

A bill for an act

relating to professions; changing licensing provisions for the Board of Pharmacy; defining electronic signature and electronic transmission; setting requirements for prescriptions by electronic transmission; amending Minnesota Statutes 2006, sections 151.01, by adding subdivisions; 151.06, subdivision 1; 151.21, subdivisions 1, 2, 3, by adding a subdivision.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 151.01, is amended by adding a subdivision to read:

Subd. 31. **Electronic signature.** "Electronic signature" means an electronic sound, symbol, or process attached to or associated with a record and executed or adopted by a person with the intent to sign the record.

Sec. 2. Minnesota Statutes 2006, section 151.01, is amended by adding a subdivision to read:

Subd. 32. **Electronic transmission.** "Electronic transmission" means transmission of information in electronic form.

Sec. 3. Minnesota Statutes 2006, section 151.06, subdivision 1, is amended to read:

Subdivision 1. **Generally; rules.** (a) **Powers and duties.** The Board of Pharmacy shall have the power and it shall be its duty:

(1) to regulate the practice of pharmacy;

(2) to regulate the manufacture, wholesale, and retail sale of drugs within this state;

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2.1 (3) to regulate the identity, labeling, purity, and quality of all drugs and medicines
2.2 dispensed in this state, using the United States Pharmacopeia and the National Formulary,
2.3 or any revisions thereof, or standards adopted under the federal act as the standard;

2.4 (4) to enter and inspect by its authorized representative any and all places where
2.5 drugs, medicines, medical gases, or veterinary drugs or devices are sold, vended, given
2.6 away, compounded, dispensed, manufactured, wholesaled, or held; it may secure samples
2.7 or specimens of any drugs, medicines, medical gases, or veterinary drugs or devices
2.8 after paying or offering to pay for such sample; it shall be entitled to inspect and make
2.9 copies of any and all records of shipment, purchase, manufacture, quality control, and
2.10 sale of these items provided, however, that such inspection shall not extend to financial
2.11 data, sales data, or pricing data;

2.12 (5) to examine and license as pharmacists all applicants whom it shall deem qualified
2.13 to be such;

2.14 (6) to license wholesale drug distributors;

2.15 (7) to deny, suspend, revoke, or refuse to renew any registration or license required
2.16 under this chapter, to any applicant or registrant or licensee upon any of the following
2.17 grounds:

2.18 (i) fraud or deception in connection with the securing of such license or registration;

2.19 (ii) in the case of a pharmacist, conviction in any court of a felony;

2.20 (iii) in the case of a pharmacist, conviction in any court of an offense involving
2.21 moral turpitude;

2.22 (iv) habitual indulgence in the use of narcotics, stimulants, or depressant drugs;
2.23 or habitual indulgence in intoxicating liquors in a manner which could cause conduct
2.24 endangering public health;

2.25 (v) unprofessional conduct or conduct endangering public health;

2.26 (vi) gross immorality;

2.27 (vii) employing, assisting, or enabling in any manner an unlicensed person to
2.28 practice pharmacy;

2.29 (viii) conviction of theft of drugs, or the unauthorized use, possession, or sale thereof;

2.30 (ix) violation of any of the provisions of this chapter or any of the rules of the State
2.31 Board of Pharmacy;

2.32 (x) in the case of a pharmacy license, operation of such pharmacy without a
2.33 pharmacist present and on duty;

2.34 (xi) in the case of a pharmacist, physical or mental disability which could cause
2.35 incompetency in the practice of pharmacy;

3.1 (xii) in the case of a pharmacist, the suspension or revocation of a license to practice
3.2 pharmacy in another state; or

3.3 (xiii) in the case of a pharmacist, aiding suicide or aiding attempted suicide in
3.4 violation of section 609.215 as established by any of the following:

3.5 (A) a copy of the record of criminal conviction or plea of guilty for a felony in
3.6 violation of section 609.215, subdivision 1 or 2;

3.7 (B) a copy of the record of a judgment of contempt of court for violating an
3.8 injunction issued under section 609.215, subdivision 4;

3.9 (C) a copy of the record of a judgment assessing damages under section 609.215,
3.10 subdivision 5; or

3.11 (D) a finding by the board that the person violated section 609.215, subdivision
3.12 1 or 2. The board shall investigate any complaint of a violation of section 609.215,
3.13 subdivision 1 or 2;

3.14 (8) to employ necessary assistants and ~~make~~ adopt rules for the conduct of its
3.15 business;

3.16 (9) to register as pharmacy technicians all applicants who the board determines are
3.17 qualified to carry out the duties of a pharmacy technician; and

3.18 (10) to perform such other duties and exercise such other powers as the provisions of
3.19 the act may require.

3.20 (b) **Temporary suspension.** In addition to any other remedy provided by law, the
3.21 board may, without a hearing, temporarily suspend a license for not more than 60 days if
3.22 the board finds that a pharmacist has violated a statute or rule that the board is empowered
3.23 to enforce and continued practice by the pharmacist would create an imminent risk of
3.24 harm to others. The suspension shall take effect upon written notice to the pharmacist,
3.25 specifying the statute or rule violated. At the time it issues the suspension notice, the
3.26 board shall schedule a disciplinary hearing to be held under the Administrative Procedure
3.27 Act. The pharmacist shall be provided with at least 20 days' notice of any hearing held
3.28 under this subdivision.

3.29 (c) **Rules.** For the purposes aforesaid, it shall be the duty of the board to make
3.30 and publish uniform rules not inconsistent herewith for carrying out and enforcing
3.31 the provisions of this chapter. The board shall adopt rules regarding prospective drug
3.32 utilization review and patient counseling by pharmacists. A pharmacist in the exercise of
3.33 the pharmacist's professional judgment, upon the presentation of a new prescription by a
3.34 patient or the patient's caregiver or agent, shall perform the prospective drug utilization
3.35 review required by rules issued under this subdivision.

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4.1 Sec. 4. Minnesota Statutes 2006, section 151.21, subdivision 1, is amended to read:

4.2 Subdivision 1. **Generally.** Except as provided in this section, it shall be unlawful for
4.3 any pharmacist, ~~assistant pharmacist,~~ or pharmacist intern who dispenses prescriptions,
4.4 drugs, and medicines to substitute an article different from the one ordered, or deviate
4.5 in any manner from the requirements of an order or prescription without the approval of
4.6 the prescriber.

4.7 Sec. 5. Minnesota Statutes 2006, section 151.21, subdivision 2, is amended to read:

4.8 Subd. 2. **Brand name specified.** When a pharmacist receives a written paper or
4.9 hard copy prescription on which the prescriber has personally written in handwriting
4.10 "dispense as written" or "D.A.W.," a prescription sent by electronic transmission on which
4.11 the prescriber has expressly indicated in a manner consistent with the standards for
4.12 electronic prescribing under Code of Federal Regulations, title 42, section 423, that the
4.13 prescription is to be dispensed as transmitted and which bears the prescriber's electronic
4.14 signature, or an oral prescription in which the prescriber has expressly indicated that the
4.15 prescription is to be dispensed as communicated, the pharmacist shall dispense the brand
4.16 name legend drug as prescribed.

4.17 Sec. 6. Minnesota Statutes 2006, section 151.21, subdivision 3, is amended to read:

4.18 Subd. 3. **Brand name not specified.** When a pharmacist receives a written paper or
4.19 hard copy prescription on which the prescriber has not personally written in handwriting
4.20 "dispense as written" or "D.A.W.," a prescription sent by electronic transmission on which
4.21 the prescriber has not expressly indicated in a manner consistent with the standards for
4.22 electronic prescribing under Code of Federal Regulations, title 42, section 423, that the
4.23 prescription is to be dispensed as transmitted and which bears the prescriber's electronic
4.24 signature, or an oral prescription in which the prescriber has not expressly indicated
4.25 that the prescription is to be dispensed as communicated, and there is available in the
4.26 pharmacist's stock a less expensive generically equivalent drug that, in the pharmacist's
4.27 professional judgment, is safely interchangeable with the prescribed drug, then the
4.28 pharmacist shall, after disclosing the substitution to the purchaser, dispense the generic
4.29 drug, unless the purchaser objects. A pharmacist may also substitute pursuant to the oral
4.30 instructions of the prescriber. A pharmacist may not substitute a generically equivalent
4.31 drug product unless, in the pharmacist's professional judgment, the substituted drug is
4.32 therapeutically equivalent and interchangeable to the prescribed drug. A pharmacist
4.33 shall notify the purchaser if the pharmacist is dispensing a drug other than the brand
4.34 name drug prescribed.

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5.1 Sec. 7. Minnesota Statutes 2006, section 151.21, is amended by adding a subdivision
5.2 to read:

5.3 Subd. 3a. **Prescriptions by electronic transmission.** Nothing in this section
5.4 permits a prescriber to maintain "dispense as written" or "D.A.W." as a default on all
5.5 prescriptions. Prescribers must add the "dispense as written" or "D.A.W." designation to
5.6 electronic prescriptions individually, as appropriate.