LEGISLATURE OF THE STATE OF IDAHO

Sixty-second Legislature First Regular Session - 2013

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 239

BY HEALTH AND WELFARE COMMITTEE

AN ACT

RELATING TO PHARMACISTS; AMENDING SECTION 54-1705, IDAHO CODE, TO DEFINE A TERM AND TO REVISE A DEFINITION; AMENDING SECTION 54-1719, IDAHO CODE, TO PROVIDE THAT THE BOARD OF PHARMACY SHALL BE RESPONSIBLE FOR THE COMPOUNDING, DISPENSING AND DISTRIBUTION OF CERTAIN MEDICATIONS, DRUGS, DEVICES AND OTHER MATERIALS WITHIN THE PRACTICE OF PHARMACY AND TO MAKE A TECHNICAL CORRECTION; AMENDING SECTION 54-1752, IDAHO CODE, TO REMOVE REFERENCE TO RETAIL PHARMACIES; AND AMENDING SECTIONS 37-3201, 54-1761, 54-4702 AND 54-5110, IDAHO CODE, TO PROVIDE CORRECT CODE REFERENCES.

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

SECTION 1. 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) "Compounding" means the act of incorporating two (2) or more substances to create a finished drug product.

(3) "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 and devices. Specific areas of counseling shall include, but are not limited to:

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

(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 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~~4) "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~~5~~) "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~~6) "Dispense" or "dispensing" means the preparation and delivery of a prescription drug pursuant to a lawful 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~~7) "Distribute" means the delivery of a drug other than by administering or dispensing.

(~~7~~8) "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~~9) "Drug order" means an order for a patient of an institutional facility, or for other purposes when permitted by board 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.

(~~9~~10) "Drug outlets" means all pharmacies and other facilities with 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.

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

(1~~1~~2) "Externship" means a structured practical experience program in pharmacy, approved by the board and administered by a college of pharmacy.

(1~~2~~3) "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.

(1~~3~~4) "Intern" means any person who has completed a course of study at an approved college of pharmacy, received the first professional degree in pharmacy and is registered with the board as an intern. Interns must register with the board prior to commencement of an internship program.

(1~~4~~5) "Internship" means a postgraduate practical experience program under the supervision of a preceptor at a preceptor site.

(15~~5~~6) "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~~7~~7) "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~~8~~8) "Limited service outlet" means a facility that is subject to registration or licensure by the board, pursuant to section 54-1729(3), Idaho Code, in that it 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 or mail service pharmacy.

(18~~9~~9) "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 or, as authorized by board rule, distributing 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~~20) "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.

(20~~1~~1) "Nonprescription drugs" means medicines or drugs which may be sold without a prescription 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.

(21~~2~~2) "Person" means an individual, corporation, partnership, association or any other legal entity.

(22~~3~~3) "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.

(23~~4~~4) "Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy or a pharmacist licensed in another state who is registered by the board of pharmacy to engage in the practice of telepharmacy across state lines.

(24~~5~~) "Pharmacy" means any facility, department or other place where prescriptions are filled or compounded and 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~~6~~) "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~~7~~) "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~~8~~) "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~~9~~) "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~~30) "Preceptor" means a pharmacist licensed in the state and in good standing, who supervises the internship training of a registered intern. The preceptor shall be actively engaged in the practice of pharmacy on a full-time employment basis at a registered preceptor site.

(30~~1~~) "Preceptor site" means any training site for pharmacy interns and externs registered with the board pursuant to board rule.

(31~~2~~) "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 only or is restricted to use by practitioners only.

(32~~3~~) "Prescription drug order" means a lawful written or verbal 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.

(33~~4~~) "Prospective drug review" includes, but is not limited to, the following activities:

(a) Evaluation of the prescription or medication 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 order for duplication of therapy.
(c) Evaluation of the prescription or medication order for interactions:
(i) Drug-drug;
(ii) Drug-food; and
(iii) Drug-disease.
(d) Evaluation of the prescription or medication order for proper utilization:
(i) Over or under utilization; and
(ii) Abuse/misuse.

(34~~5~~) "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.

(35~~6~~) "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.

(36~~7~~) "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.

(37~~8~~) "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 2. That Section 54-1719, Idaho Code, be, and the same is hereby amended to read as follows:

54-1719. MEDICATIONS -- DRUGS -- DEVICES -- OTHER MATERIALS. The board of pharmacy shall also have the following responsibilities in regard to medications, drugs, devices and other materials used in this state in the diagnosis, mitigation and treatment or prevention of injury, illness and disease:

(1) The regulation of the sale at retail and the dispensing of medications, drugs, devices and other materials, including the method of dispensing in institutional facilities, and including the right to seize such drugs, devices and other materials found to be detrimental to the public health and welfare by the board after appropriate hearing as required under the administrative procedures~~s~~ act;

(2) The specifications of minimum professional and technical equipment, environment, supplies and procedures for the compounding ~~and/or~~, dispensing and distribution of such medications, drugs, devices and other materials within the practice of pharmacy;

(3) The control of the purity and quality of such medications, drugs, devices and other materials within the practice of pharmacy;

(4) The issuance and renewal of certificates of registration of drug outlets for purposes of ascertaining those persons engaged in the manufacture and distribution of drugs.

SECTION 3. That Section 54-1752, Idaho Code, be, and the same is hereby amended to read as follows:

54-1752. DEFINITIONS. As used in sections 54-1751 through 54-1759, Idaho Code:

(1) "Authentication" means to affirmatively verify before any wholesale distribution of a prescription drug occurs that each transaction listed on the pedigree has occurred.

(2) "Authorized distributor of record" means a wholesale distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer's prescription drug. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in section 1504 of the Internal Revenue Code, complies with the following:

(a) The wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and

(b) The wholesale distributor is listed on the manufacturer's current list of authorized distributors of record, which is updated by the manufacturer on no less than a monthly basis.

(3) "Chain pharmacy warehouse" means a physical location for prescription drugs that acts as a central warehouse and performs intracompany sales or transfers of such drugs to a group of chain pharmacies that have the same common ownership and control.

(4) "Colicensed partner or product" means an instance where two (2) or more parties have the right to engage in the manufacturing and/or marketing of a prescription drug, consistent with the federal food and drug administration's implementation of the prescription drug marketing act.

(5) "Drop shipment" means the sale of a prescription drug to a wholesale distributor or chain pharmacy warehouse by the manufacturer of the prescription drug, or that manufacturer's colicensed product partner, that manufacturer's third party logistics provider or that manufacturer's exclusive distributor, whereby the wholesale distributor or chain pharmacy warehouse takes title but not physical possession of such prescription drug and the wholesale distributor invoices the pharmacy or chain pharmacy warehouse, or other person authorized by law to dispense or administer such drug to a patient, and the pharmacy or chain pharmacy warehouse or other authorized person receives delivery of the prescription drug directly from the manufacturer, or that manufacturer's third party logistics provider, or that manufacturer's exclusive distributor.

(6) "Facility" means a facility of a wholesale distributor where prescription drugs are stored, handled, repackaged or offered for sale.

(7) "Manufacturer" means a person licensed or approved by the federal food and drug administration to engage in the manufacture of drugs or devices, consistent with the federal food and drug administration definition of "manufacturer" under its regulations and guidance implementing the prescription drug marketing act.

(8) "Manufacturer's exclusive distributor" means anyone who contracts with a manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer and who takes title to that manufacturer's prescription drug, but who does not have general responsibility to direct the sale or disposition of the manufacturer's prescription drug. Such manufacturer's exclusive distributor must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(9) "Normal distribution channel" means a chain of custody for a prescription drug that goes from a manufacturer of the prescription drug, from that manufacturer to that manufacturer's colicensed partner, from that manufacturer to that manufacturer's third party logistics provider, from that manufacturer to that manufacturer's exclusive distributor, or from that manufacturer directly or through its colicensed partner, third party logistics provider or manufacturer's exclusive distributor to a repackager who is an authorized distributor of record for the manufacturer, whose facility is registered with the United States food and drug administration and who engages in the practice of repackaging the original dosage form of a prescription drug in accordance with applicable regulations and guidelines of the United States food and drug administration, either directly or by drop shipment, to:

(a) A pharmacy to a patient;

(b) Other designated persons authorized by law to dispense or administer such drug to a patient;

(c) A wholesale distributor to a pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient;

(d) A wholesale distributor to a chain pharmacy warehouse to that chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient; or

(e) A chain pharmacy warehouse to the chain pharmacy warehouse's intracompany pharmacy to a patient or other designated persons authorized by law to dispense or administer such drug to a patient.

(10) "Pedigree" means a document or electronic file containing information that records each wholesale distribution of any given prescription drug.

(11) "Prescription drug" means any drug, including any biological product, except for blood and blood components intended for transfusion or biological products that are also medical devices, required by federal law or federal regulation to be dispensed only by a prescription, including fin-

ished dosage forms and bulk drug substances, subject to section 503(b) of the federal food, drug and cosmetic act.

(12) "Repackage" means repackaging or otherwise changing the container, wrapper or labeling to further the distribution of a prescription drug, excluding that completed by the pharmacist responsible for dispensing product to the patient.

(13) "Repackager" means a person who repackages.

(14) "Third party logistics provider" means anyone who contracts with a prescription drug manufacturer to provide or coordinate warehousing, distribution or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug's sale or disposition. Such third party logistics provider must be licensed as a wholesale distributor under section 54-1753, Idaho Code, and to be considered part of the normal distribution channel, must also be an authorized distributor of record.

(15) "Veterinary pharmacy" means a business properly licensed as a pharmacy engaging exclusively in the preparation and dispensing of prescription drugs for veterinary prescribed use.

(16) "Wholesale distributor" means anyone engaged in the wholesale distribution of prescription drugs including, but not limited to:

(a) Manufacturers;

(b) Repackagers;

(c) Own-label distributors;

(d) Private-label distributors;

(e) Jobbers;

(f) Brokers;

(g) Warehouses, including manufacturers' and distributors' warehouses;

(h) Manufacturer's exclusive distributors;

(i) Authorized distributors of record;

(j) Drug wholesalers or distributors;

(k) Independent wholesale drug traders;

(l) Specialty wholesale distributors;

(m) Third party logistics providers;

(n) Retail pharmacies that conduct wholesale distribution; and

(o) Chain pharmacy warehouses that conduct wholesale distribution.

To be considered part of the normal distribution channel, such wholesale distributor, except for a chain pharmacy warehouse not engaged in wholesale distribution, must also be an authorized distributor of record.

(17) "Wholesale distribution" means distribution of prescription drugs to persons other than a consumer or patient, but does not include:

(a) Intracompany sales of prescription drugs, meaning any transaction or transfer between any division, subsidiary, parent or affiliated or related company under common ownership and control of a corporate entity, or any transaction or transfer between colicensees of a colicensed product.

(b) The sale, purchase, distribution, trade or transfer of a prescription drug or offer to sell, purchase, distribute, trade or transfer a prescription drug for emergency medical reasons.

(c) The distribution of prescription drug samples by manufacturers' representatives.

(d) Drug returns, when conducted by a hospital, health care entity or charitable institution in accordance with 21 CFR 203.23.

(e) Drug donations, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.

(f) The sale of minimal quantities of prescription drugs by ~~retail~~ pharmacies to licensed practitioners for office use.

(g) The sale, purchase or trade of a drug, an offer to sell, purchase or trade a drug, or the dispensing of a drug pursuant to a prescription.

(h) The sale, transfer, merger or consolidation of all or part of the business of a pharmacy or pharmacies from or with another pharmacy or pharmacies, whether accomplished as a purchase and sale of stock or business assets.

(i) The sale, purchase, distribution, trade or transfer of a prescription drug from one (1) authorized distributor of record to one (1) additional authorized distributor of record when the manufacturer has stated in writing to the receiving authorized distributor of record that the manufacturer is unable to supply such prescription drug and the supplying authorized distributor of record states in writing that the prescription drug being supplied had, until that time, been exclusively in the normal distribution channel.

(j) The delivery of, or offer to deliver, a prescription drug by a common carrier solely in the common carrier's usual course of business of transporting prescription drugs, and such common carrier does not store, warehouse or take legal ownership of the prescription drug.

(k) The sale or transfer from a retail pharmacy or chain pharmacy warehouse of expired, damaged, returned or recalled prescription drugs to the original manufacturer or third party returns processor, including a reverse distributor.

(l) The sale of a prescription drug by a veterinary pharmacy to the prescribing veterinarian in which:

(i) The prescribing veterinarian takes title but not physical possession of such prescription drug and invoices the owner or person having custody of the animal for whom the prescription drug is intended; and

(ii) Pursuant to a valid prescription drug order the veterinary pharmacy labels and delivers the prescription drug directly to the owner or person having custody of the animal for whom the prescription drug is intended.

SECTION 4. 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(31~~)~~2), Idaho Code.

SECTION 5. 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(31~~)~~2), 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 6. 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(31~~)~~2), Idaho Code.

SECTION 7. 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~~2), Idaho Code, or medical device unless such prescription drug or medical device is specifically included in the naturopathic medical formulary.