

Dear Senators LODGE, Broadsword & Werk, and  
Representatives BLOCK, Nielsen & Henbest:

The Legislative Services Office, Research and Legislation, has received the enclosed  
rules of the Board of Pharmacy:

IDAPA 27.01.01 - Rules of the Idaho State Board of Pharmacy (Docket No. 27-0101-0806).

Pursuant to Section 67-454, Idaho Code, a meeting on the enclosed rules may be called by  
the cochairmen or by two (2) or more members of the subcommittee giving oral or written notice  
to Research and Legislation no later than fourteen (14) days after receipt of the rules' analysis  
from Legislative Services. The final date to call a meeting on the enclosed rules is no later than  
10-24-08. If a meeting is called, the subcommittee must hold the meeting within forty-two (42)  
days of receipt of the rules' analysis from Legislative Services. The final date to hold a meeting  
on the enclosed rules is 11-21-08.

\_\_\_\_\_The germane joint subcommittee may request a statement of economic impact with  
respect to a proposed rule by notifying Research and Legislation. There is no time limit on  
requesting this statement, and it may be requested whether or not a meeting on the proposed rule  
is called or after a meeting has been held.

To notify Research and Legislation, call 334-2475, or send a written request to the  
address or FAX number indicated on the memorandum enclosed.

## MEMORANDUM

**TO:** Rules Review Subcommittee of the Senate Health & Welfare Committee and the House Health & Welfare Committee

**FROM:** Research & Legislation Staff - Paige Alan Parker

**DATE:** October 6, 2008

**SUBJECT:** Board of Pharmacy - IDAPA 27.01.01 - Rules of the Idaho State Board of Pharmacy (Docket No. 27-0101-0806 (Proposed))

The Board of Pharmacy submits Docket No. 27-0101-0806 (hereinafter “proposed rule”), amending the Board’s rules found at IDAPA 27.01.01. According to the Board, the proposed rule is authorized pursuant to sections 37-2715 and 54-1717, Idaho Code.

Chapter 27, title 37, Idaho Code is the Uniform Controlled Substances Act. Section 37-2715, Idaho Code, permits the Board to promulgate rules relating to the dispensing of controlled substances within Idaho. Chapter 17, title 54, Idaho Code, is the Idaho Pharmacy Act. Section 54-1717, Idaho Code, provides general rulemaking authority for the Board of Pharmacy.

According to the Board, the purpose of this rulemaking is to limit the evidentiary presumption of the occurrence of a violation of section 37-2720, Idaho Code, dealing with unaccounted for controlled substance in a record or inventory in disciplinary proceedings to a rebuttal presumption.

Section 37-2720, Idaho Code, states: “Persons [Persons] registered to manufacture, distribute, or dispense controlled substances under this act shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the board issues.”

According to the Board, no fee or charge is imposed by the temporary and proposed rule. The Board states that there is no anticipated impact to the general fund greater than \$10,000 during the fiscal year as a result of the temporary and proposed rule. According to the Board,

negotiated rulemaking was not conducted because of the simple nature of the rulemaking. The Board states that public hearing(s) will be scheduled if requested in writing by 25 persons, a political subdivision, or an agency, not later than October 15, 2008. All written comments must be delivered to the Board on or before October 22, 2008.

### **ANALYSIS**

The rebuttable presumption is that where there is evidence of an amount of a controlled substance which is different from that reflected on any record or by any inventory required by federal law and any additional rules issued by the Board, the registrant has failed to keep records and maintain inventories in conformance with those record keeping and inventory requirements. The proposed rule clarifies that the application of the rebuttable presumption applies to a disciplinary proceeding to suspend or revoke the controlled substance registration in violation of section 37-2720, Idaho Code, rather than to a prosecution.

### **SUMMARY**

The Department's proposed rule change appears to be authorized under sections 37-2715, and 54-1717, Idaho Code.

cc: Idaho State Board of Pharmacy  
Mark D. Johnston, Executive Director

## **IDAPA 27 - BOARD OF PHARMACY**

### **27.01.01 - RULES OF THE IDAHO BOARD OF PHARMACY**

**DOCKET NO. 27-0101-0806**

#### **NOTICE OF RULEMAKING - PROPOSED RULE**

**AUTHORITY:** In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Sections 37-2715 and 54-1717, Idaho Code.

**PUBLIC HEARING SCHEDULE:** Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 15, 2008.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

**DESCRIPTIVE SUMMARY:** The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Clarification is needed of evidentiary presumption in IDAPA 27.01.01.460. The proposed rulemaking amends the rule to limit the evidentiary presumption of the occurrence of a violation warranting discipline to a rebuttal presumption in proceedings to suspend or revoke the controlled substance registration of a registration for violation of Section 37-2720, Idaho Code, where there is evidence of an amount of a controlled substance unaccounted for by any record or inventory required by law.

**FISCAL IMPACT:** The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: None.

**NEGOTIATED RULEMAKING:** Pursuant to 67-5220(1), Idaho Code, negotiated rulemaking was not conducted because of the simple nature of the rulemaking.

**ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS:** For assistance on technical questions concerning the proposed rule, contact Mark Johnston, R.Ph., Executive Director, (208) 334-2356.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 22, 2008.

DATED this 13th day of August, 2008.

Mark D. Johnston, R.Ph.  
Executive Director  
Idaho Board of Pharmacy  
3380 Americana Terrace, Ste. 320  
P. O. Box 83720  
Boise, ID 83720-0067  
Phone: (208) 334-2356  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 27-0101-0806**

460. ~~POSSESSION OF GREATER OR LESSER AMOUNT OF CONTROLLED SUBSTANCE THAN SHOWN BY RECORDS — EVIDENCE OF GUILT~~ REBUTTAL PRESUMPTION OF VIOLATION.

~~In a prosecution under this act proof that a defendant received or has had in his possession at any time a greater amount of a controlled substance than is accounted for by which is different from the amount reflected on any record or by any inventory required by federal law or that the amount of controlled substance possessed by a defendant is a lesser amount than is accounted for by any record required by law is prima facie evidence of guilt~~ and any additional rules, if any, issued by the Board, there shall be a rebuttable presumption that the registrant has failed to keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and any additional rules, if any, issued by the Board and is in violation of Section 37-2720, Idaho Code. (7-1-93)( )