

IN THE HOUSE OF REPRESENTATIVES

HOUSE BILL NO. 316

BY HEALTH AND WELFARE COMMITTEE

AN ACT

1 RELATING TO PHARMACY; AMENDING SECTION 37-2718, IDAHO CODE, TO REVISE PROVI-  
2 SIONS REGARDING DISCIPLINE OF CERTAIN REGISTRANTS AND TO MAKE TECHNICAL  
3 CORRECTIONS; AMENDING SECTION 37-2744, IDAHO CODE, TO REMOVE A REFER-  
4 ENCE TO THE BOARD OF PHARMACY AND TO MAKE TECHNICAL CORRECTIONS; AMEND-  
5 ING SECTION 54-1704, IDAHO CODE, TO REVISE PROVISIONS REGARDING THE  
6 PRACTICE OF PHARMACY; AMENDING SECTION 54-1705, IDAHO CODE, TO REVISE  
7 DEFINITIONS; AMENDING SECTION 54-1711, IDAHO CODE, TO REVISE PROVI-  
8 SIONS REGARDING VACANCIES ON THE BOARD OF PHARMACY; AMENDING SECTION  
9 54-1722, IDAHO CODE, TO REVISE QUALIFICATIONS FOR LICENSURE; AMENDING  
10 SECTION 54-1725, IDAHO CODE, TO REVISE PROVISIONS REGARDING CONTINUING  
11 PHARMACY EDUCATION; REPEALING SECTION 54-1733C, IDAHO CODE, RELATING  
12 TO EMERGENCY ADMINISTRATION OF EPINEPHRINE AUTO-INJECTORS; AMENDING  
13 SECTION 54-1733D, IDAHO CODE, TO PROVIDE FOR EMERGENCY ADMINISTRATION  
14 OF EPINEPHRINE AUTO-INJECTORS, TO PROVIDE FOR LEGAL IMMUNITY, AND TO  
15 DEFINE A TERM; REPEALING SECTION 54-1733E, IDAHO CODE, RELATING TO  
16 TOBACCO CESSATION PRODUCTS; REPEALING SECTION 54-1733F, IDAHO CODE,  
17 RELATING TO TUBERCULIN PURIFIED PROTEIN DERIVATIVE PRODUCTS; AMENDING  
18 SECTION 54-1739, IDAHO CODE, TO REVISE PROVISIONS REGARDING PROSPEC-  
19 TIVE DRUG REVIEW AND COUNSELING AND TO MAKE TECHNICAL CORRECTIONS;  
20 REPEALING SECTION 54-1768, IDAHO CODE, RELATING TO PRESCRIBER-AUTHO-  
21 RIZED SUBSTITUTION; AMENDING SECTION 54-1732, IDAHO CODE, TO REMOVE  
22 CODE REFERENCES; AND AMENDING SECTION 54-1733, IDAHO CODE, TO REMOVE A  
23 CODE REFERENCE.  
24

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

26 SECTION 1. That Section 37-2718, Idaho Code, be, and the same is hereby  
27 amended to read as follows:

28 37-2718. DISCIPLINE. (a) A registration under section 37-2717, Idaho  
29 Code, may be restricted, suspended or revoked by the board upon a finding  
30 that the registrant:

31 (1) Has furnished false or fraudulent material information in any ap-  
32 plication filed under this act;

33 (2) Has been found guilty of a felony or misdemeanor under any state or  
34 federal law relating to any controlled substance; ~~or~~

35 (3) Has had his federal registration restricted, suspended or revoked;  
36 or

37 (4) Has violated this chapter, any rule of the board promulgated un-  
38 der this act, an order of the board or any federal regulation relating to  
39 controlled substances; provided, however, that no restriction, revoca-  
40 tion or suspension procedure be initiated under this paragraph without  
41 the board first giving notice of the procedure to the state licensing  
42 board with authority over the registrant's professional license.

1 (b) The notice required in subsection (a) (4) of this section shall be  
2 given immediately in the event action is taken without an order to show cause  
3 as allowed under section 37-2719(b), Idaho Code. In all other cases, such  
4 notice shall be given as early as reasonably practicable without risking  
5 compromise of the board's investigation but no later than the earlier of:

6 (1) Issuance of an order to show cause under section 37-2719(a), Idaho  
7 Code; or

8 (2) Setting of a hearing for approval of a resolution of the matter  
9 through informal proceedings.

10 (c) Restriction, revocation or suspension procedures arising solely  
11 from "practice-related issues" shall be referred by the board to such regis-  
12 trant's state licensing board.

13 (1) Upon such referral, the registrant's state licensing board shall  
14 commence such investigation of the referred matter as it deems neces-  
15 sary and shall take action upon the registrant's license or shall inform  
16 the board of pharmacy, in writing, that it has investigated the referred  
17 matter and has concluded that no action is necessary.

18 (2) For purposes of this section, the term "practice-related issues"  
19 refers to issues involving questions regarding the professional con-  
20 duct of the registrant within the scope of the registrant's profession.

21 (d) The board may limit the revocation or suspension of a registration  
22 to the particular controlled substance with respect to which grounds for re-  
23 vocation or suspension exist.

24 (e) If the board restricts, suspends or revokes a registration, all  
25 pertinent controlled substances owned or possessed by the registrant at the  
26 time of the restriction or suspension or the effective date of the revocation  
27 order may be placed under seal. No disposition may be made of substances un-  
28 der seal until the time for taking an appeal has elapsed or until all appeals  
29 have been concluded unless a court, upon application therefor, orders the  
30 sale of perishable substances and the deposit of the proceeds of the sale  
31 with the court. Upon a revocation order becoming final, all controlled sub-  
32 stances may be forfeited to the state.

33 (f) The board shall promptly notify the bureau and the state licensing  
34 board with authority over the registrant's professional license of all or-  
35 ders restricting, suspending or revoking registration and all forfeitures  
36 of controlled substances.

37 (g) In the event the drug enforcement administration or a state li-  
38 censing board with authority over a registrant's professional license or  
39 registration takes an action against the registrant in any fashion which  
40 suspends, restricts, limits or affects the registrant's ability to manufac-  
41 ture, distribute, prescribe, administer, dispense, or conduct research with  
42 any controlled substance, the professional licensing board shall promptly  
43 notify the board of pharmacy of the action.

44 (1) Upon such action, the board of pharmacy shall be authorized to issue  
45 its order suspending, restricting, limiting or otherwise affecting the  
46 registrant's controlled substance registration in the same fashion as  
47 the professional licensing board action.

48 (2) The board of pharmacy order may be issued without further hearing or  
49 proceeding, but shall be subject to the effect of any reversal or modi-

1           fication of the professional licensing board action by reason of any ap-  
2           peal or rehearing.

3           SECTION 2. That Section 37-2744, Idaho Code, be, and the same is hereby  
4           amended to read as follows:

5           37-2744. FORFEITURES. (a) The following are subject to forfeiture:

6           (1) All controlled substances that have been manufactured, dis-  
7           tributed, dispensed, acquired, possessed or held in violation of this  
8           act or with respect to which there has been any act by any person in vio-  
9           lation of this act;

10          (2) All raw materials, products and equipment of any kind that are used,  
11          or intended for use, in manufacturing, compounding, processing, deliv-  
12          ering, importing, or exporting any controlled substances or counter-  
13          feit substances in violation of this act;

14          (3) All property that is used, or intended for use, as a container  
15          for property used in the commission of an act prohibited by section  
16          37-2732B, 37-2732(a) or (b), or 37-2737A, Idaho Code;

17          (4) All conveyances, including aircraft, vehicles, or vessels, that  
18          are used, or intended for use, to transport, or in any manner to fa-  
19          cilitate the transportation, delivery, receipt or manufacture of  
20          substances as prohibited by section 37-2732B, 37-2732(a) or (b), or  
21          37-2737A, Idaho Code, but:

22           (A) No conveyance used by any person as a common carrier in the  
23           transaction of business as a common carrier is subject to forfei-  
24           ture under this section unless it appears that the owner or other  
25           person in charge of the conveyance is a consenting party or privy  
26           to a violation of this act;

27           (B) No conveyance is subject to forfeiture under this section if  
28           the owner establishes that he could not have known in the exercise  
29           of reasonable diligence that the conveyance was being used, had  
30           been used, was intended to be used or had been intended to be used  
31           in any manner described in subsection (a) (4) of this section;

32           (C) A forfeiture of a conveyance encumbered by a bona fide secu-  
33           rity interest is subject to the interest of the secured party if  
34           the security interest was created without any knowledge or reason  
35           to believe that the conveyance was being used, had been used, was  
36           intended to be used, or had been intended to be used for the purpose  
37           alleged.

38          (5) All books, records, and research products and materials, including  
39          formulas, microfilm, tapes, and data that are used, or intended for use,  
40          in violation of this act.

41          (6) (A) All moneys, currency, negotiable instruments, securities or  
42          other items easily liquidated for cash, such as, but not limited  
43          to, jewelry, stocks and bonds, or other property described in  
44          paragraphs (2) and (3) of this subsection that is found in close  
45          proximity to property described in paragraph (1), (2), (3), (5),  
46          (7) or (8) of this subsection and that has been used or is intended  
47          for use in connection with the illegal manufacture, distribution,  
48          dispensing or possession of property described in paragraph (1),  
49          (2), (3), (5), (7) or (8) of this subsection;

1 (B) Items described in subparagraph (6)(A) of this ~~subsection~~  
 2 paragraph or other things of value furnished or intended to be  
 3 furnished by any person in exchange for a contraband controlled  
 4 substance in violation of this chapter, all proceeds, including  
 5 items of property traceable to such an exchange, and all moneys  
 6 or other things of value used or intended to be used to facilitate  
 7 any violation of this chapter, except that no property shall be  
 8 forfeited under this paragraph to the extent of the interest of an  
 9 owner, by reason of any act or omission established by that owner  
 10 to have been committed or omitted without the knowledge or consent  
 11 of that owner.

12 (7) All drug paraphernalia as defined by section 37-2701, Idaho Code.

13 (8) All simulated controlled substances, which are used or intended for  
 14 use in violation of this chapter.

15 (9) All weapons, or firearms, which are used in any manner to facilitate  
 16 a violation of the provisions of this chapter.

17 (b) Property subject to forfeiture under this chapter may be seized by  
 18 the director, or any peace officer of this state, upon process issued by any  
 19 district court, or magistrate division thereof, having jurisdiction over  
 20 the property. Seizure without process may be made if:

21 (1) The seizure is incident to an arrest or a search under a search war-  
 22 rant or an inspection under an administrative inspection warrant;

23 (2) The property subject to seizure has been the subject of a prior  
 24 judgment in favor of the state in a criminal racketeering or civil for-  
 25 feiture proceeding based upon a violation of this chapter;

26 (3) Probable cause exists to believe that the property is directly or  
 27 indirectly dangerous to health or safety; or

28 (4) Probable cause exists to believe that the property was used or is  
 29 intended to be used in violation of this chapter.

30 Mere presence or possession of United States currency, without other indicia  
 31 of criminal activity, is insufficient cause for seizure.

32 (c) In the event of seizure pursuant to subsection (b) of this sec-  
 33 tion, proceedings under subsection (d) of this section shall be instituted  
 34 promptly.

35 (1) When property is seized under this section, the director or the  
 36 peace officer who seized the property may:

37 (A) Place the property under seal;

38 (B) Remove the property to a place designated by ~~it~~ him; or

39 (C) Take custody of the property and remove it to an appropriate  
 40 location for disposition in accordance with law.

41 (2) The peace officer who seized the property shall within five (5) days  
 42 notify the director of such seizure.

43 (3) In the event of seizure pursuant to subsection (b) of this section,  
 44 proceedings under subsection (d) of this section shall be instituted  
 45 within thirty (30) days by the director or appropriate prosecuting at-  
 46 torney.

47 (d) Property taken or detained under this section may be subject to re-  
 48 plevin during the pendency of the forfeiture proceedings upon a hearing and  
 49 finding by the district court, or magistrate division thereof, having juris-  
 50 diction over the forfeiture proceedings, that the property is: (i) reason-

1 ably necessary for the owner's employment or personal use, that the property  
2 will not be disposed of or used for criminal activity, and that reasonable  
3 security has been posted; or (ii) that the seizure violated the provisions  
4 of this section. The right of replevin shall terminate upon an order of for-  
5 feiture as set forth in this section. Property that is being held that has  
6 evidentiary value in the underlying criminal case shall not be subject to re-  
7 plevin. Forfeiture proceedings shall be civil actions against the property  
8 subject to forfeiture and the standard of proof shall be preponderance of the  
9 evidence.

10 (1) All property described in paragraphs (1), (7) and (8) of subsection  
11 (a) of this section shall be deemed contraband and shall be summarily  
12 forfeited to the state. Controlled substances that are seized or come  
13 into possession of the state, the owners of which are unknown, shall be  
14 deemed contraband and shall be summarily forfeited to the state.

15 (2) When property described in paragraphs (2), (3), (4), (5), (6) or (9)  
16 of subsection (a) of this section is seized pursuant to this section,  
17 forfeiture proceedings shall be filed in the office of the clerk of the  
18 district court for the county wherein such property is seized. The pro-  
19 cedure governing such proceedings shall be the same as that prescribed  
20 for civil proceedings by the Idaho rules of civil procedure. The court  
21 shall determine whether such property was used, or intended for use,  
22 in violation of this chapter. The court shall also determine whether a  
23 property forfeiture is proportionate to the crime alleged, charged or  
24 proven. Factors to be considered by the court in making such a determi-  
25 nation shall include, but are not limited to, the nature and severity of  
26 the crime, the fair market value of the property, the intangible or sub-  
27 jective value of the property, the hardship to the defendant, the effect  
28 of forfeiture on the defendant's family or financial circumstances, and  
29 any other sanctions or penalties that have been imposed upon the defen-  
30 dant. The court may tailor the forfeiture of property according to its  
31 determination of proportionality as justice requires.

32 (3) When conveyances, including aircraft, vehicles, or vessels, are  
33 seized pursuant to this section, a complaint instituting forfeiture  
34 proceedings shall be filed in the office of the clerk of the district  
35 court for the county wherein such conveyance is seized.

36 (A) Notice of forfeiture proceedings shall be given to each owner  
37 or party in interest who has a right, title, or interest which in  
38 the case of a conveyance shall be determined by the record in the  
39 Idaho transportation department, or a similar department of an-  
40 other state if the records are maintained in that state, by serving  
41 a copy of the complaint and summons according to one (1) of the fol-  
42 lowing methods:

43 (I) Upon each owner or party in interest by mailing a copy of  
44 the complaint and summons by certified mail to the address as  
45 given upon the records of the appropriate department.

46 (II) Upon each owner or party in interest whose name and ad-  
47 dress is known, by mailing a copy of the notice by registered  
48 mail to the last known address.

49 (B) Within twenty (20) days after the mailing or publication of  
50 the notice, the owner of the conveyance or claimant may file a ver-

1           ified answer and claim to the property described in the complaint  
2 instituting forfeiture proceedings.

3           (C) If at the end of twenty (20) days after the notice has been  
4 mailed there is no verified answer on file, the court shall hear  
5 evidence upon the fact of the unlawful use, or intent to use, and  
6 shall order the property forfeited to the director, or appropriate  
7 prosecuting attorney, if such fact is proved.

8           (D) If a verified answer is filed, the forfeiture proceeding shall  
9 be set for hearing before the court without a jury on a day not less  
10 than thirty (30) days therefrom; and the proceeding shall have  
11 priority over other civil cases.

12           (I) At the hearing any owner who has a verified answer on  
13 file may show by competent evidence that the conveyance was  
14 not used or intended to be used in any manner described in  
15 subsection (a) (4) of this section.

16           (II) At the hearing any owner who has a verified answer on  
17 file may show by competent evidence that his interest in the  
18 conveyance is not subject to forfeiture because he did not  
19 know that the conveyance was being used, had been used, was  
20 intended to be used or had been intended to be used in any  
21 manner described in subsection (a) (4) of this section.

22           (III) If the court finds that the property was not used or was  
23 not intended to be used in violation of this act, or is not  
24 subject to forfeiture under this act, the court shall order  
25 the property released to the owner as his right, title, or  
26 interest appears on records in the appropriate department as  
27 of the seizure.

28           (IV) An owner, co-owner or claimant of any right, title, or  
29 interest in the conveyance may prove that his right, title,  
30 or interest, whether under a lien, mortgage, conditional  
31 sales contract or otherwise, was created without any knowl-  
32 edge or reason to believe that the conveyance was being used,  
33 had been used, was intended to be used, or had been intended  
34 to be used for the purpose alleged;

35           (i) In the event of such proof, the court shall or-  
36 der the conveyance released to the bona fide or inno-  
37 cent owner, purchaser, lienholder, mortgagee, or con-  
38 ditional sales vendor.

39           (ii) If the amount due to such person is less than the  
40 value of the conveyance, the conveyance may be sold at  
41 public auction by the director or appropriate prose-  
42 cuting attorney. The director, or appropriate prose-  
43 cuting attorney, shall publish a notice of the sale by  
44 at least one (1) publication in a newspaper published  
45 and circulated in the city, community or locality where  
46 the sale is to take place at least one (1) week prior  
47 to sale of the conveyance. The proceeds from such sale  
48 shall be distributed as follows in the order indicated:

49           1. To the bona fide or innocent owner, purchaser,  
50 conditional sales vendor, lienholder or mort-

1 gagee of the conveyance, if any, up to the value  
2 of his interest in the conveyance.

3 2. The balance, if any, in the following order:

4 A. To the director, or appropriate prose-  
5 cuting attorney, for all expenditures made  
6 or incurred by ~~it~~ him in connection with the  
7 sale, including expenditure for any neces-  
8 sary repairs, storage, or transportation  
9 of the conveyance, and for all expendi-  
10 tures made or incurred by him in connection  
11 with the forfeiture proceedings includ-  
12 ing, but not limited to, expenditures for  
13 witnesses' fees, reporters' fees, tran-  
14 scripts, printing, traveling and investi-  
15 gation.

16 B. To the law enforcement agency of this  
17 state which seized the conveyance for all  
18 expenditures for traveling, investiga-  
19 tion, storage and other expenses made or  
20 incurred after the seizure and in connec-  
21 tion with the forfeiture of any conveyance  
22 seized under this act.

23 C. The remainder, if any, to the director  
24 for credit to the drug and driving while  
25 under the influence enforcement donation  
26 fund or to the appropriate prosecuting  
27 attorney for credit to the local drug en-  
28 forcement donation fund, or its equiva-  
29 lent.

30 (iii) In any case, the director, or appropriate pros-  
31 ecuting attorney, may, within thirty (30) days after  
32 judgment, pay the balance due to the bona fide lien-  
33 holder, mortgagee or conditional sales vendor and  
34 thereby purchase the conveyance for use to enforce this  
35 act.

36 (e) When property is forfeited under this section, or is received from a  
37 federal enforcement agency, the director, or appropriate prosecuting attor-  
38 ney, may:

39 (1) Upon a showing that the property as set forth in this section is  
40 suited for and likely to be used for law enforcement activities, the  
41 plaintiff or law enforcement agency may, with judicial approval, retain  
42 it for official use;

43 (2) Sell that which is not required to be destroyed by law and which is  
44 not harmful to the public.

45 The director, or appropriate prosecuting attorney, shall publish a no-  
46 tice of the sale by at least one (1) publication in a newspaper published  
47 and circulated in the city, community or locality where the sale is to  
48 take place at least one (1) week prior to sale of the property. The pro-  
49 ceeds from such sale shall be distributed as follows in the order indi-  
50 cated:

1 (A) To the director, or prosecuting attorney on behalf of the  
2 county or city law enforcement agency, for all expenditures made  
3 or incurred in connection with the sale, including expenditure  
4 for any necessary repairs, maintenance, storage or transporta-  
5 tion, and for all expenditures made or incurred in connection  
6 with the forfeiture proceedings including, but not limited to,  
7 expenditures for witnesses' fees, reporters' fees, transcripts,  
8 printing, traveling and investigation.

9 (B) To the law enforcement agency of this state which seized the  
10 property for all expenditures for traveling, investigation, stor-  
11 age and other expenses made or incurred after the seizure and in  
12 connection with the forfeiture of any property seized under this  
13 act.

14 (C) The remainder, if any, to the director for credit to the drug  
15 and driving while under the influence enforcement donation fund  
16 or to the appropriate prosecuting attorney for credit to the local  
17 agency's drug enforcement donation fund; or

18 (3) Take custody of the property and remove it for disposition in accor-  
19 dance with law.

20 (f) (1) The director or any peace officer of this state seizing any of  
21 the property described in paragraphs (1) and (2) of subsection (a) of  
22 this section shall cause a written inventory to be made and maintain  
23 custody of the same until all legal actions have been exhausted unless  
24 such property has been placed in lawful custody of a court or state  
25 or federal law enforcement agency. After all legal actions have been  
26 exhausted with respect to such property, the property shall be surren-  
27 dered by the court, law enforcement agency, or person having custody  
28 of the same to the director to be destroyed pursuant to paragraph (2)  
29 of this subsection. The property shall be accompanied with a written  
30 inventory on forms furnished by the director.

31 (2) All property described in paragraphs (1) and (2) of subsection (a)  
32 of this section that is seized or surrendered under the provisions of  
33 this act may be destroyed after all legal actions have been exhausted.  
34 The destruction shall be done under the supervision of the Idaho state  
35 police by a representative of the office of the director ~~and a represen-~~  
36 ~~tative of the state board of pharmacy.~~ An official record listing the  
37 property destroyed and the location of destruction shall be kept on file  
38 at the office of the director. Except, however, that the director of the  
39 Idaho state police or his designee may authorize the destruction of drug  
40 or nondrug evidence, or store those items at government expense when,  
41 in the opinion of the director or his designee, it is not reasonable to  
42 remove or transport such items from the location of the seizure for de-  
43 struction. In such case, a representative sample will be removed and  
44 preserved for evidentiary purposes and, when practicable, destroyed as  
45 otherwise is in accordance with this chapter. On-site destruction of  
46 such items shall be witnessed by at least two (2) persons, one (1) of  
47 whom shall be the director or his designee who shall make a record of the  
48 destruction.

49 (g) Species of plants from which controlled substances in schedules I  
50 and II may be derived that have been planted or cultivated in violation of



1 this act, or of which the owners or cultivators are unknown, or that are wild  
2 growths, may be seized and summarily forfeited to the state.

3 (h) The failure, upon demand by the director, or his duly authorized  
4 agent, of the person in occupancy or in control of land or premises upon which  
5 the species of plants are growing or being stored, to produce an appropriate  
6 registration, or proof that he is the holder thereof, constitutes authority  
7 for the seizure and forfeiture of the plants.

8 (i) The director shall have the authority to enter upon any land or into  
9 any dwelling pursuant to a search warrant, to cut, harvest, carry off or de-  
10 stroy such plants described in subsection (g) of this section.

11 (j) On or before March 31, 2019, and by March 31 of each year thereafter,  
12 each state or local law enforcement agency in this state that has seized or  
13 forfeited property pursuant to this section shall retain the following in-  
14 formation from the previous calendar year:

15 (1) Name of the law enforcement agency that seized the property;

16 (2) Date of seizure;

17 (3) Type and description of property seized, including make, model,  
18 year, and serial number, if applicable;

19 (4) Crime, if any, for which the suspect has been charged, including  
20 whether such crime is a violation of state or federal law;

21 (5) Criminal case number, if any;

22 (6) Outcome, if any, of suspect's case;

23 (7) If forfeiture was not processed under state law, the reason for the  
24 federal transfer, if known;

25 (8) Forfeiture case number;

26 (9) Date of forfeiture decision;

27 (10) Whether there was a forfeiture settlement agreement;

28 (11) Date and outcome of property disposition as described by one (1) of  
29 the following: returned to owner, partially returned to owner, sold,  
30 destroyed, or retained by law enforcement; and

31 (12) Value of the property forfeited based on the value realized, if  
32 sold, or a reasonable good faith estimate of the value, if possible.

33 Local law enforcement agencies shall submit the information required by this  
34 subsection to the county prosecutor for its jurisdiction on a form as promul-  
35 gated in rule by the Idaho state police, and such prosecutor shall retain the  
36 form for a period of seven (7) years.

37 SECTION 3. That Section 54-1704, Idaho Code, be, and the same is hereby  
38 amended to read as follows:

39 54-1704. PRACTICE OF PHARMACY. "Practice of pharmacy" means:

40 (1) The interpretation, evaluation and dispensing of prescription drug  
41 orders;

42 (2) Participation in drug and device selection, drug administration,  
43 prospective and retrospective drug reviews and drug or drug-related re-  
44 search;

45 (3) The provision of patient counseling and the provision of those acts  
46 or services necessary to provide pharmaceutical care;

47 (4) The responsibility for:

1 (a) Compounding and labeling of drugs and devices, except labeling by  
 2 a manufacturer, repackager or distributor of nonprescription drugs and  
 3 commercially packaged legend drugs and devices;

4 (b) Proper and safe storage of drugs and devices, and maintenance of  
 5 proper records for them; and

6 (c) The offering or performing of those acts, services, operations or  
 7 transactions necessary to the conduct, operation, management and con-  
 8 trol of pharmacy;

9 (5) The prescribing of:

10 (a) ~~Dietary fluoride supplements when prescribed according to the~~  
 11 ~~American dental association's recommendations for persons whose drink-~~  
 12 ~~ing water is proven to have a fluoride content below the United States~~  
 13 ~~department of health and human services' recommended concentration;~~

14 ~~(b) Agents for active immunization when prescribed for susceptible~~  
 15 ~~persons six (6) years of age or older for the protection from communica-~~  
 16 ~~ble disease; and~~

17 ~~(c) Opioid antagonists pursuant to section 54-1733B, Idaho Code;~~

18 ~~(d) Epinephrine auto-injectors pursuant to sections 54-1733C and~~  
 19 ~~54-1733D, Idaho Code;~~

20 ~~(e) Tobacco cessation products pursuant to section 54-1733E, Idaho~~  
 21 ~~Code;~~

22 ~~(f) Tuberculin purified protein derivative products pursuant to sec-~~  
 23 ~~tion 54-1733F, Idaho Code; and~~

24 ~~(g)~~ Drugs, drug categories, or devices that are prescribed in accor-  
 25 dance with the product's federal food and drug administration-approved  
 26 labeling and that are limited to conditions that:

27 (i) Do not require a new diagnosis;

28 (ii) Are minor and generally self-limiting;

29 (iii) Have a test that is used to guide diagnosis or clinical deci-  
 30 sion-making and are waived under the federal clinical laboratory  
 31 improvement amendments of 1988; or

32 (iv) In the professional judgment of the pharmacist, threaten  
 33 the health or safety of the patient should the prescription not be  
 34 immediately dispensed. In such cases, only sufficient quantity  
 35 may be provided until the patient is able to be seen by another  
 36 provider.

37 The board shall not adopt any rules authorizing a pharmacist to pre-  
 38 scribe a controlled drug, compounded drug or biological product.

39 SECTION 4. That Section 54-1705, Idaho Code, be, and the same is hereby  
 40 amended to read as follows:

41 54-1705. DEFINITIONS. In this chapter:

42 (1) "Board of pharmacy" or "board" means the Idaho state board of phar-  
 43 macy.

44 (2) "Central drug outlet" means a resident or nonresident pharmacy,  
 45 drug outlet or business entity employing or contracting pharmacists to per-  
 46 form off-site pharmacy services.

47 (3) "Compounding" means the practice in which a pharmacist, a pre-  
 48 scriber, or, in the case of an outsourcing facility, a person under the

1 supervision of a pharmacist, combines, mixes or alters ingredients of a drug  
2 to create a medication tailored to the needs of an individual patient.

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

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

9 ~~(b) Route of administration, dosage, dosage form, continuity of ther-~~  
10 ~~apy and refill information;~~

11 ~~(c) Special directions and precautions for preparation, administra-~~  
12 ~~tion, storage and use by the patient as deemed necessary by the pharma-~~  
13 ~~ceutist;~~

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

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

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

20 (5) "Deliver" or "delivery" means the actual, constructive or at-  
21 tempted transfer of a drug or device from one person to another, whether or  
22 not for a consideration.

23 (6) "Device" means an instrument, apparatus, implement, machine, con-  
24 trivance, implant, in vitro reagent or other similar related article includ-  
25 ing any component part or accessory which is:

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

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

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

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

40 (8) "Distribute" means the delivery of a drug other than by administer-  
41 ing or dispensing.

42 (9) "Drug" means:

43 (a) Articles recognized as drugs in the official United States Phar-  
44 macopoeia, official National Formulary, official Homeopathic Pharma-  
45 copoeia, other drug compendia or any supplement to any of them;

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

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

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

3 (10) "Drug outlet" means a resident or nonresident pharmacy, business  
4 entity or other facility where employees or personnel are engaged in the  
5 practice of pharmacy, in the provision of pharmaceutical care, or in the  
6 dispensing, delivering, distributing or manufacturing of drugs or devices  
7 in or into Idaho.

8 (11) "Institutional drug order" means a prescription drug order issued  
9 in the unique form and manner permitted for a patient or resident of an in-  
10 stitutional facility or as permitted for other purposes as defined in rule.  
11 Unless specifically differentiated, state law applicable to a prescription  
12 drug order is also applicable to an institutional drug order.

13 (12) "Institutional facility" means a facility for which its primary  
14 purpose is to provide a physical environment for patients to obtain health  
15 care services and in which patients spend a majority of their time, as may be  
16 further defined by board rule.

17 (13) "Internship" means a practical experience program under the super-  
18 vision of a preceptor.

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

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

27 (16) "Limited service outlet" means a resident or nonresident pharmacy,  
28 facility or business entity that is subject to registration by the board,  
29 pursuant to section 54-1729, Idaho Code, and has employees or personnel en-  
30 gaged in the practice of pharmacy, in the provision of pharmaceutical care,  
31 or in the dispensing, delivering, distributing or manufacturing of drugs or  
32 devices as may be further defined by board rule but is not a retail pharmacy,  
33 institutional facility, manufacturer, wholesaler, nonresident central drug  
34 outlet or mail service pharmacy.

35 (17) "Mail service pharmacy" means a nonresident pharmacy that ships,  
36 mails or delivers by any lawful means a dispensed legend drug to residents  
37 in this state pursuant to a legally issued prescription drug order and en-  
38 sures the provision of corresponding related pharmaceutical care services  
39 required by law.

40 (18) "Manufacture" means the production, preparation, propagation,  
41 compounding, conversion or processing of a device or a drug, either directly  
42 or indirectly by extraction from substances of natural origin or indepen-  
43 dently by means of chemical synthesis or by a combination of extraction and  
44 chemical synthesis, and includes any packaging or repackaging of the sub-  
45 stance or labeling or relabeling of its container, except that this term does  
46 not include the preparation or compounding of a drug by an individual for his  
47 own use or the preparation, compounding, packaging or labeling of a drug:

48 (a) By a pharmacist or practitioner as an incident to his administer-  
49 ing, dispensing or, as authorized by board rule, distributing of a drug  
50 in the course of his professional practice; or

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

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

10 (20) "Nonprescription drugs" means medicines or drugs which may be sold  
11 without a prescription drug order and which are prepackaged for use by the  
12 consumer and labeled in accordance with state and federal law.

13 (21) "Nonresident" means a person or business entity located in the Dis-  
14 trict of Columbia or a state or territory other than Idaho that practices  
15 pharmacy including, but not limited to, pharmaceutical care services into  
16 Idaho.

17 (22) "Off-site pharmacy services" means services provided by a central  
18 drug outlet or an off-site pharmacist or technician. Services may include,  
19 but are not limited to: processing a request from another pharmacy to fill,  
20 refill or dispense a prescription drug order; performance of processing  
21 functions; or providing cognitive or pharmaceutical case services. Each  
22 function may be performed by the same or different persons and at the same or  
23 different locations.

24 (23) "Outsourcing facility" means a pharmacy or facility that is regis-  
25 tered by the United States food and drug administration pursuant to 21 U.S.C.  
26 353b and either registered or endorsed by the board.

27 (24) "Person" means an individual, corporation, partnership, associa-  
28 tion or any other legal entity.

29 (25) "Person in charge" or "PIC" means a ~~pharmacist or, in the case of a~~  
30 ~~prescriber drug outlet, a prescriber~~ person whose qualifications, responsi-  
31 bilities, and reporting requirements are defined in rule.

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

37 (27) "Pharmacist" means an individual licensed by this state to engage  
38 in the practice of pharmacy or a pharmacist registered by this state who is  
39 located in another state, territory or the District of Columbia and is en-  
40 gaged in the practice of pharmacy into Idaho, unless exempted.

41 (28) "Pharmacist intern" means a person who is enrolled in or who has  
42 completed a course of study at an accredited school or college of pharmacy  
43 and is registered with the board as a pharmacist intern prior to commencement  
44 of an internship program.

45 (29) "Pharmacy" means any drug outlet, facility, department or other  
46 place where prescription drug orders are filled or compounded and prescrip-  
47 tions are sold, dispensed, offered or displayed for sale, which has, as its  
48 principal purpose, the dispensing of drug and health supplies intended for  
49 the general health, welfare and safety of the public.

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

4 (31) "Preceptor" means a pharmacist or other health professional li-  
5 censed and in good standing who supervises the internship training of a  
6 registered pharmacist intern.

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

14 (33) "Prescriber" means an individual currently licensed, registered  
15 or otherwise authorized to prescribe and administer drugs in the course of  
16 professional practice.

17 (34) "Prescriber drug outlet" means a drug outlet in which prescription  
18 drugs or devices are dispensed directly to patients under the supervision of  
19 a prescriber, except where delivery is accomplished only through on-site ad-  
20 ministration or the provision of drug samples, patient assistance program  
21 drugs, or investigational drugs as permitted in chapter 94, title 39, Idaho  
22 Code.

23 (35) "Prescription drug or legend drug" means a drug that under federal  
24 law is required, prior to being dispensed or delivered, to be labeled with  
25 one (1) of the following statements:

26 (a) "Caution: Federal law prohibits dispensing without a prescrip-  
27 tion"; or  
28 (b) "Rx Only"; or  
29 (c) "Caution: Federal law restricts this drug to use by or on the order  
30 of a licensed veterinarian";  
31 or a drug which is required by any applicable federal or state law or regula-  
32 tion to be dispensed on prescription drug order only or is restricted to use  
33 by practitioners only.

34 (36) "Prescription drug order" means a valid order of a prescriber for a  
35 drug or device for an ultimate user of the drug or device.

36 (37) "Prospective drug review" includes, but is not limited to, the fol-  
37 lowing activities:

38 (a) Evaluation of the prescription drug order for:  
39 ~~(i) Known allergies;~~  
40 ~~(ii) Rational therapy contraindications;~~  
41 ~~(iii) Reasonable dose and route of administration;~~ and  
42 ~~(iv) Reasonable directions for use.~~  
43 (b) Evaluation of the prescription drug order for duplication of ther-  
44 apy.  
45 (c) Evaluation of the prescription drug order for drug, food, or dis-  
46 ease interactions:  
47 ~~(i) Drug-drug;~~  
48 ~~(ii) Drug-food; and~~  
49 ~~(iii) Drug-disease.~~  
50 (d) Evaluation of the prescription drug order for proper utilization;

1            ~~(i) Over- or under-utilization,~~ and  
 2            ~~(ii) Abuse/misuse.~~

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

8            (39) "Sale" means every sale and includes:

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

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

12           (c) Holding, storing or any other possession;

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

14           (e) Applying, administering or any other usage.

15           (40) "Ultimate user" means a person who lawfully possesses a drug for  
 16           his own use or for the use of a member of his household or for administering to  
 17           an animal owned by him or by a member of his household.

18           (41) "Veterinary drug outlet" means a prescriber drug outlet that dis-  
 19           penses drugs or devices intended for animal patients.

20           (42) "Wholesaler" means a person who in the usual course of business  
 21           lawfully distributes drugs or devices in or into Idaho to persons other than  
 22           the ultimate user.

23           SECTION 5. That Section 54-1711, Idaho Code, be, and the same is hereby  
 24           amended to read as follows:

25           54-1711. VACANCIES. Any vacancy which occurs in the membership of the  
 26           board for any reason, including expiration of term, removal, resignation,  
 27           death, disability or disqualification, shall be filled by the governor in  
 28           the manner prescribed in section 54-1709, Idaho Code. ~~The governor shall~~  
 29           ~~fill vacancies which occur by expiration of full terms within thirty (30)~~  
 30           ~~days prior to each date of expiration, and shall fill vacancies which occur~~  
 31           ~~for any other reason within sixty (60) days after such vacancy occurs.~~

32           SECTION 6. That Section 54-1722, Idaho Code, be, and the same is hereby  
 33           amended to read as follows:

34           54-1722. QUALIFICATIONS FOR LICENSURE BY EXAMINATION. (1) To obtain a  
 35           license to engage in the practice of pharmacy, an applicant for licensure by  
 36           examination shall:

37           (a) Have submitted a written application in the form prescribed by the  
 38           board of pharmacy;

39           (b) Have attained the age of majority;

40           ~~(c) Be of good moral character and temperate habits;~~

41           ~~(d) Have graduated and received the first professional undergraduate~~  
 42           ~~degree from a school or college of pharmacy approved by the board of~~  
 43           ~~pharmacy;~~

44           (ed) Have completed an internship or other program approved by the  
 45           board of pharmacy, or demonstrated to the board's satisfaction expe-  
 46           rience in the practice of pharmacy that meets or exceeds the minimum  
 47           internship requirements of the board;

1           (~~f~~e) Have successfully passed an examination given by the board of  
2 pharmacy; and

3           (~~g~~f) Paid the fees specified by the board of pharmacy for examination  
4 and issuance of license.

5           (2) Examinations. The examination shall be prepared to measure the  
6 competence of the applicant to engage in the practice of pharmacy. The board  
7 may employ and cooperate with any organization or consultant in the prepa-  
8 ration and grading of an appropriate examination, but shall retain the sole  
9 discretion and responsibility of determining which applicants have success-  
10 fully passed such an examination.

11           (3) Internship and other training programs. All applicants for licen-  
12 sure by examination shall obtain practical experience in the practice of  
13 pharmacy concurrent with or after college attendance, or both, under such  
14 terms and conditions as the board shall determine.

15           (4) Any applicant who is a graduate of a school or college of pharmacy  
16 located outside the United States, the degree program of which has not been  
17 approved by the board, but who is otherwise qualified to apply for a license  
18 to practice pharmacy in this state, may be considered to have satisfied the  
19 degree requirements of subsection (1) (d) of this section by verification to  
20 the board of his academic record and his graduation and by meeting any other  
21 requirements as the board may establish from time to time. The board may re-  
22 quire that the applicant successfully pass an examination given or approved  
23 by the board to establish proficiency in English and an equivalency of edu-  
24 cation with qualified graduates of a degree program specified in subsection  
25 (1) (d) of this section as a prerequisite of taking the licensure examination  
26 as provided in subsection (1) (f) of this section.

27           SECTION 7. That Section 54-1725, Idaho Code, be, and the same is hereby  
28 amended to read as follows:

29           54-1725. CONTINUING PHARMACY EDUCATION. ~~(1) The legislature makes the~~  
30 ~~following findings and declarations:~~

31           ~~(a) Because of the continuous introduction of new therapeutic and di-~~  
32 ~~agnostic agents and the changing concepts in the delivery of health care~~  
33 ~~services in the practice of pharmacy, it is essential that a pharmacist~~  
34 ~~undertake a continuing education program in order to maintain his pro-~~  
35 ~~fessional competency and improve his professional skills; and~~

36           ~~(b) To assure the continued competency of the pharmacist and to main-~~  
37 ~~tain uniform qualifications for registration and licensure in the pro-~~  
38 ~~fession for the protection of the health and welfare of its citizens,~~  
39 ~~the legislature of this state deems it in the public interest to adopt a~~  
40 ~~continuing professional education program.~~

41           ~~(2) No annual renewal license shall be issued to a pharmacist until such~~  
42 ~~pharmacist shall have submitted proof to the board that he has satisfacto-~~  
43 ~~rily completed an accredited program of continuing professional education~~  
44 ~~during the previous year to help assure his continued competence to engage~~  
45 ~~in the practice of pharmacy. The board shall from time to time determine the~~  
46 ~~amount of continuing education to be required.~~

47           ~~(3) The board shall adopt rules and regulations necessary to carry out~~  
48 ~~the stated objectives and purposes and to enforce the provisions of this~~  
49 ~~section, which shall include the methods of determining may determine which~~



1 continuing education programs are accredited programs, any fees the amount  
2 of continuing education to be required, and such other rules and regulations  
3 consistent with this section as the board shall determine pertaining to con-  
4 tinuing education.

5 SECTION 8. That Section [54-1733C](#), Idaho Code, be, and the same is hereby  
6 repealed.

7 SECTION 9. That Section 54-1733D, Idaho Code, be, and the same is hereby  
8 amended to read as follows:

9 54-1733D. EPINEPHRINE AUTO-INJECTORS -- PRESCRIPTION AND ADMINIS-  
10 TRATION. (1) Notwithstanding any other provision of law, any prescriber or  
11 pharmacist acting in good faith and exercising reasonable care may prescribe  
12 an epinephrine auto-injector to:

13 (1a) A person at risk of experiencing anaphylaxis;

14 (2b) A person in a position to assist a person at risk of experiencing  
15 anaphylaxis;

16 (3c) A person who, in the course of the person's official duties or  
17 business, may encounter a person experiencing anaphylaxis; and

18 (4d) A person who, in the opinion of the prescriber or pharmacist, has a  
19 valid reason to be in possession of an epinephrine auto-injector.

20 (2) Notwithstanding any other provision of law, any person acting in  
21 good faith and exercising reasonable care may administer an epinephrine  
22 auto-injector to another person who appears to be experiencing anaphylaxis.  
23 As soon as possible, the administering person shall contact emergency medi-  
24 cal services.

25 (3) Any person who prescribes, dispenses, or administers an epineph-  
26 rine auto-injector pursuant to subsection (1) or (2) of this section shall  
27 not be liable in a civil or an administrative action or subject to criminal  
28 prosecution for such acts.

29 (4) As used in this section, "epinephrine auto-injector" means a sin-  
30 gle-use device used for the automatic injection of a premeasured dose of epi-  
31 nephrine into the human body.

32 SECTION 10. That Section [54-1733E](#), Idaho Code, be, and the same is  
33 hereby repealed.

34 SECTION 11. That Section [54-1733F](#), Idaho Code, be, and the same is  
35 hereby repealed.

36 SECTION 12. That Section 54-1739, Idaho Code, be, and the same is hereby  
37 amended to read as follows:

38 54-1739. PROSPECTIVE DRUG REVIEW AND COUNSELING. (1) Before dispens-  
39 ing any new prescription, a pharmacist shall complete a prospective drug re-  
40 view as defined in section 54-1705, Idaho Code.

41 (2) Before dispensing a prescription for a new medication, or when  
42 otherwise deemed necessary or appropriate, a pharmacist shall counsel the  
43 patient or caregiver. ~~In addition to the counseling requirements provided~~  
44 ~~in section 54-1705, Idaho Code, e~~counseling shall include such supplemental

1 written materials as required by law or as are customary in that practice  
2 setting. For refills or renewed prescriptions, a pharmacist or a technician  
3 shall extend an offer to counsel the patient or caregiver. If such offer is  
4 accepted, a pharmacist shall provide such counseling as necessary or ap-  
5 propriate in the professional judgment of the pharmacist. All counseling  
6 and offers to counsel shall be face-to-face with the patient or caregiver  
7 when possible, but if not possible, then a reasonable effort shall be made  
8 to contact the patient or caregiver. Nothing in this section shall require  
9 a pharmacist to provide counseling when a patient or caregiver refuses such  
10 counseling or when counseling is otherwise impossible. Patient counseling  
11 shall not be required for inpatients of a hospital or institutional facility  
12 when licensed health care professionals administer the medication.

13 (3) This section shall apply to all registered and licensed pharmacies,  
14 including mail service pharmacies. In cases of prescriber dispensing, the  
15 prescriber shall perform the prospective drug review and counseling consis-  
16 tent with the provisions of this section outlets.

17 SECTION 13. That Section [54-1768](#), Idaho Code, be, and the same is hereby  
18 repealed.

19 SECTION 14. That Section 54-1732, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 54-1732. VIOLATIONS AND PENALTIES. (1) No drug outlet designated in  
22 section 54-1729, Idaho Code, shall be operated until a certificate of reg-  
23 istration has been issued to said facility by the board. Upon the finding of  
24 a violation of this subsection, the board may impose one (1) or more of the  
25 penalties enumerated in section 54-1728, Idaho Code.

26 (2) Reinstatement of a certificate that has been suspended, revoked  
27 or restricted by the board may be granted in accordance with the procedures  
28 specified in section 54-1728(8), Idaho Code.

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

31 (a) The sale, delivery or administration of any prescription drug or  
32 legend drug, except an opioid antagonist pursuant to section 54-1733B,  
33 Idaho Code, or an epinephrine auto-injector pursuant to sections  
34 ~~54-1733C and 54-1733D~~, Idaho Code, unless:

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

43 (ii) In the case of a legend drug dispensed to a person, there is  
44 a label affixed to the immediate container in which such drug is  
45 dispensed. Any person violating this subparagraph shall be guilty  
46 of a misdemeanor and upon conviction thereof shall be fined not  
47 more than five hundred dollars (\$500). Nothing in this subpara-  
48 graph prohibits a practitioner from delivering professional sam-

1           ples of legend drugs in their original containers in the course of  
2           his practice when oral directions for use are given at the time of  
3           such delivery.

4           (b) The refilling of any prescription or drug order for a legend drug,  
5           except as designated on the prescription or drug order or by the autho-  
6           rization of the practitioner, or in accordance with board rule. Any  
7           person guilty of violating the provisions of this paragraph shall be  
8           guilty of a misdemeanor and upon conviction thereof shall be incarcer-  
9           ated in the county jail for a term not to exceed one (1) year or punished  
10          by a fine of not more than one thousand dollars (\$1,000), or by both such  
11          fine and incarceration.

12          (c) The possession or use of a legend drug or a precursor, except an  
13          opioid antagonist pursuant to section 54-1733B, Idaho Code, or an epi-  
14          nephrine auto-injector pursuant to sections ~~54-1733C~~ and 54-1733D,  
15          Idaho Code, by any person unless such person obtains such drug on the  
16          prescription or drug order of a practitioner. Any person guilty of vio-  
17          lating the provisions of this paragraph shall be guilty of a misdemeanor  
18          and upon conviction thereof shall be incarcerated in the county jail for  
19          a term not to exceed one (1) year or punished by a fine of not more than  
20          one thousand dollars (\$1,000), or by both such fine and incarceration.

21          (d) The wholesale distribution of drugs or devices by a pharmacy except  
22          for:

23           (i) The sale, transfer, merger or consolidation of all or part of  
24           the business of a pharmacy or pharmacies from or with another phar-  
25           macy or pharmacies, whether accomplished as a purchase and sale of  
26           stock or business assets;

27           (ii) The sale of minimal quantities of prescription drugs to prac-  
28           titioners for office use or to dispensing drug outlets for a spe-  
29           cific patient need;

30           (iii) The sale of a prescription drug for emergency medical rea-  
31           sons, but never to a wholesale distributor;

32           (iv) Intracompany sales of prescription drugs, meaning any trans-  
33           action or transfer between any division, subsidiary, parent or af-  
34           filiated or related company under common ownership and control of  
35           a corporate entity, or any transaction or transfer between colli-  
36           censees or a colicensed product, but never to a wholesale distrib-  
37           utor; or

38           (v) Other exemptions as permitted by federal law.

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

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

1 (g) It is unlawful to:

2 (i) Obtain or attempt to obtain a legend drug or procure or at-  
 3 tempt to procure the administration of a legend drug by fraud, de-  
 4 ceit, misrepresentation or subterfuge; by the forgery or alter-  
 5 ation of a prescription, drug order, or of any written order; by  
 6 the concealment of a material fact; or by the use of a false name or  
 7 the giving of a false address.

8 (ii) Communicate information to a practitioner in an effort un-  
 9 lawfully to procure a legend drug, or unlawfully to procure the ad-  
 10 ministration of any such drug. Any such communication shall not be  
 11 deemed a privileged communication.

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

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

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

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

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

27 Every violation of paragraph (g) (i) through (vi) of this subsection shall  
 28 be a misdemeanor, and any person convicted thereof shall be incarcerated in  
 29 the county jail for a term not to exceed one (1) year or fined not more than  
 30 one thousand dollars (\$1,000) or punished by both such fine and imprison-  
 31 ment. Any person violating paragraph (g) (vii) of this subsection is guilty  
 32 of a felony and on conviction thereof shall be imprisoned in the state peni-  
 33 tentiary for a term not to exceed three (3) years or punished by a fine of not  
 34 more than five thousand dollars (\$5,000) or by both such fine and imprison-  
 35 ment.

36 (4) The ultimate user of a legend drug who has lawfully obtained such  
 37 legend drug may deliver, without being registered, the legend drug to an-  
 38 other person for the purpose of disposal of the legend drug if the person re-  
 39 ceiving the legend drug for purposes of disposal is authorized under a state  
 40 or federal law or regulation to engage in such activity.

41 SECTION 15. That Section 54-1733, Idaho Code, be, and the same is hereby  
 42 amended to read as follows:

43 54-1733. VALIDITY OF PRESCRIPTION DRUG ORDERS. (1) A prescription  
 44 drug order for a legend drug is valid only if it is issued by a prescriber for  
 45 a legitimate medical purpose arising from a prescriber-patient relation-  
 46 ship which includes a documented patient evaluation adequate to establish  
 47 diagnoses, if applicable, and identify underlying conditions and/or con-  
 48 traindications to the treatment.

1 (2) A prescriber who is otherwise authorized to perform any of the ac-  
2 tivities listed in this section may prescribe or perform any of the follow-  
3 ing activities for a patient with whom the prescriber does not have a pre-  
4 scriber-patient relationship under the following circumstances:

5 (a) Writing initial admission orders for a newly hospitalized patient;

6 (b) Writing a prescription drug order for a patient of another pre-  
7 scriber for whom the prescriber is taking call;

8 (c) Writing a prescription drug order for a patient examined by a physi-  
9 cian assistant, advanced practice registered nurse or other licensed  
10 practitioner with whom the prescriber has a supervisory or collabora-  
11 tive relationship;

12 (d) Writing a prescription drug order for a medication on a short-term  
13 basis for a new patient prior to the patient's first appointment;

14 (e) Writing a prescription for an opioid antagonist pursuant to section  
15 54-1733B, Idaho Code;

16 (f) In emergency situations where the life or health of the patient is  
17 in imminent danger;

18 (g) In emergencies that constitute an immediate threat to the public  
19 health including, but not limited to, empiric treatment or prophylaxis  
20 to prevent or control an infectious disease outbreak;

21 (h) Epinephrine auto-injectors in the name of a school pursuant to sec-  
22 tion 33-520A, Idaho Code, ~~or an authorized entity pursuant to section~~  
23 ~~54-1733C, Idaho Code;~~ and

24 (i) If a prescriber makes a diagnosis of an infectious disease in a  
25 patient, prescribe or dispense antimicrobials to an individual who  
26 has been exposed to the infectious person in accordance with clinical  
27 guidelines.

28 (3) Treatment, including issuing a prescription drug order, based  
29 solely on an online questionnaire or consultation outside of an ongoing  
30 clinical relationship does not constitute a legitimate medical purpose.

31 (4) A prescription drug order shall be issued only by a prescriber in-  
32 cluding a prescriber who is licensed in a jurisdiction other than the state  
33 of Idaho and is permitted by such license to prescribe legend drugs in the  
34 course of his professional practice as long as the individual is acting  
35 within the jurisdiction, scope and authority of his license when issuing the  
36 prescription drug order.

37 (5) The following acts shall be unlawful:

38 (a) To knowingly issue an invalid prescription drug order for a legend  
39 drug;

40 (b) To knowingly dispense a legend drug pursuant to an invalid pre-  
41 scription drug order; or

42 (c) To prescribe drugs to individuals without a prescriber-patient re-  
43 lationship, unless excepted in this section.

44 Such acts shall constitute unprofessional conduct and the prescriber or  
45 dispenser shall be subject to discipline according to the provisions of  
46 the Idaho Code chapter pursuant to which the prescriber or dispenser is li-  
47 censed, certified or registered.