is defined in G.S. 131E-256(b), when the controlled substances are delivered to the health care facilities for the benefit of residents or patients of such health care facilities.” G.S. 131E-256(b) includes adult care homes, hospitals, home care agencies, hospices, nursing facilities, and “community-based providers of services for the mentally ill, the developmentally disabled, and substance abusers that are not required to be licensed under Article 2 of Chapter 122C of the General Statutes.”

March 6, 2012 Update

- Several pharmacists have asked whether an identification check is required prior to dispensing a Schedule II or covered Schedule III controlled substance to a hospice patient receiving hospice care at his/her home. The statute states that delivery of such prescription drugs to “employees” of a “health care facility” for “the benefit of residents or patients or such health care facilities” does not trigger the identification check requirement. The relevant statute defines “hospice” as “any coordinated program of home care with provision for inpatient care for terminally ill patients and their families. . . .” Accordingly, Board staff concludes that the identification check requirement does not apply to home-based hospice patients when delivery of the covered medication is made to an “employee” of the hospice care provider.

- Relatedly, some pharmacists have inquired whether the identification check is required when a non-employee caretaker of a home hospice patient (such as a family member) picks up a prescription for a covered drug. In this case, the statute does require checking the identification of the person picking up the prescription. The “health care facility” exception (which, as noted, includes hospice) is limited to delivery to “employees” of the health care facility.

March 7, 2012 Update

- Pharmacists have inquired whether the dispensing of a small “starter” supply of a Schedule II or covered Schedule III drug in an emergency room triggers the identification requirement. Board staff interprets the statute as not requiring identification check and recording in this instance. As noted directly above, delivery of such prescription drugs to “employees” of a “health care facility” for “the benefit of residents or patients or such health care facilities” does not trigger the identification check-and-record requirements. Emergency room patients are “patients” of a “health care facility,” and provision of covered drugs to these patients occurs by “employees” of the hospital in the emergency department.

13. Does the identification check and record requirement apply to outpatient and/or employee pharmacy services at hospitals? Yes. When a hospital (or other “health care facility”) pharmacy provides controlled substances to employees who will then going to administer those substances to inpatients, the identification requirement does not apply (see question #12 above). But if a hospital operates an outpatient pharmacy, dispensing is not being provided from that facility to “residents or patients,” and the identification check and record provision applies.

14. What does the statute require the pharmacy to record? The pharmacy must “document the name of the person seeking the dispensation, the type of photographic identification presented by the person seeking the dispensation, and the photographic identification number.”

15. Must the pharmacy scan or otherwise image the identification? No.

16. Does the statute specify a particular format for the documentation? No.

17. Where and how long do I have to retain the documentation? The documentation must be retained “on the premises or at a central location apart from the premises as part of its business records for a period of three years following the dispensation.”

18. Can't I just send the identification documentation information with my North Carolina Controlled Substance Reporting System updates? The statute contemplates transmittal of information through the CSRS as a means of maintaining documentation. The software currently used by the North Carolina CSRS is not, however, capable of receiving this information. Bill Bronson, head of the Drug Control Unit, reports his anticipation that the CSRS software will be upgraded to receive this information within the next 12 months. The Board will announce any upgrade information upon receiving it.

19. Who can access the identification information from my prescription files? The statute limits access to those persons authorized to receive information from the Controlled Substance Reporting System:

- (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.

(8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.

G.S. 90-113.74(c)

Note: Neither local law enforcement nor sheriff's departments have an independent authority to access the Controlled Substance Reporting System, and thus have no independent authority to access documented identification information under this statute.

20. **I am a dispensing physician/physician assistant/nurse practitioner. Must I comply with identification check requirements?** For physician assistants and nurse practitioners, the answer is clearly yes. Under North Carolina law, a physician assistant or nurse practitioner "must . . . dispense[] from a place holding a current pharmacy permit from the Board as required by G.S. 90-85.21" 21 NCAC 46.1703(d). The controlled substance identification statute imposes its requirements on "each pharmacy holding a valid permit pursuant to G.S. 90-85.21." Accordingly, a dispensing physician assistant or nurse practitioner must comply with the identification requirements.

For dispensing physician, while the issue is somewhat clouded, the answer also appears to be yes. As noted, the identification requirement attaches to "each pharmacy holding a valid permit pursuant to G.S. 90-85.21." Dispensing physicians are not "pharmacies," but are required to hold a valid permit from the Board of Pharmacy pursuant to G.S. 90-85.21(b). Moreover, G.S. 90-85.21(b) requires all physician dispensing to "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." The controlled substance identification is a law that "govern[s] the distribution of drugs," specifically recordkeeping.