Committee on Law Enforcement/Legislation

Members Present:

Leo R. Blais (RI), *Chairman*; Thomas A. Aday (TX); Julene Burton-Goode (NY); Frank Cole (AR); Lloyd K. Jessen (IA); Albert Fulton Lockamy, Jr. (NC); and Doyle Potter (NM).

Others Present:

Franklin Z. Wickham (OH); *Executive Committee Liaison*; Carman A. Catizone, *NABP Executive Director*; Janice Teplitz, Bart Clark, *NABP Staff*.

Introduction:


Review of the Committee Charge:

The Committee reviewed its charge and proposed no recommendations to amend or change it. The charge of the Committee on Law Enforcement/Legislation remains as follows:

1. Review and comment on existing legislation and regulations for the practice of pharmacy and related areas within pharmacy, including pharmacist impairment issues;
2. Develop model regulations for pharmacy as assigned by the Executive Committee, or from resolutions adopted by the members of the Association, or from reports of other committee of the Association;
3. Recommend to the Executive Committee areas where model regulations are needed in pharmacy for improving the protections of the public health.

RESOLUTION CL/L #1

WHEREAS, there exists a wide variety of terms utilized to describe those personnel who assist pharmacists in the practice of pharmacy; and

WHEREAS, a uniformly recognized term describing these personnel would benefit the boards of pharmacy that regulate these individuals;

THEREFORE BE IT RESOLVED, that state boards of pharmacy adopt the term “Pharmacy Technician” as the legal designation of licensed personnel who work under the immediate supervision of a pharmacist and assist in the practice of pharmacy.

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Background

The Committee reviewed the Report of the Task Force on Pharmacy Technicians and the directives of the Executive Committee. The Committee felt that a universally adopted and recognized term to describe these personnel is needed. The Committee also discussed the scope and clarification of the term “assist in the practice of pharmacy,” reaffirming the role and responsibilities of the pharmacist.

RESOLUTION CL/L #2

WHEREAS, there is a need to license and regulate Pharmacy Technicians; and

WHEREAS, the Boards of Pharmacy are charged with the authority to assess the competence of all persons involved in providing Pharmaceutical Care to the public; and

WHEREAS, Pharmacy technicians are required to work under the direct supervision of a licensed pharmacist;

THEREFORE BE IT RESOLVED, that Boards of Pharmacy license and regulate Pharmacy Technicians; and

BE IT FURTHER RESOLVED, that State Boards of Pharmacy stipulate that for employment, technician licensure be dependent on a license in good standing of a supervising pharmacist in that state.

Background

Since pharmacy technicians in states where regulations exist work under the supervision of licensed pharmacists in a variety of practice settings, and therefore, have the potential to impact the public health, safety, and welfare, the Committee felt that there is a need for boards of pharmacy to license and regulate these personnel. Because the pharmacist is ultimately responsible for the actions of a pharmacy technician, the Committee believed that a pharmacy technician’s license should be affiliated with the license of a licensed pharmacist.

RESOLUTION CL/L #3

WHEREAS, the Boards of Pharmacy are the bodies charged with the protection of the public health and welfare; and

WHEREAS, the Boards of Pharmacy are the bodies responsible for the regulation of the practice of pharmacy and the sites where pharmacy is practiced; and

WHEREAS, the Boards of Pharmacy are charged with the authority to assess and certify the competence of all persons involved in providing Pharmaceutical Care to the public; and
WHEREAS, there is currently no uniformly recognized mechanism to assess the competence of Pharmacy Technicians;

THEREFORE BE IT RESOLVED, that NABP develop and implement a national examination program for Pharmacy Technicians; and

BE IT FURTHER RESOLVED, that the individual states utilized this examination to assess the minimum competency of Pharmacy Technicians in their jurisdictions.

Background

The Committee debated whether simple registration of pharmacy technicians would be sufficient to protect the public health. Upon further consideration, coupled with the mission of Boards of Pharmacy to protect the public health, the Committee decided that it would be in the public interest to develop an examination mechanism to assess the minimum competency of pharmacy technicians. The Committee did not favor a national certification program developed by groups outside of the boards of pharmacy.

RESOLUTION CL/L #4

WHEREAS, it is in the interest of protecting the public safety, health, and welfare that boards of pharmacy prevent dangerous, incompetent, or unethical Pharmacy technicians from assisting in the practice of pharmacy;

THEREFORE BE IT RESOLVED, that the Model State Pharmacy Act and Model Rules of the National Association of Boards of Pharmacy be amended as follows:

Model State Pharmacy Act

Article I. Title, Purpose, and Definition
Section 105. Definitions
(x) “Pharmacy Technician” means supportive personnel who work under the immediate supervision of a Pharmacist and who have passed a minimum competency examination approved by the Board of Pharmacy and who are licensed by the Board of Pharmacy of the state in which they work.

Article III. Licensing
Section 307. Pharmacy Technician Licensure
The Board shall establish licensure requirements for Pharmacy Technicians.

Article IV. Discipline
Section 401. Grounds, Penalties, and Reinstatement
(a) The Board of Pharmacy may refuse to issue or renew, or may suspend, revoke, restrict the licenses of, or fine any Person pursuant to the procedures set forth in Section 402 herein below, upon one or more of the following grounds:

(1) Unprofessional conduct as that term is defined by the rules of the Board;
(2) Incapacity that prevents a licensee from engaging or assisting in the Practice of Pharmacy with reasonable skill, competence, and safety to the public;

(3) Being guilty of one (1) or more of the following:
   (i) A felony;
   (ii) Any act involving moral turpitude or gross immorality; or
   (iii) Violations of the pharmacy or drug laws of this State or rules and regulations pertaining thereto, or of laws, rules, and regulations of any other state, or of the Federal government.

(4) Knowing or suspecting that a Pharmacist or Pharmacy Intern is incapable of engaging in the Practice of Pharmacy, or that a Pharmacy Technicians is incapable of assisting in the practice of pharmacy, with reasonable skill, competence, and safety to the public, and failing to report any relevant information to the Board of Pharmacy;

(5) Misrepresentation of a material fact by a licensee in securing the issuance or renewal of a license;

(6) Fraud by a licensee in connection with the Practice of Pharmacy;

(7) Engaging or aiding and abetting an individual to engage in the Practice of Pharmacy or assist in the practice of pharmacy without the appropriate license, or falsely using the title of Pharmacist, Pharmacy Intern, or Pharmacy Technician, or;

(8) Failing to pay the costs assessed in a disciplinary hearing pursuant to Section 213(b)(9);

(9) Being found by the Board to be in violation of any of the provisions of this Act or rules adopted pursuant to this Act.

(b) Any Person whose license to practice pharmacy or assist in the practice of pharmacy in this State has been suspended, revoked, or restricted pursuant to this Act, 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. The Board, also at its discretion, may require such person to pass an examination(s) for reentry into the Practice of Pharmacy.

(c) Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.

(d) All final decisions by the Board shall be subject to judicial review pursuant to the Administrative Procedures Act.

(e) Any individual or entity whose licensure to practice pharmacy, or assist in the practice of pharmacy, is revoked, suspended, or not renewed shall return his license to the offices of the State Board of Pharmacy within 10 days after receipt of notice of such action.

Section 402. Procedure
Notwithstanding any provisions of the State Administrative Procedures Act, the Board may, without a hearing, temporarily suspend a license for not more than 60 days if the Board find that a Technician has violated a law or rule that the Board if empowered to enforce, and if continued practice by the Pharmacist or Pharmacy Intern, or continued assistance in the practice of pharmacy by a Pharmacy Technician, would create an imminent risk of the harm to the public. The suspension shall take effect upon written notice to the Pharmacist, Pharmacy Intern, or Pharmacy Technician, specifying the statute or rule violated. At the time it issues the suspension notice, the Board shall schedule a disciplinary hearing to be held under the Administrative Procedures Act within 20
days thereafter. The Pharmacist, Pharmacy Intern, or Pharmacy Technician, shall be provided with at least 10 days notice of any hearing held under this subsection.

**Model Rules for Pharmaceutical Care**

**Section 2. Personnel**

A. (No Changes.)

B. No pharmacy shall employ a Pharmacy Technician who has not been licensed by the State Board of Pharmacy.

**Background**

Having concluded that assessment of the minimum competency of pharmacy technicians is consistent with the mission of the Boards of Pharmacy, the Committee felt that pharmacy technicians should be required to pass an examination specified the Board of Pharmacy before being allowed to assist licensed pharmacists in the practice of pharmacy. The preceding amendments to the *Model State Pharmacy Act and Model Rules* for “Pharmaceutical Care,” having provided for licensure of pharmacy technicians, also establish the basis for discipline of the licensees.

**RESOLUTION CL/L#5**

WHEREAS, there is an increasing number of instances of drug diversion in pharmacies involving Pharmacy Technicians; and

WHEREAS, there is a need on the part of the State Boards of Pharmacy to implement a system that would allow the Boards to discipline the licenses of certain pharmacy Technicians;

THEREFORE BE IT RESOLVED, that NABP develop a Disciplinary Clearinghouse for Pharmacy Technicians; and

BE IT FURTHER RESOLVED, that NABP encourage participation by its member boards in the Pharmacy Technician Disciplinary Clearinghouse.

**Background**

The Committee felt that the existence of the NABP Disciplinary Clearinghouse programs for pharmacists, pharmacies, and wholesale distributors would provide an already established mechanism which could be applied to the tracking and reporting of disciplinary actions taken against pharmacy technicians. Such a mechanism would assist the individual State Boards of Pharmacy by preventing individual pharmacy technicians from moving state to state to avoid disciplinary actions or prosecution.

**RESOLUTION CL/L#6**

WHEREAS, the goal of Pharmaceutical Care is to provide drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to cure or prevention of disease, elimination or reduction of patients’ symptoms, or arresting or slowing of a disease process, and

WHEREAS, the upward spiral in health care costs has denied a large portion of the population access to affordable health care; and
WHEREAS, “Therapeutic Interchange” is the modification of drug therapy by a pharmacist in accordance with written guidelines or protocols previously established and approved through an agreement between pharmacists and practitioners authorized to prescribe drugs, including the dispensing of a drug different from the one originally prescribed, and

WHEREAS, Therapeutic Interchange is one component of managed health care which currently may not be allowed in all pharmacy practice settings; and

WHEREAS, access to cost-effective and therapeutically appropriate pharmaceutical care is in the best interest of promoting and protecting the public health;

THEREFORE BE IT RESOLVED, that NABP recommends that individual states review and seek revision of statutes or rules to strengthen requirements for pharmacist involvement in patient counseling and drug utilization review/evaluation and to allow Therapeutic Interchange which assures that the patient receives the most appropriate medication therapy; and

BE IT FURTHER RESOLVED, that State Boards of Pharmacy work cooperatively with State Drug Utilization Review Boards to establish protocols and guidelines to allow the practice of Therapeutic Interchange by pharmacists in all practice settings focusing on the areas of concern delineated by the Task Force on Therapeutic Interchange.

Background
The Committee commended the Task Force on Therapeutic Interchange for their efforts in defining therapeutic interchange for inclusion in the Model Act, suggesting specific areas of concern, and recommending the development of therapeutic interchange protocols.

RESOLUTION CL/L#7

WHEREAS, there is a need for a centralized clearinghouse on disciplinary actions concerning Wholesale Distributors; and

WHEREAS, NABP can assist the State Boards of Pharmacy in the licensing and registration of Wholesale Distributors; and

WHEREAS, the participation of the State Boards of Pharmacy is critical to the operation and effectiveness of the NABP Wholesale Distribution Clearinghouse;

THEREFORE BE IT RESOLVED, that the following language be incorporated in Section 1 of the NABP “Model Rules for Licensure of Wholesale Distributors.”

Model Rules for Licensure of Wholesale Distributors
Section 1. Minimum Required Information for Licensure

(a) (No Changes.)
(b) (No Changes.)
(c) Pursuant to Section 501(f) and Section 502, the information required for initial licensure or renewal of a license of a Wholesale Distributor shall be submitted on forms prepared by the
Board of Pharmacy or by the National Association of Boards of Pharmacy (NABP), which the Association shall act as a clearinghouse of applications for the Board and shall be submitted to the Board of NABP accompanied by the applicable fee as directed on such form.

**RECOMMENDATION CL/L#1**

The Committee supports the findings of the Task Force on Therapeutic Interchange that prescriptive authority for pharmacists is integral to the concept of Therapeutic Interchange, and recommends that the Executive Committee heed Recommendation #3 from the Task Force on Therapeutic Interchange.