LEGISLATURE OF THE STATE OF IDAHO

Sixty-second Legislature First Regular Session - 2013

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 17

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO THE BOARD OF PHARMACY; AMENDING SECTION 37-3201, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 54-1701, IDAHO CODE, TO REVISE TERMINOLOGY; AMENDING SECTION 54-1702, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PROVIDE FOR PRACTICE INTO THE STATE; AMENDING SECTION 54-1704, IDAHO CODE, TO REVISE A DEFINITION; AMENDING SECTION 54-1705, IDAHO CODE, TO REVISE DEFINITIONS; AMENDING SECTION 54-1720, IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE PROVISIONS RELATING TO FEES FOR NONRESIDENT PRACTICE AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1721, IDAHO CODE, TO REVISE TERMINOLOGY AND TO PROVIDE FOR NONRESIDENT PRACTICE UNDER UNLAWFUL PRACTICE; AMENDING SECTION 54-1723A, IDAHO CODE, TO REVISE TERMINOLOGY AND TO REVISE PROVISIONS RELATING TO REGISTRATION FOR NONRESIDENTS IN TELEPHARMACY; AMENDING SECTION 54-1726, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR GROUNDS FOR DISCIPLINE FOR NONRESIDENT LICENSEES AND REGISTRANTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1728, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR PENALTIES AND REINSTATEMENT FOR NONRESIDENT LICENSEES AND REGISTRANTS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1729, IDAHO CODE, TO REVISE TERMINOLOGY, TO PROVIDE FOR NONRESIDENT FACILITIES REGISTRATION REQUIREMENTS AND COMPLIANCE STANDARDS AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1730, IDAHO CODE, TO REVISE TERMINOLOGY, TO REVISE PROVISIONS RELATING TO DRUG OUTLET APPLICATION AND FEES AND TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1732, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE AND TO MAKE A TECHNICAL CORRECTION; REPEALING SECTION 54-1740, IDAHO CODE, RELATING TO SHORT TITLE; REPEALING SECTION 54-1741, IDAHO CODE, RELATING TO LEGISLATIVE DECLARATION; REPEALING SECTION 54-1742, IDAHO CODE, RELATING TO THE DEFINITION OF OUT-OF-STATE MAIL SERVICE PHARMACY; REPEALING SECTION 54-1743, IDAHO CODE, RELATING TO LICENSE REQUIREMENTS; REPEALING SECTION 54-1744, IDAHO CODE, RELATING TO NOTIFICATIONS; REPEALING SECTION 54-1745, IDAHO CODE, RELATING TO INSPECTIONS; REPEALING SECTION 54-1746, IDAHO CODE, RELATING TO PRODUCT SELECTION OF PRESCRIBED DRUGS; REPEALING SECTION 54-1747, IDAHO CODE, RELATING TO PATIENT COMMUNICATION; REPEALING SECTION 54-1748, IDAHO CODE, RELATING TO VIOLATIONS AND PENALTIES; AMENDING SECTION 54-1761, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AMENDING SECTION 54-4702, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE; AND AMENDING SECTION 54-5110, IDAHO CODE, TO PROVIDE A CORRECT CODE REFERENCE.

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

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

37-3201. DEFINITIONS. As used in this chapter:
(1) "Code imprint" means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, or marks or monograms unique to the manufacturer or distributor of the drug, or both;
(2) "Distributor" means a person who distributes for resale a drug in solid dosage form under his own label even though he is not the actual manufacturer of the drug;
(3) "Solid dosage form" means capsules or tablets intended for oral use;
(4) "Legend drug" means any drug defined by section 54-1705(3~~1~~4), Idaho Code.

SECTION 2. That Section 54-1701, Idaho Code, be, and the same is hereby amended to read as follows:

54-1701. SHORT TITLE. This ~~act~~ chapter shall be known as the "Idaho Pharmacy Act."

SECTION 3. That Section 54-1702, Idaho Code, be, and the same is hereby amended to read as follows:

54-1702. LEGISLATIVE DECLARATION. The practice of pharmacy in the state of Idaho is declared a professional practice affecting the health, safety and welfare of the public and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy, as defined in this chapter, merits and receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in or into the state of Idaho. This ~~act~~ chapter shall be liberally construed to carry out these objects and purposes.

SECTION 4. That Section 54-1704, Idaho Code, be, and the same is hereby amended to read as follows:

54-1704. PRACTICE OF PHARMACY. "Practice of pharmacy" means:
(1) T~~t~~he interpretation, evaluation and dispensing of prescription drug orders;
(2) P~~p~~articipation in drug and device selection, drug administration, prospective and retrospective drug ~~regimen~~ reviews and drug or drug-related research; ~~the practice of telepharmacy within and across state lines;~~
(3) The provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care; ~~and~~
(4) T~~t~~he responsibility for:
(a) C~~c~~ompounding and labeling of drugs and devices, except labeling by a manufacturer, repackager or distributor of nonprescription drugs and commercially packaged legend drugs and devices;
(b) P~~p~~roper and safe storage of drugs and devices, and maintenance of proper records for them; and
(c) The offering or performing of those acts, services, operations or transactions necessary to the conduct, operation, management and control of pharmacy~~. Licensed pharmacists may~~;

(5) T~~t~~he ~~prescribe~~ prescribing of:

(a) D~~d~~ietary fluoride supplements when prescribed according to the American dental association's recommendations for persons whose drinking water is proven to have a fluoride content below the United States department of health and human services' recommended concentration~~.~~ ~~Licensed pharmacists may also prescribe~~; and

(b) A~~a~~gents for active immunization when prescribed for susceptible persons twelve (12) years of age or older for the protection from communicable disease.

SECTION 5. That Section 54-1705, Idaho Code, be, and the same is hereby amended to read as follows:

54-1705. DEFINITIONS. In this chapter:

(1) "Board of pharmacy" or "board" means the Idaho state board of pharmacy.

(2) "Central drug outlet" means a resident or nonresident pharmacy, drug outlet, or business entity employing or contracting pharmacists to perform centralized pharmacy services.

(3) "Central pharmacist" means a pharmacist performing centralized pharmacy services.

(4) "Centralized pharmacy services" means the processing by a central drug outlet or central pharmacist of a request from another pharmacy to fill, refill, or dispense a prescription drug order, perform processing functions or provide cognitive or pharmaceutical care services. Each function may be performed by the same or different persons and at the same or different locations.

(5) "Counseling" or "counsel" means the effective communication by the pharmacist of information as set out in this chapter, to the patient or caregiver, in order to improve therapeutic outcomes by maximizing proper use of prescription ~~medications~~ drugs and devices. Specific areas of counseling shall include, but are not limited to:

(a) Name and strength and description of the ~~medication~~ drug;

(b) Route of administration, dosage, dosage form, continuity of therapy and refill information;

(c) Special directions and precautions for preparation, administration, storage and use by the patient as deemed necessary by the pharmacist;

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

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

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

(~~3~~6) "Deliver" or "delivery" means the actual, constructive or attempted transfer of a drug or device from one (1) person to another, whether or not for a consideration.

(4~~7~~) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar related article including any component part or accessory which is:

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

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

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

(~~5~~8) "Dispense" or "dispensing" means the preparation and delivery of a ~~prescription~~ drug pursuant to a lawful prescription drug order of a practitioner in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription ~~drug~~.

(~~6~~9) "Distribute" means the delivery of a drug other than by administering or dispensing.

(~~7~~10) "Drug" means:

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

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

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

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

(~~8~~11) "Drug order" means a~~n~~ prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility~~,~~ or as permitted for other purposes ~~when permitted by board~~ as defined in rules ~~that contains at least the name of the patient; date of issuance; the drug name, strength, and route of administration; directions for use; the name of the prescribing practitioner and, if written, the prescribing practitioner's signature or the signature of the practitioner's agent~~. Unless specifically differentiated, state law applicable to a prescription drug order is also applicable to a drug order.

(~~9~~12) "Drug outlets" means all resident or nonresident pharmacies, business entities and other facilities ~~with~~ where employees or personnel are engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices in or into Idaho.

(1~~0~~3) "Extern" means a bona fide student enrolled in an approved school or college of pharmacy who has not received his first professional degree in pharmacy.

(1~~1~~4) "Externship" means a structured practical experience program in pharmacy~~, approved by the board and~~ administered by a school or college of pharmacy.

(1~~2~~5) "Institutional facility" means a facility for which its primary purpose is to provide a physical environment for patients to obtain health

care services and in which patients spend a majority of their time, as may be further defined by board rules.

(13~~6~~) "Intern" means any person who has completed a course of study at an approved school or college of pharmacy, received the first professional degree in pharmacy and is registered with the board as a~~n~~ pharmacist intern. Interns must register with the board prior to commencement of an internship program.

(14~~7~~) "Internship" means a postgraduate practical experience program under the supervision of a preceptor ~~at a preceptor site~~.

(15~~8~~) "Investigational or new drug" means any drug which is limited by state or federal law to use under professional supervision of a practitioner authorized by law to prescribe or administer such drug.

(16~~9~~) "Labeling" means the process of preparing and affixing of a label to any drug container, exclusive however, of the labeling by a manufacturer, packer or distributor of a nonprescription drug or commercially packaged legend drug or device. Any such label shall include all information required by federal and state law ~~or regulation~~.

(~~17~~20) "Limited service outlet" means a resident or nonresident facility or business entity that is subject to registration ~~or licensure~~ by the board, pursuant to section 54-1729~~(3)~~, Idaho Code, ~~in that it~~ and has employees or personnel engaged in the practice of pharmacy, in the provision of pharmaceutical care, or in the dispensing, delivering, distributing or manufacturing of drugs or devices but is not a retail pharmacy, institutional facility, manufacturer, wholesaler, veterinary drug outlet, ~~telepharmacy across state lines~~ nonresident central drug outlet or mail service pharmacy.

(21) "Mail service pharmacy" means a nonresident pharmacy that ships, mails or delivers by any lawful means a dispensed legend drug to residents in this state pursuant to a legally issued prescription drug order and ensures the provision of corresponding related pharmaceutical care services required by law.

(~~18~~22) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and 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 drug by an individual for his own use or the preparation, compounding, packaging or labeling of a drug:

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

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

(~~19~~23) "Manufacturer" means a person who by compounding, cultivating, harvesting, mixing or other process, produces or prepares legend drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process, or who packages or repackages such drugs, but does not include pharmacists or practitioners in the practice of their profession.

(2~~0~~4) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription drug order and which are prepackaged for use by the consumer and labeled in accordance with ~~the requirements of the statutes and regulations of this~~ state and ~~the~~ federal ~~government~~ law.

(25) "Nonresident" means a person or business entity located in the District of Columbia or a state other than Idaho that practices pharmacy including, but not limited to, pharmaceutical care services into Idaho.

(2~~1~~6) "Person" means an individual, corporation, partnership, association or any other legal entity.

(2~~2~~7) "Pharmaceutical care" means drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.

(2~~3~~8) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy or a pharmacist ~~licensed~~ registered by this state who is located in another state ~~who~~ or the District of Columbia and is ~~registered by the board of pharmacy to~~ engaged in the practice of ~~telepharmacy across state lines~~ pharmacy into Idaho, unless exempted.

(29) "Pharmacist-in-charge" (PIC) means a pharmacist whose qualifications, responsibilities and reporting requirements are defined in rule.

(~~24~~30) "Pharmacy" means any facility, department or other place where prescription~~s~~ drug orders are filled or compounded and prescriptions are sold, dispensed, offered or displayed for sale, which has, as its principal purpose, the dispensing of drug and health supplies intended for the general health, welfare and safety of the public.

~~(25) "Practice of telepharmacy" means the provision of pharmaceutical care by registered or licensed pharmacies and pharmacists located within United States jurisdictions through the use of telecommunications or other technologies to patients at distances that are located within United States jurisdictions, as defined in the rules of the board.~~

~~(26) "Practice of telepharmacy across state lines" means the practice of telepharmacy when the patient is located within the state of Idaho and the pharmacist is located in a United States jurisdiction outside the state of Idaho, as defined in the rules of the board.~~

(~~27~~31) "Practitioner" means a person licensed in this state and permitted by such license to dispense, conduct research with respect to or administer drugs in the course of professional practice or research in this state.

(~~28~~32) "Precursor" means a substance, other than a legend drug which is an immediate chemical intermediate that can be processed or synthesized into a legend drug, and is used or produced primarily for use in the manufacture of a legend drug by persons other than persons licensed to manufacture such legend drugs by the Idaho board of pharmacy, registered by the state board of health and welfare, or licensed to practice pharmacy by the Idaho board of pharmacy.

(~~29~~33) "Preceptor" means a pharmacist licensed ~~in the state~~ and in good standing~~,~~ who supervises the internship or externship training of a registered ~~intern~~ student pharmacist. The preceptor shall be actively engaged in the practice of pharmacy on a full-time employment basis ~~at a registered preceptor site~~.

~~(30) "Preceptor site" means any training site for pharmacy interns and externs registered with the board pursuant to board rule.~~

(3~~1~~4) "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with one (1) of the following statements:

(a) "Caution: Federal law prohibits dispensing without a prescription"; or

(b) "Rx Only"; or

(c) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian";

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

(3~~2~~5) "Prescription drug order" means a ~~lawful written or verbal~~ valid order of a practitioner for a drug or device for an ultimate user of the drug or device~~, issued and signed by a practitioner, or an order transmitted verbally from a practitioner or the practitioner's agent to a pharmacist in a pharmacy, or transmitted verbally from a practitioner and immediately reduced to writing by a licensed practical nurse or licensed professional nurse in an institutional facility for a patient or resident of such facility~~.

(3~~3~~6) "Prospective drug review" includes, but is not limited to, the following activities:

(a) Evaluation of the prescription ~~or medication~~ drug order for:

(i) Known allergies;

(ii) Rational therapy contraindications;

(iii) Reasonable dose and route of administration; and

(iv) Reasonable directions for use.

(b) Evaluation of the prescription ~~or medication~~ drug order for duplication of therapy.

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

(i) Drug-drug;

(ii) Drug-food; and

(iii) Drug-disease.

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

(i) Over or under utilization; and

(ii) Abuse/misuse.

(3~~4~~7) "Record" means all papers, letters, memoranda, notes, prescriptions, drug orders, invoices, statements, patient medication charts or files, computerized records or other written indicia, documents or objects which are used in any way in connection with the purchase, sale or handling of any drug or device.

(3~~5~~8) "Sale" means every sale and includes:

(a) Manufacturing, processing, transporting, handling, packaging or any other production, preparation or repackaging;

(b) Exposure, offer, or any other proffer;

(c) Holding, storing or any other possession;

(d) Dispensing, giving, delivering or any other supplying; and

(e) Applying, administering or any other usage.

(3~~6~~9) "Warehouseman" means a person who stores legend drugs for others and who has no control over the disposition of such drugs except for the purpose of such storage.

(3~~7~~40) "Wholesaler" means a person engaged in the business of distributing legend drugs that he himself has not produced or prepared, to persons included in any of the classes named in subsection (2)(a) through (f) of section 54-1734, Idaho Code.

SECTION 6. That Section 54-1720, Idaho Code, be, and the same is hereby amended to read as follows:

54-1720. OTHER DUTIES -- POWERS -- AUTHORITY. The board of pharmacy shall have such other duties, powers, and authority as may be necessary to the enforcement of this ~~act~~ chapter and to the enforcement of board rules made pursuant thereto, which shall include, but are not limited to, the following:

(1) The board may join such professional organizations and associations organized exclusively to promote the improvement of the standards of the practice of pharmacy for the protection of the health and welfare of the public and whose activities assist and facilitate the work of the board.

(2) In addition to any statutory requirements, the board may require such surety bonds as it deems necessary to guarantee the performance and discharge of the duties of any officer or employee receiving and disbursing funds.

(3) The executive director of the board shall keep the seal of the board and shall affix it only in such manner as may be prescribed by the board.

(4) On or before the 60th day after the last day of each state fiscal year, the board shall submit to the governor a report summarizing its proceedings and activities during that fiscal year, together with a report of all moneys received and disbursed by the board. Such reports or comprehensive summaries or abstracts thereof, as determined by the board shall be made available to the public.

(5) (a) The board shall determine ~~within thirty (30) days prior to the beginning of each state fiscal year~~ the fees to be collected for:

~~1.~~(i) Examinations and reexaminations, which fee shall not exceed two hundred fifty dollars ($250);

~~2.~~(ii) The issuance of licenses, which fee shall not exceed two hundred fifty dollars ($250);

~~3.~~(iii) The issuance and renewal of certificates of registration ~~and renewal certificates of registration~~, which fee shall not exceed one hundred dollars ($100), except ~~in the case of out-of-state mail service pharmacies licensed pursuant to section 54-1743, Idaho Code, in which case~~ the fee for nonresident registrations shall not exceed five hundred dollars ($500) for initial registration and two hundred fifty dollars ($250)~~; and~~

~~4. The certification of approved providers of continuing education courses, which fee shall not exceed three hundred dollars ($300)~~ thereafter for annual renewals.

(b) All fees or fines which shall be paid under the provisions of this ~~act~~ chapter shall be paid over by the board to the treasurer of the state

of Idaho, and shall be held by the state treasurer in the pharmacy account, which shall be paid out by the state treasurer upon warrant drawn by the state controller against said account. The state controller is hereby authorized, upon presentation of the proper vouchers of claims against the state, approved by the said board and the state board of examiners, as provided by law, to draw his warrant upon said account.

(6) The board may receive and expend moneys in addition to its annual appropriations, from parties other than the state, provided:

(a) Such moneys are awarded for the pursuit of a specific objective which the board is authorized to accomplish by this ~~act~~ chapter, or which the board is qualified to accomplish by reason of its jurisdiction or professional expertise;

(b) Such moneys are expended for the pursuit of the objective for which they are awarded;

(c) Activities connected with or occasioned by the expenditures of such moneys do not interfere with or impair the performance of the board's duties and responsibilities and do not conflict with the exercise of the board's powers as specified by this ~~act~~ chapter;

(d) Such moneys are kept in a separate, special state account; and

(e) Periodic reports are made to the administrator, division of ~~budget, policy planning and coordination~~ financial management, concerning the board's receipt and expenditure of such moneys.

(7) The board shall assign to each drug outlet under its jurisdiction~~,~~ a uniform state number~~, coordinated where possible with all other states which adopt the same uniform numbering system~~.

(8) The board or its authorized representatives shall also have power to investigate and gather evidence concerning alleged violations of the provisions of this ~~act~~ chapter or of the rules of the board.

(9) (a) Notwithstanding anything in this ~~act~~ chapter to the contrary, whenever a duly authorized representative of the board finds or has probable cause to believe that any drug, or device is adulterated or misbranded within the meaning of the Idaho food, drug and cosmetic act, he shall affix to such drug or device a tag or other appropriate marking giving notice that such article is or is suspected of being adulterated or misbranded, has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the board, its agent or the court. No person shall remove or dispose of such embargoed drug or device by sale or otherwise without the permission of the board or its agent or, after summary proceedings have been instituted, without permission from the court.

(b) When a drug or device detained or embargoed under paragraph (a) of this subsection (9) has been declared by such representative to be adulterated or misbranded, the board shall, as soon as practical thereafter, petition the judge of the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. If the judge determines that the drug or device so detained or embargoed is not adulterated or misbranded, the board shall direct the immediate removal of the tag or other marking.

(c) If the court finds the detained or embargoed drug or device is adulterated or misbranded, such drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a board representative and all court costs and fees, storage and other proper expense shall be borne by the owner of such drug or device. When the adulteration or misbranding can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after such costs, fees and expenses have been paid and a good and sufficient bond has been posted, may direct that such drug or device be delivered to the owner thereof for such labeling or processing under the supervision of a board representative. Expense of such supervision shall be paid by the owner. Such bond shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid.

(d) It is the duty of the attorney general to whom the board reports any violation of this subsection to cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. Nothing in this subsection (9) shall be construed to require the board to report violations whenever the board believes the public's interest will be adequately served in the circumstances by a suitable written notice or warning.

(10) Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers and authority in accordance with the administrative procedures~~s~~ act.

(11) (a) For the purpose of any proceedings held before the board as authorized by law, including the refusal, nonrenewal, revocation or suspension of licenses, registrations or certifications authorized by this ~~act~~ chapter, or the imposition of fines or reprimands on persons holding such licenses, certification or registrations, the board may subpoena witnesses and compel their attendance, and may also at such time require the production of books, papers, documents or other memoranda. In any such proceeding before the board, any member of the board, or its designee, may administer oaths or affirmations to witnesses so appearing.

(b) If any person shall refuse to obey a subpoena so issued, or refuse to testify or produce any books, papers or documents called for by said subpoena, the board may make application to the district court of the county in which the proceeding is held, for an order of the court requiring the person to appear before the court, and to show cause why the person should not be compelled to testify, to produce such books, papers, memoranda or other documents required by the subpoena, or otherwise comply with its terms. The application shall set forth the action theretofore taken by the board to compel the attendance of the witness, the circumstances surrounding the failure of the witness to attend or otherwise comply with the subpoena, together with a brief statement of the reasons why compliance with the subpoena is necessary to the proceeding before the board.

(c) Upon the failure of a person to appear before the court at the time and place designated by it, the court may enter an order without further

proceedings requiring the person to comply with the subpoena. Any person failing or refusing to obey such order of the court shall be punished for contempt of court as in other cases provided.

SECTION 7. That Section 54-1721, Idaho Code, be, and the same is hereby amended to read as follows:

54-1721. UNLAWFUL PRACTICE. (1) It shall be unlawful for any person or business entity to engage in the practice of pharmacy including, but not limited to, pharmaceutical care services in or into Idaho unless licensed or registered to so practice under the provisions of this ~~act;~~ chapter, except as provided~~, however,~~ herein:

(a) P~~p~~hysicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of this state may deliver and administer prescription drugs to their patients in the practice of their respective professions where specifically authorized to do so by statute of this state; and

(b) Nonresident pharmacists practicing pharmacy into Idaho who are employed by and practicing for an Idaho registered nonresident mail service pharmacy.

(2) Notwithstanding the provisions of subsection (1) of this section and any statute or rule to the contrary, persons who hold a valid and current license to practice practical or professional nursing in this state pursuant to sections 54-1407, 54-1408 and 54-1418, Idaho Code, and who are employed by one (1) of the public health districts established under section 39-408, Idaho Code, shall be permitted to engage in the labeling and delivery of refills of the following prepackaged items when such items have been prescribed to a patient by a licensed physician, licensed physician's assistant or licensed advanced practice nurse:

(a) Prenatal vitamins;

(b) Contraceptive ~~medications~~ drugs approved by the United States food and drug administration;

(c) Antiviral ~~medications~~ drugs approved by the United States centers for disease control and prevention for treatment of sexually transmitted infection; and

(d) ~~Medications~~ Drugs approved by the United States centers for disease control and prevention for treatment of active and latent tuberculosis.

(3) It shall be unlawful for any person, not legally licensed or registered as a pharmacist, to take, use or exhibit the title of pharmacist or the title of druggist or apothecary, or any other title or description of like import.

(4) Any person who shall be found to have unlawfully engaged in the practice of pharmacy shall be subject to a fine not to exceed three thousand dollars ($3,000) for each offense. Each such violation of this ~~act~~ chapter or the rules promulgated hereunder pertaining to unlawfully engaging in the practice of pharmacy shall also constitute a misdemeanor punishable upon conviction as provided in the criminal code of this state.

SECTION 8. That Section 54-1723A, Idaho Code, be, and the same is hereby amended to read as follows:

54-1723A. REGISTRATION TO ENGAGE IN THE PRACTICE OF ~~TELE~~PHARMACY ~~ACROSS STATE LINES~~ INTO IDAHO. (1) ~~No pharmacist who is not licensed t~~To obtain a registration to practice ~~pharmacy within~~ as a pharmacist into the state of Idaho ~~may engage in the practice of telepharmacy across state lines unless registered by the board pursuant to this section.~~

~~(2) To obtain registration to engage in the practice of telepharmacy across state lines~~, the applicant shall:

(a) ~~Present to the board proof of licensure in another~~ Be licensed and in good standing in the state ~~and proof that such license is in good standing~~ from which the applicant practices pharmacy;

(b) Submit a written application in the form prescribed by the board;

(c) Pay the fee(s) specified by the board for the issuance of the registration; ~~and~~

(d) Be located in one (1) of the fifty (50) states or the District of Columbia; and

(e) Comply with all other requirements of the board.

~~(3) The application required under this section shall request from the applicant, at a minimum, the following information:~~

~~(a) Name, address and current pharmacist licensure information in all other states, including each state of licensure and each license number;~~

~~(b) Name, address, telephone number and state of licensure or registration and license or registration number of the facility from which the applicant will be engaged in the practice of telepharmacy across state lines; and~~

~~(c) A statement attesting that the applicant will abide by the pharmacy laws and rules of the state of Idaho.~~

(4~~2~~) A successful applicant for registration under this section shall be subject to the disciplinary provisions of section 54-1726, Idaho Code, the penalty provisions of section 54-1728, Idaho Code, and the rules of the board.

(3) A successful applicant for registration under this section shall comply with the board's laws and rules of this state unless compliance would violate the laws or rules in the state in which the registrant is located, except as follows:

(a) A technician shall not exceed the practice limitations for technicians in Idaho;

(b) A pharmacist shall only substitute drug products in accordance with Idaho law;

(c) A pharmacist shall only select drug products in accordance with Idaho law; and

(d) A pharmacist shall not exceed the pharmacy staffing ratio, as defined in rule.

(5~~4~~) Renewal ~~of a registration to engage in the practice of pharmacy across state lines~~ shall be required annually and~~. The application for renewal shall be~~ submitted to the board no later than the thirtieth day of June. ~~The board shall renew the registration of a pharmacist who is qualified to engage in the practice of pharmacy across state lines as provided for in this section.~~ The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration.

SECTION 9. That Section 54-1726, Idaho Code, be, and the same is hereby amended to read as follows:

54-1726. GROUNDS FOR DISCIPLINE. (1) The board of pharmacy may refuse to issue or renew, or may suspend, revoke or restrict the licenses or registration of any person, pursuant to the procedures set forth in chapter 52, title 67, Idaho Code, upon one (1) or more of the following grounds:

(a) Unprofessional conduct as that term is defined by the rules of the board;

(b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence and safety to the public;

(c) Being found guilty, convicted or having received a withheld judgment or suspended sentence by a court of competent jurisdiction in this state or any other state of one (1) or more of the following:

1. (i) Any felony;

2. (ii) Any act involving moral turpitude, gross immorality or which is related to the qualifications, functions or duties of a licensee; or

3. (iii) Violations of the pharmacy or drug laws of this state or rules pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government;

(d) Fraud or intentional misrepresentation by a licensee in securing the issuance or renewal of a license.

(e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license, or falsely using the title of pharmacist.

(f) Being found by the board to be in violation of any of the provisions of this chapter, chapter 27, title 37, Idaho Code, or rules adopted pursuant to either chapter.

(2) Nonresident licensees and registrants shall be held accountable to the board for violations by its agents and employees and subject to the same grounds for discipline and penalties for their actions as set forth herein.

SECTION 10. That Section 54-1728, Idaho Code, be, and the same is hereby amended to read as follows:

54-1728. PENALTIES AND REINSTATEMENT. (1) Upon the finding of the existence of grounds for discipline of any person or business entity holding a license or registration, seeking a license or registration, or a renewal license or registration under the provisions of this act chapter, the board of pharmacy may impose one (1) or more of the following penalties:

(a) Suspension of the offender's license or registration for a term to be determined by the board;

(b) Revocation of the offender's license or registration;

(c) Restriction of the offender's license or registration to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;

(d) Refusal to renew offender's license or registration;

(e) Placement of the offender on probation and supervision by the board for a period to be determined by the board;

(f) Imposition of an administrative fine not to exceed two thousand dollars ($2,000) plus costs of prosecution and administrative costs of bringing the action including, but not limited to, attorney's fees and costs and costs of hearing transcripts.

(2) The board may take any action against a nonresident licensee or registrant that the board can take against a resident licensee or registrant for violation of the laws of this state or the state in which it resides.

(3) The board may report any violation by a nonresident licensee or registrant, or its agent or employee, of the laws and rules of this state, the state in which it resides or the United States to any appropriate state or federal regulatory or licensing agency including, but not limited to, the regulatory agency of the state in which the nonresident licensee or registrant is a resident.

(4) The board may elect to not initiate an administrative action under Idaho law against a nonresident licensee or registrant upon report of a violation of law or rule of this state if the licensee's or registrant's home state commences an action for the violation complained of; provided however, that the board may elect to initiate an administrative action if the home state action is unreasonably delayed or the home state otherwise fails to take appropriate action for the reported violation.

(5) The suspension, revocation, restriction or other action taken against a licensee or registrant by a state licensing board with authority over a licensee's or registrant's professional license or registration or by the drug enforcement administration may result in the board's issuance of an order likewise suspending, revoking, restricting or otherwise affecting the license or registration in this state, without further proceeding, but subject to the effect of any modification or reversal by the issuing state or the drug enforcement administration.

(6) Any person whose license to practice pharmacy in this state has been suspended, revoked or restricted pursuant to this ~~act~~ chapter, or any drug outlet whose certificate of registration has been suspended, revoked or restricted pursuant to this ~~act~~ chapter, whether voluntarily or by action of the board, shall have the right, at reasonable intervals, to petition the board for reinstatement of such license. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.

(~~3~~7) Nothing herein shall be construed as barring criminal prosecutions for violations of the act where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(~~4~~8) All final decisions by the board shall be subject to judicial review pursuant to the procedures of the administrative procedure act.

SECTION 11. That Section 54-1729, Idaho Code, be, and the same is hereby amended to read as follows:

54-1729. REGISTRATION AND LICENSURE OF FACILITIES. (1) All drug or device outlets doing business in or into Idaho shall ~~annually register with or~~:

(a) If a nonresident, be licensed ~~by, as applicable, the board of pharmacy~~ or registered and in good standing in the applicant's state of residence;

(b) Submit a written application in the form prescribed by the board;

(c) Pay the fee or fees specified by the board for the issuance of the registration or license;

(d) Be located in one (1) of the fifty (50) states or the District of Columbia; and

(e) Have a PIC or director who is licensed or registered by the board, except manufacturers, wholesalers, veterinary drug outlets and limited service outlets without a pharmacy.

(2) Each drug or device outlet shall apply for a certificate of registration or a license in one (1) of the following classifications:

(a) Retail pharmacy;

(b) Institutional facility;

(c) Manufacturer;

(d) Wholesaler;

(e) Veterinary drug outlet;

(f) ~~Telepharmacy across state lines~~ Nonresident central drug outlet;

(g) Mail service pharmacy;

(h) Limited service outlet.

(3) The board shall establish by rule under the powers granted to it under sections 54-1718 and 54-1719, Idaho Code, the criteria which each ~~drug~~ outlet, that has employees or personnel engaged in the practice of pharmacy, must meet to qualify for registration or licensure in each classification designated in subsection (2) of this section. The board may issue various types of certificates with varying restrictions to such ~~limited service~~ outlets designated in subsection (2) of this section where the board deems it necessary by reason of the type of ~~drug~~ outlet requesting a certificate.

(4) It shall be lawful for an ~~drug~~ outlet registered or licensed under this section to sell and distribute nonprescription drugs. ~~Drug o~~Outlets engaging in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of pharmacy. No rule will be adopted by the board under this chapter which shall require the sale of nonprescription drugs by a ~~licensed~~ pharmacist or under the supervision of a ~~licensed~~ pharmacist or otherwise apply to or interfere with the sale and distribution of such medicines.

(5) If the regulatory board or licensing authority of the state in which a nonresident outlet is located fails or refuses to conduct an inspection or fails to obtain records or reports required by the board, upon reasonable notice to the nonresident outlet, the board may conduct an inspection. ~~Drug~~ Nonresident outlets ~~registered under subsection (2)(f) of this section shall pay the same registration fee as those registering under subsection (2)(b) of this section, but~~ shall also pay the actual costs of the out-of-state inspection of the ~~drug~~ outlet ~~as may be required by the board~~, including the transportation, lodging and related expenses of the board's inspector. ~~Nothing in this section shall preclude the board, in lieu of an inspection by the board, from relying on an inspection of the drug outlet conducted by the regulatory authority of the state within which the drug outlet is located.~~

(6) A successful applicant for registration under the provisions of this section shall be subject to the disciplinary provisions of section 54-1726, Idaho Code, the penalty provisions of section 54-1728, Idaho Code, and the rules of the board.

(7) A successful applicant for registration under the provisions of this section shall comply with the board's laws and rules of this state unless compliance would violate the laws or rules in the state in which the registrant is located, except as follows:

(a) A technician shall not exceed the practice limitations for technicians in Idaho;

(b) A pharmacist shall only substitute drug products in accordance with the board's laws and rules;

(c) A pharmacist shall only select drug products in accordance with the board's laws and rules; and

(d) A pharmacy shall not exceed the pharmacy staffing ratio, as defined in rule.

(8) Renewal shall be required annually and submitted to the board no later than the thirtieth day of June. The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration or licensure.

SECTION 12. That Section 54-1730, Idaho Code, be, and the same is hereby amended to read as follows:

54-1730. DRUG OUTLET APPLICATION PROCEDURES. (1) The board shall specify by rule ~~or regulation~~ the registration procedures to be followed~~,~~ including, but not limited to, specification of forms for use in applying for such certificates of registration and times, places and fees for filing such application; provided~~,~~ however, the annual fee for an original or renewal certificate shall not exceed one hundred dollars ($100), except the fee for nonresident pharmacies or outlets shall not exceed five hundred dollars ($500) for initial registration and two hundred fifty dollars ($250) thereafter for annual renewals.

(2) Applications for certificates of registration shall include the following information about the proposed ~~drug~~ outlet:

(a) Ownership;

(b) Location;

(c) Identity of pharmacist licensed or registered to practice in the state, who shall be the pharmacist in charge of the ~~drug~~ outlet, where one (1) is required by this ~~act~~ chapter, and such further information as the board may deem necessary.

(3) Certificates of registration issued by the board pursuant to this ~~act~~ chapter shall not be transferable or assignable.

(4) The board shall specify by rule ~~and regulation~~ minimum standards for the professional responsibility in the conduct of any ~~drug~~ outlet that has employees or personnel engaged in the practice of pharmacy. The board is specifically authorized to require that the portion of the facility to which such certificate of registration applies be operated only under the direct supervision of no less than one (1) pharmacist licensed to practice in this state and not otherwise, and to provide such other special requirements as deemed necessary.

SECTION 13. That Section 54-1732, Idaho Code, be, and the same is hereby amended to read as follows:

54-1732. VIOLATIONS AND PENALTIES. (1) No drug outlet designated in section 54-1729, Idaho Code, shall be operated until a certificate of registration has been issued to said facility by the board. Upon the finding of a violation of this subsection, the board may impose one (1) or more of the penalties enumerated in section 54-1728, Idaho Code.

(2) Reinstatement of a certificate that has been suspended, revoked or restricted by the board may be granted in accordance with the procedures specified in section 54-1728(~~2~~6), Idaho Code.

(3) The following acts, or the failure to act, and the causing of any such act or failure are unlawful~~;~~:

(a) The sale, delivery or administration of any prescription drug or legend drug unless:

(i) Such legend drug is dispensed or delivered by a pharmacist upon an original prescription, drug order or prescription drug order by a practitioner in good faith in the course of his practice. Any person violating the provisions of this subparagraph shall be guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars ($5,000) or by both such fine and imprisonment.

(ii) There is affixed, in the case of a legend drug dispensed or delivered by a pharmacist, to the immediate container in which such drug is delivered a label bearing the name, address, and phone number of the establishment from which such drug was dispensed; the date on which the prescription for such drug was filled; the number of such prescription as filed in the prescription files of the pharmacist who filled the prescription; the name of the practitioner who prescribed such drug; the name of the patient, and if such drugs were prescribed for an animal, a statement of the species of the animal; and the directions for the use of the drug as contained in the prescription; or in the case of a legend drug delivered or administered by a practitioner in the course of his practice, the immediate container in which such drug is delivered bears a label on which appears the directions for use of such drug; the name and address of such practitioner; the name of the patient; and if such drug is prescribed for an animal, a statement of the species of the animal. Any person violating this subparagraph shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars ($500). Nothing in this subparagraph prohibits a practitioner from delivering professional samples of legend drugs in their original containers in the course of his practice when oral directions for use are given at the time of such delivery.

(b) The refilling of any prescription or drug order for a legend drug except as designated on the prescription or drug order, or by the authorization of the practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall

be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(c) The possession or use of a legend drug or a precursor by any person unless such person obtains such drug on the prescription or drug order of a practitioner. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(d) The failure to keep records as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(e) The refusal to make available and to accord full opportunity to check any record, as required by the board. Any person guilty of violating this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

(f) It is unlawful to:

(i) Obtain or attempt to obtain a legend drug or procure or attempt to procure the administration of a legend drug by fraud, deceit, misrepresentation or subterfuge; by the forgery or alteration of a prescription, drug order, or of any written order; by the concealment of a material fact; or by the use of a false name or the giving of a false address.

(ii) Communicate information to a physician in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug. Any such communication shall not be deemed a privileged communication.

(iii) Intentionally make a false statement in any prescription, drug order, order, report or record required by this chapter.

(iv) For the purpose of obtaining a legend drug to falsely assume the title of, or represent himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian or other person.

(v) Make or utter any false or forged prescription or false drug order or forged written order.

(vi) Affix any false or forged label to a package or receptacle containing legend drugs. This subparagraph does not apply to law enforcement agencies or their representatives while engaged in enforcing state and federal drug laws.

(vii) Wholesale or retail any prescription or legend drug to any person in this state not entitled by law to deliver such drug to another.

(4) Provided however, that a veterinarian may dispense or deliver a legend drug prescribed for an animal upon the prescription, drug order, or prescription drug order of another veterinarian. The label shall comply

with the provisions of subsection (3)(a)(ii) of this section, and penalties for violations of the provisions of this subsection shall be as provided in this section for like violations by a pharmacist.

(5) The ultimate user of a legend drug who has lawfully obtained such legend drug may deliver, without being registered, the legend drug to another person for the purpose of disposal of the legend drug if the person receiving the legend drug for purposes of disposal is authorized under a state or federal law or regulation to engage in such activity.

Every violation of subsection (3)(f)(i) through (vi) of this section shall be a misdemeanor and any person convicted thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or fined not more than one thousand dollars ($1,000), or punished by both such fine and imprisonment. Any person violating subsection (3)(f)(vii) of this section is guilty of a felony, and on conviction thereof shall be imprisoned in the state penitentiary for a term not to exceed three (3) years, or punished by a fine of not more than five thousand dollars ($5,000), or by both such fine and imprisonment.

SECTION 14. That Sections 54-1740 through 54-1748, Idaho Code, be, and the same are hereby repealed.

SECTION 15. That Section 54-1761, Idaho Code, be, and the same is hereby amended to read as follows:

54-1761. DEFINITIONS. As used in sections 54-1760 through 54-1765, Idaho Code:

(1) "Legend drug" has the same meaning as provided in section 54-1705(3~~1~~4), Idaho Code.

(2) "Medically indigent" means any person who is in need of a legend drug and who is not eligible for medicaid or medicare, who cannot afford private prescription drug insurance or who does not have income and other resources available sufficient to pay for the legend drug.

(3) "Qualifying charitable clinic or center" means a community health center as defined in section 39-3203, Idaho Code, and means a free medical clinic as defined in section 39-7702, Idaho Code, acting in consultation with a pharmacist licensed in the state of Idaho.

SECTION 16. That Section 54-4702, Idaho Code, be, and the same is hereby amended to read as follows:

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

(1) "Acupuncture" means that theory of health care developed from traditional and modern Oriental medical philosophies that employs diagnosis and treatment of conditions of the human body based upon stimulation of specific acupuncture points on meridians of the human body for the promotion, maintenance, and restoration of health and for the prevention of disease. Therapies within the scope of acupuncture include manual, mechanical, thermal, electrical and electromagnetic treatment of such specific indicated points. Adjunctive therapies included in, but not exclusive to, acupuncture include herbal and nutritional treatments, therapeutic exercise and other therapies based on traditional and modern Oriental medical theory.

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

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

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

(a) surgery; or

(b) prescribing, dispensing or administering any prescription drug or legend drug as defined in section 54-1705(3~~1~~4), Idaho Code.

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

54-5110. NATUROPATHIC MEDICAL FORMULARY COUNCIL ESTABLISHED. There is hereby established a naturopathic medical formulary council, which is separate and distinct from the board, to be composed of seven (7) members. Two (2) members shall be naturopathic physicians licensed under this chapter, appointed by the board of naturopathic medical examiners. Three (3) members shall be pharmacists licensed under chapter 17, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of pharmacy. Two (2) members shall be physicians licensed under chapter 18, title 54, Idaho Code, appointed by the board of naturopathic medical examiners from a list of nominees provided by the Idaho state board of medicine. The initial council shall be appointed as follows: One (1) naturopathic physician shall be appointed for a one (1) year term; one (1) physician licensed under chapter 18, title 54, Idaho Code, and one (1) pharmacist shall be appointed for a two (2) year term; and two (2) pharmacists, one (1) naturopathic physician and one (1) physician licensed under chapter 18, title 54, Idaho Code, shall be appointed for a three (3) year term. Thereafter, the term of office shall be three (3) years. A quorum shall consist of five (5) members and shall be required for any vote to be taken. It shall be the duty of the naturopathic medical formulary council to establish a formulary for use by naturopathic physicians, and immediately upon adoption or revision of the formulary, the council shall transmit the approved formulary to the board, which shall adopt the formulary by temporary rule. The formulary will be reviewed annually by the council, or at any time at the request of the board. The formulary list may not go beyond the scope of prescription medicines and medical devices covered by approved naturopathic medical education and training and existing naturopathic medical formularies, or board-approved continuing education. The naturopathic medical formulary shall not include medicines and devices that are inconsistent with the training provided by approved naturopathic medical colleges. Nothing herein shall allow a naturopathic physician to dispense, administer or prescribe any prescription drug as defined in section 54-1705(3~~1~~4), Idaho Code, or medical device unless such prescription drug or medical device is specifically included in the naturopathic medical formulary.