

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 108

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO PHARMACY; AMENDING SECTION 54-1704, IDAHO CODE, TO REVISE LAN-
2 GUAGE RELATING TO THE PRACTICE OF PHARMACY; AMENDING SECTION 54-1732,
3 IDAHO CODE, TO REVISE LANGUAGE RELATING TO VIOLATIONS AND PENALTIES AND
4 TO MAKE TECHNICAL CORRECTIONS; AMENDING SECTION 54-1733, IDAHO CODE,
5 TO REVISE LANGUAGE RELATING TO VALID PRESCRIPTION DRUG ORDERS; AMEND-
6 ING CHAPTER 17, TITLE 54, IDAHO CODE, BY THE ADDITION OF A NEW SECTION
7 54-1733B, IDAHO CODE, TO PROVIDE THAT PRESCRIBERS OR PHARMACISTS MAY
8 PRESCRIBE OPIOID ANTAGONISTS TO CERTAIN PERSONS UNDER CERTAIN CIRCUM-
9 STANCES, TO PROVIDE THAT A PERSON ACTING IN GOOD FAITH AND EXERCISING
10 REASONABLE CARE MAY ADMINISTER AN OPIOID ANTAGONIST TO A PERSON WHO
11 APPEARS TO BE EXPERIENCING AN OVERDOSE, TO PROVIDE THAT PERSONS PRE-
12 SCRIBING OR ADMINISTERING OPIOID ANTAGONISTS IN CERTAIN CIRCUMSTANCES
13 SHALL NOT BE LIABLE IN CIVIL OR ADMINISTRATIVE ACTIONS OR SUBJECT TO
14 CRIMINAL PROSECUTION, TO PROVIDE THAT THE DEPARTMENT OF HEALTH AND
15 WELFARE AND THE OFFICE OF DRUG POLICY SHALL DEVELOP AN EDUCATION PRO-
16 GRAM AND TO DEFINE A TERM; AND AMENDING SECTION 54-1734, IDAHO CODE,
17 TO PROVIDE AN EXCEPTION TO LAWS ON PRESCRIPTION DRUG SALES AND TO MAKE
18 TECHNICAL CORRECTIONS.
19

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

21 SECTION 1. That Section 54-1704, Idaho Code, be, and the same is hereby
22 amended to read as follows:

23 54-1704. PRACTICE OF PHARMACY. "Practice of pharmacy" means:
24 (1) The interpretation, evaluation and dispensing of prescription drug
25 orders;
26 (2) Participation in drug and device selection, drug administration,
27 prospective and retrospective drug reviews and drug or drug-related re-
28 search;
29 (3) The provision of patient counseling and the provision of those acts
30 or services necessary to provide pharmaceutical care;
31 (4) The responsibility for:
32 (a) Compounding and labeling of drugs and devices, except labeling by
33 a manufacturer, repackager or distributor of nonprescription drugs and
34 commercially packaged legend drugs and devices;
35 (b) Proper and safe storage of drugs and devices, and maintenance of
36 proper records for them; and
37 (c) The offering or performing of those acts, services, operations or
38 transactions necessary to the conduct, operation, management and con-
39 trol of pharmacy;
40 (5) The prescribing of:
41 (a) Dietary fluoride supplements when prescribed according to the Amer-
42 ican dental association's recommendations for persons whose drinking

1 water is proven to have a fluoride content below the United States de-
 2 partment of health and human services' recommended concentration; ~~and~~
 3 (b) Agents for active immunization when prescribed for susceptible per-
 4 sons twelve (12) years of age or older for the protection from communi-
 5 cable disease; and
 6 (c) Opioid antagonists pursuant to section 54-1733B, Idaho Code.

7 SECTION 2. That Section 54-1732, Idaho Code, be, and the same is hereby
 8 amended to read as follows:

9 54-1732. VIOLATIONS AND PENALTIES. (1) No drug outlet designated in
 10 section 54-1729, Idaho Code, shall be operated until a certificate of reg-
 11 istration has been issued to said facility by the board. Upon the finding of
 12 a violation of this subsection, the board may impose one (1) or more of the
 13 penalties enumerated in section 54-1728, Idaho Code.

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

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

19 (a) The sale, delivery or administration of any prescription drug or
 20 legend drug, except an opioid antagonist pursuant to section 54-1733B,
 21 Idaho Code, unless:

22 (i) Such legend drug is dispensed or delivered by a pharmacist
 23 upon an original prescription, drug order or prescription drug or-
 24 der by a practitioner in good faith in the course of his practice.
 25 Any person violating the provisions of this subparagraph shall
 26 be guilty of a felony, and on conviction thereof shall be impris-
 27 oned in the state penitentiary for a term not to exceed three (3)
 28 years, or punished by a fine of not more than five thousand dollars
 29 (\$5,000) or by both such fine and imprisonment.

30 (ii) In the case of a legend drug dispensed by a pharmacist or pre-
 31 scriber, there is a label affixed to the immediate container in
 32 which such drug is dispensed. Any person violating this subpara-
 33 graph shall be guilty of a misdemeanor and upon conviction thereof
 34 shall be fined not more than five hundred dollars (\$500). Noth-
 35 ing in this subparagraph prohibits a practitioner from delivering
 36 professional samples of legend drugs in their original contain-
 37 ers in the course of his practice when oral directions for use are
 38 given at the time of such delivery.

39 (b) The refilling of any prescription or drug order for a legend drug
 40 except as designated on the prescription or drug order, or by the autho-
 41 rization of the practitioner. Any person guilty of violating this para-
 42 graph shall be guilty of a misdemeanor and upon conviction thereof shall
 43 be incarcerated in the county jail for a term not to exceed one (1) year,
 44 or punished by a fine of not more than one thousand dollars (\$1,000) or
 45 by both such fine and incarceration.

46 (c) The possession or use of a legend drug or a precursor, except an opi-
 47 oid antagonist pursuant to section 54-1733B, Idaho Code, by any person
 48 unless such person obtains such drug on the prescription or drug order
 49 of a practitioner. Any person guilty of violating this paragraph shall

1 be guilty of a misdemeanor and upon conviction thereof shall be incar-
2 cerated in the county jail for a term not to exceed one (1) year, or pun-
3 ished by a fine of not more than one thousand dollars (\$1,000) or by both
4 such fine and incarceration.

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

10 (e) The refusal to make available and to accord full opportunity to
11 check any record, as required by the board. Any person guilty of violat-
12 ing this paragraph shall be guilty of a misdemeanor and upon conviction
13 thereof shall be incarcerated in the county jail for a term not to exceed
14 one (1) year, or punished by a fine of not more than one thousand dollars
15 (\$1,000) or by both such fine and incarceration.

16 (f) It is unlawful to:

17 (i) Obtain or attempt to obtain a legend drug or procure or at-
18 tempt to procure the administration of a legend drug by fraud, de-
19 ceit, misrepresentation or subterfuge; by the forgery or alter-
20 ation of a prescription, drug order, or of any written order; by
21 the concealment of a material fact; or by the use of a false name or
22 the giving of a false address.

23 (ii) Communicate information to a physician in an effort unlaw-
24 fully to procure a legend drug, or unlawfully to procure the ad-
25 ministration of any such drug. Any such communication shall not be
26 deemed a privileged communication.

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

29 (iv) For the purpose of obtaining a legend drug to falsely assume
30 the title of, or represent himself to be, a manufacturer, whole-
31 saler, pharmacist, physician, dentist, veterinarian or other per-
32 son.

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

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

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

42 Every violation of ~~subsection (3) paragraph~~ (f) (i) through (vi) of this
43 subsection shall be a misdemeanor and any person convicted thereof shall
44 be incarcerated in the county jail for a term not to exceed one (1) year,
45 or fined not more than one thousand dollars (\$1,000), or punished by both
46 such fine and imprisonment. Any person violating ~~subsection (3) paragraph~~
47 (f) (vii) of this subsection is guilty of a felony and on conviction thereof
48 shall be imprisoned in the state penitentiary for a term not to exceed three
49 (3) years, or punished by a fine of not more than five thousand dollars
50 (\$5,000), or by both such fine and imprisonment.

1 (4) Provided however, that a veterinarian may dispense or deliver a
2 legend drug prescribed for an animal upon the prescription, drug order, or
3 prescription drug order of another veterinarian. The label shall be affixed
4 pursuant to subsection (3) (a) (ii) of this section, and penalties for vio-
5 lations of the provisions of this subsection shall be as provided in this
6 section for like violations by a pharmacist.

7 (5) The ultimate user of a legend drug who has lawfully obtained such
8 legend drug may deliver, without being registered, the legend drug to an-
9 other person for the purpose of disposal of the legend drug if the person re-
10 ceiving the legend drug for purposes of disposal is authorized under a state
11 or federal law or regulation to engage in such activity.

12 SECTION 3. That Section 54-1733, Idaho Code, be, and the same is hereby
13 amended to read as follows:

14 54-1733. VALIDITY OF PRESCRIPTION DRUG ORDERS. (1) Except as provided
15 in subsection (4) of this section, a prescription drug order for a legend
16 drug is not valid unless it is issued for a legitimate medical purpose aris-
17 ing from a prescriber-patient relationship which includes a documented
18 patient evaluation adequate to establish diagnoses and identify underlying
19 conditions and/or contraindications to the treatment. Treatment, including
20 issuing a prescription drug order, based solely on an online questionnaire
21 or consultation outside of an ongoing clinical relationship does not consti-
22 tute a legitimate medical purpose. A prescription drug order may be issued
23 either:

24 (a) By a practitioner acting in the usual course of his profession; or

25 (b) By a physician, dentist, veterinarian, scientific investigator or
26 other person, other than a pharmacist, who is licensed in a jurisdic-
27 tion other than the state of Idaho and is permitted by such license to
28 dispense, conduct research with respect to or administer the prescribed
29 legend drugs in the course of his professional practice or research in
30 such jurisdiction, so long as the individual is acting within the jurisdic-
31 tion, scope and authority of his license when issuing the prescrip-
32 tion drug order.

33 (c) The prescription drug order may be signed and sent electronically
34 pursuant to chapter 50, title 28, Idaho Code.

35 (d) Transmission of prescription drug order. In addition to delivery
36 of the original signed written prescription drug order to a licensed
37 pharmacy:

38 (i) A prescription drug order that has been signed by the practi-
39 tioner may be received by a licensed pharmacy for dispensing pur-
40 poses through a facsimile transmission from the prescribing prac-
41 titioner or the practitioner's agent, or from an institutional fa-
42 cility for a patient or resident in such facility;

43 (ii) A prescription drug order may also be received by a licensed
44 pharmacist verbally from the practitioner, the practitioner's
45 agent or from a licensed practical nurse or licensed professional
46 nurse in an institutional facility for a patient or resident in
47 such facility;

48 (iii) A prescription drug order received verbally from the prac-
49 tioner by a licensed practical nurse or licensed professional

1 nurse in a licensed institutional facility for a patient or resi-
 2 dent in such facility may also be sent by facsimile transmission
 3 from the institutional facility to a licensed pharmacy for dis-
 4 pensing purposes provided the transmitted document includes the
 5 name of the prescriber issuing the prescription drug order, the
 6 name of the nurse who transcribed the order and the name of the per-
 7 son who sent the facsimile.

8 (e) In the event that there are no refills remaining on an existing pre-
 9 scription drug order, and the pharmacist requests a new prescription
 10 drug order from the practitioner, the practitioner's agent, after ob-
 11 taining practitioner authorization, may sign and return the request via
 12 facsimile so long as:

- 13 (i) The request is generated from the pharmacy;
- 14 (ii) The request is for medication that the patient is currently
 15 taking;
- 16 (iii) There are no changes to the type of drug, its strength or di-
 17 rections for the continuation of therapy;
- 18 (iv) The practitioner's agent's transmission is received via fac-
 19 simile from the practitioner's office; and
- 20 (v) The request, which is subsequently transmitted back to the
 21 requesting pharmacy by the practitioner's agent, contains all
 22 components of a valid prescription drug order.

23 (2) It is unlawful for a practitioner to knowingly issue an invalid pre-
 24 scription drug order for a legend drug.

25 (3) It is unlawful for a pharmacist or veterinarian to knowingly fill an
 26 invalid prescription drug order for a legend drug.

27 (4) A prescriber who is otherwise authorized to perform any of the ac-
 28 tivities listed in this subsection may prescribe or perform any of the fol-
 29 lowing activities for a patient with whom the prescriber does not have a pre-
 30 scriber-patient relationship under the following circumstances:

- 31 (a) Writing initial admission orders for a newly hospitalized patient;
- 32 (b) Writing a prescription for a patient of another prescriber for whom
 33 the prescriber is taking call;
- 34 (c) Writing a prescription for a patient examined by a physician as-
 35 sistant, advanced practice registered nurse or other licensed practi-
 36 tioner with whom the prescriber has a supervisory or collaborative re-
 37 lationship;
- 38 (d) Writing a prescription for medication on a short-term basis for a
 39 new patient prior to the patient's first appointment;
- 40 (e) Writing a prescription for an opioid antagonist pursuant to section
 41 54-1733B, Idaho Code;
- 42 (f) In emergency situations where life or health of the patient is in
 43 imminent danger;
- 44 (~~f~~g) In emergencies that constitute an immediate threat to the public
 45 health including, but not limited to, empiric treatment or prophylaxis
 46 to prevent or control an infectious disease outbreak;
- 47 (~~g~~h) Epinephrine auto-injectors in the name of a school pursuant to
 48 section 33-520A, Idaho Code;
- 49 (~~h~~i) If a prescriber makes a diagnosis of a sexually transmitted dis-
 50 ease in a patient, the prescriber may prescribe or dispense antibiotics

1 to the infected patient's named sexual partner or partners for treat-
2 ment of the sexually transmitted disease as recommended by the most cur-
3 rent centers for disease control and prevention (CDC) guidelines.

4 (5) Prescribing drugs to individuals without a prescriber-patient re-
5 lationship and not in accordance with this section shall be unprofessional
6 conduct and the prescriber shall be subject to discipline according to the
7 provisions of the Idaho Code chapter pursuant to which the prescriber is li-
8 censed, certified or registered.

9 SECTION 4. That Chapter 17, Title 54, Idaho Code, be, and the same is
10 hereby amended by the addition thereto of a NEW SECTION, to be known and des-
11 ignated as Section 54-1733B, Idaho Code, and to read as follows:

12 54-1733B. OPIOID ANTAGONISTS. (1) Notwithstanding any other provi-
13 sion of law, any prescriber or pharmacist acting in good faith and exercising
14 reasonable care may prescribe an opioid antagonist to:

15 (a) A person at risk of experiencing an opiate-related overdose;

16 (b) A person in a position to assist a person at risk of experiencing an
17 opiate-related overdose;

18 (c) A person who, in the course of his official duties or business, may
19 encounter a person experiencing an opiate-related overdose; or

20 (d) A person who in the opinion of the prescriber or pharmacist has
21 valid reason to be in the possession of an opioid antagonist.

22 (2) Notwithstanding any other provision of law, any person acting in
23 good faith and exercising reasonable care may administer an opioid antag-
24 onist to another person who appears to be experiencing an opiate-related
25 overdose. As soon as possible, the administering person shall contact emer-
26 gency medical services.

27 (3) Any person who prescribes or administers an opioid antagonist pur-
28 suant to subsection (1) or (2) of this section shall not be liable in a civil
29 or administrative action or subject to criminal prosecution for such acts.

30 (4) The department of health and welfare in cooperation with the of-
31 fice of drug policy shall create and maintain an online education program for
32 laypersons and the general public on matters pertaining to opiate-related
33 overdoses, including:

34 (a) How to recognize symptoms or indications of an opiate-related over-
35 dose;

36 (b) How to store, administer and dispose of an opioid antagonist;

37 (c) Emergency procedures in the event of an opiate-related overdose;
38 and

39 (d) Other information deemed pertinent by the department of health and
40 welfare and the office of drug policy.

41 (5) As used in this section, "opioid antagonist" means naloxone hy-
42 drochloride or any other similarly acting and equally safe drug approved by
43 the federal food and drug administration for the treatment of drug overdose.

44 SECTION 5. That Section 54-1734, Idaho Code, be, and the same is hereby
45 amended to read as follows:

46 54-1734. EXCEPTIONS. The provisions of this chapter pertaining to the
47 sale of prescription drugs are not applicable:

1 (1) To the sale of legend drugs to persons included in any of the classes
2 named in paragraphs (a) through (g) in subsection (2) of this section, or
3 to the agents or employees of such persons, for use in the usual and lawful
4 course of their business or practice or in the performance of their lawful
5 official duties, as the case may be; or

6 (2) To the possession of legend drugs by such persons or their agents or
7 employees for such use:

8 (a) Pharmacists;

9 (b) Practitioners;

10 (c) Persons who procure legend drugs for handling by or under the super-
11 vision of pharmacists or practitioners employed by them, or for the pur-
12 pose of lawful research, teaching, or testing, and not for resale;

13 (d) Hospitals and other institutions which procure legend drugs for
14 lawful administration by practitioners;

15 (e) Manufacturers and wholesalers;

16 (f) Carriers and warehousemen; ~~and~~

17 (g) Schools possessing stock supplies of epinephrine auto-injectors
18 pursuant to section 33-520A, Idaho Code; and

19 (h) Persons, agencies and organizations possessing opioid antagonists
20 pursuant to section 54-1733B, Idaho Code.

21 (3) To the sale by a business not licensed as a pharmacy of legend drugs
22 (excluding controlled substances) designated for veterinary use which re-
23 quire a prescription, provided that:

24 (a) The business is registered and licensed with the board of pharmacy.

25 (b) The sale is authorized by a written or oral order from a veterinar-
26 ian licensed in this or another state.

27 ~~1-~~(i) Prior to dispensing an order from an out-of-state veteri-
28 narian, the seller must confirm and document that the veterinarian
29 is properly licensed in his state.

30 ~~2-~~(ii) Oral orders must be confirmed by the veterinarian in writ-
31 ing no later than seven (7) days after the seller receives the or-
32 der.

33 (c) The written order or confirmation of an oral order must be retained
34 on the premises of the business for at least two (2) years after the
35 original date of the order.