TITLE 54
PROFESSIONS, VOCATIONS, AND BUSINESSES

CHAPTER 17
PHARMACISTS

54-1701. SHORT TITLE. This chapter shall be known as the "Idaho Pharmacy Act."
[54-1701, added 1979, ch. 131, sec. 3, p. 404.; am. 2013, ch. 28, sec. 2, p. 52.]

54-1702. LEGISLATIVE DECLARATION. The practice of pharmacy in the state of Idaho is declared a professional practice affecting the health, safety and welfare of the public and is subject to regulation and control in the public interest. It is further declared to be a matter of public interest and concern that the practice of pharmacy, as defined in this chapter, merits and receives the confidence of the public and that only qualified persons be permitted to engage in the practice of pharmacy in or into the state of Idaho. This chapter shall be liberally construed to carry out these objects and purposes.
[54-1702, added 1979, ch. 131, sec. 3, p. 404.; am. 2013, ch. 28, sec. 3, p. 52.]

54-1703. STATEMENT OF PURPOSE. It is the purpose of this act to promote, preserve and protect the health, safety and welfare of the public by and through the effective control and regulation of the practice of pharmacy and of the registration of drug outlets engaged in the manufacture, production, sale and distribution of drugs, medications, devices and such other materials as may be used in the diagnosis and treatment of injury, illness and disease.
[54-1703, added 1979, ch. 131, sec. 3, p. 404.]

54-1704. PRACTICE OF PHARMACY. "Practice of pharmacy" means:
(1) The interpretation, evaluation and dispensing of prescription drug orders;
(2) Participation in drug and device selection, drug administration, prospective and retrospective drug reviews and drug or drug-related research;
(3) The provision of patient counseling and the provision of those acts or services necessary to provide pharmaceutical care;
(4) The responsibility for:
(a) Compounding and labeling of drugs and devices, except labeling by a manufacturer, repackager or distributor of nonprescription drugs and commercially packaged legend drugs and devices;
(b) Proper and safe storage of drugs and devices, and maintenance of proper records for them; and
(c) The offering or performing of those acts, services, operations or transactions necessary to the conduct, operation, management and control of pharmacy;
(5) The prescribing of:
(a) Dietary fluoride supplements when prescribed according to the American dental association's recommendations for persons whose drink-

ing water is proven to have a fluoride content below the United States department of health and human services' recommended concentration;

(b) Agents for active immunization when prescribed for susceptible persons six (6) years of age or older for the protection from communicable disease;

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

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

(e) Drugs, drug categories or devices that are specifically authorized in rules adopted by the board. Such drugs and devices shall be prescribed in accordance with the product's federal food and drug administration-approved labeling. Drugs, drug categories or devices authorized by the board under this section shall be limited to conditions that:

(i) Do not require a new diagnosis;

(ii) Are minor and generally self-limiting;

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

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

The board shall not adopt any rules authorizing a pharmacist to prescribe a controlled drug, compounded drug or biological product;

(f) Tobacco cessation products pursuant to section 54-1733E, Idaho Code; and

(g) Tuberculin purified protein derivative products pursuant to section 54-1733F, Idaho Code.

[54-1704, added 1979, ch. 131, sec. 3, p. 404; am. 1992, ch. 179, sec. 1, p. 565; am. 1993, ch. 49, sec. 1, p. 126.; am. 2009, ch. 244, sec. 2, p. 748; am. 2011, ch. 264, sec. 1, p. 709; am. 2013, ch. 28, sec. 4, p. 52; am. 2015, ch. 88, sec. 1, p. 217; am. 2016, ch. 62, sec. 1, p. 198; am. 2016, ch. 264, sec. 1, p. 693; am. 2017, ch. 23, sec. 1, p. 42; am. 2017, ch. 25, sec. 1, p. 45; am. 2017, ch. 143, sec. 1, p. 339; am. 2018, ch. 169, sec. 18, p. 368.]

54-1705. DEFINITIONS. In this chapter:

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

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

(3) "Compounding" means the practice in which a pharmacist, a prescriber, or, in the case of an outsourcing facility, a person under the supervision of a pharmacist, combines, mixes or alters ingredients of a drug to create a medication tailored to the needs of an individual patient.

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

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

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

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

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

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

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

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

(6) "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.

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

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

(9) "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 animal; and

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

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

(11) "Institutional drug order" means a prescription drug order issued in the unique form and manner permitted for a patient or resident of an institutional facility or as permitted for other purposes as defined in rule.

Unless specifically differentiated, state law applicable to a prescription drug order is also applicable to an institutional drug order.

(12) "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 rule.

(13) "Internship" means a practical experience program under the supervision of a preceptor.

(14) "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.

(15) "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.

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

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

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

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

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

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

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

(25) "Person in charge" or "PIC" means a pharmacist or, in the case of a prescriber drug outlet, a prescriber whose qualifications, responsibilities and reporting requirements are defined in rule.

(26) "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.

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

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

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

(30) "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.

(31) "Preceptor" means a pharmacist or other health professional licensed and in good standing who supervises the internship training of a registered pharmacist intern.

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

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

(34) "Prescriber drug outlet" means a drug outlet in which prescription drugs or devices are dispensed directly to patients under the supervision of a prescriber, except where delivery is accomplished only through on-site administration or the provision of drug samples, patient assistance program drugs, or investigational drugs as permitted in chapter 93, title 39, Idaho Code.

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

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

(b) "Rx Only"; or

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

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

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

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

(a) Evaluation of the prescription drug order for:

(i) Known allergies;

(ii) Rational therapy contraindications;

(iii) Reasonable dose and route of administration; and

(iv) Reasonable directions for use.

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

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

(i) Drug-drug;

(ii) Drug-food; and

(iii) Drug-disease.

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

(i) Over- or under-utilization; and

(ii) Abuse/misuse.

(38) "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 that are used in any way in connection with the purchase, sale or handling of any drug or device.

(39) "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.

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

(41) "Veterinary drug outlet" means a prescriber drug outlet that dispenses drugs or devices intended for animal patients.

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

[54-1705, added 1979, ch. 131, sec. 3, p. 404; am. 1989, ch. 193, sec. 14, p. 483; am. 1992, ch. 179, sec. 2, p. 565; am. 1993, ch. 49, sec. 2, p. 126; am. 2000, ch. 103, sec. 1, p. 228; am. 2000, ch. 274, sec. 132, p. 866; am. 2002, ch. 26, sec. 1, p. 29; am. 2006, ch. 290, sec. 1, p. 888; am. 2008, ch. 51, sec. 1, p. 124; am. 2009, ch. 244, sec. 3, p. 749; am. 2011, ch. 135, sec. 2, p. 375; am. 2013, ch. 28, sec. 5, p. 53; am. 2013, ch. 270, sec. 1, p. 698; am. 2014, ch. 146, sec. 2, p. 392; am. 2015, ch. 28, sec. 1, p. 44; am. 2018, ch. 37, sec. 1, p. 77.]

54-1706. STATE BOARD OF PHARMACY ESTABLISHED. There is hereby established in the department of self-governing agencies a state board of pharmacy whose responsibilities shall be to enforce the provisions of this act. The board shall have all of the duties, powers and authority specifically granted by and necessary to the enforcement of this act, as well as such other duties, powers and authority as it may be granted from time to time by appropriate statute.

[54-1706, added 1979, ch. 131, sec. 3, p. 408.]

54-1707. MEMBERSHIP. The board of pharmacy shall consist of five (5) members. One (1) member shall be a representative of the public, and four (4) members shall be licensed pharmacists who possess the qualifications specified in section 54-1708, Idaho Code. The board of pharmacy shall have diverse pharmacy practice experience, with at least one (1) member having substantial experience in retail pharmacy and at least one (1) member having substantial experience in hospital pharmacy.

[54-1707, added 1979, ch. 131, sec. 3, p. 408.; am. 2013, ch. 65, sec. 1, p. 161.]

54-1708. QUALIFICATIONS OF BOARD MEMBERS. (1) The public member of the board of pharmacy shall be a resident of the state of Idaho who has attained the age of majority and shall not be nor shall he ever have been a member of the profession of pharmacy, the spouse of a member of the profession of pharmacy, or a person who has or has had a material financial interest in providing pharmacy service or any other activity directly related to the practice of pharmacy.

(2) The pharmacist members of the board of pharmacy shall at the time of their appointment and at all times thereafter:

(a) Be residents of the state of Idaho;

(b) Be licensed and in good standing to engage in the practice of pharmacy in the state of Idaho;

(c) Be engaged in the practice of pharmacy in the state of Idaho;

(d) Have five (5) years of experience in the practice of pharmacy in the state of Idaho after licensure.

[54-1708, added 1979, ch. 131, sec. 3, p. 408.]

54-1709. APPOINTMENT OF BOARD MEMBERS -- NOTICE OF VACANCY -- NOMINEES. Prior to the expiration of the regular term of a member of the board or upon the occurrence of declaration of a vacancy in the membership of the board, the governor shall appoint a qualified person to fill the vacancy. The governor may consider recommendations for appointment to the board from

the Idaho state pharmacy association and from any individual residing in this state.

[54-1709, added 1979, ch. 131, sec. 3, p. 409; am. 1997, ch. 22, sec. 1, p. 32; am. 2016, ch. 340, sec. 20, p. 943.]

54-1710. TERMS OF OFFICE. (1) Except as provided in subsection (2) of this section, members of the board of pharmacy shall be appointed for a term of five (5) years, except that members of the board who are appointed to fill vacancies which occur prior to the expiration of a former member's full term shall serve the unexpired portion of such term.

(2) The terms of the members of the board shall be staggered, so that the terms of no more than one (1) member shall expire in any year.

(3) No member of the board shall serve more than (2) consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for purposes of this section.

(4) An appointee to a full term on the board shall be appointed by the governor as provided in section 54-1709, Idaho Code, and be effective on July 1 of the year of appointment. Appointees to unexpired portions of full terms shall become members of the board upon appointment.

[54-1710, added 1979, ch. 131, sec. 3, p. 409.; am. 2016, ch. 71, sec. 1, p. 248.]

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

[54-1711, added 1979, ch. 131, sec. 3, p. 409.]

54-1712. REMOVAL OF BOARD MEMBERS. All board members shall serve at the pleasure of the governor.

[54-1712, added 1979, ch. 131, sec. 3, p. 410; am. 2016, ch. 340, sec. 21, p. 943.]

54-1713. ORGANIZATION OF THE BOARD. (1) The board of pharmacy shall elect from its members a chairman and such other officers as it deems appropriate and necessary to the conduct of its business. The chairman of the board of pharmacy shall preside at all meetings of the board and shall be responsible for the performance of all of the duties and functions of the board required or permitted by this chapter. Each additional officer elected by the board shall perform those duties normally associated with his position and such other duties assigned to him from time to time by the board.

(2) Officers elected by the board shall serve terms of one (1) year commencing with the day of their election, and ending upon election of their successors.

(3) The board shall employ a person who shall be an ex officio member of the board without vote to serve as a full-time employee of the board in the position of executive director. The executive director shall be responsible for the performance of the regular administrative functions of the board and such other duties as the board may direct.

[54-1713, added 1979, ch. 131, sec. 3, p. 410.; am. 2016, ch. 71, sec. 2, p. 248; am. 2016, ch. 341, sec. 3, p. 967.]

54-1714. COMPENSATION OF BOARD MEMBERS. (1) Each member of the board of pharmacy shall be compensated as provided by section 59-509(p), Idaho Code, for each day on which the member is engaged in performance of the official duties of the board, and reimbursement for all expenses incurred in connection with the discharge of such official duties.

(2) The executive director of the board of pharmacy shall be a nonclassified officer and shall receive, as compensation, an annual salary payable on regular pay periods, the amount of which shall be determined by the board, and reimbursement for all expenses incurred in connection with performance of his official duties.

[54-1714, added 1979, ch. 131, sec. 3, p. 410; am. 1980, ch. 247, sec. 63, p. 627; am. 1982, ch. 260, sec. 1, p. 671; am. 1996, ch. 237, sec. 2, p. 767; am. 2016, ch. 71, sec. 3, p. 249.]

54-1715. MEETINGS OF THE BOARD. (1) The board of pharmacy shall meet at least once every six (6) months to transact its business. One such meeting held during each fiscal year of the state shall be designated as the annual meeting and shall be for the purpose of electing officers and for the reorganization of the board. The board shall meet at such additional times as it may determine. Such additional meetings may be called by the chairman of the board or by three (3) of the members of the board.

(2) The board shall meet at such place as it may from time to time determine. The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate subsequent notice.

(3) Notice of all meetings of the board shall be given in the manner and pursuant to requirements prescribed by the state's applicable statutes, rules and regulations.

(4) A majority of the members of the board shall constitute a quorum for the conduct of a board meeting and, except where a greater number is required by the act, or by any rule or regulation of the board, all actions of the board shall be by a majority of a quorum.

(5) All meetings and hearings of the board shall be conducted in compliance with the provisions of chapter 2, title 74, Idaho Code.

[54-1715, added 1979, ch. 131, sec. 3, p. 410.; am. 2015, ch. 141, sec. 139, p. 485.]

54-1716. EMPLOYEES. (1) The board of pharmacy may, in its discretion, employ persons in addition to the executive director in such other positions or capacities as it deems necessary to the proper conduct of board business and to the fulfillment of the board's responsibilities as defined by this act.

(2) The employees of the board other than the executive director and the board's chief controlled substance investigator under chapter 27, title 37, Idaho Code, shall be classified employees and shall receive, as compensation, an annual salary payable on regular pay periods, the amount of which shall be determined by the personnel commission classification and compensation plan set forth in section 67-5309, Idaho Code, and reimbursement for all expenses incurred in connection with performance of their official duties.

[54-1716, added 1979, ch. 131, sec. 3, p. 411; am. 2000, ch. 353, sec. 1, p. 1187.]

54-1717. RULES AND REGULATIONS. The board of pharmacy shall make, adopt, amend and repeal such rules and regulations as may be deemed necessary by the board, from time to time, for the proper administration and enforcement of this act. Such rules and regulations shall be promulgated in accordance with the procedures specified in Chapter 52, Title 67, Idaho Code, the administrative procedures act.

[54-1717, added 1979, ch. 131, sec. 3, p. 411.]

54-1718. LICENSURE AND DISCIPLINE. (1) The board of pharmacy shall be responsible for the control and regulation of the practice of pharmacy in this state including, but not limited to, the following:

(a) The licensing by examination or by reciprocity of applicants who are qualified to engage in the practice of pharmacy under the provisions of this chapter;

(b) The renewal of licenses to engage in the practice of pharmacy;

(c) The determination and issuance of standards for recognition and approval of schools and colleges of pharmacy whose graduates shall be eligible for licensure in this state, and the specification and enforcement of requirements for practical training, including internship;

(d) The enforcement of the provisions of this chapter relating to the conduct or competence of pharmacists practicing in this state, and the suspension, revocation or restriction of licenses to practice pharmacy;

(e) The regulation of the training, qualifications and employment of pharmacist interns.

(2) The board of pharmacy shall require the following applicants to submit to a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database:

(a) Original applicants for licensure or registration, unless exempted by board rule; and

(b) Applicants for reinstatement of a license or registration.

Each applicant shall submit a completed ten (10) finger fingerprint card or scan to the board of pharmacy at the time of application and shall pay the cost of the criminal history check.

[54-1718, added 1979, ch. 131, sec. 3, p. 411; am. 2010, ch. 63, sec. 1, p. 112; am. 2015, ch. 36, sec. 1, p. 75; am. 2018, ch. 37, sec. 2, p. 81.]

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 procedure act;

(2) The specifications of minimum professional and technical equipment, environment, supplies and procedures for the compounding, 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.

[54-1719, added 1979, ch. 131, sec. 3, p. 412; am. 1990, ch. 144, sec. 1, p. 324.; am. 2013, ch. 270, sec. 2, p. 702.]

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

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

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

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

(4) (a) The board shall determine by rule the fees to be collected for the issuance and renewal of licenses and registrations.

(b) All fees or fines that shall be paid under the provisions of this chapter shall be paid over by the board to the treasurer of the state of Idaho and shall be held by the state treasurer in the pharmacy account, which shall be paid out by the state treasurer upon warrant drawn by the state controller against said account. The state controller is hereby authorized, upon presentation of the proper vouchers of claims against the state, approved by the said board and the state board of examiners, as provided by law, to draw his warrant upon said account.

(5) In addition to its annual appropriations, the board may solicit and receive, from parties other than the state, grants, moneys, donations and gifts of tangible and intangible property for any purpose consistent with this act, which may be specified as a condition of any grants, donations or gifts. Such moneys may be solicited or received provided:

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

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

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

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

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

(6) The board shall assign to each drug outlet under its jurisdiction a uniform state number.

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

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

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

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

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

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

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

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

(c) Upon the failure of a person to appear before the court at the time and place designated by it, the court may enter an order without further proceedings requiring the person to comply with the subpoena. Any person failing or refusing to obey such order of the court shall be punished for contempt of court as in other cases provided.

(11) The board may sponsor, participate in or conduct education, research or public service programs or initiatives to carry out the purposes of this act.

[54-1720, added 1979, ch. 131, sec. 3, p. 412; am. 1980, ch. 354, sec. 1, p. 915; am. 1985, ch. 152, sec. 2, p. 406; am. 1994, ch. 180, sec. 100, p. 491; am. 1994, ch. 348, sec. 1, p. 1104; am. 2013, ch. 28, sec. 6, p. 57; am. 2018, ch. 37, sec. 3, p. 82.]

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

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

(b) Nonresident pharmacists who are actively licensed in their state of residence may practice pharmacy into Idaho if employed by or affiliated with and practicing for an Idaho-registered nonresident drug outlet.

Only the person in charge of a registered nonresident facility must be licensed or registered to practice into Idaho; and

(c) A veterinary drug outlet, as defined in section 54-1705, Idaho Code, does not need to register with the board if the outlet does not dispense for outpatient use any controlled substances listed in chapter 27, title 37, Idaho Code, euthanasia drugs, tranquilizer drugs, neuromuscular paralyzing drugs or general anesthesia drugs.

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

(a) Prenatal vitamins;

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

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

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

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

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

[54-1721, added 1979, ch. 131, sec. 3, p. 415; am. 2010, ch. 346, sec. 1, p. 904; am. 2013, ch. 28, sec. 7, p. 59; am. 2018, ch. 37, sec. 4, p. 84.]

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

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

(b) Have attained the age of majority;

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

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

(e) Have completed an internship or other program approved by the board of pharmacy, or demonstrated to the board's satisfaction experience in the practice of pharmacy that meets or exceeds the minimum internship requirements of the board;

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

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

(2) Examinations. The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed such an examination.

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

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

[54-1722, added 1979, ch. 131, sec. 3, p. 415; am. 1985, ch. 49, sec. 1, p. 99; am. 2018, ch. 37, sec. 5, p. 85.]

54-1723. QUALIFICATIONS FOR LICENSURE BY RECIPROCITY. (1) To obtain a license as a pharmacist by reciprocity, an applicant for licensure shall:

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

(b) Have attained the age of majority;

(c) Have good moral character and temperate habits;

(d) Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in this state;

(e) Have presented to the board proof of initial licensure by examination and proof that such license and any other license or licenses granted to the applicant by any other state or states is not at the time of application suspended, revoked, canceled or otherwise restricted in a manner preventing the applicant from practicing as a pharmacist for any reason except nonrenewal or the failure to obtain required continuing education credits in any state where the applicant is licensed but not engaged in the practice of pharmacy; and

(f) Have paid the fees specified by the board of pharmacy for issuance of a license.

(2) Eligibility. No applicant shall be eligible for licensure by reciprocity unless the state in which the applicant was initially licensed as a pharmacist also grants reciprocal licensure to pharmacists duly licensed by examination in this state, under like circumstances and conditions.

[54-1723, added 1979, ch. 131, sec. 3, p. 416; am. 2005, ch. 218, sec. 1, p. 693; am. 2017, ch. 24, sec. 1, p. 43; am. 2018, ch. 37, sec. 6, p. 86.]

54-1723A. REGISTRATION TO ENGAGE IN THE PRACTICE OF PHARMACY INTO IDAHO. (1) To obtain a registration to practice as a pharmacist into the state of Idaho, the applicant shall:

(a) Be licensed and in good standing in the state from which the applicant practices pharmacy;

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

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

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

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

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

(4) Renewal shall be required annually and submitted to the board no later than the last day of the registrant's birth month. The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration.

[54-1723A, added 2009, ch. 244, sec. 4, p. 752; am. 2010, ch. 116, sec. 1, p. 242; am. 2013, ch. 28, sec. 8, p. 60; am. 2014, ch. 34, sec. 1, p. 54; am. 2018, ch. 37, sec. 7, p. 88.]

54-1724. RENEWAL OF LICENSES. (1) Each pharmacist shall apply for license renewal annually no later than the last day of the licensee's birth month. The board shall renew the license of each pharmacist who is qualified to engage in the practice of pharmacy.

(2) The board shall specify by rule or regulation the procedures to be followed and the fees to be paid for renewal of licenses.

[54-1724, added 1979, ch. 131, sec. 3, p. 416; am. 2010, ch. 116, sec. 2, p. 242; am. 2018, ch. 37, sec. 8, p. 88.]

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

(a) Because of the continuous introduction of new therapeutic and diagnostic agents and the changing concepts in the delivery of health care services in the practice of pharmacy, it is essential that a pharmacist undertake a continuing education program in order to maintain his professional competency and improve his professional skills; and

(b) To assure the continued competency of the pharmacist and to maintain uniform qualifications for registration and licensure in the profession for the protection of the health and welfare of its citizens, the legislature of this state deems it in the public interest to adopt a continuing professional education program.

(2) No annual renewal license shall be issued to a pharmacist until such pharmacist shall have submitted proof to the board that he has satisfactorily completed an accredited program of continuing professional education during the previous year to help assure his continued competence to engage

in the practice of pharmacy. The board shall from time to time determine the amount of continuing education to be required.

(3) The board shall adopt rules and regulations necessary to carry out the stated objectives and purposes and to enforce the provisions of this section, which shall include the methods of determining accredited programs, any fees and such other rules and regulations consistent with this section as the board shall determine.

[54-1725, added 1979, ch. 131, sec. 3, p. 417; am. 2018, ch. 37, sec. 9, p. 88.]

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

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

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

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

(i) Any felony;

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

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

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

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

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

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

[54-1726, added 1979, ch. 131, sec. 3, p. 417; am. 1985, ch. 152, sec. 3, p. 409; am. 1988, ch. 12, sec. 1, p. 15; am. 1993, ch. 216, sec. 70, p. 650.; am. 2013, ch. 28, sec. 9, p. 61.]

54-1727. CONFIDENTIALITY OF PRESCRIPTIONS AND PATIENT INFORMATION. (1) All prescriptions, drug orders, records or any other prescription information that specifically identifies an individual patient shall be held in the strictest confidence. No person in possession of such information shall release the information, unless requested as follows:

(a) By the board, or its representatives, acting in their official capacity;

(b) By the patient, or the patient's designee, regarding the patient's own records;

(c) By the practitioner, or the practitioner's designee, who issued the prescription;

(d) By other licensed health care professionals who are responsible for the direct and acute care of the patient;

(e) By agents of the department of health and welfare when acting in their official capacity with reference to issues related to the practice of pharmacy (written requests by authorized agents of the department requesting such information are required);

(f) By agents of any board whose practitioners have prescriptive authority, when the board is enforcing laws governing that practitioner;

(g) By an agency of government charged with the responsibility for providing medical care for the patient (written requests by authorized agents of the agency requesting such information are required);

(h) By the federal food and drug administration (FDA), for purposes relating to monitoring of adverse drug events in compliance with the requirements of federal law, rules or regulations adopted by the federal food and drug administration;

(i) By the patient's authorized insurance benefit provider or health plan providing health care coverage or pharmacy benefits to the patient.

(j) Nothing in this section shall be construed to prohibit consultations between health care professionals who are involved in the diagnosis, care and treatment of the patient.

(k) Nothing in this section shall prohibit insurance companies and health plans from sharing patient specific information with law enforcement authorities or any of the entities identified in subsections (1)(a) through (i) of this section, in cases of suspected fraud and substance abuse.

(l) Nothing in this section shall prohibit disclosure of patient specific information to law enforcement authorities pursuant to a search warrant, subpoena, or other court order.

(2) Nothing in this section shall prevent the pharmacist or others from providing aggregate or other data, which does not identify the patient to qualified researchers, including pharmaceutical manufacturers, for purposes of clinical, pharmacoepidemiological, or pharmacoeconomic research.

(3) Any person who has knowledge by virtue of his office or occupation of any prescription drug order, record, or pharmacy related information that specifically identifies an individual patient shall not divulge such information except as authorized in subsections (1) and (2) of this section. Any person or entity to whom information is divulged pursuant to subsection (1) of this section shall not divulge such information except in compliance with this section.

(4) Nothing in this section shall limit the authority of the board or its representatives from inspecting the records of pharmacies or pharmacists or the authority of any other board with licensees who have prescriptive authority from performing any other duty or authority of that board, nor shall this section limit a court of competent jurisdiction from ordering the release or disclosure of such records upon a showing of just cause after such review or hearing as the court deems necessary and proper. This section shall not limit the authority of any other board or agency to inspect records of persons it regulates, notwithstanding that the records may contain information protected by the provisions of this section.

(5) In addition to all other penalties as provided by law, any person or entity found by the board to be in violation of the provisions of this section shall be subject to an administrative penalty not to exceed three thousand dollars ($3,000) for each violation.

(6) No person shall be liable, nor shall a cause of action exist, for any loss or damage based upon the proper good faith release of records pursuant to the provisions of subsection (1) or (2) of this section.

[54-1727, added 2000, ch. 189, sec. 1, p. 465; am. 2007, ch. 140, sec. 1, p. 405.]

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

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

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

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

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

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

(f) Imposition of an administrative fine not to exceed two thousand dollars ($2,000) for each occurrence providing a basis for discipline.

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

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

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

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

(6) The assessment of costs and fees incurred in the investigation and prosecution or defense of a person holding a license or registration, seek-

ing a license or registration, or renewing a license or registration under this chapter shall be governed by the provisions of section 12-117(5), Idaho Code.

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

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

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

[54-1728, added 1979, ch. 131, sec. 3, p. 419; am. 1985, ch. 152, sec. 4, p. 409; am. 1995, ch. 42, sec. 1, p. 63.; am. 2013, ch. 28, sec. 10, p. 62; am. 2018, ch. 37, sec. 10, p. 89; am. 2018, ch. 348, sec. 8, p. 804.]

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

(a) If a nonresident, be licensed or registered and in good standing in the applicant's state of residence;

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

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

(d) Have a PIC who is licensed or registered by the board, except manufacturers, wholesalers and other drug outlets in accordance with board rule.

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

(a) Retail pharmacy;

(b) Institutional facility;

(c) Manufacturer;

(d) Wholesaler;

(e) Prescriber drug outlet;

(f) Central drug outlet;

(g) Mail service pharmacy;

(h) Limited service outlet.

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

(4) It shall be lawful for any outlet or facility to sell and distribute nonprescription drugs. Outlets engaging in the sale and distribution of such items shall not be deemed to be improperly engaged in the practice of

pharmacy. No rule will be adopted by the board under this chapter that requires the sale of nonprescription drugs by a pharmacist or under the supervision of a pharmacist or otherwise applies to or interferes with the sale and distribution of such medicines.

(5) If the regulatory board or licensing authority of the state in which a nonresident outlet is located fails or refuses to conduct an inspection or fails to obtain records or reports required by the board, upon reasonable notice to the nonresident outlet, the board may conduct an inspection. Nonresident outlets shall also pay the actual costs of the out-of-state inspection of the outlet, including the transportation, lodging and related expenses of the board's inspector.

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

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

(8) Renewal shall be required annually and submitted to the board no later than December 31. The board shall specify by rule the procedures to be followed and the fees to be paid for renewal of registration or licensure.

[54-1729, added 1979, ch. 131, sec. 3, p. 420; am. 1985, ch. 21, sec. 1, p. 33; am. 2009, ch. 244, sec. 5, p. 753; am. 2011, ch. 135, sec. 3, p. 379; am. 2013, ch. 28, sec. 11, p. 63; am. 2014, ch. 34, sec. 2, p. 55; am. 2018, ch. 37, sec. 11, p. 90.]

54-1730. DRUG OUTLET APPLICATION PROCEDURES. (1) The board shall specify by rule the registration procedures to be followed including, but not limited to, specification of forms for use in applying for such certificates of registration and times, places and fees for filing such application.

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

(a) Ownership;

(b) Location;

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

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

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

[54-1730, added 1979, ch. 131, sec. 3, p. 420; am. 2013, ch. 28, sec. 12, p. 64; am. 2018, ch. 37, sec. 12, p. 91.]

54-1731. NOTIFICATIONS. (1) All registered drug outlets shall report to the board of pharmacy the occurrence of any of the following changes:

(a) Permanent closing;

(b) Change of ownership, management, location or pharmacist in charge;

(c) Any and all other matters and occurrences as the board may require by rules and regulations.

(2) Disasters, accidents and emergencies which may affect the strength, purity or labeling of drugs, medications, devices or other materials used in the diagnosis or the treatment of injury, illness and disease shall be immediately reported to the board.

[54-1731, added 1979, ch. 131, sec. 3, p. 421.]

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

(2) Reinstatement of a certificate that has been suspended, revoked or restricted by the board may be granted in accordance with the procedures specified in section 54-1728(7), Idaho Code.

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

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

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

(ii) In the case of a legend drug dispensed by a pharmacist or prescriber, there is a label affixed to the immediate container in which such drug is dispensed. Any person violating this subparagraph shall be guilty of a misdemeanor and upon conviction thereof shall be fined not more than five hundred dollars ($500). Nothing in this subparagraph prohibits a practitioner from delivering professional samples of legend drugs in their original containers in the course of his practice when oral directions for use are given at the time of such delivery.

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

(c) The possession or use of a legend drug or a precursor, except an opioid antagonist pursuant to section 54-1733B, Idaho Code, or an epinephrine auto-injector pursuant to sections 54-1733C and 54-1733D, Idaho Code, by any person unless such person obtains such drug on the prescription or drug order of a practitioner. Any person guilty of vio-

lating the provisions of this paragraph shall be guilty of a misdemeanor and upon conviction thereof shall be incarcerated in the county jail for a term not to exceed one (1) year, or punished by a fine of not more than one thousand dollars ($1,000) or by both such fine and incarceration.

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

(i) 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.

(ii) The sale of minimal quantities of prescription drugs to practitioners for office use.

(iii) The sale of a prescription drug for emergency medical reasons, but never to a wholesale distributor.

(iv) 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 or a colicensed product, but never to a wholesale distributor.

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

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

(g) It is unlawful to:

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

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

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

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

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

(vi) Affix any false or forged label to a package or receptacle containing legend drugs. This subparagraph does not apply to law

enforcement agencies or their representatives while engaged in enforcing state and federal drug laws.

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

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

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

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

[54-1732, added 1979, ch. 131, sec. 3, p. 421; am. 1985, ch. 43, sec. 1, p. 91; am. 2010, ch. 113, sec. 1, p. 231; am. 2013, ch. 28, sec. 13, p. 65; am. 2014, ch. 146, sec. 3, p. 396; am. 2015, ch. 28, sec. 2, p. 48; am. 2015, ch. 88, sec. 2, p. 218; am. 2016, ch. 264, sec. 2, p. 694; am. 2018, ch. 348, sec. 9, p. 805.]

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

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

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

(b) Writing a prescription drug order for a patient of another prescriber for whom the prescriber is taking call;

(c) Writing a prescription drug order for a patient examined by a physician assistant, advanced practice registered nurse or other licensed practitioner with whom the prescriber has a supervisory or collaborative relationship;

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

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

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

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

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

(i) If a prescriber makes a diagnosis of a sexually transmitted disease in a patient, prescribe or dispense antibiotics to the infected patient's named sexual partner or partners for treatment of the sexually transmitted disease as recommended by the most current centers for disease control and prevention guidelines; and

(j) If a prescriber makes a diagnosis of an infectious disease in a patient, prescribe or dispense antimicrobials to an individual who has been exposed to the infectious person in accordance with clinical guidelines for chemoprophylaxis.

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

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

(5) The following acts shall be unlawful:

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

(b) To knowingly dispense a legend drug pursuant to an invalid prescription drug order; or

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

Such acts shall constitute unprofessional conduct and the prescriber or dispenser shall be subject to discipline according to the provisions of the Idaho Code chapter pursuant to which the prescriber or dispenser is licensed, certified or registered.

[54-1733, added 1979, ch. 131, sec. 3, p. 423; am. 1985, ch. 43, sec. 2, p. 93; am. 2000, ch. 276, sec. 2, p. 899; am. 2006, ch. 117, sec. 1, p. 330; am. 2006, ch. 290, sec. 2, p. 893; am. 2007, ch. 90, sec. 25, p. 262; am. 2007, ch. 245, sec. 1, p. 722; am. 2010, ch. 112, sec. 1, p. 229; am. 2011, ch. 135, sec. 4, p. 380; am. 2012, ch. 163, sec. 1, p. 442; am. 2014, ch. 146, sec. 4, p. 398; am. 2015, ch. 26, sec. 1, p. 39; am. 2015, ch. 88, sec. 3, p. 219; am. 2016, ch. 264, sec. 3, p. 696; am. 2018, ch. 37, sec. 13, p. 92.]

54-1733A. TRANSMISSION OF PRESCRIPTION DRUG ORDERS. (1) A valid prescription drug order may be transmitted to a licensed pharmacy by the following means:

(a) By delivery of the original signed written prescription drug order or a digital image of the order in accordance with rules adopted by the board;

(b) Electronically by the prescriber or prescriber's agent in compliance with the uniform electronic transactions act, chapter 50, title 28, Idaho Code;

(c) Electronically by a licensed practical or professional nurse in an institutional facility for a patient of that facility via a secure, interoperable information technology system that exchanges data accurately, effectively and in compliance with applicable laws;

(d) Verbally by the prescriber, prescriber's agent, or a licensed practical or professional nurse for a patient of an institutional facility or for a hospice patient; and

(e) Via facsimile by a prescriber, prescriber's agent, institutional facility or hospice agent, provided that if the order was initially received verbally, the transmitted document shall include the name of the prescriber, the name of the licensed practical or professional nurse who received and transcribed the order and the name of the person who faxed the order.

(2) In the event that there are no refills remaining on an existing prescription drug order and the pharmacist requests a new prescription drug order from the prescriber, the prescriber's agent, after obtaining prescriber authorization, may sign and return the request via facsimile as long as:

(a) The request is generated from the pharmacy;

(b) The request is for medication that the patient is currently taking;

(c) There are no changes to the type of drug, its strength or directions for the continuation of therapy;

(d) The prescriber's agent's transmission is received via facsimile from the prescriber's office; and

(e) The request, which is subsequently transmitted back to the requesting pharmacy by the prescriber's agent, contains all components of a valid prescription drug order.

[54-1733A, added 2015, ch. 26, sec. 2, p. 41; am. 2018, ch. 37, sec. 14, p. 93.]

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

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

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

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

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

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

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

(4) The department of health and welfare in cooperation with the office of drug policy shall create and maintain an online education program for

laypersons and the general public on matters pertaining to opiate-related overdoses, including:

(a) How to recognize symptoms or indications of an opiate-related overdose;

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

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

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

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

[54-1733B, added 2015, ch. 88, sec. 4, p. 221.]

54-1733C. EPINEPHRINE AUTO-INJECTORS -- EMERGENCY ADMINISTRATION. Notwithstanding any provision of law to the contrary:

(1) A health care practitioner, including a pharmacist, may prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this section, and pharmacists and other health care practitioners may dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity.

(2) An authorized entity may acquire and stock a supply of epinephrine auto-injectors pursuant to a prescription issued in accordance with this section. Such epinephrine auto-injectors shall be stored in a location readily accessible in an emergency and in accordance with the epinephrine auto-injector's instructions for use. Following administration, the administering person shall contact emergency medical services as soon as possible.

(3) An employee or agent of an authorized entity or other individual who has completed the training required by subsection (4) of this section may use an epinephrine auto-injector prescribed pursuant to subsection (1) of this section to:

(a) Provide an epinephrine auto-injector to any individual whom the employee, agent or other individual believes in good faith to be experiencing anaphylaxis, or the parent, guardian or caregiver of such an individual, for immediate administration, regardless of whether the person has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy; or

(b) Administer an epinephrine auto-injector to any individual whom the employee, agent or other individual believes in good faith to be experiencing anaphylaxis, regardless of whether the individual has a prescription for an epinephrine auto-injector or has previously been diagnosed with an allergy.

(4) An employee, agent or other individual described in subsection (2) or (3) of this section must complete a biennial anaphylaxis training program. Such training shall be conducted by a nationally recognized organization experienced in training laypersons in emergency health treatment. Training may be conducted online or in person, and at a minimum shall cover:

(a) How to recognize signs and symptoms of severe allergic reactions, including anaphylaxis;

(b) Standards and procedures for the storage, administration and disposal of an epinephrine auto-injector; and

(c) Emergency follow-up procedures.

The entity that conducts training shall issue a document of completion to each person who successfully completes the anaphylaxis training program.

(5) Nurses, pharmacists or other health care practitioners may act pursuant to subsection (3) of this section without completing the training required by subsection (4) of this section.

(6) The following shall not be liable for any injuries or related damages that result from any act or omission taken pursuant to this section:

(a) An authorized entity that possesses and makes available epinephrine auto-injectors, and the employees, agents or other individuals associated with such entity;

(b) A pharmacist or other health care practitioner who prescribes or dispenses epinephrine auto-injectors to an authorized entity; and

(c) An individual or entity that conducts the training required by subsection (4) of this section.

This provision of immunity does not apply to acts or omissions constituting gross negligence. The administration of an epinephrine auto-injector in accordance with this section is not the practice of medicine or any other profession that otherwise requires licensure. This section does not eliminate, limit or reduce any other immunity or defense that may be available under state law, including that provided under section 5-330, Idaho Code.

(7) An entity located in this state shall not be liable for any injuries or related damages that result from the provision or administration of an epinephrine auto-injector outside of this state if the entity:

(a) Would not have been liable for such injuries or related damages had the provision or administration occurred within this state; or

(b) Is not liable for such injuries or related damages under the law of the state in which such provision or administration occurred.

(8) An authorized entity that possesses and makes available epinephrine auto-injectors shall take effort to remove outdated product and dispose of it properly.

(9) As used in this section:

(a) "Administer" means the direct application of an epinephrine auto-injector to the body of an individual.

(b) "Authorized entity" means any entity or organization, other than a school pursuant to section 33-520A, Idaho Code, in connection with or at which allergens capable of causing anaphylaxis may be present including, but not limited to, recreation camps, colleges and universities, day care facilities, youth sports leagues, amusement parks, restaurants, places of employment and sports arenas.

(c) "Epinephrine auto-injector" means a single-use device used for the automatic injection of a premeasured dose of epinephrine into the human body.

(d) "Health care practitioner" means an individual currently licensed, registered or otherwise authorized to prescribe and administer drugs in the course of professional practice.

(e) "Provide" means to supply one (1) or more epinephrine auto-injectors to an individual.

[54-1733C, added 2016, ch. 264, sec. 4, p. 697.]

54-1733D. EPINEPHRINE AUTO-INJECTORS -- PRESCRIPTION AND ADMINISTRATION. Notwithstanding any other provision of law, any prescriber or pharmacist acting in good faith and exercising reasonable care may prescribe an epinephrine auto-injector to:

(1) A person at risk of experiencing anaphylaxis;

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

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

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

[54-1733D, added 2016, ch. 264, sec. 5, p. 699.]

54-1733F. TUBERCULIN PURIFIED PROTEIN DERIVATIVE PRODUCTS -- SCREENING. Notwithstanding any other provision of law, a pharmacist acting in good faith and exercising reasonable care may prescribe and administer a tuberculin purified protein derivative product approved by the federal food and drug administration to a patient for the purpose of screening for tuberculosis infection, provided the following conditions are met:

(1) Prior to prescribing and administering a tuberculin purified protein derivative product, the pharmacist must successfully complete a course on proper test administration and interpretation of results from the United States centers for disease control and prevention (CDC) or a comparable course from a provider accredited by the accreditation council for pharmacy education;

(2) The pharmacist shall follow the recommendations for Mantoux tuberculin skin testing from the CDC regarding test administration and interpretation of results;

(3) Documentation of test results shall be maintained in the records of the pharmacy and a copy of the results shall be made available to the patient upon request; and

(4) If the patient is found to have a positive test reading:

(a) The pharmacist shall coordinate a timely referral to the patient's primary care provider, if applicable, or to a local clinic to coordinate further diagnostics and follow-up care; and

(b) A report shall be submitted to the patient's local health district or to the Idaho department of health and welfare in accordance with the rules governing Idaho reportable diseases.

[(54-1733F) 54-1733E, added 2017, ch. 23, sec. 2, p. 43; am. and redesig. 2018, ch. 169, sec. 19, p. 369.]

54-1734. POSSESSION OF LEGEND DRUGS. The following persons or their agents or employees may possess legend drugs for use in the usual and lawful course of their business or practice or in the performance of their lawful official duties, without a valid prescription drug order:

(1) Pharmacists;

(2) Prescribers;

(3) Researchers who are prohibited from further distribution;

(4) Hospitals and other institutional facilities;

(5) Manufacturers and wholesalers;

(6) Common carriers solely in the usual course of business of transporting prescription drugs;

(7) Schools or other authorized entities possessing stock supplies of epinephrine auto-injectors pursuant to section 33-520A or 54-1733C, Idaho Code, upon presenting proof that the authorized entity has at least one (1) individual who has completed the training requirement of section 33-520A(5)(b) or 54-1733C(4), Idaho Code;

(8) Persons, agencies and organizations possessing opioid antagonists pursuant to section 54-1733B, Idaho Code;

(9) Midwives licensed pursuant to section 54-5507, Idaho Code, limited to formulary drugs consistent with rules promulgated by the Idaho board of midwifery;

(10) Home health nurses or agencies, or hospice agencies, possessing emergency kits pursuant to rules of the board; and

(11) Chiropractic physicians licensed pursuant to chapter 7, title 54, Idaho Code, and certified pursuant to sections 54-708 and 54-717, Idaho Code, limited to the prescription drug products listed in section 54-716, Idaho Code.

[54-1734, added 1979, ch. 131, sec. 3, p. 423; am. 1985, ch. 21, sec. 2, p. 34; am. 2010, ch. 64, sec. 1, p. 113; am. 2014, ch. 146, sec. 5, p. 400; am. 2015, ch. 28, sec. 3, p. 50; am. 2015, ch. 88, sec. 5, p. 222; am. 2016, ch. 73, sec. 1, p. 251; am. 2016, ch. 264, sec. 6, p. 699; am. 2017, ch. 190, sec. 9, p. 438; am. 2018, ch. 37, sec. 15, p. 94.]

54-1735. PATIENT MEDICATION RECORDS. In order to effectively counsel patients, the pharmacist shall make a reasonable effort to obtain, record and maintain significant patient information including, but not limited to:

(1) Name, address, telephone number;

(2) Date of birth (age), gender;

(3) Medical history:

(a) Disease state(s);

(b) Allergies/drug reactions; and

(c) Current list of medications and devices;

(4) Pharmacist comments.

[54-1735, added 1979, ch. 131, sec. 3, p. 424; am. 1992, ch. 179, sec. 3, p. 569.; am. 2015, ch. 28, sec. 4, p. 51.]

54-1736. DECLARATION OF COMMON NUISANCE. Any store, shop, warehouse, dwelling house, apartment, building, vehicle, boat, aircraft, or any place whatever, which is used by any person for the purpose of unlawfully using any legend drug, or which is used for the unlawful keeping or selling of the same, is a common nuisance. No person shall keep, or maintain such a common nuisance, nor frequent or visit such place knowing it to be used for any said purposes.

[54-1736, added 1979, ch. 131, sec. 3, p. 424.]

54-1737. BURDEN OF PROOF. (a) In any complaint, information, affidavit or indictment, and in any action or proceeding brought for the enforcement of any provision of this chapter, proviso, or exemption contained in this chapter, the burden of proof is upon the party claiming any such exception, excuse, proviso or exemption.

(b) Anyone wholesaling or retailing prescription or legend drugs shall bear the burden of ascertaining that the receiver of such drugs is entitled by law to administer, dispense or deliver such drugs and proof that one has sold such drugs at wholesale or retail to an unauthorized person shall be prima facie evidence of illegality.

[57-1737, added 1979, ch. 131, sec. 3, p. 424.]

54-1738. PROOF THAT A DRUG IS A PRESCRIPTION DRUG OR LEGEND DRUG. The following shall constitute prima facie evidence in any criminal or civil proceeding in this state that a drug is a prescription drug or legend drug:

(1) In the case of a drug for which a new drug application was submitted to the United States food and drug administration, the affidavit of an officer having legal custody of the official records of the United States food and drug administration stating that such records show that the new drug application was approved, setting forth the date of approval, and further stating that the records show that proposed labeling for the drug which includes the legend "Caution: Federal law prohibits dispensing without a prescription" was approved. The affidavit shall be accompanied by a certificate that such officer has the custody.

(2) In the case of a drug for which the United States food and drug administration does not require an approved new drug application as a condition for marketing the drug, the affidavit of an officer having legal custody of the official records of the United States food and drug administration stating that such records reflect that the drug meets the criteria of federal law to be regarded as a prescription drug and is required to bear the legend "Caution: Federal law prohibits dispensing without a prescription." The affidavit shall be accompanied by a certificate that such officer has the custody.

(3) In the case of a drug designated a prescription drug by action of the state board of pharmacy, independently of federal law, the affidavit of an officer having legal custody of the records of the state board of pharmacy stating that such records show that the drug has been denominated a prescription drug, to which shall be attached a copy of the official document evidencing such action. The affidavit shall be accompanied by a certificate that such officer has the custody.

(4) This section does not prevent proof that a drug is a prescription or legend drug by any method authorized by any applicable statute, rule of procedure or rule of evidence.

[54-1738, added 1979, ch. 131, sec. 3, p. 424; am. 2018, ch. 37, sec. 16, p. 94.]

54-1739. PROSPECTIVE DRUG REVIEW AND COUNSELING. (1) Before dispensing any prescription, a pharmacist shall complete a prospective drug review as defined in section 54-1705, Idaho Code.

(2) Before dispensing a prescription for a new medication, or when otherwise deemed necessary or appropriate, a pharmacist shall counsel the patient or caregiver. In addition to the counseling requirements provided in section 54-1705, Idaho Code, counseling shall include such supplemental written materials as required by law or as are customary in that practice setting. For refills or renewed prescriptions, a pharmacist or a technician shall extend an offer to counsel the patient or caregiver. If such offer is accepted, a pharmacist shall provide such counseling as necessary or appropriate in the professional judgment of the pharmacist. All counseling and offers to counsel shall be face to face with the patient or caregiver when possible, but if not possible, then a reasonable effort shall be made to contact the patient or caregiver. Nothing in this section shall require a pharmacist to provide counseling when a patient or caregiver refuses such counseling or when counseling is otherwise impossible. Patient counseling shall not be required for inpatients of a hospital or institutional facility when licensed health care professionals administer the medication.

(3) This section shall apply to all registered and licensed pharmacies, including mail service pharmacies. In cases of prescriber dispensing, the prescriber shall perform the prospective drug review and counseling consistent with the provisions of this section.

[54-1739, added 2011, ch. 263, sec. 2, p. 708.]

54-1751. SHORT TITLE. Sections 54-1751 through 54-1759, Idaho Code, shall be known and may be cited as the "Idaho Wholesale Drug Distribution Act."

[54-1751, added 2007, ch. 319, sec. 1, p. 949.]

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

(1) "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.

(2) "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.

(3) "Manufacturer" means a person, including a colicensed partner or affiliate of that person, who prepares, derives, manufactures, produces or repackages a drug or is licensed or approved by the federal food and drug administration to engage in the manufacture of drugs.

(4) "Person" means an individual, corporation, business entity, government, governmental subdivision or agency, partnership, business trust, association or any other legal entity.

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

(6) "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.

(7) "Reverse distributor" means a drug outlet that receives nonsaleable prescription drugs from persons or their agents, who may lawfully possess prescription drugs without being issued a valid prescription drug order, and processes for credit or disposes of such prescription drugs.

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

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

(b) 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.

(c) 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.

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

[54-1752, added 2007, ch. 319, sec. 1, p. 949; am. 2009, ch. 105, sec. 1, p. 320; am. 2009, ch. 143, sec. 7, p. 430; am. 2011, ch. 144, sec. 1, p. 405; am. 2013, ch. 270, sec. 3, p. 702; am. 2014, ch. 34, sec. 3, p. 56; am. 2015, ch. 28, sec. 5, p. 51.]

54-1753. WHOLESALE DRUG DISTRIBUTOR LICENSING REQUIREMENT -- MINIMUM REQUIREMENTS FOR LICENSURE. (1) Every business entity that engages in the wholesale distribution of prescription drugs in or into Idaho must be licensed by the board as a wholesale distributor except:

(a) Manufacturers distributing their own federal food and drug administration approved drugs and devices including distribution of prescription drug samples by manufacturer's representatives and intracompany sales, 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 transfer between colicensees of a colicensed product, unless particular requirements are deemed necessary and appropriate following rulemaking.

(b) An entity that donates prescription drugs, when conducted in accordance with sections 54-1760 through 54-1765, Idaho Code.

(c) A pharmacy distributing in accordance with section 54-1732, Idaho Code.

(d) Persons selling, purchasing, distributing, trading or transferring a prescription drug for emergency medical reasons.

(2) The board shall require the following minimum information from each wholesale distributor applying for a license under subsection (1) of this section:

(a) The name, full business address and telephone number of the licensee;

(b) All trade or business names used by the licensee;

(c) Addresses, telephone numbers, and the names of contact persons for all facilities used by the licensee for the storage, handling, and distribution of prescription drugs;

(d) The type of ownership or operation, i.e., partnership, corporation, or sole proprietorship;

(e) The name of each person who is an owner or an operator of the licensee;

(f) A list of all licenses and permits issued to the applicant by any other state that authorizes the applicant to purchase or possess prescription drugs;

(g) The name of the applicant's designated representative for the facility, together with the personal information statement and fingerprints, required pursuant to paragraph (h) of this subsection for such individual;

(h) Each individual required by paragraph (g) of this subsection to provide a personal information statement and fingerprints shall provide the following information to the board:

(i) The individual's places of residence for the past seven (7) years;

(ii) The individual's date and place of birth;

(iii) The individual's occupations, positions of employment and offices held during the past seven (7) years;

(iv) The principal business and address of any business, corporation or other organization in which each such office of the individual was held or in which each such occupation or position of employment was carried on;

(v) Whether the individual has been, during the past seven (7) years, the subject of any proceeding for the revocation of any license or any criminal violation and, if so, the nature of the proceeding and the disposition of the proceeding;

(vi) Whether, during the past seven (7) years, the individual has been enjoined, either temporarily or permanently, by a court of competent jurisdiction from violating any federal or state law regulating the possession, control or distribution of prescription drugs or criminal violations, together with details concerning any such event;

(vii) A description of any involvement by the individual with any business, including any investments, other than the ownership of stock in a publicly traded company or mutual fund, during the past seven (7) years, which manufactured, administered, prescribed, distributed or stored pharmaceutical products, and any lawsuits in which such businesses were named as a party and in which the individual was also a named party in the same lawsuit or, regardless of whether the individual was a named party, in which the individual testified as a witness at trial or in a deposition;

(viii) A description of any felony criminal offense of which the individual, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the individual pled guilty or nolo contendere. If the individual indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of that criminal offense, the applicant must, within fifteen (15) days after the disposition of the appeal, submit to the board a copy of the final written order of disposition; and

(ix) A photograph of the individual taken in the previous year.

(3) The information required pursuant to subsection (2) of this section shall be provided under oath.

(4) The board shall not issue a wholesale distributor license to an applicant, unless the board:

(a) Conducts a physical inspection of the facility at the address provided by the applicant as required in subsection (2)(a) of this section or approves an inspection report that evidences equivalent standards to those in Idaho; and

(b) Determines that the designated representative meets the following qualifications:

(i) Is at least twenty-one (21) years of age;

(ii) Has been employed full time for at least three (3) years in a pharmacy or with a wholesale distributor in a capacity related to the dispensing and distribution of, and recordkeeping relating to, prescription drugs;

(iii) Is employed by the applicant full time in a managerial level position;

(iv) Is actively involved in and aware of the actual daily operation of the wholesale distributor;

(v) Is physically present at the facility of the applicant during regular business hours, except when the absence of the designated representative is authorized including, but not limited to, sick leave and vacation leave;

(vi) Is serving in the capacity of a designated representative for only one (1) applicant at a time, except where more than one (1) licensed wholesale distributor is colocated in the same facility and such wholesale distributors are members of an affiliated group, as defined in section 1504 of the Internal Revenue Code;

(vii) Does not have any convictions under any federal, state or local law relating to wholesale or retail prescription drug distribution or distribution of controlled substances; and

(viii) Does not have any felony convictions under federal, state or local law.

(5) All applicant-designated representatives shall submit to a fingerprint-based criminal history check of the Idaho central criminal history database and the federal bureau of investigation criminal history database. Each applicant shall submit a completed ten (10) finger fingerprint card or scan to the board of pharmacy at the time of application and shall pay the cost of the criminal history check.

(6) If a wholesale distributor distributes prescription drugs in or into Idaho from more than one (1) facility, the wholesale distributor shall obtain a license for each facility.

(7) A wholesale distributor shall have adequate processes in place for monitoring purchase activity of customers and identifying suspicious ordering patterns that identify potential diversion or criminal activity related to controlled substances such as orders of unusual size, orders deviating substantially from a normal pattern, orders for drugs that are outside of the prescriber's scope of practice, or orders of unusual frequency.

(8) The designated representative identified pursuant to subsection (2)(g) of this section must receive and complete continuing training in applicable federal law and the law of this state governing wholesale distribution of prescription drugs.

(9) The board may adopt rules to approve an accreditation body to evaluate a wholesaler's operations to determine compliance with professional standards and any other applicable laws, and to perform inspections of each facility and location where wholesale distribution operations are conducted by the wholesaler.

[54-1753, added 2007, ch. 319, sec. 1, p. 952; am. 2008, ch. 190, sec. 1, p. 595; am. 2015, ch. 28, sec. 6, p. 55.]

54-1754. RESTRICTIONS ON TRANSACTIONS. (1) A wholesale distributor shall receive prescription drug returns or exchanges from a pharmacy or chain pharmacy warehouse pursuant to the terms and conditions of the agreement between the wholesale distributor and the pharmacy or chain pharmacy warehouse. Returns of expired, damaged, recalled or otherwise nonsaleable pharmaceutical product shall be distributed by the receiving wholesale distributor only to either the original manufacturer or third-party returns processor, including a reverse distributor. Wholesale distributors and pharmacies shall be held accountable for administering their returns

process and ensuring that the aspects of this operation are secure and do not permit the entry of adulterated and counterfeit product.

(2) A wholesale distributor shall not engage in the wholesale distribution of prescription drugs that are purchased from pharmacies or practitioners or from wholesale distributors that purchase them from pharmacies or practitioners.

(3) A manufacturer or wholesale distributor shall furnish prescription drugs only to a person licensed by the appropriate state licensing agency to manufacture, distribute, dispense, conduct research or independently administer such prescription drugs, unless exempted by law. A manufacturer or wholesale distributor shall furnish a scheduled controlled substance listed in section 37-2705, 37-2707, 37-2709, 37-2711 or 37-2713, Idaho Code, only to a person who has been issued a valid controlled substance registration by the United States drug enforcement administration and the Idaho board of pharmacy, unless exempted by state or federal law.

(4) Prescription drugs furnished by a manufacturer or wholesale distributor shall be delivered only to the registered address; provided that the manufacturer or wholesale distributor may furnish prescription drugs to an authorized person or agent of that person at the premises of the manufacturer or wholesale distributor if:

(a) The identity and authorization of the recipient is properly established; and

(b) This method of receipt is employed only to meet the immediate needs of a particular patient of the authorized person.

(5) Prescription drugs may be furnished to a hospital pharmacy receiving area provided that a pharmacist or authorized receiving personnel signs, at the time of delivery, a receipt showing the type and quantity of the prescription drug so received. Any discrepancy between receipt and the type and quantity of the prescription drug actually received shall be reported to the delivering manufacturer or wholesale distributor by the next business day after the delivery to the pharmacy receiving area.

(6) A manufacturer or wholesale distributor shall not accept payment for, or allow the use of, a person's credit to establish an account for the purchase of prescription drugs from any person other than the owner(s) of record, the chief executive officer or the chief financial officer listed on the license of a person legally authorized to receive prescription drugs. Any account established for the purchase of prescription drugs must bear the name of the licensee.

[54-1754, added 2007, ch. 319, sec. 1, p. 955; am. 2014, ch. 34, sec. 4, p. 59; am. 2015, ch. 28, sec. 7, p. 57; am. 2018, ch. 37, sec. 17, p. 95.]

54-1757. DISCIPLINE -- GROUNDS -- PENALTIES. (1) Upon a finding that a wholesale distributor is in violation of any provision of this chapter or of this act, or such rules or standards of conduct and practice as may be adopted by the board, and in accordance with the provisions of chapter 52, title 67, Idaho Code, the board may impose any one (1) or more of the penalties provided for in section 54-1728, Idaho Code.

(2) Imposition of a penalty by the board or other action against a wholesale distributor by the board as set forth in this act shall not be construed as barring other civil, administrative or criminal proceedings or prosecutions or entry of any available penalty or sanction as authorized by law.

[54-1757, added 2007, ch. 319, sec. 1, p. 957.]

54-1758. PROHIBITED ACTS. (1) It shall be unlawful for a person to knowingly perform, or cause the performance of, or aid and abet any of the following acts in this state:

(a) Failure to obtain a license when a license is required by this chapter;

(b) Operate as a wholesale distributor without a valid license when a license is required by this chapter;

(c) Purchase from or otherwise receive, return or exchange a prescription drug from a pharmacy or chain pharmacy warehouse, other than in compliance with section 54-1754(1), Idaho Code;

(d) When a state license is required pursuant to section 54-1754(3), Idaho Code, sell, distribute, transfer or otherwise furnish a prescription drug to a person who is not authorized under the law of the jurisdiction in which the person received the prescription drug to receive the prescription drug;

(e) Failure to deliver prescription drugs to specified premises, as required by section 54-1754(4), Idaho Code;

(f) Acceptance of payment or credit for the purchase of prescription drugs, other than in compliance with section 54-1754(6), Idaho Code;

(g) Provide the board or any of its representatives or any federal official with false or fraudulent records or make false or fraudulent statements regarding any matter within the provisions of this chapter;

(h) Obtain, or attempt to obtain, a prescription drug by fraud, deceit or misrepresentation or engage in misrepresentation or fraud in the distribution of a prescription drug;

(i) Manufacture, repackage, sell, transfer, deliver, hold or offer for sale any prescription drug that is adulterated, misbranded, counterfeit, suspected of being counterfeit or otherwise has been rendered unfit for distribution;

(j) Adulterate, misbrand or counterfeit any prescription drug;

(k) Receive any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit;

(l) Deliver or proffer delivery of, for pay or otherwise, any prescription drug that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit or suspected of being counterfeit;

(m) Alter, mutilate, destroy, obliterate or remove the whole or any part of the labeling of a prescription drug or commit any other act with respect to a prescription drug that results in the prescription drug being misbranded; or

(n) Sell, deliver, transfer or offer to sell to a person not authorized under law to receive the return or exchange of a prescription drug, a prescription drug that has expired, been damaged or recalled by either the original manufacturer, a third party returns processor or a reverse distributor.

(2) The acts prohibited in subsection (1) of this section do not include a prescription drug manufacturer, or agent of a prescription drug manufacturer, who obtains or attempts to obtain a prescription drug for the sole purpose of testing the prescription drug for authenticity.

[54-1758, added 2007, ch. 319, sec. 1, p. 958; am. 2015, ch. 28, sec. 8, p. 58.]

54-1759. PENALTIES. (1) Any person who commits any act prohibited by section 54-1758(1)(a) through (f), Idaho Code, is guilty of a misdemeanor, which is punishable by not more than one (1) year of imprisonment, or by a fine not exceeding five thousand dollars ($5,000), or both.

(2) Any person who commits any act prohibited by section 54-1758(1)(g) through (n), Idaho Code, is guilty of a felony, which is punishable by imprisonment for a term of not less than five (5) years and not more than twenty (20) years, or by a fine not exceeding five hundred thousand dollars ($500,000), or both.

(3) Any person who, with the intent to commit any of the acts prohibited by section 54-1758(1)(g) through (n), Idaho Code, commits any act prohibited by section 54-1758(1)(a) through (f), Idaho Code, is guilty of a felony, which is punishable by imprisonment for a term of not less than five (5) years and not more than twenty (20) years, or by a fine not exceeding five hundred thousand dollars ($500,000), or both.

(4) Any criminal penalty imposed on a person who commits any act prohibited by section 54-1758, Idaho Code, is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

[54-1759, added 2007, ch. 319, sec. 1, p. 959; am. 2015, ch. 28, sec. 12, p. 60.]

54-1760. SHORT TITLE. Sections 54-1760 through 54-1765, Idaho Code, shall be known and may be cited as the "Idaho Legend Drug Donation Act."

[54-1760, added 2009, ch. 143, sec. 1, p. 428.]

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(35), 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) "Patient assistance program" means a program in which pharmaceutical manufacturers provide financial or medication assistance to low-income or medically indigent individuals.

(4) "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; or a designated regional behavioral health center as identified in chapter 31, title 39, Idaho Code; or a state charitable institution as defined in chapter 1, title 66, Idaho Code, acting in consultation with a pharmacist, physician, physician assistant or advanced practice professional nurse with prescriptive authority licensed in the state of Idaho.

[54-1761, added 2009, ch. 143, sec. 2, p. 428; am. 2010, ch. 79, sec. 19, p. 146; am. 2010, ch. 348, sec. 1, p. 909; am. 2011, ch. 135, sec. 5, p. 381; am. 2013, ch. 28, sec. 15, p. 67; am. 2013, ch. 270, sec. 5, p. 706; am. 2014, ch. 146, sec. 7, p. 401; am. 2015, ch. 28, sec. 13, p. 60; am. 2016, ch. 81, sec. 1, p. 259; am. 2018, ch. 37, sec. 19, p. 96.]

54-1762. IDAHO LEGEND DRUG DONATION ACT. (1) The board of pharmacy shall establish and implement a program through which legend drugs may be

transferred from a qualified donor that elects to participate in the program for the purpose of distribution to a qualifying charitable clinic or center for donation to qualifying medically indigent patients.

(2) A qualifying charitable clinic or center shall establish procedures consistent with the Idaho legend drug donation act and rules promulgated thereunder.

(3) The acceptance and distribution of legend drugs for use in the program shall be subject to the following requirements:

(a) Donated drugs shall be in the manufacturer's original, sealed and tamper evident packaging, including drugs packaged in single unit doses when the outside packaging is open and the single unit dose packaging is intact, except for patient assistance program medications as described in subsection (8) of this section, which must be originally received by the qualifying designated regional behavioral health center or qualifying state charitable institution and remain under the control and storage of such center or institution. Drugs that have been previously dispensed by a pharmacy in unit dose packaging may be donated provided that the packaging is sealed, tamper evident and properly labeled.

(b) Only drugs that bear a clear and verifiable lot number and expiration date may be accepted and dispensed. However, drugs that bear an expiration date that is less than three (3) months from the date the drug is donated shall not be accepted and dispensed.

(c) Drugs and other substances provided in schedules II through V of article II, chapter 27, title 37, Idaho Code, shall not be accepted and shall not be dispensed.

(d) A drug shall not be accepted or dispensed if the person accepting or dispensing the drug has reason to believe that the drug has been adulterated.

(4) The following entities that are licensed or registered in the state of Idaho are qualified donors and may donate legend drugs to a qualifying charitable clinic or center:

(a) Pharmacies;

(b) Hospitals and nursing homes;

(c) Drug manufacturers;

(d) Wholesale distributors; and

(e) Prescriber drug outlets.

(5) The following entities may accept legend drugs:

(a) A qualifying charitable clinic's or center's pharmacy;

(b) A qualifying charitable clinic or center in consultation with a pharmacist licensed in the state of Idaho; or

(c) A qualifying charitable clinic or center designated as a regional behavioral health center or a state charitable institution acting in consultation with a pharmacist, physician, physician assistant or advanced practice professional nurse with prescriptive authority licensed in the state of Idaho.

(6) Any qualifying charitable clinic or center that participates in the program may dispense drugs donated under the Idaho legend drug donation act to persons who are medically indigent residents of the state of Idaho.

(7) Any qualifying charitable clinic or center dispensing legend drugs shall:

(a) Comply with the provisions of the Idaho legend drug donation act and all rules promulgated thereunder;

(b) Comply with all applicable federal and state laws related to the storage and distribution of drugs;

(c) Inspect all drugs prior to dispensing to determine that such drugs have not been adulterated; and

(d) Dispense drugs only pursuant to a valid prescription.

(8) A qualifying charitable clinic or center designated as a regional behavioral health center or state charitable institution may accept unused patient assistance program medications as donations for use and may dispense these medications if:

(a) The unused patient assistance program medication has remained under the control of the designated regional behavioral health center or state charitable institution;

(b) The storage of the medication complies with all applicable federal and state laws; and

(c) At least one (1) of the following applies:

(i) The original recipient of the patient assistance program medication no longer has a valid prescription order for the medication;

(ii) The patient assistance program medication was not picked up for the use of the original recipient; or

(iii) The original recipient of the patient assistance program medication is no longer receiving services from the regional behavioral health center or state charitable institution.

(9) Participation in the program is voluntary and nothing in the Idaho legend drug donation act shall require any person or entity to participate in the program.

(10) Nothing in the Idaho legend drug donation act shall prohibit or restrict the return of unused prescription drugs to the Idaho medicaid program pursuant to rules promulgated by the Idaho department of health and welfare.

[54-1762, added 2009, ch. 143, sec. 3, p. 428; am. 2010, ch. 348, sec. 2, p. 909; am. 2016, ch. 81, sec. 2, p. 260.]

54-1763. BOARD DUTIES AND POWERS. (1) The board of pharmacy shall adopt rules necessary for the donation of legend drugs to qualifying charitable clinics or centers by nursing homes, including:

(a) Standards and procedures for the transfer, acceptance and safe storage of donated drugs;

(b) Standards and procedures for inspecting donated drugs to ensure that the drugs are in compliance with the provisions of the Idaho legend drug donation act and all federal and state product integrity standards and regulations;

(c) Standards and procedures for the distribution of donated drugs to a qualifying charitable clinic or center;

(d) Standards and procedures for the dispensing of donated drugs to qualifying medically indigent patients; and

(e) Any other standards and procedures the board deems appropriate or necessary to implement or enforce the provisions of the Idaho legend drug donation act.

(2) The board shall provide technical assistance to participants in the program.

[54-1763, added 2009, ch. 143, sec. 4, p. 429; am. 2010, ch. 348, sec. 3, p. 910.]

54-1764. IMMUNITY FROM LIABILITY. Any entity that lawfully and voluntarily participates by donating, accepting, distributing or dispensing legend drugs under the Idaho legend drug donation act shall be immune from liability for any civil action arising out of the provision of such action. This section shall not extend immunity to the participating entity for any acts constituting intentional, willful or grossly negligent conduct or to acts by a participating entity that are outside the scope of practice authorized by the entity's licensure, certification or registration.

[54-1764, added 2009, ch. 143, sec. 5, p. 430.]

54-1765. EXEMPT FROM THE IDAHO WHOLESALE DRUG DISTRIBUTION ACT. Any person or entity lawfully donating, accepting, distributing or dispensing legend drugs under the Idaho legend drug donation act shall be exempt from the provisions of the Idaho wholesale drug distribution act as provided in sections 54-1751 through 54-1759, Idaho Code.

[54-1765, added 2009, ch. 143, sec. 6, p. 430.]

54-1768. PRESCRIBER-AUTHORIZED SUBSTITUTION. (1) A licensed prescriber may authorize a pharmacist to substitute a drug with another drug in the same therapeutic class that would, in the opinion of the pharmacist, have a substantially equivalent therapeutic effect even though the substitute drug is not a therapeutic equivalent drug, provided the following conditions are met:

(a) The prescriber has clearly indicated that drug product substitution is permissible by indicating "therapeutic substitution allowed" or by making a similar designation;

(b) The drug product substitution is intended to ensure formulary compliance with the patient's health insurance plan or, in the case of a patient without insurance, to lower the cost to the patient while maintaining safety;

(c) The patient opts in to the drug product substitution, and the pharmacist clearly informs the patient of the differences in the drug products and specifies that the patient may refuse the substitution; and

(d) If a drug product substitution is made:

(i) The prescriber's directions are modified to allow for an equivalent amount of drug to be dispensed as prescribed; and

(ii) The pharmacist shall notify the patient's original prescriber of the drug product substitution within five (5) business days of dispensing the prescription.

(2) Nothing in this section shall apply to biological products, as set forth in section 54-1769, Idaho Code, or to narrow therapeutic index drugs.

(3) For purposes of this section:

(a) "Drug product substitution" means dispensing a drug product other than the drug product originally prescribed.

(b) "Narrow therapeutic index drug" means a drug where a small difference in dose or blood concentration may lead to serious therapeutic failures or adverse drug reactions.

(c) "Therapeutic class" means a group of similar drug products that have the same or similar mechanisms of action and are used to treat a specific condition.

(d) "Therapeutic equivalent drug" means a product assigned an "A" code by the federal food and drug administration (FDA) in the "Approved Products with Therapeutic Equivalence Evaluations" (orange book) and an-

imal drug products published in the FDA's "Approved Animal Drug Products" (green book).

[54-1768, added 2018, ch. 35, sec. 1, p. 67.]

54-1769. COMMUNICATION REGARDING BIOLOGICAL PRODUCTS. [EFFECTIVE UNTIL JULY 1, 2026] (1) A pharmacist who dispenses a biological product according to board rule shall communicate to the prescriber the name and manufacturer of the drug within five (5) business days following the dispensing of the biological product. Communication shall occur via an entry in an interoperable electronic medical records system, an electronic prescribing technology, a pharmacy benefit management system or a pharmacy record that can be accessed electronically by the prescriber. Entry into an electronic records system as described in this subsection shall be considered notice to the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber using facsimile, telephone, electronic transmission or other prevailing means, provided that the communication shall not be required when:

(a) There is no interchangeable biological product approved by the federal food and drug administration for the product prescribed;

(b) A refill prescription is not changed from the product dispensed on the prior filling of the prescription; or

(c) The pharmacist or the pharmacist's designee has already communicated to the prescriber the specific product to be provided to the patient, including the name and manufacturer of the product, prior to dispensing; and that product is the product that is actually dispensed.

(2) Nothing in this section shall delay the dispensing of a valid prescription for a biological product.

(3) For purposes of this section:

(a) "Biological product" shall have the same meaning as in 42 U.S.C. 262(i).

(b) "Interchangeable biological product" means a biological product that the federal food and drug administration has licensed and determined meets the standards for interchangeability set forth in 42 U.S.C. 262(k)(4) or has been deemed therapeutically equivalent by the federal food and drug administration in the latest edition of or supplement to the publication "Approved Drug Products with Therapeutic Equivalence Evaluations."

[54-1769, added 2016, ch. 197, sec. 1, p. 553.]

54-1770. NOTIFICATION OF DRUG PRODUCT SELECTION FOR EPILEPSY AND SEIZURE DRUGS. (1) In this section:

(a) "Anti-epileptic drug" means:

(i) A drug used for the treatment of epilepsy; or

(ii) A drug used to treat or prevent seizures.

(b) "Drug product selection" means the selection of a therapeutically equivalent drug, including a generic version for the prescribed brand, a branded version for the prescribed generic, a generic version by one (1) manufacturer for a generic version by a different manufacturer.

(c) "Epilepsy" means a neurological condition characterized by recurrent seizures.

(d) "Seizure" means an acute clinical change secondary to a brief disturbance in the electrical activity of the brain.

(2) When a prescriber has specified that a drug is prescribed for the treatment of epilepsy or seizures, pharmacy personnel who perform drug product selections shall:

(a) Notify the prescriber of such drug product selection via facsimile, telephone message or any other appropriate means to the prescriber's place of business; and

(b) Provide the patient or the patient's representative with notification of the selection.

(3) Nothing in this section shall delay the dispensing of a valid prescription for an anti-epileptic drug.

[54-1770, added 2010, ch. 277, sec. 1, p. 717.]

54-1771. SEVERABILITY. The provisions of this chapter are hereby declared to be severable and if any provision of this chapter or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of remaining portions of this chapter.

[54-1771, added 2011, ch. 263, sec. 5, p. 709.]