

Model State Pharmacy Act

and Model Rules of the

National Association of Boards of Pharmacy

August 2023

Mission Statement of the

National Association of Boards of Pharmacy

***NABP Mission Statement***

The National Association of Boards of Pharmacy (NABP) is the independent, international, and impartial Association that assists its member boards in protecting the public health.

***Vision Statement***

In**n**ovating **a**nd colla**b**orating today for a safer **p**ublic health tomorrow.

***NABP Member Boards of Pharmacy***



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and Model Rules of the

National Association of Boards of Pharmacy

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National Association of Boards of Pharmacy

Model State Pharmacy Act

# Article I Title, Purpose, and Definitions

### Introductory Comment to Article I

*Article I of the* Model State Pharmacy Act and Model Rules of the National Association of Boards of Pharmacy (Model Act) *sets forth the foundation upon which the Act is constructed. It clearly declares and acknowledges that safeguarding the public interest is the foremost compelling reason for regulating the practice of pharmacy and the distribution of drugs and related devices. It also circumscribes the activities included within the practice of pharmacy, as well as the definitions of several other terms used throughout the Act.*

*NABP created the* Model Act *to provide state boards of pharmacy with model language that may be used when developing state laws or board rules for the respective states. NABP believes that it is both desirable and necessary to recognize that the public interest must be the central precept in the* Model Act *and its administration, and that state boards of pharmacy must constantly strive to achieve the principles enunciated in Article I of the Act.*

*An Act concerning the regulation of the practice of pharmacy in this state and related matters.*

*Be it enacted. . . .*

### Section 101. Title of Act.

This Act shall be known as the “\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Pharmacy Practice Act.”

### Section 102. Legislative Declaration.

The practice of pharmacy in the state of \_\_\_\_\_\_\_\_\_\_\_\_ is declared a professional health care practice affecting the public health, safety, and welfare and is subject to regulation and control in the public interest.[[1]](#footnote-2) Pharmacy is a learned health care profession affecting public health and welfare and is declared as such by the state legislature. This Act shall be liberally construed to carry out these objectives and purposes.

### Section 103. Statement of Purpose.

It is the purpose of this Act to promote, preserve, and protect the public health, safety, and welfare through the effective control and regulation of, as well as through access to, health care providers who engage in the practice of pharmacy; the licensure of pharmacists; the registration of certified pharmacy technicians and certified pharmacy technician candidates; the licensure, control, and regulation of all sites or persons, in or out of this state, that distribute, manufacture, or sell drugs (or devices used in the dispensing and administration of drugs), within this state, and the regulation and control of such other materials as may be used in the diagnosis, treatment, and prevention of injury, illness, and disease of a patient or other individual.[[2]](#footnote-3)

### Section 104. Definitions for the Practice of Pharmacy and Related Terms.

The “practice of pharmacy” means, but is not limited to:

1. interpreting, evaluating, compounding, dispensing, and/or administering medical orders;
2. providing patient counseling;
3. assessing the patient for the purposes of prescribing drugs and devices;
4. initiating and/or providing pharmacist care services;
5. using continuous quality improvement programs, emerging technologies, and competency-based education to improve patient safety and the quality of services provided;
6. engaging in collaborative pharmacy practice**.** [[3]](#footnote-4)

“Pharmacist care services”[[4]](#footnote-5) mean services intended to achieve patient outcomes related to the treatment or prevention of disease, elimination or reduction of symptoms, and promotion of health and wellness. Pharmacist care services include but are not limited to:

1. drug utilization review;
2. medication adherence monitoring service;
3. emergency use prescribing and dispensing;[[5]](#footnote-6)
4. medication therapy management (MTM);
5. reviewing, selecting, and developing formularies and/or practice guidelines;
6. performing drug product selection, substitution, therapeutic interchange[[6]](#footnote-7), prescription adaptation or continuation of therapy;

ordering, interpreting laboratory tests, and performing Clinical Laboratory Improvement Amendments-waived[[7]](#footnote-8) lab tests.

“Collaborative pharmacy practice” means that practice of pharmacy whereby one or more pharmacists have jointly agreed, on a voluntary basis, to work in conjunction with one or more practitioners under protocol and in collaboration with practitioner(s) to provide patient care services to achieve optimal medication use and desired patient outcomes.

“MTM” includes the following:

* + 1. patient health status assessment and evaluation;
    2. medication reconciliation;
    3. formulating medication treatment plan;
    4. selecting, prescribing, modifying, discontinuing, or administering drugs, devices, vaccines, or biologicals;
    5. monitoring and evaluating the patient’s response to therapy, including safety and effectiveness;
    6. performing a comprehensive drug utilization review to identify, resolve, and prevent medication-related problems, including adverse drug events;
    7. documenting the care delivered and communicating essential information to the patient’s prescribing practitioner(s) and primary care providers;
    8. providing education, support services, and resources designed to enhance patient adherence with therapeutic regimens, such as medication synchronization;
    9. coordinating and integrating services within the broader health care management services being provided to the patient; and
    10. such other patient care services as may be allowed by law.

### Section 105. Definitions.

1. “Active ingredients” means chemicals, substances, or other components of articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of diseases in humans or animals or for use as nutritional supplements.
2. “Added substances” mean the ingredients necessary to prepare the drug product but are not intended or expected to cause a human pharmacologic response if administered alone in the amount or concentration contained in a single dose of the compounded drug product or alter the composition and effectiveness of the compounded drug product. The term “added substances” is used synonymously with the terms “inactive ingredients,” “excipients,” “flavoring agents,” and “pharmaceutic ingredients.”
3. “Administer” means the direct application of a drug to the body of a patient or research subject by injection, inhalation, ingestion, or any other means.
4. “Adulterated”: A Drug or Device shall be deemed to be adulterated
   1. if:
      1. it consists in whole or in part of any filthy, putrid, or decomposed substance; or
      2. it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practices to ensure that such drug or device meets the requirements of this part as to safety and has the identity and strength, and meets the quality and purity characteristics that it purports or is represented to possess; or
      3. its container is composed, in whole or in part, of any poisonous or deleterious substance that may render the contents injurious to health; or
      4. it bears or contains, for purposes of coloring only, a color additive that is unsafe within the meaning of the Federal Food, Drug, and Cosmetic Act (Federal Act); or it is a color additive, the intended use of which, in or on such drugs or devices, is for purposes of coloring only, and is unsafe within the meaning of the Federal Act;
   2. if it purports to be or is represented as a drug, the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in the compendium. Such a determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the compendium, or in the absence of or inadequacy of these tests or methods of assay, those prescribed under authority of the Federal Act. No drug defined in an official compendium shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefore set forth in the compendium, if its difference in strength, quality, or purity from that standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopeia (USP) and the Homeopathic Pharmacopoeia of the United States it shall be subject to USP requirements unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the Homeopathic Pharmacopoeia of the United States and not those of the USP;
   3. if it is not subject to paragraph (b) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess; or
   4. if it is a drug and any substance has been mixed or packed therewith so as to reduce its quality or strength; or substituted wholly or in part, therefore.
5. “Automated pharmacy systems” include, but are not limited to, mechanical systems that perform operations or activities, compounding or administration, relative to the storage, packaging, dispensing, or distribution of drugs, and which collect, control, and maintain all transaction information.
6. “Beyond-use date” means a date placed on a prescription label at the time of dispensing that is intended to indicate to the patient or caregiver a time beyond which the contents of the prescription are not recommended to be used.[[8]](#footnote-9)
7. “Bioburden” means the total number of microorganisms associated with a specific item prior to sterilization.
8. “Biological product” is:
   1. regulated by Food and Drug Administration (FDA);
   2. used to diagnose, prevent, treat, and cure diseases and medical conditions;
   3. a diverse category of products and generally large, complex molecules;
   4. produced through biotechnology in a living system, such as a microorganism, plant cell, or animal cell, and often more difficult to characterize than small molecule drugs.
9. “Board of pharmacy” or “Board” means the governmental regulatory body empowered to regulate the practice of pharmacy including issuing and disciplining licenses of individuals and companies.
10. “Business entity” means a corporation, subsidiary, partnership, association, organization, affiliate organization, or any other legal entity formed to conduct business.
11. “Cease and desist” means an order of the board prohibiting a licensee or other person from continuing a particular course of conduct that violates the Pharmacy Practice Act or its rules and regulations.[[9]](#footnote-10)
12. “Censure” means a severe formal reproof of a licensee for violation of the Pharmacy Practice Act or rules and regulations, and may require specific redress; eg, restitution of fees.
13. “Certified pharmacy technician”[[10]](#footnote-11) means personnel licensed by the board who have completed a certification program approved by the board and may, under the supervision of a pharmacist, perform certain activities involved in the practice of pharmacy that are within their scope of certification and as delegated by the pharmacist, but excluding clinical patient care activities such as, but not limited to:
    1. drug utilization review (DUR);
    2. clinical conflict resolution; and
    3. patient counseling.
14. “Certified pharmacy technician candidate” means personnel licensed by the Board who intend to complete a certification program approved by the board and may, under the supervision of a pharmacist, perform certain activities involved in the practice of pharmacy that are within their scope of education and training and as delegated by the pharmacist, but excluding clinical patient care activities such as, but not limited to:
    1. drug utilization review (DUR);
    2. clinical conflict resolution; and
    3. patient counseling.
15. “Chart order” means a lawful order entered on the chart or a medical record of an inpatient or resident of an institutional facility by a practitioner or their licensed health care designee for a drug or device and shall be considered a prescription drug order provided that it contains:
    1. the full name of the patient;
    2. date of issuance;
    3. name, strength, and dosage form of the drug prescribed;
    4. directions for use; and
    5. if written or electronic, the prescribing practitioner’s signature[[11]](#footnote-12) or the signature of the practitioner’s licensed health care designee (including the name of the prescribing practitioner).

Bidirectional transmission of chart orders between the institutional pharmacy and the institutional facility is allowed. The pharmacist-in-charge shall ensure that the institutional pharmacy has policies and procedures for a practitioner to delegate the transmittal of a chart order to a licensed nurse employed by, or contracted by, the institutional facility and acting within the scope of their practice. Renewal of ongoing chart orders shall be signed by the prescriber at the appropriate time interval based on facility type and federal regulation, state law, or rule. Chart orders shall be ongoing until such time as the practitioner discontinues the order and such discontinuation is communicated to the pharmacy, including but not limited to, by automatic stop order, unless otherwise indicated.

1. “Collaborative pharmacy practice agreement” means a written or electronic and signed agreement between one or more pharmacists and one or more practitioners that provides for collaborative pharmacy practice as defined by law and the rules of the board.
2. “Common carrier” means any person who undertakes, whether directly or by any other arrangement, to transport property including prescription drugs for compensation.[[12]](#footnote-13)
3. “Component” means any active ingredient or added substance intended for use in the compounding of a drug, including those that may not appear in such drug.
4. “Compounding” means the preparation, mixing, assembling, altering, packaging, or labeling of a drug, drug-delivery device, or device in accordance with a licensed practitioner’s prescription drug order, medical order, or initiative based on the practitioner/patient/pharmacist/compounder relationship in the course of professional practice. Compounding includes the following:
   1. preparation of drug dosage forms for both human and animal patients;
   2. preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns[[13]](#footnote-14); and
   3. manipulation of commercial products for patient-specific needs beyond FDA-approved labeling.[[14]](#footnote-15)
5. “Continuous quality improvement program” means a system of standards and procedures to identify and evaluate quality-related events, and to constantly enhance the efficiency and effectiveness of the structures and processes of a pharmacy system that determine the outcomes of medication use.
6. “Costs/administrative costs” means a monetary amount assessed a licensee to cover the cost of investigation and prosecution of a disciplinary action.
7. “Counterfeit device” means a device which, or the container, shipping container, seal, or product labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or any likeness thereof, of a manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, distributed, or wholesale distributed such device and which thereby falsely purports or is represented to be the product of, or to have been packed, distributed, or wholesale distributed by, such other manufacturer, processor, packer, or distributor.
8. “Counterfeit drug” means a drug which, or the container, shipping container, seal, or product labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, or device, or any likeness thereof, of a manufacturer, processor, packer, or distributor other than the person who in fact manufactured, processed, packed, distributed, or wholesale distributed such drug and which thereby falsely purports or is represented to be the product of, or to have been packed, distributed, or wholesale distributed by, such other manufacturer, processor, packer, or distributor.
9. “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.
10. “Device” means an instrument, apparatus, implement, machine, contrivance, implant, or other similar or related article, including any component part or accessory, which is required under federal law to bear the label, “Caution: Federal or state law requires dispensing by or on the order of a physician.”[[15]](#footnote-16)
11. “Disinfection” means the process by which surface bioburden is reduced to a safe level or eliminated.
12. “Dispense” or “Dispensing” means the interpretation, evaluation, and implementation of a prescription drug order, including the preparation, final verification, and delivery of a drug or device to a patient or patient’s agent in a suitable container appropriately labeled for subsequent administration to, or use by, a patient.[[16]](#footnote-17)
13. “Dispenser” means a retail pharmacy, hospital pharmacy, a group of chain pharmacies under common ownership and control that do not act as a wholesale distributor, or any other person authorized by law to dispense or administer prescription drugs, and the affiliated warehouses or distribution centers of such entities under common ownership and control that do not act as a wholesale distributor.
14. “Distribute” or “Distribution” means to sell, offer to sell, deliver, offer to deliver, broker, give away, or transfer a drug, whether by passage of title, physical movement, or both. The term does not include:
    1. To dispense or administer;
    2. Delivering or offering to deliver a drug by a common carrier in the usual course of business as a common carrier; or
    3. Providing a drug sample to a patient by a practitioner licensed to prescribe such drug; a health care professional acting at the direction and under the supervision of a practitioner; or the pharmacy of a hospital or of another health care entity that is acting at the direction of such a practitioner and that received such sample in accordance with the Act and regulations to administer or dispense.
15. “Drug” means:
    1. articles recognized as drugs in any official compendium, or supplement thereto, designated from time to time by the board for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;[[17]](#footnote-18)
    2. articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or other animals;
    3. articles (other than food) intended to affect the structure or any function of the body of humans or other animals; and
    4. articles intended for use as a component of any articles specified in clause (a), (b), or (c) of this definition.
16. “Drug of concern” means any prescription or over-the-counter drug that demonstrates a potential for abuse, particularly those identified by boards of pharmacy, law enforcement, and addiction treatment professionals.
17. “Drug utilization review (DUR)”[[18]](#footnote-19) includes but is not limited to the following activities:
    1. Evaluation of the prescription drug order(s) and patient record(s) for:
       1. known allergies;
       2. rational therapy contraindications;
       3. reasonable dose, duration of use, and route of administration, considering age, gender, and other patient factors;[[19]](#footnote-20)
       4. reasonable directions for use;
       5. potential or actual adverse drug reactions;
       6. drug-drug interactions;
       7. drug-food interactions;
       8. drug-disease contraindications;
       9. therapeutic duplication;
       10. proper utilization (including over- or under-utilization), and optimum therapeutic outcomes; and
       11. abuse/misuse.
18. “Emergency medical reasons” include, but are not limited to, transfers of a prescription drug between a wholesale distributor or pharmacy to alleviate a temporary shortage of a prescription drug arising from delays in or interruption of regular distribution schedules; sales to nearby emergency medical services, eg, ambulance companies and firefighting organizations in the same state or same marketing or service area, or nearby licensed practitioners, of prescription drugs for use in the treatment of acutely ill or injured persons; provision of minimal emergency supplies of prescription drugs to nearby nursing homes for use in emergencies or during hours of the day when necessary prescription drugs cannot be obtained; and transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.
19. “Equivalent drug product” means a drug product that has the same established name, active ingredient(s), strength or concentration, dosage form, and route of administration and which is formulated to contain the same amount of active ingredient(s) in the same dosage form and to meet the same compendial or other applicable standards (eg, strength, quality, purity, and identity), but which may differ in characteristics, such as shape, scoring, configuration, packaging, excipients (including colors, flavors, and preservatives), and expiration time.
20. “FDA” means Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for drugs, food, cosmetics, and other consumer products.
21. “Federal Act” means the Federal Food, Drug, and Cosmetic Act.
22. “Fine/civil penalty” means a monetary penalty assessed to a licensee for violation of the Pharmacy Practice Act or rules and regulations.
23. “Health care entity” means any person that provides diagnostic, medical, surgical, dental treatment, or rehabilitative care but does not include any retail pharmacy or wholesale distributor.
24. “Health information” means any information, whether oral or recorded in any form or medium, that:
    1. is created or received by a health care provider, health plan, public health authority, employer, life insurer, school or university, or health care clearinghouse, and
    2. relates to the past, present, or future physical or mental health or condition of an individual; or the past, present, or future payment for the provision of health care to an individual.
25. “Illegitimate product” means a product for which credible evidence shows that the product:
    1. is counterfeit, diverted, or stolen;
    2. is intentionally adulterated such that the product would result in serious adverse health consequences or death to humans;
    3. is the subject of a fraudulent transaction; or
    4. appears otherwise unfit for distribution such that the product would be reasonably likely to result in serious adverse health consequences or death to humans.
26. “Individually identifiable health information” means information that is a subset of health information, including demographic information collected from an individual and:
    1. is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
    2. relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and
       1. that identifies the individual; or
       2. with respect to which there is a reasonable basis to believe the information can be used to identify the individual.
27. “Institutional facility” means any organization whose primary purpose is to provide a physical environment for patients to obtain health care services, including but not limited to a(n):
    1. hospital;
    2. long-term care facility;
    3. convalescent home;
    4. nursing home;
    5. extended care facility;
    6. mental health facility;
    7. rehabilitation center;
    8. psychiatric center;
    9. developmental disability center;
    10. drug abuse treatment center;
    11. family planning clinic;
    12. penal institution;
    13. hospice;
    14. public health facility;
    15. athletic facility;
    16. assisted living facility; and
    17. intermediate care facility for individuals with intellectual disabilities.
28. “Institutional pharmacy”[[20]](#footnote-21) means any place that is registered with the state board of pharmacy that provides pharmacist care services to an institutional facility and where drugs, devices, and other materials used in the diagnosis and treatment of injury, illness, and disease (hereinafter referred to as “drugs”) are dispensed, compounded, and distributed.[[21]](#footnote-22)
29. “Label” means a display of written, printed, or graphic matter upon the immediate container of any drug or device.
30. “Labeling” means the process of preparing and affixing 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.
31. “Legend drug” – See “Prescription drug.”
32. “Long-term care facility” means a nursing home, retirement care, mental care, or other facility or institution that provides extended health care to resident patients.
33. “Manufacturer” means a business entity, which may include a virtual manufacturer, engaged in the manufacture of drugs or devices.
34. “Manufacturing” means the production, preparation, propagation, conversion, or processing of a drug or device, either directly or indirectly, by extraction from substances of natural origin or independently by means of chemical or biological synthesis. Manufacturing includes the packaging or repackaging of a drug or device or the labeling or relabeling of the container of a drug or device for resale by pharmacies, practitioners, business entities, or other persons.[[22]](#footnote-23)
35. “Marketing” means:
    1. to make a communication about a product or service that encourages recipients of the communication to purchase or use the product or service, unless the communication is made:
       1. to describe a health-related product or service (or payment for such product or service) that is provided by, or included in a plan of benefits of, the covered entity making the communication, including communications about the entities participating in a health care provider network or health plan network; replacement of, or enhancements to, a health plan; and health-related products or services available only to a health plan enrollee that add value to, but are not part of, a plan of benefits;
       2. for treatment of the patient; or
       3. for case management or care coordination for the patient, or to direct or recommend alternative treatments, therapies, health care providers, or settings of care to the patient.
    2. An arrangement between a pharmacy, pharmacist, pharmacy benefits manager, or person licensed or registered by the board, and any other entity whereby the pharmacy, pharmacist, pharmacy benefits manager, or person licensed or registered by the board discloses protected health information to the other entity in exchange for direct or indirect remuneration, for the other entity or its affiliate to make a communication about its own product or service that encourages recipients of the communication to purchase or use that product or service.
36. “Medical order” means a lawful order of a practitioner that may or may not include a prescription drug order.
37. “Medication adherence monitoring service” means any structured activity (e.g., refill reminder and patient education programs) that complements or supplements the existing responsibilities regarding the dispensing of prescriptions and associated patient counseling, and that uses protected health information to contact the patient or caregiver via phone, print, electronic media, or other means of communication, in order to improve patient compliance with and adherence to prescribed medication therapy and that involves the collection and analysis of data related to patient medication use.[[23]](#footnote-24)
38. ”Medication for opioid use disorder (MOUD)” means the use of FDA-approved medications, in combination with counseling and behavioral therapies, to provide a patient-centered approach to the treatment of opioid use disorder (OUD).[[24]](#footnote-25)
39. “Medication synchronization” means a component of medication therapy management that recognizes the authority of the pharmacist, at the patient’s direction, to proactively adjust the medication quantity or refill schedule and to manage a patient’s maintenance medications by coordinating the refill schedules to improve patient outcomes.[[25]](#footnote-26)
40. “Misbranded”: A drug or device shall be deemed to be misbranded if the label is false or misleading in any particular; or the label does not bear the name and address of the manufacturer, packer, or distributor and does not have an accurate statement of the quantities of the active ingredients in the case of a drug; or the label does not show an accurate monograph for prescription drugs.
41. “National Association of Boards of Pharmacy (NABP)” means the association whose members are the boards of pharmacy, and which was established to assist boards in protecting the public health.
42. “NABP e-Profile ID” means the unique identifier for permittees, licensees, and registrants that is provided by NABP. This unique, unduplicated identifier allows for, but is not limited to, the accurate identification and collection of licensure, disciplinary, and inspection information for permittees, licensees, and registrants, both in-state as well as out-of-state, in a secure electronic profile that can be utilized for applicant submission, review, and/or board action.
43. “NABP Emergency Passport Program” means a program, operated by NABP, that verifies pharmacists, certified pharmacy technicians, pharmacy interns, and pharmacies meet the standard of licensure and are in good standing in states of licensure in order to practice on a temporary or emergency basis according to state public health emergency orders or as otherwise determined by the state board of pharmacy.
44. “NABP Information Sharing Network”[[26]](#footnote-27) means the information sharing network developed by NABP that collects, assesses, and allows for review and sharing of compounding pharmacy and physician information as described in the “MEMORANDUM OF UNDERSTANDING ADDRESSING CERTAIN DISTRIBUTIONS OF COMPOUNDED HUMAN DRUG PRODUCTS BETWEEN THE [insert STATE BOARD OF PHARMACY OR OTHER APPROPRIATE STATE AGENCY] AND THE U.S. FOOD AND DRUG ADMINISTRATION.”
45. “NABP Verify” means an ongoing credentialing and license monitoring service, operated by NABP, that verifies pharmacists and applicable business entities are licensed in good standing and provides proof of that status
46. “Nonprescription drug” means a drug that may be sold without a prescription and that is labeled for use by the consumer in accordance with the requirements of the laws and rules of this state and the federal government.
47. “Nonresident pharmacy” means a pharmacy located outside this state.
48. “Outsourcing facility”[[27]](#footnote-28) means a facility at one geographic location or address that[[28]](#footnote-29):
    1. is engaged in the compounding of sterile drugs for human use;
    2. is registered as an outsourcing facility with FDA; and
    3. complies with all of the requirements of Section 503B of the Federal FD&C Act.
49. “Parenteral” means by some other route than through the gastrointestinal tract such as, but not limited to, intravenous, subcutaneous, or intramuscular routes.
50. “Patient counseling” means the communication by the pharmacist of information, as defined in the rules of the applicable board, to the patient or caregiver in person, whenever practicable, or by telephone or other audio/visual means, in order to ensure proper use of drugs and devices.
51. “Patient intervention program” means any structured activity that complements or supplements the existing responsibilities regarding the dispensing of drugs and associated patient counseling, and that uses protected health information to contact the patient or caregiver via phone, print, electronic media, or other means of communication, to discuss, inform, and/or affect patient therapy or choice of drugs.
52. “Peer review” means a process, which is not utilized in a performance evaluation or in a punitive manner, that is part of an outcome-based, continuous quality improvement process that involves:
    1. the setting and periodic re-evaluation of standards for quality by which a pharmacy operation will be evaluated:
    2. the collection of data necessary to identify when those standards are not being met and data necessary to evaluate the reason(s) the deficiency occurred;
    3. an objective review of the data by an appropriate peer review committee to make recommendations for quality improvement; and
    4. an appropriate feedback mechanism to ensure that the process is operating in a manner that continually improves the quality of care provided to patients.
53. “Peer review committee”[[29]](#footnote-30) means:
    1. a committee that is authorized to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care; or
    2. a committee established by a person who owns a pharmacy or employs pharmacists that is authorized to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care.
54. “Person” means:
    1. an individual; or
    2. a business entity.
55. “Pharmacist” means a health care provider currently licensed by this state to engage in the practice of pharmacy, as defined in this chapter, within or outside of a licensed pharmacy, as defined in the rules of the board.
56. “Pharmacist-in-charge” means a pharmacist currently licensed in this state who accepts responsibility for the operation of a pharmacy or an outsourcing facility in conformance with all laws and rules pertinent to the practice of pharmacy and the distribution of drugs, and who is personally in full and actual charge of such pharmacy and personnel.
57. “Pharmacist’s scope of practice pursuant to the collaborative pharmacy practice agreement” means those duties and limitations of duties placed upon one or more pharmacists by the collaborating practitioner or practitioners, the board, and applicable law, and includes the limitations implied by the scope of practice of the collaborating practitioner or practitioners.
58. “Pharmacy” means any licensed facility within or outside this state where drugs are dispensed and/or pharmacist care services are provided to residents of this state.
59. “Pharmacy benefits manager” means a person that administers the prescription drug/device portion of health insurance plans on behalf of plan sponsors, such as self-insured employers, insurance companies, and health maintenance organizations, and that engages in or directs the practice of pharmacy.[[30]](#footnote-31)
60. “Pharmacy intern”[[31]](#footnote-32) means an individual who is:
    1. currently licensed by this state to engage in the practice of pharmacy while under the supervision of a pharmacist and is enrolled in a professional degree program of a school or college of pharmacy that has been approved by the board and is satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; or
    2. a graduate of an approved professional degree program of a school or college of pharmacy or a graduate who has established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee™ (FPGEC®) Certificate, who is currently licensed by the board of pharmacy for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or
    3. a qualified applicant awaiting examination for licensure or meeting Board requirements for re-licensure; or
    4. an individual participating in a residency or fellowship program.
61. “Positive patient outcomes” means the cure or prevention of disease, elimination or reduction of a patient’s symptoms, or arresting or slowing of a disease process so as to improve the patient’s quality of life.
62. “Practice of telepharmacy” means the practice of pharmacy by registered pharmacists located within US jurisdictions through the use of telepharmacy technologies between a licensee and patients or their agents at distances that are located within US jurisdictions.
63. “Practitioner” means an individual currently licensed, registered, or otherwise authorized by the appropriate jurisdiction to prescribe and administer Drugs in the course of professional practice.[[32]](#footnote-33)
64. “Preceptor” means an individual who is currently licensed as a pharmacist by the board of pharmacy, meets the qualifications as a preceptor under the rules of the board, and participates in the instructional training of pharmacy interns.[[33]](#footnote-34)
65. “Prescription drug” or “legend drug” means a drug that is required under federal law to be labeled with either of the following statements prior to being dispensed or delivered: (1) “Rx Only”; or (2) “Caution: Federal law restricts this drug to use by, or on the order of, a licensed veterinarian”; or (3) a drug that is required by any applicable federal or state law or rule to be dispensed pursuant only to a prescription drug order or is restricted to use by practitioners only.
66. “Prescription drug order” means a lawful order from a practitioner for a drug or device for a specific patient, including orders derived from collaborative pharmacy practice, where a valid patient-practitioner relationship exists, that is communicated to a pharmacist in a licensed pharmacy.
67. “Primary care” means the first level of contact of individuals, the family, and the community with the health care delivery system, bringing health care as close as possible to where people live and work, and constitutes the first element of a continuing health care process. (Areas of primary care where pharmacists provide pharmacist care services include, but are not limited to, the following: chronic disease management; smoking cessation; maternal and child health; immunizations; family planning; self-care consulting; drug selection under protocol; treatment of common diseases and injuries; nutrition; and general health education and promotion.)
68. “Probation” means a type of disciplinary action that allows for the continuation of practice subject to specific conditions established by the board and that may include a restriction of pharmacy practice for a specified period of time.[[34]](#footnote-35)
69. “Product labeling” means all labels and other written, printed, or graphic matter upon any manufactured article or any of its containers or wrappers or accompanying such article.
70. “Protected health information” means individually identifiable health information as defined in the Federal Health Insurance Portability and Accountability Act of 1996 and its implementing rules.
71. “Public health emergency” means an imminent threat or occurrence of an illness or health condition caused by terrorism, bioterrorism, epidemic or pandemic disease, novel and highly fatal infectious agent or biological toxin, or natural or man-made disaster, that poses a substantial risk of significant number of human fatalities or incidents of permanent or long-term disability that is beyond the capacity of local government or nongovernmental organizations to resolve.
72. “Quality-related event” means any departure from the appropriate dispensing of a prescribed drug that is or is not corrected prior to the delivery and/or administration of the drug. The term “quality-related event” includes:
    1. a variation from the prescriber’s prescription drug order, including, but not limited to:
       1. incorrect drug;
       2. incorrect drug strength;
       3. incorrect dosage form;
       4. incorrect patient; or
       5. inadequate or incorrect packaging, labeling, or directions;
    2. a failure to identify and manage:
       1. over-utilization or under-utilization;
       2. therapeutic duplication;
       3. drug-disease contraindications;
       4. drug-drug interactions;
       5. incorrect drug dosage or duration of drug treatment;
       6. drug-allergy interactions;
       7. clinical abuse/misuse;
    3. packaging or warnings that fail to meet recognized standards;
    4. the delivery of a drug to the wrong patient; or
    5. the failure to meet the professional standard of care in the provision of pharmacist care services.
73. “Quality self-audit” means an internal evaluation at a pharmacy to assess the effectiveness of the continuous quality improvement (CQI) program.
74. “Remote dispensing site” means a location, other than where a pharmacist is located, where drugs are maintained and prescriptions are filled by a certified pharmacy technician and dispensed under the direct, remote supervision of a pharmacist.
75. “Repackage” means the act of taking a drug product from the container in which it was distributed by the manufacturer and placing it into a different container without further manipulation of the drug. Repackaging also includes the act of placing the contents of multiple containers, eg, vials, of the same finished drug into one container, providing the container does not include other ingredients or is not further manipulated in any way.
76. “Repackager” means a person who owns or operates an establishment that repackages and relabels a product or package for:
    1. further sale; or
    2. distribution without a further transaction.[[35]](#footnote-36)
77. “Repository program” means a program that is established to receive previously dispensed drugs and redispense such to qualified individuals and/or to facilitate the proper disposal of unacceptable drugs in compliance with state, federal, and environmental regulations.
78. “Reprimand” means a formal reproof of a licensee for violation of the Pharmacy Practice Act or rules and regulations.
79. “Revocation” means the recission of the license to practice pharmacy.
80. “Serious adverse drug experience” means any adverse drug experience occurring at any dose that results in any of the following outcomes: death, a life-threatening adverse drug experience, inpatient hospitalization or prolongation of existing hospitalization, a persistent or significant disability/incapacity, or a congenital anomaly/birth defect. Important medical events that may not result in death, be life-threatening, or require hospitalization may be considered a serious adverse drug experience when, based on appropriate medical judgment, they may jeopardize the patient or subject and may require medical or surgical intervention to prevent one of the outcomes listed in this definition.
81. “Shared pharmacy services” means a system that allows a participating pharmacist or pharmacy pursuant to a request from another participating pharmacist or pharmacy to process or fill a prescription drug order, which may include preparing, packaging, labeling, compounding for specific patients, dispensing, performing drug utilization reviews, conducting claims adjudication, obtaining refill authorizations, reviewing therapeutic interventions, and/or reviewing institutional facility orders.
82. “Significant loss” means any loss of a prescription drug that exceeds a reasonable level established by like persons, which requires that loss to be reported to the board or as required by Drug Enforcement Administration (DEA) or other state and/or federal agencies for prescription drugs and controlled substances.[[36]](#footnote-37)
83. “Significant public health concern” means a potential threat or occurrence of a circumstance or health condition that poses a risk to the health of a significant number of patients that is beyond the capacity of local government or nongovernmental organizations to immediately resolve.
84. “Significant quality-related event” means any quality-related event that results in serious harm, injury, or death to the patient.
85. “Standard of care” means the degree of care a prudent and reasonable licensee or registrant with similar education, training, and experience will exercise under similar circumstances.
86. “State of emergency” means a governmental declaration, usually issued as a result of a public health emergency, that may suspend certain normal functions of government, alert citizens to alter their normal behaviors, and/or direct government agencies to implement emergency preparedness plans.
87. “Sterile drug” means any dosage form of a drug, including but not limited to, parenterals (eg, injectables, surgical irrigants, and ophthalmics) devoid of viable microorganisms.
88. “Summary suspension” means the suspension of a license, which requires the licensee to cease the practice of pharmacy immediately pending the results of a timely hearing.[[37]](#footnote-38)
89. “Suspect product” means a product for which there is reason to believe that such product:
    1. is potentially counterfeit, diverted, or stolen;
    2. is potentially intentionally adulterated such that the product would result in serious adverse health consequences or death to humans;
    3. is potentially the subject of a fraudulent transaction; or
    4. appears otherwise unfit for distribution such that the product would result in serious adverse health consequences or death to humans.
90. “Suspension” means the withdrawal of the license to practice pharmacy in the state for a specified period of time.
91. “Therapeutic interchange” means substitution by the pharmacist of one drug for another drug with a similar therapeutic effect, at the time of dispensing.
92. “Third-party logistics provider” means an entity that:
    1. provides or coordinates warehousing, distribution, or other services on behalf of a manufacturer, but does not take title to the prescription drug or have general responsibility to direct the prescription drug’s sale or disposition; and
    2. is licensed as a third-party logistics provider.
93. “USP Standards” means standards published in the current official United States Pharmacopeia (USP) or National Formulary.
94. “Valid patient-practitioner relationship”[[38]](#footnote-39) means the relationship that is established between a patient and a practitioner which was based upon the following:
    1. a patient has a medical complaint;
    2. a medical history has been taken;
    3. a face-to-face physical examination adequate to establish the medical complaint has been performed by the prescribing practitioner or, in the instances of telemedicine, through telemedicine practice approved by the appropriate practitioner board; and
    4. some logical connection exists between the medical complaint, the medical history, and the physical examination and the drug prescribed.
95. “Veterinary dispensing” means the interpretation, evaluation, and implementation of a veterinary prescription drug order, including the preparation, final verification, and delivery of a drug for a veterinary patient in a suitable container appropriately labeled for the client for subsequent administration.
96. “Virtual manufacturer” means a manufacturer that sells its own prescription drugs and/or devices but never physically possesses the product.
97. “Virtual wholesale distributor” means a wholesale distributor that sells a prescription drug or device but never physically possesses the Product.
98. “Warning” means a written notice issued to a licensee addressing possible errant conduct.[[39]](#footnote-40)
99. “Wholesale distribution” means the distribution of a drug or device to a person other than a consumer or patient, or receipt of a drug or device by a person other than the consumer or patient, but does not include:[[40]](#footnote-41)
    1. intracompany distribution of any drug between members of an affiliate or within a manufacturer;
    2. the distribution of a drug or an offer to distribute a drug among hospitals or other health care entities that are under common control;
    3. the distribution of a drug or an offer to distribute a drug for emergency medical reasons, including a public health emergency declaration made by the secretary of the united states department of health and human services, except that, for purposes of this paragraph, a drug shortage not caused by a public health emergency shall not constitute an emergency medical reason;
    4. the dispensing of a drug pursuant to a prescription drug order;
    5. the distribution of minimal quantities of a drug by a licensed retail pharmacy to a licensed practitioner for office use;[[41]](#footnote-42)
    6. the distribution of a drug or an offer to distribute a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
    7. the purchase or other acquisition by a dispenser, hospital, or other health care entity of a drug for use by such dispenser, hospital, or other health care entity;
    8. the distribution of a drug by the manufacturer of such drug;
    9. the receipt or transfer of a drug by an authorized third-party logistics provider, provided that such third-party logistics provider does not take ownership of the drug;
    10. a common carrier that transports a drug, provided that the common carrier does not take ownership of the drug;
    11. the distribution of a drug or an offer to distribute a drug by an authorized repackager that has taken ownership or possession of the drug and repackages it in accordance with federal law;
    12. salable drug returns when conducted by a dispenser;
    13. the distribution of a collection of finished medical devices, which may include a drug product or biological product, assembled in kit form strictly for the convenience of the purchaser or user (referred to in this subparagraph as a “medical convenience kit”) if:
        1. the medical convenience kit is assembled in an establishment that is registered with FDA as a device manufacturer;
        2. the medical convenience kit does not contain a controlled substance;
        3. in the case of a medical convenience kit that includes a drug product, the person that manufactures the kit:
           1. purchased such drug product directly from the drug manufacturer or from a wholesale distributor that purchased the drug product directly from the drug manufacturer; and
           2. does not alter the primary container or label of the drug product as purchased from the manufacturer or wholesale distributor; and
        4. in the case of a medical convenience kit that includes a drug product, the drug product is:
           1. an intravenous solution intended for the replenishment of fluids and electrolytes;
           2. a product intended to maintain the equilibrium of water and minerals in the body;
           3. a product intended for irrigation or reconstitution;
           4. an anesthetic;
           5. an anticoagulant;
           6. a vasopressor; or
           7. a sympathomimetic.
    14. the distribution of an intravenous drug that, by its formulation, is intended for the replenishment of fluids and electrolytes (such as sodium, chloride, and potassium) or calories (such as dextrose and amino acids);
    15. the distribution of an intravenous drug used to maintain the equilibrium of water and minerals in the body, such as dialysis solutions;
    16. the distribution of a drug that is intended for irrigation, or sterile water, whether intended for such purposes or for injection;
    17. the distribution of medical gas;
    18. facilitating the distribution of a product by providing solely administrative services, including processing of orders and payments; or
    19. the transfer of a product by a hospital or other health care entity, or by a wholesale distributor or manufacturer operating at the direction of the hospital or other health care entity, to a repackager and registered with FDA for the purpose of repackaging the drug for use by that hospital or other health care entity and other health care entities that are under common control, if ownership of the drug remains with the hospital or other health care entity at all times.
100. “Wholesale distributor” means any business entity, which may include a virtual wholesale distributor, (other than a manufacturer, a manufacturer’s co-licensed partner, a third-party logistics provider, or repackager) engaged in wholesale distribution of prescription drugs or devices in or into the state.

# Article II Board of Pharmacy

### Introductory Comment to Article II

Before it can regulate the practice of pharmacy, the state must first establish and empower the board of pharmacy. Accordingly, Article II of the Model Act defines and creates the board of pharmacy by specifying elements necessary to its formation, organization, and operation.

Each of the Sections contained in this article covers elements that NABP felt necessary to the proper formation and efficient operation of the board. Several of these sections, especially those that contain innovative or infrequently utilized provisions, are supplemented by individual explanatory comments.

Among the Sections of Article II that may be of particular interest to users of the Model Act are the following: Sections 202 and 203(3), pertaining to the inclusion of public members as board members; Section 207, which provides grounds and procedures for removal of board members; and Section 213(2)(b), which enables boards to avail themselves of research and study grants and other non-state monies.

It is also important to note that Section 212 specifically empowers the board to make such rules as are necessary to fully administer and implement the Act. This is a most significant feature of the Model Act. The underlying philosophy of this approach is that the statute should create objectives, guidelines, and policies in general areas, and permit the Board to provide the specifics in its rules. This approach recognizes that it is impossible for state legislatures to enact comprehensive provisions regarding all of the matters with which a board of pharmacy may be confronted or to anticipate the rapidly changing conditions of the professions and the delivery of health care. Consequently, NABP recommends that boards have adequate power to adopt and amend rules with the greatest possible flexibility and autonomy. Section 212 of the Model Act accomplishes this objective.

As noted in the findings of the 1990 report on the “State Discipline of Pharmacists” by the Federal Health and Human Services Department, Office of Inspector General (OIG), “The ability of many State Pharmacy Boards to protect the public is hampered by limitations in their legal authorities, administrative processes, and resources.” Based on these findings, the OIG recommended that, “State governments should ensure that State Pharmacy Boards have adequate resources and authority for carrying out their enforcement responsibilities effectively.”

### Section 201. Designation.

The responsibility for enforcement of the provisions of this Act is hereby vested in the board of pharmacy. The board shall have all of the duties, powers, and authority specifically granted by or necessary for the enforcement of this Act, as well as such other duties, powers, and authority as it may be granted from time to time by applicable law. In the event of a declared state of emergency, the board may waive the requirements of this Act in order to protect the public health, safety, or welfare of its citizens and to facilitate the provision of drugs, devices, and pharmacist care services to the public.[[42]](#footnote-43)

### Section 202. Membership.

The board of pharmacy shall consist of \_\_\_\_\_\_\_\_\_\_\_ members, \_\_\_\_\_\_\_\_\_\_ of whom shall be a representative of the public, one of whom shall be a certified pharmacy technician, and the remainder of whom shall be pharmacists who possess the qualifications specified in Section 203.[[43]](#footnote-44)

### Section 203. Qualifications.

1. Each pharmacist member of the board of pharmacy shall at the time of appointment[[44]](#footnote-45):
   1. be a resident of this state for not less than six months;
   2. be currently licensed and in good standing to engage in the practice of pharmacy in this state;
   3. be actively engaged in the practice of pharmacy in this state; and
   4. have five (5) years of experience in the practice of pharmacy after licensure.
2. Each certified pharmacy technician member of the board of pharmacy shall at the time of appointment:
   1. be a resident of this state for not less than six months;
   2. be currently licensed and in good standing as a certified pharmacy technician in this state;
   3. be an actively practicing certified pharmacy technician in this state; and
   4. have five (5) years of experience as a certified pharmacy technician after licensure.
3. The public member of the board of pharmacy shall be a resident of this state who has attained the age of 18 years and shall not be, nor shall ever have been, a pharmacist, a certified pharmacy technician, or a person who has ever had any direct conflict of interest pertaining to the practice of pharmacy or material financial interest in the provision of pharmacy services or who has engaged in any activity directly related to the practice of pharmacy.[[45]](#footnote-46)

### Section 204. Appointment.

1. The Governor shall appoint the members of the board of pharmacy in accordance with other provisions of this Section and the state constitution.
2. Nominations for appointment to the board may be made to the Governor by any individual, association, or any other entity. Such nominations shall be recommendations only and shall not be binding in any manner upon the Governor.[[46]](#footnote-47)

### Section 205. Terms of Office.

1. Except as provided in subsection (2), members of the board of pharmacy shall be appointed for a term of \_\_\_\_\_\_ years, except that members of the board who are appointed to fill vacancies that 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 \_\_\_\_\_\_ member(s) shall expire in any year. Each member shall serve until a successor is appointed and qualified.
   1. The present members of the board shall serve the balance of their terms.
   2. Any present board member appointed initially for a term of less than \_\_\_\_\_\_ years shall be eligible to serve for \_\_\_\_\_\_\_\_ additional full terms.
3. No member of the board shall serve more than \_\_\_\_\_\_ consecutive full terms. The completion of the unexpired portion of a full term shall not constitute a full term for the purposes of this Section.

### Section 206. Vacancies.

Any vacancy that occurs in the membership of the board for any reason, including expiration of term, removal, resignation, death, disability, or disqualification, shall be expeditiously filled by the Governor in the manner prescribed by Section 204.

### Section 207. Removal.[[47]](#footnote-48)

1. A board member may be removed pursuant to the procedures set forth in subsection (2) herein, upon one or more of the following grounds:
   1. the refusal or inability for any reason of a board member to perform their duties as a member of the board in an efficient, responsible, and professional manner;
   2. the misuse of office by a member of the board to obtain personal, pecuniary, or material gain or advantage for himself or herself or another through such office;
   3. the violation by any member of the laws governing the practice of pharmacy or the distribution of drugs and/or devices.
2. Removal of a member of the board of pharmacy shall be in accordance with the Administrative Procedures Act of this state, or other applicable laws.

### Section 208. Organization.

1. The board of pharmacy shall elect from its members a president and such other officers as it deems appropriate and necessary to the conduct of its business. The president 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 Act. Each additional officer elected by the board shall perform those duties normally associated with their position and such other duties assigned to them 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 and shall serve no more than \_\_\_\_\_\_\_\_\_ consecutive full terms in each office to which they are elected.
3. The board shall employ a pharmacist 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 administrative functions of the board and such other duties as the board may direct.[[48]](#footnote-49)

### Section 209. Compensation of Board Members.

Each member of the board of pharmacy shall receive as compensation the sum of $\_\_\_\_\_\_\_\_\_ per day for each day on which the member is engaged in performance of the official duties of the board, and shall be reimbursed for all reasonable and necessary expenses incurred in connection with the discharge of such official duties.

### Section 210. Meetings.

1. The board of pharmacy shall meet at least once every \_\_\_\_\_\_\_\_\_ months to transact its business. The board shall meet at such additional times as it may determine. Such additional meetings may be called by the president of the board or by two-thirds (2/3) 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 prior notice.
3. Notice of all meetings of the board shall be given in the manner and pursuant to requirements prescribed by the state’s Administrative Procedures Act.
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 this Act or by any rule of the board, all actions of the board shall be by a majority of a quorum.
5. All board meetings and hearings shall be open to the public. The board may, in its discretion and according to law, conduct any portion of its meeting in executive session, closed to the public.[[49]](#footnote-50)

### Section 211. Employees.

The board of pharmacy may, at 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.[[50]](#footnote-51)

### Section 212. Rules.

The board of pharmacy shall make, adopt, amend, and repeal such rules as may be deemed necessary by the board from time to time for the proper administration and enforcement of this Act. Such rules shall be promulgated in accordance with the procedures specified in the Administrative Procedures Act of this state.

### Section 213. Powers and Responsibilities.

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:[[51]](#footnote-52)
   1. the licensing by examination or by licensure transfer of applicants who are qualified to engage in the practice of pharmacy under the provisions of this Act;
   2. the issuance and renewal of licenses to engage in the practice of pharmacy;
   3. the recognition of the NABP Verify credential for the provision of pharmacy-related services by nonresident pharmacists;
   4. the establishment and enforcement of compliance with professional standards and rules of conduct of pharmacists engaged in the practice of pharmacy;
   5. the determination and issuance of standards for recognition and approval of degree programs 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 pharmacy practice experience;[[52]](#footnote-53)
   6. the enforcement of those provisions of this Act relating to the conduct or competence of pharmacists practicing in this state; the revocation, summary suspension, suspension, probation, censure, or reprimand of, or the issuance of warnings or the assessment of fines/civil penalties or costs/administrative costs against licenses to engage in the practice of pharmacy; and the issuance of cease and desist orders against any person or entity;
   7. the licensure and regulation of the training, qualifications, and employment of pharmacy interns, certified pharmacy technicians, and certified pharmacy technician candidates;
   8. the collection of professional demographic data;
   9. the right to seize any such drugs and devices found by the board to constitute an imminent danger to the public health and welfare;
   10. establishing minimum specifications for the physical facilities, technical equipment, environment, supplies, personnel, and procedures for the storage, compounding and/or dispensing of such drugs or devices, for the monitoring of drug therapy, and for the manufacture and distribution of drugs and devices;
   11. establishing minimum standards for the purity and quality of such drugs, devices, and other materials within the practice of pharmacy;
   12. the issuance and renewal of licenses for pharmacies located within this state, or outside this state if providing services to patients within this state, that compound or dispense drugs or devices or provide pharmacist care services.
   13. the issuance and renewal of licenses of all manufacturers and distributors of drugs and devices located within this state, or outside this state if providing such services within this state;
   14. inspection at all reasonable hours of the facility and appropriate records of any licensed person or licensed facility and any person or facility seeking licensure for the purpose of determining if any provisions of the laws governing licensure, the legal distribution of drugs or devices, or the practice of pharmacy are being violated, including the inspection of protected health information.
       1. agents duly authorized to conduct inspections, whether agents of the board or an approved third party, must be competent to inspect the facilities they are assigned to inspect to include training on any applicable state, federal, and USP standards.
       2. the board of pharmacy, its officers, inspectors, and representatives shall cooperate with all agencies charged with the enforcement of the laws of the united states, of this state, and of all other states relating to drugs, devices, and the practice of pharmacy;
   15. the recognition of the NABP Emergency Passport for pharmacists, pharmacy interns, certified pharmacy technicians, and business entities to practice on a temporary or emergency basis in accordance with state emergency orders;
   16. establishing minimum standards for maintaining the integrity and confidentiality of prescription information and other patient health care information; and[[53]](#footnote-54)
   17. the approval of pharmacy practice initiatives that improve the quality of or access to pharmacist care services, but which fall outside the scope of present regulations. This subsection shall not be construed to expand the definition of the practice of pharmacy as defined in this Act.
2. The board of pharmacy shall have such other duties, powers, and authority as may be necessary to the enforcement of this Act 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/or whose activities assist and facilitate the work of the board.
   2. the board may receive and expend funds, in addition to its [annual/biennial] appropriation, from parties other than the state, provided:
      1. such funds are awarded for the pursuit of a specific objective which the board is authorized to accomplish by this Act, or which the board is qualified to accomplish by reason of its jurisdiction or professional expertise;
      2. such funds are expended for the pursuit of the objective for which they are awarded;
      3. activities connected with or occasioned by the expenditures of such funds do not interfere with 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 Act;
      4. such funds are kept in a separate, special account; and
      5. periodic reports are made concerning the Board’s receipt and expenditure of such funds.
   3. The board may establish a Bill of Rights for patients concerning the health care services a patient may expect in regard to pharmacist care services.[[54]](#footnote-55)
   4. Any investigation, inquiry, or hearing which the state board of pharmacy is empowered to hold or undertake may be held or undertaken by or before any member or members of the board and the finding or order of such member or members shall be deemed to be the order of said board when approved and confirmed as noted in Section 210(4).
   5. Embargo.[[55]](#footnote-56)
      1. Notwithstanding anything in this Act 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 (state) Food and Drug Act, they 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.
      2. When a drug or device detained or embargoed has been declared by such representative to be adulterated or misbranded, the board shall, as soon as practical thereafter, petition the judge of the \_\_\_\_\_\_\_\_\_\_ Court in which 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.
      3. 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.
      4. It is the duty of the attorney general [state’s attorney] to whom the board reports any violation of this Section 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 subparagraph (iv) 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.
   6. The board may place under seal all drugs or devices that are owned by or in the possession, custody, or control of a licensee at the time of license suspension or revocation or at the time the board refuses to renew the license. Except as otherwise provided in this Section, drugs or devices so sealed shall not be disposed of until appeal rights under the Administrative Procedures Act have expired, or an appeal filed pursuant to that Act has been determined. The court involved in an appeal filed pursuant to the Administrative Procedures Act may order the board, during the pendency of the appeal, to sell sealed drugs that are perishable. The proceeds of such a sale shall be deposited with that court.
   7. Except as otherwise provided to the contrary, the board shall exercise all of its duties, powers, and authority in accordance with the state Administrative Procedures Act.
   8. In addition to the fees specifically provided for herein, the board may assess additional reasonable fees for services rendered to carry out its duties and responsibilities as required or authorized by this Act or rules adopted hereunder. Such services rendered shall include, but not be limited to, the following:
      1. issuance of duplicate certificates or identification cards;
      2. mailing lists or reports of data maintained by the board;
      3. copies of any documents;
      4. certification of documents;
      5. notices of meetings;
      6. licensure transfer;
      7. examination administration to a licensure applicant; and
      8. examination materials.
   9. Cost recovery.[[56]](#footnote-57)
      1. If any order issues in resolution of a disciplinary proceeding before the board of pharmacy, the board may request the \_\_\_\_\_\_\_\_\_\_\_ to direct any licensee found guilty of a charge involving a violation of any drug laws or rules, to pay to the board a sum not to exceed the reasonable costs of the investigation and prosecution of the case and may include a monetary penalty per violation not to exceed \_\_\_\_\_\_\_\_\_.
      2. In the case of a pharmacy or wholesale distributor, the order may be made as to the corporate owner, if any, and as to any pharmacist, officer, owner, or partner of the pharmacy or wholesale distributor who is found to have had knowledge of or have knowingly participated in one or more of the violations set forth in this Section.
      3. The costs to be assessed shall be fixed by the \_\_\_\_\_\_\_\_\_\_\_ and shall not be increased by the board; where the board does not adopt a proposed decision and remands the case to a(n) \_\_\_\_\_ , the \_\_\_\_\_\_\_\_\_\_ shall not increase any assessed costs.
      4. Where an order for recovery of costs is made and timely payment is not made as directed in the board’s decision, the board may enforce the order for payment in the court in the county where the administrative hearing was held. This right of enforcement shall be in addition to any other rights the board may have as to any person directed to pay costs.
      5. In any action for recovery of costs, proof of the board’s decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

# Article III Licensing

### Introductory Comment to Article III

Article III of the Model Act specifies the requirements for initial licensure of pharmacists, transfer of licensure, and renewal of licenses and registrations. In each of these areas, the Act sets forth basic criteria and delegates to the board the authority for implementing those criteria. The board does this by utilizing appropriate administrative enforcement mechanisms and by the issuance of specific rules.

Section 301 establishes the basis for this article by making it unlawful for any unlicensed person to engage in the practice of pharmacy, and by enabling the board to exact penalties for unlawful practice.

In the area of initial licensure (Section 302), the board must implement the Act by approving degree programs of pharmacy, by specifying the examination to be employed (Section 302[2]), by establishing pharmacy practice experience standards (Section 303), and by ensuring that all other prerequisites are met by each applicant to whom it issues a license.

The Act also reflects the efforts of NABP to continue uniform standards for transfer of licensure (Section 304).

### Section 301. Unlawful Practice. [[57]](#footnote-58)

1. Except as otherwise provided in this Act, it shall be unlawful for any individual located in this state to engage in the practice of pharmacy unless currently licensed.
2. It shall be unlawful for any individual located outside this state to engage in the practice of pharmacy in this state unless currently licensed to practice or credentialed by NABP Verify.[[58]](#footnote-59)
3. The provision of pharmacist care services to an individual in this state, regardless of the location of the pharmacist, shall constitute the practice of pharmacy and shall be subject to regulation.[[59]](#footnote-60) Pharmacists located outside this state who are providing pharmacist care services outside of a licensed pharmacy to individuals located in this state must be licensed to practice pharmacy in this state or be credentialed by NABP Verify.
4. Licensed practitioners authorized under the laws of this state to compound drugs and to dispense drugs to their patients in the practice of their respective professions shall meet the same standards, record-keeping requirements, and all other requirements for the dispensing of drugs applicable to pharmacists.
5. It shall be unlawful for any individual to perform the activities of a certified pharmacy technician or certified pharmacy technician candidate unless currently licensed to do so under the provisions of this Act.
6. Actions of the board:
   1. the board may in its own name issue a cease and desist order to stop an individual from engaging in an unauthorized practice of pharmacy.[[60]](#footnote-61)
   2. except as otherwise indicated in this Act, any individual who, after due process, shall be found by the board to have unlawfully engaged in the practice of pharmacy shall be subject to a fine to be imposed by the board not to exceed $\_\_\_\_ for each offense. Each such violation of this Act 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.
   3. except as otherwise indicated in this Act, any individual who, after due process, shall be found by the board to have unlawfully engaged in the practice of pharmacy that resulted in harm to an individual shall be subject to a fine to be imposed by the board not to exceed $\_\_\_\_ for each offense. each such violation of this Act or the rules promulgated hereunder pertaining to unlawfully engaging in the practice of pharmacy that resulted in harm to an individual shall also constitute a felony punishable upon conviction as provided in the criminal code of this state.

### Section 302. Qualifications for Pharmacist Licensure by Examination.

1. To obtain a license to engage in the practice of pharmacy, an applicant for licensure by examination shall:
   1. have submitted an application in the form prescribed by the board of pharmacy;
   2. have attained the age of 18 years;
   3. have graduated and received the first professional degree from a college or school of pharmacy that has been approved by the board of pharmacy;[[61]](#footnote-62) or have graduated from a foreign college of pharmacy,[[62]](#footnote-63) completed a transcript verification program, taken and passed a college of pharmacy equivalency examination program, and completed a process of communication-ability testing as defined under board of pharmacy regulations so that it is ensured that the applicant meets standards necessary to protect public health and safety;[[63]](#footnote-64)
   4. have completed a pharmacy practice experience program or other program that has been approved by the board of pharmacy, or demonstrated to the board’s satisfaction that experience in the practice of pharmacy which meets or exceeds the minimum pharmacy practice experience requirements of the board;
   5. have successfully passed an examination or examinations approved by the board of pharmacy within five attempts;
   6. have undergone a state and federal fingerprint-based criminal background check as specified by state law or board rule; and
   7. have paid the fees specified by the board of pharmacy for the examination and any related materials and have paid for the issuance of the license.
2. Examinations.
   1. The examinations for licensure, which include a pharmacy practice examination and a jurisprudence examination, required under Section 302(1)(e) of the Act, shall be provided by a testing provider approved by the board.[[64]](#footnote-65) if applicable, state-specific compounding examinations shall be administered by the board. The content and subject matter of the pharmacy practice examination shall be determined by the examination provider approved by the board and the board shall determine the content and subject matter of each state-specific compounding and jurisprudence examination.
   2. The examinations shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The examination provider may employ, cooperate, and contract with any organization or consultant in the preparation and grading of an examination, but the board shall retain the sole discretion and responsibility for determining which applicants are eligible for licensure.

### Section 303. Pharmacy Practice Experience Program Standards; Pharmacy Intern Licensure.

1. The board of pharmacy shall establish standards for pharmacy practice experience programs for the purpose of providing the practice experience necessary for licensure as a pharmacist.
2. The board shall grant a pharmacy intern license to pharmacy students, authorizing those students to engage in the practice of pharmacy under the supervision of a pharmacist.
3. The board of pharmacy shall adopt rules regarding the licensure of pharmacy interns and the standards for pharmacy practice experience programs.[[65]](#footnote-66)
   1. 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.[[66]](#footnote-67)
   2. The board shall establish such licensure requirements for pharmacy interns and standards for pharmacy practice experiences, or any other experiential program necessary to qualify an applicant for the licensure examination and shall also determine the qualifications of preceptors used in practical experience programs.[[67]](#footnote-68)

### Section 304. Qualifications for Licensure Transfer.[[68]](#footnote-69)

1. In order for a pharmacist currently licensed in another jurisdiction to obtain a license as a pharmacist by licensure transfer in this state, an applicant shall:[[69]](#footnote-70)
   1. have submitted an application in the form prescribed by the board of pharmacy;
   2. have attained the age of 18 years;
   3. have possessed at the time of initial licensure as a pharmacist all qualifications necessary to have been eligible for licensure at that time in this state;
   4. have engaged in the practice of pharmacy for a period of at least one (1) year or have met the pharmacy practice experience requirements of this state within the one (1) year period immediately preceding the date of such application;
   5. have presented to the board proof of an active license in good standing;
   6. have presented to the board proof that any other license granted to the applicant by any other state has not been suspended, revoked, or otherwise restricted for any reason, except nonrenewal or for the failure to obtain the required continuing education credits, in any state where the applicant is currently licensed but not engaged in the practice of pharmacy; and
   7. have paid the fees specified by the board.

### Section 305. Licensure of Certified Pharmacy Technician Candidates.

1. In order to be licensed as a certified pharmacy technician candidate in this state, an applicant shall:
   1. have submitted an application in the form prescribed by the board of pharmacy;
   2. have attained the age of \_\_\_\_\_\_\_;
   3. have undergone a state and federal fingerprint-based criminal background check as specified by board rule;
   4. have paid the fees specified by the board; and
   5. have enrolled in a site-specific training program or a competency-based pharmacy technician education and training program that includes experiential training approved by the board of pharmacy and an objective assessment mechanism prepared in accordance with any rules established by the board.
2. No pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes shall be eligible to be licensed as a certified pharmacy technician candidate.[[70]](#footnote-71)
3. Certified pharmacy technician candidates must complete requirements for certified pharmacy technician licensure within 12 months. For good cause shown, the board may approve one 12-month extension.
4. The board of pharmacy shall, by rule, establish requirements for licensure of certified pharmacy technician candidates.

### Section 306. Licensure of Certified Pharmacy Technicians.

1. In order to be licensed as a certified pharmacy technician in this state, an applicant shall:
   1. have submitted an application in the form prescribed by the board of pharmacy;
   2. have attained the age of \_\_\_\_\_\_;
   3. have graduated from high school or obtained a Certificate of General Educational Development (GED) or equivalent;
   4. have:[[71]](#footnote-72)
      1. graduated from a site-specific training program or a competency-based pharmacy technician education and training program that includes experiential training approved by the board of pharmacy;[[72]](#footnote-73), [[73]](#footnote-74)
      2. completed a minimum number of pharmacy technician practice experience hours approved by the board of pharmacy;
   5. have successfully passed an examination developed using nationally recognized and validated psychometric and pharmacy practice standards approved by the board of pharmacy;
   6. have undergone a state and federal fingerprint-based criminal background check as specified by board rule; and
   7. have paid the fees specified by the board of pharmacy for the examination and any related materials and have paid for the issuance of the license.
2. No pharmacist whose license has been denied, revoked, suspended, or restricted for disciplinary purposes shall be eligible to be licensed as a certified pharmacy technician.[[74]](#footnote-75)
3. the board of pharmacy shall, by rule, establish requirements for licensure of certified pharmacy technicians.

### Section 307. Licensure of Dispensing Practitioners.

1. In order to be licensed as dispensing practitioner[[75]](#footnote-76) in this state, an applicant shall:
   1. have submitted an application in the form prescribed by the board of pharmacy;
   2. have undergone a state and federal fingerprint-based criminal background check as specified by board rule;
   3. submit to an inspection of the dispensing practitioner’s facility by the board; and
   4. have paid the fees specified by the board.

### Section 308. Renewal of Licenses.

1. Each pharmacist, pharmacy intern, and certified pharmacy technician shall apply for renewal of licensure annually [or at such interval determined by the board], no later than the first day of \_\_\_\_\_\_\_\_\_\_\_. A pharmacist or pharmacy intern who desires to continue in the practice of pharmacy in this state shall file with the board an application in such form and containing such data as the board may require for renewal of the license.
2. If a pharmacist fails to make application to the state board of pharmacy for renewal of licensure within a period of three years from the expiration of such licensure, the pharmacist must pass an examination for license renewal; except that a person who has been licensed under the laws of this state and after the expiration of licensure, has continually practiced pharmacy in another state under a license issued by the authority of such state, may renew licensure upon payment of the designated fee.
3. The board may extend a pharmacist, pharmacy intern, or certified pharmacy technician license renewal date in the case of a state of emergency or significant public health concern.

### Section 309. Continuing Pharmacy Education.

The board shall, by rule, establish requirements for continuing education in pharmacy, including the determination of acceptable program content and fees. The board shall adopt rules necessary to carry out the stated objectives and purposes, to enforce the provisions of this Section, and to ensure continued competence. The board may extend the date of compliance with continuing pharmacy education provisions in the case of a state of emergency or significant public health concern.[[76]](#footnote-77)

# Article IV Licensing of Facilities

### Introductory Comment to Article IV

The fourth substantive article of the Model Act concerns licensure of pharmacies, manufacturers, wholesale distributors, repackagers, third-party logistics providers, and the like. The licensure requirements of this article will provide a board with knowledge of all facilities involved in the storage, distribution, and sale of drugs or devices within the state and those located outside the state that are shipping drugs or devices into the state. They will permit a board to verify compliance with federal requirements and better ensure against drug or device diversion from the legitimate channels of commerce and provide the necessary data for effective recalls and the dissemination of information.

### Section 401. Unlawful Practice.

1. No business entity designated in Section 402 of this Act shall operate until a license has been issued to the business entity by the board.
2. Except where otherwise permitted by state or federal law, it shall be unlawful for a manufacturer, repackager, third-party logistics provider, or wholesale distributor to distribute or deliver drugs or devices to any person in this state not licensed under this statute. Any manufacturer, repackager, third-party logistics provider, or wholesale distributor who shall distribute or deliver drugs or devices to a person not licensed shall be subject to a fine to be imposed by the board for each offense in addition to such other disciplinary action the board may take under this Act.

### Section 402. Licensing.

1. The following business entities located within this state, and the following business entities located outside this state that provide services to other business entities or patients within this state, shall be licensed by the board of pharmacy and shall periodically renew[[77]](#footnote-78) their license with the board:[[78]](#footnote-79)
   1. pharmacies where drugs or devices are dispensed or compounded, or pharmacist care services are provided;[[79]](#footnote-80)
   2. dispensing practitioner’s facilities including those engaged in compounding;[[80]](#footnote-81), [[81]](#footnote-82)
   3. manufacturers or repackagers of drugs or devices;
   4. wholesale distributors of drugs or devices;
   5. drug or device third-party logistics providers;
   6. outsourcing facilities;
   7. pharmacy benefits managers; and
   8. repository programs,

Where operations are conducted at more than one location, each such location shall be licensed by the board of pharmacy.

1. The board shall establish by rule, under the powers granted to it under Sections 212 and 213 of this Act and as may be required from time to time, under federal law, the criteria that each business entity must meet to qualify for licensure in each classification, as well as the required practice standards applicable to each type of activity and/or facility. The board shall adopt definitions in addition to those provided in Article I, Section 105, where necessary to carry out the board’s responsibilities. The board may issue licenses with varying conditions to such business entity where the board deems it necessary.[[82]](#footnote-83)
2. Each pharmacy and/or outsourcing facility shall have a pharmacist-in-charge. Joint responsibility for compliance with all laws and rules shall be that of the owner and/or permit holder and the pharmacist-in-charge, whether the owner and/or permit holder is a sole proprietor, partnership, association, corporation, or otherwise.
3. Each licensed business entity located outside of this state who ships, mails, dispenses, distributes, wholesale distributes, or delivers drugs or devices in this state, shall comply with the laws of patients’ domicile, and shall designate a registered agent in this state for service of process. Any such licensed business entity that does not so designate a registered agent shall be deemed to have designated the Secretary of State of this state to be its true and lawful attorney, upon whom may be served all legal process in any action or proceeding against such licensed business entity growing out of or arising from such shipping, mailing, dispensing, distribution, wholesale distribution, or delivery of drugs or devices. A copy of any such service of process shall be mailed to such business entity by the board by certified mail, return receipt requested, postage prepaid, at the address such licensed business entity has designated on its application for licensure in this state, or by electronic means if permitted. If any such business entity is not licensed in this state, service on the Secretary of State only shall be sufficient service.[[83]](#footnote-84)
4. The board may enter into agreements with other states or with third parties for the purpose of exchanging information concerning the licensure and inspection of business entities located in this state and those located outside this state.
5. Inspections
   1. For facilities that compound and/or repackage sterile drugs, an initial inspection shall be required prior to initial licensure or upon initiation of sterile compounding activity. Thereafter, an annual inspection shall be required for licensure renewal. For facilities that do not compound sterile drugs, an initial inspection, and thereafter an inspection that takes place not less than every 24 months, shall be required for purposes of licensure or licensure renewal[[84]](#footnote-85). Such inspection shall be performed by the following:
      1. the board or its duly authorized agent; or
      2. a duly authorized agent of a third party approved by the Board[[85]](#footnote-86).
   2. For nonresident pharmacies, the inspection shall be performed by the resident state board of pharmacy, if the resident board’s inspection is substantially equivalent to inspection in this state, or a duly authorized agent of a third party approved by the board.[[86]](#footnote-87)
6. The board may consider exempting facilities engaged solely in the distribution of dialysate, drugs, or devices necessary to perform home renal dialysis to patients with chronic kidney failure from pharmacy licensure, provided that the following criteria are met:
   1. The dialysate, drugs, or devices are approved by Food and Drug Administration, as required by federal law.
   2. The dialysate, drugs, or devices are lawfully held by a manufacturer (or a manufacturer’s agent) that is properly registered with the board as a manufacturer and/or wholesale drug distributor.
   3. The dialysate, drugs, or devices are held and delivered in their original, sealed labeled packaging from the manufacturing facility.
   4. The dialysate, drugs, or devices are delivered only by the manufacturer   
      (or the manufacturer’s agent) and only upon receipt of a physician’s order.
   5. The manufacturer (or manufacturer’s agent) delivers the dialysate, drugs,   
      or devices directly to:
      1. a patient with chronic kidney failure, or their designee, for the  
         patient’s self-administration of dialysis therapy, or
      2. a health care provider or institution for administration or delivery of  
         the dialysis therapy to a patient with chronic kidney failure.
   6. Records of all sales and distribution of dialysate, drugs, or devices to home dialysis patients must be retained and readily available for inspection and copying by the board for \_\_\_\_\_\_ years.

### Section 403. Application.[[87]](#footnote-88)

1. The board shall specify by rule the licensure procedures to be followed, including but not limited to, specification of forms for use in applying for such licensure and times, places, and applicable fees.
2. Applicants for licensure to dispense, distribute, wholesale distribute, manufacture, sell, purchase, transfer, and/or produce drugs or devices, and applicants for licensure as a pharmacy benefits manager, shall file with the board of pharmacy a complete and accurate application containing such information as the board requires of the applicant relative to the qualifications for a license.
3. The board of pharmacy shall require any pharmacy applicant for initial and renewal of licensure to state whether they engage or intend to engage in compounding as defined in this Act and, if so, complete a questionnaire approved by the board.[[88]](#footnote-89), [[89]](#footnote-90)
4. Licenses issued by the board pursuant to this Act shall not be transferable or assignable.
5. The board shall specify by rule minimum standards for responsibility of any business entity, pharmacy, or pharmacy benefits manager that has employees or personnel engaged in the practice of pharmacy, or manufacture, distribution, wholesale distribution, production, sale, or use of drugs or devices in the conduct of their business. If the licensed business entity is a pharmacy located in this state, that portion of the facility to which such license applies shall be operated only under the direct supervision of a pharmacist licensed to practice in this state. If that business entity is an outsourcing facility, all compounding at the facility shall be under the direct supervision of a licensed pharmacist and comply with federal requirements applicable to outsourcing facilities.
6. A surety bond of not less than $100,000, or other equivalent means of security acceptable to the board or a third party recognized by the board such as insurance, an irrevocable letter of credit, or funds deposited in a trust account or financial institution shall be required for all wholesale distributor applicants. Such bond will be used to secure payment of any administrative penalties imposed by the board and any fees or costs incurred by the board regarding that licensee when authorized under state law and the licensee fails to pay within thirty (30) days . A separate surety bond or other equivalent means of security is not required for each company’s separate locations or for affiliated companies/groups when such separate locations or affiliated companies/groups are required to apply for or renew their wholesale distributor license with the board. The board may make a claim against such bond or other equivalent means of security until one year after the wholesale distributor’s license ceases to be valid or until sixty (60) days after any administrative or legal proceeding before or on behalf of the board that involves the wholesale distributor is concluded, including any appeal, whichever occurs later. The board may waive the bond requirement if the wholesale distributor:
   1. has previously obtained a comparable surety bond or other equivalent means of security for the purpose of licensure in another state, where the wholesale distributor possesses a valid license in good standing; or
   2. is a publicly held company.

### Section 404. Notifications.

1. All licensed business entities or persons shall report to the board of pharmacy the occurrence of any of the following:
   1. permanent closing;
   2. change of ownership, management, location, or pharmacist-in-charge of a pharmacy;
   3. any theft or loss of drugs or devices;
   4. any conviction of any employee of any state or federal drug laws;
   5. any criminal conviction or pleas of guilty or nolo contendere of all licensed or registered personnel;
   6. disasters, accidents, or any theft, destruction, or loss of records required to be maintained by state or federal law;
   7. occurrences of significant quality-related events;
   8. serious adverse drug experience associated with compounded drugs;
   9. recalls of compounded drugs;
   10. recalls of sterile repackaged drugs;
   11. any temporary closing of a pharmacy for more than two consecutive calendar days outside of the pharmacy’s regular operating hours shall be reported to the board by the next business day along with contingency plans for accessing patient prescriptions and records.
   12. illegal use or disclosure of protected health information; or
   13. any and all other matters and occurrences as the board may require by rule.
2. Prior to commencing any sterile compounding activity, all licensed business entities and/or persons shall report to the board of pharmacy, or its authorized agent, whether the licensed facility will be engaging in any sterile compounding in a manner determined by the board. The board may establish by rule additional reporting requirements for sterile and nonsterile compounding activities.
3. All licensed business entities and/or persons shall report to the board of pharmacy, or its authorized agent, the occurrence of any pharmacy or pharmacy-related inspection conducted by any state or federal regulatory agency or authorized agent thereof and shall provide a copy of the report of such inspection, including applicable documents relating to corrective actions within a timeframe determined by the board.[[90]](#footnote-91)

# Article V Discipline

### Introductory Comment to Article V

At the very heart of any Pharmacy Act is the enforcement power of the board of pharmacy. The board must have authority to discipline and/or prohibit pharmacies, pharmacists, pharmacy interns, certified pharmacy technicians, or certified pharmacy technician candidates and business entities and facilities that violate this Act or Rules from continuing to threaten the public if it is to fulfill its responsibilities. The board must have the ability to stop wrongdoers, either permanently or temporarily, discipline them, and, where appropriate, to guide and assist errant licensees in rehabilitating themselves.

The Model Act disciplinary provisions are contained in Article V. They were drafted with the purpose of granting to the board the widest possible scope within which to perform its disciplinary functions. Standardized disciplinary action terms and definitions were developed to facilitate the accurate reporting of disciplinary actions taken by boards of pharmacy and to avoid confusion associated with state-to-state variations in terms and definitions. The grounds for disciplinary action were developed to ensure protection of the public, while reserving to the board the power to expand upon them and adapt them to changing or local conditions as necessary. The penalties permitted under the Model Act will afford the board the flexibility to conform and relate discipline to offenses.

### Section 501. Disciplinary Action Terms.

The following is a list of disciplinary actions that may be taken, issued, or assessed by the board of pharmacy: revocation, summary suspension, suspension, probation, censure, reprimand, warning, cease and desist, fine/civil penalty, costs/administrative costs.[[91]](#footnote-92)

### Section 502. Grounds, Penalties, and Reinstatement.[[92]](#footnote-93)

1. The board of pharmacy may refuse to issue or renew, or may revoke, summarily suspend, suspend, place on probation, censure, reprimand, issue a warning against, or issue a cease and desist order against, the licenses or the registration of, or assess a fine/civil penalty or costs/administrative costs against any person pursuant to the procedures set forth in Section 503 herein below, upon one or more of the following grounds:
   1. Unprofessional conduct as that term is defined by the rules of the board;[[93]](#footnote-94)
   2. Incapacity that prevents a licensee from engaging in the practice of pharmacy or a registrant from assisting in the practice of pharmacy, with reasonable skill, competence, and safety to the public;[[94]](#footnote-95)
   3. Being guilty of one (1) or more of the following:
      1. a felony; or
      2. 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;[[95]](#footnote-96)
   4. Disciplinary action taken by another state or jurisdiction against a license or other authorization to practice pharmacy based upon conduct by the licensee similar to conduct that would constitute grounds for actions as defined in this Section, which involves or may result in direct patient impact or harm in states other than that of the initiating board;
   5. Failure to report to the board any adverse action taken by another licensing jurisdiction (united states or foreign), government agency, law enforcement agency, or court for conduct that would constitute grounds for action as defined in this Section;
   6. Failure to report to the board one’s surrender of a license or authorization to practice pharmacy in another state or jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this Section;
   7. Failure to report to the board any adverse judgment, settlement, or award arising from a malpractice claim arising related to conduct that would constitute grounds for action as defined in this Section;
   8. Knowing or suspecting that a pharmacist or pharmacy intern is incapable of engaging in the practice of pharmacy or that a certified pharmacy technician or certified pharmacy technician candidate 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;
   9. Misrepresentation of a material fact by a licensee in securing the issuance or renewal of a license or registration;
   10. Fraud by a licensee in connection with the practice of pharmacy;
   11. Affiliating with websites that may deceive or defraud patients or that violate 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;
   12. Engaging, or aiding and abetting an individual to engage in the practice of pharmacy without a license; assisting in the practice of pharmacy or aiding and abetting an individual to assist in the practice of pharmacy without being licensed by the board of pharmacy; or falsely using the title of pharmacist, pharmacy intern, certified pharmacy technician, or certified pharmacy technician candidate;
   13. Requiring pharmacy personnel to meet production and/or performance metrics and/or quotas that negatively impact patient safety.[[96]](#footnote-97)
   14. Failing to pay the costs assessed in a disciplinary hearing;
   15. Engaging in any conduct that subverts or attempts to subvert any licensing examination or the administration of any licensing examination;[[97]](#footnote-98)
   16. Being found by the board to be in violation of any of the provisions of this Act or rules adopted pursuant to this Act;
   17. Illegal use or disclosure of protected health information;
   18. Impeding or subverting an investigation or failure to furnish to the board, its investigators, or representatives any information legally requested by the board;
   19. Willfully and knowingly submitting false or fraudulent information or omitting information on due diligence questionnaires and/or attestation documents regarding the purchase or receipt of drugs from manufacturers, repackagers, third-party logistics providers, and wholesale distributors;
   20. Affiliating with websites that may deceive or defraud patients or that violate 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;
   21. Illegal use or disclosure of protected health information.
   22. Retaliating against or disciplining an employee for filing a complaint with a state board of pharmacy or other licensing body or reporting a suspected violation of state or federal statute or any ordinance or regulation of a political subdivision that the employee's employer has authority to correct. As used in this paragraph, retaliation or discipline of an employee includes, but is not limited to, the following:
       1. removing or suspending the employee from employment;
       2. withholding from the employee salary increases or employee benefits to which the employee is otherwise entitled;
       3. transferring or reassigning the employee;
       4. denying the employee a promotion that otherwise would have been received;
       5. reducing the employee in pay or position.
   23. The furnishing of false or fraudulent material in any application made in connection with drug or device manufacturing or distribution;
   24. Suspension or revocation by federal, state, or local government of any license currently or previously held by the applicant for the manufacture or distribution of any drugs or devices, including controlled substances;
   25. Obtaining any remuneration by fraud, misrepresentation, or deception;
   26. Dealing with drugs or devices that a person knows or should have known are suspect or illegitimate products;[[98]](#footnote-99)
   27. Purchasing or receiving of a drug from a source other than an authorized trading partner or a device from a source other than a person or pharmacy licensed under the laws of the state, except where otherwise provided;
   28. The transfer by a pharmacy to a wholesale distributor or to another pharmacy without being licensed as a wholesale distributor. The following are not subject to the provisions of this subsection:
       1. Prescription drugs or devices that are returned by a pharmacy for credit, in an amount equal to or less than the actual purchase price, to the wholesale distributor or manufacturer from which those products were purchased;
       2. Intracompany sales;
       3. The sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug among hospitals or other health care entities that are under common control;
       4. The sale, purchase, or trade of a drug or the offer to sell, purchase, or trade a drug by a charitable organization described in 503(c)(3) of the internal revenue code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
       5. The purchase or other acquisition by a hospital or other similar health care entity that is a member of a group purchasing organization of a drug for its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations;
       6. The transfer of prescription drugs or devices between pharmacies pursuant to a centralized prescription processing or filling agreement;
       7. The transfer of a drug from one pharmacy to another for a specific patient need to fill a prescription drug order for an identified patient;
       8. The distribution of minimal quantities of product by a pharmacy to a licensed practitioner for office use.
   29. Wholesale drug distributors, other than pharmacies, dispensing or distributing drugs or devices directly to patients;
   30. Violations of any of the provisions of this Act or of any of the rules adopted by the board under this Act.
2. The board of pharmacy may deny or refuse to issue or renew a license if it determines that the issuing or renewing of such license would not be in the public interest, or as otherwise statutorily provided.
3. Reinstatement of a license that has been suspended, revoked, or restricted by the board may be granted in accordance with the procedures specified by Section 401 of this Act.
4. The board of pharmacy shall require complainants to identify themselves in the complaint and make themselves available for an evidentiary interview. Complainants may request that their identity remain confidential during the preliminary investigatory process. The board may take action on a complaint if the patient or complainant does not comply with the board’s investigation when the board has probable cause of a violation of law. It shall be an act of unprofessional conduct for any licensee to file a false or fraudulent complaint or report to the board.
5. Impaired practice licensees
   1. The board may defer action with regard to an impaired practice licensee who voluntarily signs an agreement, in a form satisfactory to the board, agreeing not to practice pharmacy and to enter an approved treatment and therapeutic monitoring program in accordance with this Section, provided that this Section should not apply to a licensee who has been convicted of, pleads guilty to, or enters a plea of nolo contendere to a felonious act prohibited by \_\_\_\_\_\_\_\_\_\_ or a conviction relating to a controlled substance in a court of law of the united states or any other state, territory, or country. A licensee who is physically or behaviorally impaired due to substance use may qualify as an impaired practice licensee and have disciplinary action deferred and ultimately waived only if the board is satisfied that such action will not endanger the public and the licensee enters into an agreement with the board for a treatment and therapeutic monitoring plan approved by the board, progresses satisfactorily in such treatment and monitoring program, complies with all terms of the agreement and all other applicable terms of subsection (2)(b). Failure to enter such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the licensee from the provisions of this Section and the board shall activate an immediate investigation and disciplinary proceedings. Upon successfully meeting the requirements of the treatment and therapeutic monitoring program in accordance with the agreement signed by the board, the licensee may apply for permission to resume the practice of pharmacy upon such conditions as the board determines necessary.
   2. The board may require a licensee to enter into an agreement that includes, but is not limited to, the following provisions:
      1. Licensee agrees to voluntarily surrender their license for a period of time to be determined by the board following commencement of the treatment and therapeutic monitoring program.
      2. Licensee will enroll in a treatment and monitoring program that includes substance use disorder professionals and is approved by the board.
      3. Licensee agrees that failure to satisfactorily progress in such treatment and monitoring program shall be reported to the board by the treating professional, who shall be immune from any liability for such reporting made in good faith.
      4. Licensee consents to the treating physician or professional of the approved treatment and therapeutic monitoring program reporting to the board on the progress of licensee at such intervals as the board deems necessary and such person making such report will not be liable when such reports are made in good faith.
   3. The ability of an impaired practice licensee to practice shall only be restored and charges dismissed when the board is satisfied by the reports it has received from the approved treatment and therapeutic monitoring program that licensee can resume practice under a current approved treatment plan without danger to the public.
   4. Licensee consents, in accordance with applicable law, to the release to the board of any treatment information from the approved treatment program.
   5. Failure to enter into such agreement or to comply with the terms and make satisfactory progress in the treatment and monitoring program shall disqualify the licensee from the provisions of this Section and the board shall activate an immediate investigation and disciplinary proceedings.
   6. Any person who has substantial evidence that a licensee has an impairment due to a substance use disorder for which the licensee is not receiving treatment under a program approved by the board pursuant to an agreement entered into under this Section, is diverting a controlled substance, or is mentally or physically incompetent to carry out their duties of licensure, shall make or cause to be made a report to the board. Any person who reports pursuant to this Section in good faith and without malice shall be immune from any civil or criminal liability arising from such reports. Failure to provide such a report within a reasonable time from receipt of knowledge may be considered grounds for disciplinary action against the licensee for failing to report.
6. Any person whose license to practice pharmacy in this state has been denied renewal, voluntarily surrendered, summarily suspended, suspended, or revoked 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.[[99]](#footnote-100) Such petition shall be made as prescribed by the board. Upon investigation and hearing, the board may, at its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances that 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.
7. Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.
8. All final decisions by the board shall be subject to judicial review pursuant to the Administrative Procedures Act.

### Section 503. Procedure.[[100]](#footnote-101)

1. Notwithstanding any provisions of the state Administrative Procedures Act, the board may, without a hearing, summarily suspend a license for not more than 60 days if the board finds that a pharmacist, pharmacy intern, certified pharmacy technician, certified pharmacy technician candidate, business entity or facility has violated a law or rule that the board is empowered to enforce, and if continued practice by the pharmacist, pharmacy intern, certified pharmacy technician, certified pharmacy technician candidate, business entity or facility would create an imminent risk of harm to the public. The suspension shall take effect upon written notice to the pharmacist, pharmacy intern, certified pharmacy technician, certified pharmacy technician candidate, business entity or facility 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, certified pharmacy technician, certified pharmacy technician candidate, business entity or facility shall be provided with at least 10 days’ notice of any hearing held under this subsection.
2. Notwithstanding any provisions of the state Administrative Procedures Act, the board may, in its own name, issue a cease and desist order to stop an individual from engaging in an unauthorized practice of pharmacy or violating or threatening to violate a statute, rule, or order that the board has issued or is empowered to enforce. The cease and desist order must state the reason for its issuance and give notice of the individual’s right to request a hearing under applicable procedures as set forth in the Administrative Procedures Act. Nothing herein shall be construed as barring criminal prosecutions for violations of this Act.

# Article VI Other

### Section 601. Severability.

If any provision of this Act is declared unconstitutional or illegal, or the applicability of this Act to any person, pharmacy, or circumstance is held invalid by a court of competent jurisdiction, the constitutionality or legality of the remaining provisions of this Act and the application of this Act to other persons, pharmacies, and circumstances shall not be affected and shall remain in full force and effect without the invalid provision or application.

### Section 602. Effective Date.

This Act shall be in full force and effect on \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

# Model Rules for the Practice of Pharmacy

### Section 1. Pharmacy Licensure.

1. To obtain a license for a pharmacy, an applicant shall:
   1. have submitted an application in the form prescribed by the board of pharmacy;
   2. have attained the age of 18 years; and
   3. have paid the fees specified by the board of pharmacy for the issuance of the license.
2. The facility owner, if an individual, shall have undergone a state and federal fingerprint-based criminal background check;
3. The facility shall have undergone a pharmacy inspection by the board or authorized agent thereof;
4. The pharmacy shall have sufficient space, references, equipment, and storage to allow for the safe and proper storage of prescription drugs and for the safe and proper compounding and/or preparing and dispensing of prescription drug orders.
5. The pharmacy, if operating a website or other digital content, shall be accredited by a program approved by the board.[[101]](#footnote-102)
6. Upon renewal, the licensee shall provide to the board the NABP e-Profile ID of the pharmacy and the pharmacist-in-charge.

### Section 2. Security.

1. Basic Provisions
   1. Each pharmacist, while on duty, shall be responsible for the security of the pharmacy, including provisions for effective control against theft or diversion of drugs and/or devices.
   2. The pharmacy shall be secured by either a physical barrier with suitable locks and/or an electronic barrier to detect entry at a time when the pharmacist is not present. In the event of separation of employment of an employee, suitable action shall be taken to ensure the security of the pharmacy.
   3. Prescription and other patient health care information shall be maintained in a manner that protects the integrity and confidentiality of such information.
   4. The Pharmacy shall implement and maintain processes and technologies that will aid in theft prevention, detection, and investigation. The pharmacy shall implement and maintain processes and technologies that will aid in theft prevention, detection, and investigation.

### Section 3. Personnel.

1. Pharmacist-in-Charge
   1. No person shall operate a pharmacy without a pharmacist-in-charge. A pharmacist may not serve as pharmacist-in-charge unless engaged in the pharmacy a sufficient amount of time to provide supervision and control. A pharmacist may serve as pharmacist-in-charge for more than one pharmacy at any one time upon obtaining permission from the board.
   2. The pharmacist-in-charge has the following responsibilities:
      1. Ensuring that all pharmacists, pharmacy interns, certified pharmacy technicians, and certified pharmacy technician candidates employed at the pharmacy are currently licensed by the board of pharmacy.[[102]](#footnote-103)
      2. Notifying the board of pharmacy, as required, of any of the following[[103]](#footnote-104) changes:
         1. change of employment or responsibility as the pharmacist-in-charge;
         2. the separation of employment of any pharmacist, pharmacy intern, certified pharmacy technician candidate, or certified pharmacy technician for any confirmed drug-related reason, including but not limited to, adulteration, abuse, theft, or diversion, and shall include in the notice the reason for the termination: if it is the employment of the pharmacist-in-charge that is terminated, the owner and/or pharmacy permit holder shall notify the board of pharmacy;
         3. change of ownership of the pharmacy;
         4. change of address of the pharmacy;
         5. permanent closing of the pharmacy;
         6. significant quality-related events;
         7. the installation or removal of automated pharmacy systems. Such notice must include, but is not limited to:
            1. the name and address of the pharmacy;
            2. the location of the automated pharmacy system; and
            3. the identification of the responsible pharmacist.
            4. Such notice must occur prior to the installation or removal of the system.
      3. Making or filing any reports required by state or federal laws and rules.
      4. Reporting any theft, suspected theft, diversion, or other significant loss of any prescription drug within one business day of discovery to the board of pharmacy and as required by Drug Enforcement Administration (DEA) or other state or federal agencies for prescription drugs and controlled substances.
      5. Responding to the board of pharmacy regarding any minor violations.
   3. The pharmacist-in-charge shall be assisted by a sufficient number of pharmacists, certified pharmacy technicians, and certified pharmacy technician candidates as may be required to competently and safely provide pharmacy services.
      1. The pharmacist-in-charge shall develop or adopt, implement, and maintain written policies and procedures to specify the duties to be performed by certified pharmacy technicians and certified pharmacy technician candidates. The duties and responsibilities of these personnel shall be consistent with their education, training, and experience and shall address the method and level of necessary supervision specific to the practice site.
      2. The pharmacist-in-charge shall develop or adopt, implement, and maintain a training program that is site-specific to the practice setting of which the pharmacist is in charge for all individuals employed by the pharmacy.[[104]](#footnote-105)
2. Policies and Procedures.

The pharmacist-in-charge is responsible for developing or adopting, implementing, and maintaining policies and procedures[[105]](#footnote-106) addressing the following:

* 1. the practice of pharmacy[[106]](#footnote-107);
  2. the procurement, storage, security, and disposition of drugs and devices, particularly controlled substances and drugs of concern;
  3. record retention systems;
  4. automated pharmacy systems[[107]](#footnote-108);
  5. shared pharmacy services[[108]](#footnote-109);
  6. operation of the pharmacy in the event of a fire, flood, pandemic, or other natural or man-made disaster or emergency, to the extent that the pharmacy can be safely and effectively operated and the drugs contained therein can be safely stored and dispensed. Such policies and procedures shall include reporting to the board[[109]](#footnote-110);
  7. the proper management of drug recalls;
  8. the duties to be performed by pharmacy personnel. The duties and responsibilities of these personnel shall be consistent with their education, training, experience, and license and shall address the method and level of necessary supervision specific to the practice site.
  9. activities related to prescription drug shipment by mail or common carrier:
     1. properly transferring prescription information to an alternative pharmacy of the patient’s choice in situations where the drug is not delivered or deliverable;
     2. verifying that common carriers have in place security provisions, such as criminal background checks and random drug screens on its employees who have access to prescription drugs;
     3. tracking all shipments; and
     4. taking measures to prevent drugs from becoming adulterated in transit
  10. quality assurance programs addressing pharmacy services and equipment;
  11. activities related to security, internal theft, and diversion, including:
      1. inspection of shipments;
      2. receipt verification oversight and checking in shipments;
      3. reconciliation of orders; and
      4. inventory management, including:
         1. determination of drugs that need to be monitored and controlled beyond existing systems such as controlled substances and drugs of concern; and
         2. conducting quarterly reconciliations at a minimum but shall be more frequent up to perpetual, depending on the potential for or incidence of diversion for a particular drug.
      5. restrictions and control over and access to the locks, barriers, and systems used to secure the pharmacy and pharmacy systems in accordance with state laws and regulations.
      6. actions to be taken to prevent and react to pharmacy robberies and thefts, including but not limited to coordinating with law enforcement, training, mitigation of harm, and protecting the crime scene.
      7. the prevention and detection of drug diversion.[[110]](#footnote-111)
  12. operational aspects of the computerized record-keeping system;
  13. the pharmacy continuous quality improvement program.

1. Pharmacy Labor Standards/Shift Lengths and Breaks
   1. A pharmacy licensed under this Act shall not require a pharmacist, pharmacist intern, certified pharmacy technician, or certified pharmacy technician candidate to work longer than 12 continuous hours in any 24-hour period, inclusive of the breaks required under subsection (b).
   2. A pharmacist who works 6 continuous hours or longer per day shall be allowed to take, at a minimum, one 30-minute uninterrupted meal break and one 15-minute break during that 6-hour period. If such pharmacist is required to work 12 continuous hours in any 24-hour period, at a minimum, the pharmacist qualifies for an additional 15-minute break.
   3. A pharmacy may, but is not required to, close when a pharmacist is allowed to take a break under subsection (b). If the pharmacy does not close, the pharmacist shall either remain within the pharmacy or within the establishment in which the pharmacy is located in order to be available for emergencies. In addition, the following applies:
      1. certified pharmacy technicians, certified pharmacy technician candidates, and pharmacist interns authorized by the pharmacist on duty may continue to perform duties as allowed under this Act;
      2. no duties reserved to pharmacists and pharmacist interns under this Act, or that require the professional judgment of a pharmacist, may be performed by certified pharmacy technicians or certified pharmacy technician candidates;
      3. only prescription drug orders that have received final verification may be dispensed while the pharmacist is on break, except those prescription drug orders that require patient counseling by a pharmacist, including all new prescription drug orders and those refilled prescription drug orders for which a pharmacist has determined that counseling is necessary and/or is conducted pursuant to counseling laws and/or regulations;[[111]](#footnote-112) and
      4. a pharmacist using their professional judgment may waive subsections (a) and (b).
2. If any action of the pharmacy is deemed to contribute to or cause a violation of any provision of this Section, the board may hold the owner and/or pharmacy permit holder responsible and/or absolve the pharmacist-in-charge from the responsibility of that action.

### Section 4. Prescription Drug Order Processing.

1. Prescription Drug Order

A prescription drug order shall contain the following information at a minimum:

* 1. full name, date of birth, and street address of the patient
  2. name, prescribing practitioner’s license designation, address, and, if required by law or rules of the board, DEA registration number of the prescribing practitioner;
  3. date of issuance;
  4. name, strength, dosage form, and quantity of drug prescribed;
  5. directions for use;
  6. refills authorized, if any;
  7. if a written prescription drug order, prescribing practitioner’s signature;
  8. if an electronically transmitted prescription drug order, prescribing practitioner’s electronic or digital signature;
  9. if a hard copy prescription drug order generated from electronic media, prescribing practitioner’s electronic or manual signature. For those with electronic signatures, such prescription drug orders shall be applied to paper that utilizes security features[[112]](#footnote-113) that will ensure that the prescription drug order is not subject to any form of copying and/or alteration.

1. Manner of Issuance of a Prescription Drug Order

A prescription drug order for a controlled substance should comply with federal regulations.[[113]](#footnote-114) A prescription drug order, to be valid, must be issued for a legitimate medical purpose by a practitioner acting within the course of legitimate professional practice. The responsibility for the proper prescribing and dispensing of controlled substances is upon the prescribing practitioner, but a corresponding responsibility rests with the pharmacist who fills the prescription.[[114]](#footnote-115)



1. Transfer of a Prescription Drug Order

Pharmacies utilizing manual as well as automated data-processing systems shall satisfy all the information and documentation requirements for a prescription drug order transfer listed below, except as noted below for those pharmacies accessing a common electronic file. The transfer of original prescription drug order information for the purpose of refill dispensing is permissible between pharmacies subject to the following requirements:

* 1. The information for a prescription, other than for a controlled substance,[[115]](#footnote-116) must be communicated directly between pharmacists, pharmacy interns, or certified pharmacy technicians.
  2. The following information must be recorded by the transferring pharmacy:
     1. the fact that the original prescription drug order has been deemed void/closed;
     2. the name and address of the pharmacy to which it was transferred;
     3. the name of the pharmacist, pharmacy intern, or certified pharmacy technician receiving the prescription drug order;
     4. the date of the transfer; and
     5. the name of the pharmacist, pharmacy intern, or certified pharmacy technician transferring the information.
  3. The following information must be recorded by the pharmacy receiving the transferred prescription drug order:
     1. the fact that the prescription drug order has been received via transfer;
     2. the date of issuance of the original prescription drug order;
     3. the original number of refills authorized on the original prescription drug order;
     4. the date of original dispensing;
     5. the number of valid refills remaining and the date of last refill;
     6. the pharmacy’s name, address, and original prescription number from which the prescription drug order information was transferred; and
     7. the name of the transferring pharmacist, pharmacy intern, or certified pharmacy technician.
  4. Systems providing for the electronic transfer of information shall not infringe on a patient’s freedom of choice as to the provider of pharmacist care services.
  5. Both the original and transferred prescription drug order information shall be maintained for a period of five years from the date of last refill.
  6. Pharmacies accessing a common electronic file or database used to maintain required dispensing information are not required to transfer prescription drug orders or information for dispensing purposes between or among pharmacies participating in the same common prescription file, provided, however, that any such common file shall contain complete records of each prescription drug order and refill dispensed, and shall protect against the illegal use or disclosure of protected health information.
  7. In an emergency, a pharmacy may transfer original prescription drug order information for a non-controlled substance to a second pharmacy for the purpose of dispensing up to a 72-hour supply without voiding the original prescription drug order.

1. Drug Product Selection by the Pharmacist
   1. A pharmacist dispensing a prescription drug order for a drug product prescribed by its brand name may select any equivalent drug product provided that the manufacturer or distributor holds, if applicable, either an approved New Drug Application (NDA) or an approved Abbreviated New Drug Application (ANDA), unless other approval by law or from the Federal Food and Drug Administration is required.
   2. The pharmacist shall not select an equivalent drug product if the practitioner instructs otherwise, either orally or in writing, on the prescription drug order.
   3. The pharmacist shall notify the patient or patient’s agent if a drug other than the brand name drug prescribed is dispensed.
2. Labeling
   1. All drugs dispensed to ambulatory or outpatients, including drugs dispensed by practitioners, shall have a label affixed to the container in which such drug is dispensed. The label shall conform with the USP chapter addressing prescription container labeling.

### Section 5. Record Keeping.

1. Patient Records[[116]](#footnote-117)
   1. A patient record system shall be maintained by all pharmacies and dispensing practitioners for patients for whom prescription drug orders are dispensed. The patient record system shall provide for the immediate retrieval of information necessary for the dispensing pharmacist to identify previously dispensed drugs at the time a prescription drug order is presented for dispensing, and be created and stored in a manner to protect against illegal use or disclosure of protected health information. The pharmacist shall make a reasonable effort to obtain, record, and maintain the following information:
      1. full name of the patient for whom the drug is intended;
      2. street address and telephone number of the patient;
      3. patient’s age or date of birth;
      4. patient’s gender;
      5. a list of the drugs taken by the patient during the preceding 24 months; and
      6. pharmacist comments relevant to the individual’s drug therapy, including any other information peculiar to the specific patient or drug.
   2. The pharmacist shall make a reasonable effort to obtain from the patient or the patient’s agent and shall record any known allergies, drug reactions, and chronic conditions or disease states of the patient and the identity of any other drugs, including over-the-counter drugs or devices currently being used by the patient which may relate to prospective drug review.
   3. A patient record shall be maintained for a period of not less than ten years from the date of the last entry in the profile record. This record may be a hard copy or a computerized form.
   4. Serious adverse dug experiences shall be reported to the practitioner and an appropriate entry shall be made in the patient’s record.
2. Records of Dispensing/Delivery[[117]](#footnote-118)
   1. Records of receipt, dispensing, delivery, distribution, or other disposition of all drugs or devices are to be made in accordance with federal law and kept by pharmacies for five years and shall include, but not be limited to:
      1. quantity dispensed for original and refills, if different from original;
      2. date of receipt, dispensing, delivery, distribution, or other disposition;
      3. serial number (or equivalent if an institution);
      4. the identification of the pharmacist, certified pharmacy technician, or certified pharmacy technician candidate responsible for dispensing;
      5. name and manufacturer of drug dispensed if drug product selection occurs; and
      6. records of refills to date.
   2. Pharmacies that ship drugs by mail, common carrier, or other type of delivery service shall implement a mechanism to verify that a patient or caregiver has actually received the delivered drug.[[118]](#footnote-119)
3. Electronic Record Keeping
   1. Data Storage and Retrieval
      1. The system shall provide online retrieval of original prescription drug order information. Such information shall include, but not be limited to, the prescription drug order requirements and records of dispensing as indicated in Section 4 of this Rule; and
      2. The storage and retrieval of refill information for original paper prescription orders for controlled substances in Schedule III and IV are subject to federal regulations;
   2. Security

To maintain the confidentiality of patient records, the system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of patient records. Once the drug has been dispensed, any alterations in prescription drug order data shall be documented, including the identification of the pharmacist responsible for the alteration.

* 1. System Backup (Auxiliary Records Maintenance)
     1. In the event of an unscheduled system interruption, sufficient patient data and prescription drug order data should be available to permit reconstruction of such data as soon as possible for the pharmacist to dispense drugs with sound professional judgment.
     2. An auxiliary system shall be established for the documentation of refills if the automated data processing system is inoperative for any reason and to ensure that all refills are authorized by the original prescription drug order and that the maximum number of refills is not exceeded.
     3. The auxiliary system shall be in place to provide for the maintenance of all necessary patient drug information (as outlined in this rule) until the automated system becomes operational. However, nothing in this Section shall preclude the pharmacist from using professional judgment for the benefit of a patient’s health and safety.
     4. When the automated system is restored to operation, the information regarding prescription drug orders dispensed and refilled during the inoperative period shall be entered into the automated system as soon as possible.
     5. Routine backup systems and procedures (hard copy, copy, disk, etc) shall be in place and operational to ensure against loss of patient data.
     6. In the event that permanent dispensing information is lost due to unscheduled system interruption, the board of pharmacy shall be notified as soon as possible.

### Section 6. Pharmacist Care Services.

1. Pharmacist care services are services intended to achieve patient outcomes related to the treatment or prevention of disease, elimination or reduction of symptoms, and promotion of health and wellness. Pharmacist care services include but are not limited to:
   1. drug utilization review
   2. emergency use prescribing and dispensing[[119]](#footnote-120)
   3. medication therapy management (MTM)
   4. reviewing, selecting, and developing formularies and/or practice guidelines
   5. performing drug product selection, substitution, therapeutic interchange[[120]](#footnote-121)prescription adaptation or continuation of therapy,
   6. performing drug product selection, substitution, therapeutic interchange[[121]](#footnote-122)prescription adaptation or continuation of therapy
   7. ordering, interpreting laboratory tests, and performing Clinical Laboratory Improvement Amendments-waived[[122]](#footnote-123) lab tests.
2. Drug Utilization Review (DUR)[[123]](#footnote-124)

A pharmacist shall obtain and review the patient records and medical history for each prescription drug order for:

* 1. known allergies;
  2. rational therapy contraindications;
  3. reasonable dose, duration of use, and route of administration, considering age, gender, and other patient factors;
  4. reasonable directions for use;
  5. potential or actual adverse drug reactions;
  6. drug-drug interactions;
  7. drug-food interactions;
  8. drug-disease contraindications;
  9. therapeutic duplication;
  10. proper utilization (including over- or under-utilization), and optimum therapeutic outcomes; and
  11. abuse/misuse.

Upon recognizing any of the above, which may also include information obtained from reviewing data found in the prescription monitoring program, the pharmacist shall take appropriate steps to avoid or resolve the problem which, if necessary, includes consultation with the practitioner.

1. Patient Counseling[[124]](#footnote-125)
   1. Upon receipt of a prescription drug order and following a review of the patient’s record, a pharmacist shall engage in discussion of matters which will enhance or optimize drug therapy with each patient or caregiver of such patient. Such discussion shall be in person, whenever practicable, or by telephone or other audio/visual means of communication and shall include appropriate elements of patient counseling. Such elements may include the following:
      1. the name and description of the drug;
      2. the dosage form, dose, route of administration, and duration of drug therapy;
      3. intended use of the drug and expected action;
      4. special directions and precautions for preparation, administration, and use by the patient;
      5. common severe side or adverse effects or interactions and therapeutic contraindications that may be encountered, including their avoidance, and the action required if they occur;
      6. techniques for self-monitoring Drug therapy;
      7. proper storage and appropriate disposal method(s) of unwanted or unused medication;
      8. prescription refill information;
      9. action to be taken in the event of a missed dose; and
      10. Pharmacist comments relevant to the individual’s drug therapy, including any other information peculiar to the specific patient or drug.
   2. An offer for patient counseling can be made by a certified pharmacy technician or certified pharmacy technician candidate. An offer for patient counseling can be made by a certified pharmacy technician or certified pharmacy technician candidate.
   3. Alternative forms of patient information may be used to supplement patient counseling when appropriate. Examples include written information leaflets, pictogram labels, video programs, etc.
   4. Patient counseling, as described above and defined in this Act, shall not be required for inpatients of a hospital or institution where other licensed health care professionals are authorized to administer the drug(s).
   5. A pharmacist shall not be required to counsel a patient or caregiver when the patient or caregiver refuses such consultation.
2. Medication Adherence Monitoring Services and Patient Intervention Programs

Medication adherence monitoring services and patient intervention programs designed to promote improved medication use behaviors, such as compliance and adherence, appropriate monitoring and self-reporting, increased patient knowledge, and improved therapy options, shall comply with federal and state law addressing the privacy of protected health information.

1. Collaborative Pharmacy Practice
   1. Collaborative Pharmacy Practice Agreement

A pharmacist planning to engage in collaborative pharmacy practice shall have on file at their place of practice the collaborative pharmacy practice agreement. Any additional information the board may require concerning the collaborative pharmacy practice agreement, including the agreement itself, shall be made available to the board for review upon request. The agreement may allow the pharmacist, within the pharmacist’s scope of practice pursuant to the collaborative pharmacy practice agreement, to conduct activities approved by the practitioner in good standing, and as defined by law and by the rules of the board. The collaboration that the practitioner agrees to conduct with the pharmacist must be within the scope of the practitioner’s current practice.

* 1. Contents

The collaborative pharmacy practice agreement shall include:

* + 1. identification of the practitioner(s) and pharmacist(s) who are parties to the agreement;
    2. the types of decisions that the pharmacist is allowed to make;
    3. a process for generating any necessary medical orders, including prescription drug orders, required to initiate allowed activities;
    4. a method for the practitioner to monitor compliance with the agreement and clinical outcomes and to intercede where necessary;
    5. a description of the continuous quality improvement program used to evaluate effectiveness of patient care and ensure positive patient outcomes;
    6. a provision that allows the practitioner to override a collaborative practice decision made by the pharmacist whenever the Practitioner deems it necessary or appropriate;
    7. a provision that allows either party to cancel the agreement by written notification;
    8. an effective date;
    9. signatures of all collaborating pharmacists and practitioners who are party to the agreement, as well as dates of signing; and
    10. a procedure for periodic review and renewal within a time frame that is clinically appropriate.
  1. Amendments to a collaborative pharmacy practice agreement must be documented, signed, and dated.
  2. Documentation of pharmacist activities

Documentation of allowed activities must be kept as part of the patient’s permanent record and be readily available to other health care professionals who are providing care to that patient and who are authorized to receive it.

1. Emergency Use Prescribing and Dispensing

Prescribing and dispensing drugs for emergency use shall be pursuant to a pharmacist-issued prescription drug order and include appropriate patient counseling. Drugs or devices for emergency use include, but are not limited to:

* 1. Opioid overdose reversal agents, such as naloxone;
  2. Epinephrine;
  3. Antidote kits;
  4. Short-acting beta agonist inhalers; and
  5. Medication for opioid use disorder for the purpose of initiating therapy for opioid use disorder. The pharmacist must:
     1. obtain a DEA registration and a state controlled substance license or registration, if required; and
     2. use professional judgment to assess the clinical appropriateness of the patient’s request and the length of time until the patient obtains treatment from an authorized practitioner.[[125]](#footnote-126)

1. Emergency Refills

A pharmacist may authorize and dispense a refill of a prescription drug without practitioner authorization if:[[126]](#footnote-127),

* 1. in the pharmacist’s professional judgment, the prescription drug is essential to the maintenance of the patient’s life or to the continuation of therapy;
  2. the pharmacist makes a good faith effort to reduce the information to a form that may be maintained for the time required by law or rule, indicates that it is an “Emergency Refill Prescription,” and maintains the record as required by state and federal law, as well as state and federal disaster agencies, for consideration for possible reimbursement programs implemented to ensure continued provision of care during a disaster or emergency;
  3. the pharmacist informs the patient or the patient’s agent at the time of dispensing that the prescription drug is being provided without the practitioner’s authorization and that authorization of the practitioner is required for future refills; and
  4. the pharmacist informs the prescriber of the emergency refill as soon as practicable.

Unit-of-use quantities may be dispensed when appropriate.

### Section 7. Continuous Quality Improvement Program.

1. Continuous Quality Improvement Program
   1. Compliance with this Section may be considered by the board as a mitigating factor in the investigation and evaluation of a quality-related event (QRE).
   2. Each pharmacy shall establish a continuous quality improvement (CQI) program for the purpose of detecting, documenting, assessing, and preventing QREs. At a minimum, a CQI program shall include provisions to:
      1. designate an individual or individuals responsible for implementing, maintaining, and monitoring the CQI program,;
      2. initiate documentation of QREs as soon as possible, but no more than three days, after determining their occurrence;
      3. analyze data collected in response to QREs to assess causes and any contributing factors such as staffing levels, workflow, and technological support;
      4. use the findings of the analysis to formulate an appropriate response and develop pharmacy systems and workflow processes designed to prevent QREs and increase good outcomes for patients;
      5. for those persons utilizing a drug formulary, a periodic review of such formulary shall be undertaken to ensure that appropriate drugs are being offered/selected in the best interest of patients.
   3. As a component of its CQI program, each pharmacy shall ensure that periodic meetings are held, at least annually, by staff members of the pharmacy to consider the effects on quality of the pharmacy system due to staffing levels, workflow, and technological support. Such meetings shall review data showing evidence of the quality of care for patients served by the pharmacy and shall develop plans for improvements in the system of pharmacy practice so as to increase good outcomes for patients.
   4. Appropriately-blinded incidents of QREs shall be reported to a nationally recognized error reporting program designated by the board.
   5. Quality Self-Audit

Each Pharmacy shall conduct a quality self-audit at least quarterly to determine whether the occurrence of QREs has decreased and whether there has been compliance with preventative procedures, and to develop a plan for improved adherence with the CQI program in the future. Each pharmacy shall conduct a quality self-audit upon change of pharmacist-in-charge to familiarize that person with the pharmacy’s CQI program.

* 1. Protection from Discovery[[127]](#footnote-128)

All information, communications, or data maintained as a component of a pharmacy CQI program are privileged and confidential and not subject to discovery in civil litigation[[128]](#footnote-129). This shall not prevent review of a pharmacy’s CQI program and records maintained as part of a system by the board, pursuant to subpoena, as necessary to protect the public health and safety. All information, communications, or data furnished to any peer review committee, and any findings, conclusions, or recommendations resulting from the proceedings of such committee, board, or entity are privileged. The records and proceedings of any peer review committee are confidential and shall be used by such committee, and the members thereof, only in the exercise of the proper functions of the committee and shall not be public records nor be available for court subpoena or for discovery proceedings. The disclosure of confidential, privileged peer review committee information during advocacy, or as a report to the board of pharmacy, or to the affected pharmacist or pharmacy auxiliary personnel under review does not constitute a waiver of either confidentiality or privilege.

* 1. Compliance with Subpoena

All persons shall comply fully with a subpoena issued by the board for documents or information as otherwise authorized by law. The disclosure of documents or information under subpoena does not constitute a waiver of the privilege associated with a CQI program. Failure to comply with the subpoena is grounds for disciplinary action against the person by the appropriate licensing board.

### Section 8. Shared Pharmacy Services.

1. General Requirements[[129]](#footnote-130), [[130]](#footnote-131)
   1. The pharmacy must possess a resident or nonresident permit issued by the board prior to engaging in shared pharmacy services.[[131]](#footnote-132)
   2. A pharmacy may provide or utilize shared pharmacy services only if the pharmacies involved:
      1. have the same owner; or
      2. have a written contract or agreement that outlines the services provided and the shared responsibilities of each pharmacy in complying with federal and state pharmacy laws and rules; and
      3. share a common electronic file or technology that allows access to information necessary or required to perform shared pharmacy services in conformance with the pharmacy act and the board’s rules.
   3. A pharmacy engaged in shared pharmacy services shall comply with appropriate federal and state controlled substance registrations for each pharmacy if controlled substances are maintained.
2. Operations
   1. Pharmacies engaging in shared pharmacy services, or a pharmacist acting independently of a pharmacy and participating in shared pharmacy services shall:
      1. maintain records identifying, individually, for each prescription drug order processed, the name of each pharmacist or pharmacy intern who took part in the drug utilization review, refill authorization, or therapeutic intervention functions performed at that pharmacy and the name of any certified pharmacy technician or certified pharmacy technician candidate if they assisted in any of those functions;
      2. maintain records identifying individually, for each prescription drug order filled or dispensed, the name of each pharmacist or pharmacy intern who took part in the filling, dispensing, and patient counseling functions performed at that pharmacy and the name of any certified pharmacy technician or certified pharmacy technician candidate if they assisted in any of those functions;
      3. report to the board as soon as practical the results of any disciplinary action taken by another state’s board of pharmacy involving shared pharmacy services;
      4. maintain a mechanism for tracking the prescription drug order during each step of the processing and filling procedures performed at the pharmacy;
      5. maintain a mechanism for the patient to identify all pharmacies involved in filling the prescription drug order; and
      6. be able to obtain for inspection any required record or information within 72 hours of any request by the board or its designee.
3. Drug Storage and Security
   1. Drugs shall be stored in compliance with state and federal laws and in accordance with these Rules, including those addressing temperature, proper containers, and the handling of outdated drugs.
   2. Access to the area where drugs are stored at the shared pharmacy services pharmacy must be limited to:
      1. pharmacists, certified pharmacy technicians, certified pharmacy technician candidates, or pharmacy interns who are employed by the shared pharmacy services pharmacy; or
      2. personnel employed at the institutional facility or clinic where the shared pharmacy services pharmacy is located who:
         1. are licensed health care providers;
         2. are documented by the pharmacist-in-charge or the person responsible for the supervision and on-site operation of the facility where the shared services pharmacy is located; and
         3. have completed documented training concerning their duties associated with the shared pharmacy services Pharmacy.
   3. Shared pharmacy services pharmacies shall have adequate security to:
      1. comply with federal and state laws and regulations; and
      2. protect the confidentiality and integrity of protected health information.
4. Policies and Procedures
   1. Each pharmacy in shared pharmacy services shall jointly develop, implement, review, revise, and comply with joint policies and procedures for shared pharmacy services. Each pharmacy is required to maintain the portion of the joint policies and procedures that relate to that pharmacy’s operations. The policies and procedures shall:
      1. outline the responsibilities of each pharmacy;
      2. include a list of the name, address, telephone numbers, and all license and permit numbers of the pharmacies involved in shared pharmacy services; and
      3. include processes for:
         1. notifying patients that their prescription drug orders may be processed or filled by another pharmacy and providing the name of the pharmacy;
         2. protecting the confidentiality and integrity of protected health information;
         3. dispensing prescription drug orders when the filled prescription drug order is not received or the patient comes in before the prescription drug order is received:
         4. maintaining required manual or electronic records to identify the name, initials or identification code and specific activity or activities of each pharmacist, certified pharmacy technician, certified pharmacy technician candidate, or pharmacy intern who performed any shared pharmacy services;
         5. complying with federal and state laws; and
         6. operating a continuous quality improvement program for shared pharmacy services, designed to objectively and systematically monitor and evaluate the quality and appropriateness of patient care, pursue opportunities to improve patient care, and resolve identified problems.
5. Individual Practice
   1. Nothing in this Section shall prohibit an individual pharmacist licensed in the state, who is an employee of or under contract with a pharmacy, or a licensed certified pharmacy technician, certified pharmacy technician candidate, or pharmacy intern, working under the supervision of the pharmacist, from accessing that pharmacy’s electronic database from inside or outside the pharmacy and performing the prescription drug order processing functions permitted by the Pharmacy Act, if both of the following conditions are met:
      1. the pharmacy establishes controls to protect the confidentiality and integrity of protected health information; and
      2. no part of the database is duplicated, downloaded, or removed from the pharmacy’s electronic database.

### Section 9. Automated Pharmacy Systems.

1. Automated pharmacy systems can be utilized in licensed pharmacies, shared pharmacy services pharmacies, and other locations approved by the board. A pharmacist is not required to be physically present at the site of the automated pharmacy system if the system is supervised electronically by a pharmacist. Automated pharmacy systems shall comply with the following provisions.
   1. Documentation as to type of equipment, serial numbers, content, policies and procedures, and shared pharmacy services pharmacy location shall be maintained in the pharmacy for review. Such documentation shall include, but is not limited to:
      1. name and address of the pharmacy and the shared pharmacy services pharmacy where the automated pharmacy system is being used;
      2. manufacturer’s name and model;
      3. description of how the automated pharmacy system is used;
      4. quality assurance procedures to determine continued appropriate use of the automated pharmacy system;
      5. documentation evidencing that the automated pharmacy system has been tested prior to initial use and on a periodic basis at each location to ensure that the automated pharmacy system is operating properly.
   2. A pharmacist shall be accessible to respond to inquiries or requests pertaining to drugs dispensed from the automated pharmacy system.[[132]](#footnote-133)
   3. Any pharmacy that maintains an automated pharmacy system for the purposes of remote dispensing to outpatients[[133]](#footnote-134) shall maintain an interactive communication system to provide for effective communication between the patient and the pharmacist; the video/auditory communication system shall allow for the appropriate exchange of oral and written communication and patient counseling; if the video/auditory communication system malfunctions, then all operations of the automated pharmacy system shall cease until the system is fully functional.
   4. Automated pharmacy systems shall have adequate security systems to:
      1. prevent unauthorized access;
      2. comply with federal and state regulations; and
      3. prevent the illegal use or disclosure of protected health information.
   5. Records and/or electronic data kept by automated pharmacy systems shall meet the following requirements.
      1. All events involving the contents of the automated pharmacy system must be recorded electronically.
      2. Records must be maintained by the pharmacy and must be readily available to the board. Such records shall include:
         1. identity of system accessed;
         2. identification of the individual accessing the system;
         3. type of transaction;
         4. name, strength, dosage form, and quantity of the drug accessed;
         5. name of the patient for whom the drug was ordered; and
         6. such additional information as the pharmacist-in-charge may deem necessary.
   6. Access to and limits on access (eg, security levels) to the automated pharmacy system shall be defined.[[134]](#footnote-135)
   7. The pharmacist-in-charge shall have the responsibility to:
      1. assign, discontinue, or change access to the system;
      2. ensure that access to the drugs complies with state and federal regulations;
      3. ensure that the automated pharmacy system is filled/stocked accurately.
   8. The filling/stocking of all drugs in the automated pharmacy system shall be accomplished by qualified personnel under the supervision of a licensed pharmacist.
   9. A record of drugs filled/stocked into an automated pharmacy system shall be maintained and shall include identification of the persons filling/stocking and checking for accuracy.[[135]](#footnote-136)
   10. All containers of drugs stored in the automated pharmacy system shall be packaged and labeled in accordance with federal and state laws and regulations.
   11. All aspects of handling controlled substances shall meet the requirements of all state and federal laws and regulations.
   12. The automated pharmacy system shall provide a mechanism for securing and accounting for drugs removed from and subsequently returned to the automated pharmacy system, all in accordance with existing state and federal law.[[136]](#footnote-137)
   13. The automated pharmacy system shall provide a mechanism for securing and accounting for wasted or discarded drugs in accordance with existing state and federal law.
2. Policies and Procedures
   1. The pharmacist-in-charge is responsible for developing or adopting, implementing, and maintaining automated pharmacy systems policies and procedures that address the following:
      1. system operation, safety, stocking accuracy, patient confidentiality, access and limits to access, environmental controls, and malfunction;
      2. provision of pharmacist care;
      3. security, including:
         1. preventing unauthorized access;
         2. prevention of the illegal use or disclosure of protected health information.
   2. All policies and procedures shall be maintained in the pharmacy responsible for the automated pharmacy system and, if the automated pharmacy system is being used at a different location, at that location as well.

### Section 10. Return and Reuse of Prescription Drugs.

1. Prescription drugs may only be returned and reused providing that the prescription drugs were packaged in:
   1. the original, sealed, and tamper-evident bulk, unit-of-use,[[137]](#footnote-138) or unit dose packaging; or
   2. the dispensing pharmacy’s original packaging that maintains the product quality.
2. All returned packaging must indicate that the prescription drug’s integrity and stability has been maintained.
3. All returned prescription drugs must be evaluated by appropriate pharmacy staff to ensure that such prescription drugs are not adulterated or misbranded.

Section 11. Prescription Drug Repository Programs.

1. Repository programs must have written policies and procedures, which include at a minimum:
   1. qualifications of acceptable drugs for reuse. Such qualifications must include the following provisions:
      1. only non-controlled drugs will be accepted;[[138]](#footnote-139)
      2. all drugs will be inspected by appropriate pharmacy staff and determined to be:
         1. unadulterated;
         2. unexpired; and
         3. in unopened unit dose or manufacturer’s tamper-evident original packaging, or otherwise approved by the board of pharmacy;
      3. maintenance of a separate physical inventory;
      4. completion of a monthly expiration date review for all drugs;
      5. prohibition for charging or accepting compensation for drugs except for administrative or minimal dispensing fees;
      6. dispensing by a pharmacist or a practitioner within the practitioner’s scope of practice; and
      7. record keeping, including the source and dispensation of all drugs.
   2. A requirement that the patient receives notification that the drug is being dispensed by a repository program.

### Section 12. Disposal of Controlled Substances.[[139]](#footnote-140)

Any persons legally authorized to possess controlled substances in the course of their professional practice or the conduct of their business shall dispose of such drugs in compliance with federal law.

### Section 13. Repackaging by Pharmacies For Own Use.

1. A pharmacy may repackage drugs for its own use under the following circumstances:
   1. Containers utilized for repackaging shall meet, as a minimum requirement, Class B container standards as referenced by USP;
   2. The repackaging processes are conducted under conditions that ensure the integrity of the drug and under the direct supervision of a pharmacist;
   3. The repackaged drugs are labeled with the following components:
      1. drug name;
      2. drug strength;
      3. pharmacy control and manufacturer lot number;
      4. name of the manufacturer or distributor of the drug or the national drug code; and
      5. beyond-use date, which shall be the manufacturer’s expiration date or one that is required under the must current USP standards, whichever is earlier;
   4. Records of all repackaging operations are maintained and include the following:
      1. the name (nonproprietary and proprietary name), strength, dosage form, quantity per container, and quantity of containers of the drug being repackaged;
      2. the name of the manufacturer or distributor of the drug;
      3. pharmacy control and manufacturer lot number;
      4. expiration date of the drug according to the original manufacturer or distributor container and the beyond-use date;
      5. the name, initials, or identification codes of the certified pharmacy technician or certified pharmacy technician candidate that repackaged the drug and the name or initials of the pharmacist that verified the appropriateness of the repackaged drug; and
      6. the date the drug is repackaged.
   5. All drugs repackaged are stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the labeling of such drugs, or with requirements in the current edition of an official compendium.
2. Pharmacies that store drugs within an automated counting device or automated pharmacy system may, in place of the required label, maintain records of lot numbers and beyond-use dates that are required on the label as long as they are fully traceable and is readily retrievable.
3. The pharmacist-in-charge is responsible for developing or adopting, implementing, and maintaining[[140]](#footnote-141) policies and procedures addressing repackaging processes.

### Section 14. Telepharmacy

1. General Requirements
   1. The pharmacy shall:
      1. obtain a resident or nonresident permit issued by the board prior to engaging in the practice of telepharmacy;
      2. comply with appropriate federal and state controlled substance laws and rules for each pharmacy if controlled substances are maintained;
      3. maintain additional policies and procedures specific to telepharmacy.
2. Remote Dispensing Site Requirements
   1. The pharmacy shall submit an application to the board.
   2. The pharmacist-in-charge of the supervising pharmacy shall be responsible for all operations.
   3. The pharmacy shall have a written contract or agreement that outlines the services provided and the responsibilities of each party in complying with federal and state pharmacy laws and rules.
   4. The pharmacist-in-charge shall oversee monthly inspections, maintenance, and reconciliation of all controlled substances, including maintaining a perpetual inventory for all Schedule II controlled substances.
   5. A pharmacist must be designated to be available within ( \_) hours, in case of emergency.
   6. Unless staffed by a pharmacist, a remote dispensing site must be staffed by at least one (1) certified pharmacy technician. All certified pharmacy technicians and certified pharmacy technician candidates shall be under the supervision of a pharmacist at the supervising pharmacy at all times that the remote site is operational. The pharmacist shall supervise telepharmacy operations electronically from the supervising pharmacy.
   7. The remote dispensing site and the supervising pharmacy must utilize a common electronic record-keeping system that must be capable of the following:
      1. Electronic records must be available to, and accessible from, both the supervising pharmacy and the remote dispensing site at all times of operations; and
      2. Prescriptions dispensed at the remote dispensing site must be distinguishable from those dispensed from the supervising pharmacy.
   8. Controlled substance records must be maintained at the registered location unless specific approval is granted for central storage as permitted by, and in compliance with, state and federal law.
   9. A supervising pharmacy of a remote dispensing site must maintain a video and audio communication system that provides for effective communication between the supervising pharmacy and the remote dispensing site personnel and patients or caregivers. The system must provide an adequate number of views of the entire site, facilitate adequate pharmacist supervision and allow the appropriate exchanges of visual, verbal, and written communications for patient counseling and other matters involved in the lawful transaction or delivery of drugs. The remote dispensing site must retain a recording of facility surveillance, excluding patient communications, for a minimum of (\_) days.
      1. Adequate supervision by the pharmacist in this setting is maintaining uninterrupted visual supervision and auditory communication with the site and full supervisory control of the automated system, if applicable, and must not be delegated to another person.
      2. Each component of the communication system must be in good working order. Unless a pharmacist is present onsite, the remote dispensing site must be, or remain, closed to the public if any component of the communication system is malfunctioning, until system corrections or repairs are completed.
      3. The video and audio communication system used to counsel and interact with each patient or patient’s caregiver must be secure and compliant with state and federal confidentiality requirements.
   10. Unless a pharmacist is present, a remote dispensing site must not be open or its employees allowed access to it during times the supervising pharmacy is closed. The security system must allow for tracking of entries into the remote dispensing site, and the pharmacist-in-charge must periodically review the provision of access and record of entries.
   11. If drugs are maintained or dispensed from the remote dispensing site, drug transfers to the remote dispensing site must comply with applicable state and federal requirements.
   12. A remote dispensing site must display a sign, easily visible to the public, which informs patients:
       1. this is a remote site
       2. location of supervising pharmacy; and
       3. that a pharmacist will counsel the patient using audio and video communication systems each time a new drug is dispensed and at the time it is refilled, if necessary, at a remote dispensing site.
   13. The remote dispensing site must use telepharmacy technology that confirms that the drug selected to fill the prescription is the same as indicated on the prescription label and prescription drug order.

### Section 15. Provision of Pharmacist Care Services Outside of a Licensed Pharmacy.

In order for a pharmacist to provide pharmacist care services outside the premises of a licensed pharmacy, an applicant shall:

1. register/license with the board(s) or; if located out of state, have an active NABP Verify credential;
2. have appropriate security and protections in place to ensure the confidentiality of records or other patient-specific information;
3. maintain such records in readily retrievable form; and
4. follow the patient care process approved by the board.[[141]](#footnote-142)

### Section 16. Approval of Pharmacy Practice Initiatives.[[142]](#footnote-143)

1. Application.[[143]](#footnote-144)

An application for approval of a pharmacy practice initiative that improves the quality of or access to pharmacist care services, but which falls outside the scope of present regulations, shall be submitted to the board and shall contain at least the following information:

* 1. The name, address, telephone number, and the license number of the pharmacist responsible for overseeing the initiative;
  2. The specific location and, if a pharmacy, the pharmacy name, address, telephone, and license number where the proposed pharmacy practice initiative will be conducted; and
  3. A detailed summary of the proposed pharmacy practice initiative, which includes:
     1. the goals and/or objectives of the proposed pharmacy practice initiative;
     2. a full explanation of the initiative and how it will be conducted;
     3. the time frame for the pharmacy practice initiative, including the proposed start date;
     4. background information or literature review to support the proposal, if applicable;
     5. the rule(s) that will have to be waived in order to complete the pharmacy practice initiative and a request to waive the rule(s); and
     6. procedures to be used during the pharmacy practice initiative to ensure that the public’s health and safety are not compromised as a result of the rule waiver.

1. Approval by the Board.

The board shall approve a pharmacy practice initiative if it determines that:

* 1. the pharmacy practice initiative will improve the quality of or access to pharmacist care services;
  2. the pharmacy practice initiative will not adversely affect, directly or indirectly, the health, safety, or well-being of the public; and
  3. the alternative measures to be taken, if any, are equivalent or superior to those prescribed in the part for which the rule waiver is requested.

The board shall deny, revoke, or refuse to renew an application for a pharmacy practice initiative if the board determines that the above requirements have not been met. In issuing an approval for a pharmacy practice initiative, the board may impose such terms and conditions it deems appropriate to carry out the purposes of Section 213(1)(o) of this Act and the rules adopted thereunder.

1. Notification.

The board shall notify the applicant in writing within 60 days of the board’s decision. If an approval is granted, the notification shall specify the period of time for which the approval and rule waiver will be effective and any conditions to be met by the applicant.

1. Extension of Approval of Pharmacy Practice Initiatives.

A request for an extension of an approval of a pharmacy practice initiative shall be submitted in writing at least (\_\_\_\_\_\_\_\_\_) days prior to the expiration date of the existing approval. Renewal requests shall contain the information specified in subsection (1). An approval of a pharmacy practice initiative shall be renewed by the board if the applicant continues to satisfy the criteria contained in subsection (2) and demonstrates compliance with the alternative measures or conditions imposed at the time the original pharmacy practice initiative was approved.

### Section 17. Unprofessional Conduct.

unprofessional conduct shall include, but is not limited to, the following acts of a pharmacist or pharmacy:

1. The publication or circulation of false, misleading, or otherwise deceptive statements concerning the practice of pharmacy;
2. Unreasonably refusing to compound or dispense prescription drug orders that may be expected to be compounded or dispensed in pharmacies by pharmacists;
3. Attempting to circumvent the patient counseling requirements, or discouraging the patient from receiving patient counseling concerning their prescription drug orders;
4. The illegal use or disclosure of protected health information;
5. Failure to maintain adequate records, systems, and security to protect against the illegal use or disclosure of protected health information;
6. Failure to maintain adequate records to account for disclosures of protected health information;
7. Selling, giving away, or otherwise disposing of accessories, chemicals, or drugs or devices found in illegal drug traffic when the pharmacist knows or should have known of their intended use in illegal activities;
8. Engaging in conduct likely to deceive, defraud, or harm the public, or demonstrating a willful or careless disregard for the health, welfare, or safety of a patient, or engaging in conduct which substantially departs from the standards of care ordinarily exercised by a pharmacist, with proof of actual injury not having to be established;
9. Selling a drug for which a prescription drug order from a practitioner is required, without having received a prescription drug order for the drug;
10. Willfully and knowingly failing to maintain complete and accurate records of all drugs received, dispensed, or disposed of in compliance with the federal laws and regulations and state laws and rules;
11. Obtaining any remuneration by fraud, misrepresentation, or deception, including, but not limited to, receiving remuneration for amending or modifying, or attempting to amend or modify, a patient’s pharmacist care services, absent a clear benefit to the patient, solely in response to promotion or marketing activities;
12. Willfully and knowingly completing and submitting inaccurate due diligence questionnaires and attestation documents regarding the purchase or receipt of drugs from manufacturers, repackagers, third-party logistics providers, and wholesale distributors.

# 

# Model Prescription Monitoring Program Act

### Section 1. Short Title.

This Act shall be known and may be cited as the Model Prescription Monitoring Program Act.

### Section 2. Legislative Findings.

(Insert state-appropriate mission/purposes.)

### Section 3. Purpose.

(Insert state-appropriate mission/purposes.)

### Section 4. Definitions.

1. “Dispenser” means a person authorized in this state to distribute to the ultimate user a substance monitored by the prescription monitoring program, but does not include:
   1. a licensed hospital or institutional facility pharmacy that distributes such substances for the purposes of inpatient care;
   2. a licensed nurse or medication aide who administers such a substance at the direction of a licensed physician;
2. “Drug of Concern” means any prescription or over-the-counter drug that demonstrates a potential for abuse, particularly those identified by boards of pharmacy, law enforcement, and addiction treatment professionals.
3. “Electronic Health Information Systems” means an electronic data intermediary, gateway, or hub that facilitates secure delivery of electronic health information to practitioners or dispensers, including:
   1. health information exchanges;
   2. health information networks;
   3. pharmacy software systems;
   4. electronic medical (health) record software applications; or
   5. electronic prescribing software applications.
4. “Interoperability” means the sharing of prescription monitoring program information with another PMP, or the integration of prescription monitoring program information into the electronic health information systems.
5. “Prescription Monitoring Program Information” means information submitted to and maintained by the prescription monitoring program.[[144]](#footnote-145)
6. “Prescription Monitoring Program (PMP)” means a program established under Section 5 of this Act.

### Section 5. Establishment of a Prescription Monitoring Program.

1. The board of pharmacy shall establish and maintain an electronic system for monitoring all controlled substances in Schedules II through V, all state-specified controlled substances in Schedules II through V, and state-specified drugs of concern dispensed to patients in this state.
2. The board of pharmacy may contract with a vendor to establish and maintain the electronic monitoring system pursuant to guidelines, which the board of pharmacy shall promulgate.
3. The board of pharmacy shall promulgate rules or establish policy to include the following:
   1. using the PMP to improve patient care and to facilitate the goal of reducing misuse, abuse, overdose, addiction to and diversion of controlled substances and drugs of concern;
   2. implementing security and safeguards necessary to ensure that information is released only to authorized individuals;
   3. developing criteria for referring prescription monitoring program information to a law enforcement agency;
   4. developing criteria for referring prescription monitoring program Information to a licensing boards, or other state or federal agency charged with the regulation of prescribing, dispensing, or administering a controlled substance or drug of concern;
   5. designing and implementing training, education, and/or instruction in the appropriate access to and use of the PMP;
   6. adopting the most recent version of the American Society for Automation in Pharmacy (ASAP) technical standards for electronic reporting of Prescription Monitoring Program Information; and
   7. incorporating technological improvement to facilitate the interoperability of the PMP with other state PMPs and electronic health information systems and to facilitate prescribers’ and dispensers’ access to and use of the PMP.

### Section 6. Reporting of Prescription Monitoring Program Information.

1. Each dispenser shall submit to the board of pharmacy, by electronic means, or other format specified in a waiver granted by the board of pharmacy, within 24 hours, information specified by the board of pharmacy, including:
   1. Identification number of dispenser;
   2. identification number of the prescriber;[[145]](#footnote-146)
   3. patient name, address, and telephone number;[[146]](#footnote-147)
   4. patient gender;
   5. patient date of birth;
   6. identification of the drug by a national drug code number;
   7. quantity dispensed;
   8. number of days supplied;
   9. number of refills ordered;
   10. whether drug was dispensed as a refill or as a new prescription;
   11. date prescription was dispensed;[[147]](#footnote-148)
   12. if a refill, date of the original dispensing;
   13. prescription number;
   14. date the prescription was issued by the prescriber;
   15. method of payment for the prescription; and
   16. such other information as may be required by state law.
2. Each dispenser shall ensure that information reported to the PMP is correct and shall submit corrections when necessary.
3. Each dispenser shall reverse information for any prescription that was not dispensed.

### Section 7. Access to Prescription Monitoring Program Information/Confidentiality.

1. Except as indicated in paragraphs (2), (3), and (4) of this Section 7, prescription monitoring program information submitted to the board of pharmacy shall be considered protected health information and not subject to public or open records laws.
2. The board of pharmacy shall review the prescription monitoring program information. If there is reasonable cause to believe a violation of law (or breach of professional or occupational standards) may have occurred, the board shall notify the appropriate law enforcement, or professional or occupational licensing, certification, or regulatory agency or entity, and provide prescription monitoring program information required for an investigation.[[148]](#footnote-149)
3. The board of pharmacy may provide prescription monitoring program information for public research, policy or education purposes, to the extent all information has been de-identified.
4. The following persons may access the prescription monitoring program information in the same or similar manner, and for the same or similar purposes, as those persons are authorized to access similar protected health information under federal and state law and regulation:
   1. practitioners (or agents thereof) or dispensers (or agents thereof) who certify, under the procedures determined by the state, that the requested information is for the purpose of providing medical or pharmaceutical treatment or evaluating the need for such treatment to a bona fide current patient, or verifying PMP information for prescriptions issued by practitioners;
   2. boards of pharmacy or vendors/contractors for the purpose of establishing and maintaining the prescription monitoring program;
   3. other state licensing, certification, or regulatory agencies that license, certify, or regulate health care professionals authorized to prescribe, administer, and dispense controlled substances, which certify, under the procedures determined by the state, that the requested information is related to an individual investigation or proceeding involving the unlawful diversion or misuse of a reportable substance, and such information will further the purpose of the investigation or assist in the proceeding;
   4. local, state, or federal law enforcement, narcotics control, licensure, disciplinary, or program authorities, which certify, under the procedures determined by the state, that the requested information is related to an individual investigation or proceeding involving the unlawful diversion or misuse of a reportable substance, and such information will further the purpose of the investigation or assist in the proceeding;
   5. entities that serve as sources of data impacting the identification and reporting of prescription drug injuries and deaths, such as, but not limited to, coroners’ offices, to help address the prescription drug epidemic and improve patient care;
   6. other appropriate entities;[[149]](#footnote-150) and
   7. patients who certify, under the procedures determined by the state, that the requested information is for the purpose of obtaining and reviewing their own records.
5. The board of pharmacy shall be immune from civil liability arising from inaccuracy of any of the information submitted to the board of pharmacy pursuant to this Act.

### Section 8. Interoperability.

1. The board of pharmacy shall execute a memorandum of understanding to participate in a single national hub capable of facilitating interoperability among prescription monitoring programs and between prescription monitoring programs and electronic health information systems.
2. The board of pharmacy shall ensure that access to prescription monitoring program information by other state prescription monitoring programs is limited to persons described in Section 7(4).
3. The board of pharmacy shall establish the technological connectivity and infrastructure to facilitate the secure delivery of prescription monitoring program information to authorized users of prescription monitoring programs through other states’ prescription monitoring programs or electronic health information systems.
4. Any such gateway, hub, or any electronic health information system that facilitates the integration of prescription monitoring program information into a patient’s medical record shall:
   1. verify the identity of the individual requesting the information;
   2. verify the credential of the individual requesting the information;
   3. provide the board of pharmacy with an audit trail for each request; and
   4. maintain the security and confidentiality of such information.

### Section 9. Unlawful Acts and Penalties.

1. A dispenser who knowingly fails to submit prescription monitoring program information to the board of pharmacy as required by this Act shall be subject to (insert appropriate administrative, civil, or criminal penalty).
2. A person who knowingly accesses or uses prescription monitoring program information without authorization in violation of this Act shall be subject to (insert appropriate administrative, civil, or criminal penalty).
3. A person authorized to have prescription monitoring program information pursuant to this Act who knowingly discloses such information in violation of this Act shall be subject to (insert appropriate administrative, civil, or criminal penalty).
4. A person authorized to have prescription monitoring program information pursuant to this Act who uses such information in a manner or for a purpose in violation of this Act shall be subject to (insert appropriate administrative, civil, or criminal penalty).

### Section 10. Evaluation, Data Analysis, and Reporting.

1. The board of pharmacy shall design and implement an evaluation component to identify cost benefits of the prescription monitoring program, and other information relevant to policy, research, and education involving substances monitored by the PMP.
2. The board of pharmacy shall report to the (insert appropriate state decision makers, eg, legislature) on a periodic basis, no less than annually, about the cost-benefits and other information noted in paragraph (1).

### Section 11. Rules and Regulations.

The board of pharmacy shall promulgate rules and regulations necessary to implement the provisions of this Act.

### Section 12. Severability.

If any provision of this Act or application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act which can be given effect without the invalid provisions or applications, and to this end the provisions of this Act are severable.

### Section 13. Effective Date.

This Act shall be effective on (insert specific date or reference to normal state method of determination of the effective date).

National Association of Boards of Pharmacy  
Model Rules

# Model Rules for Pharmacy Interns and Pharmacy Practice Experience Programs[[150]](#footnote-151)

### Section 1. Licensure.

Every individual shall be licensed by the board of pharmacy before beginning pharmacy practice experiences in this state.[[151]](#footnote-152) A license to practice pharmacy as a pharmacy intern shall be granted only to those individuals who:

1. are enrolled in a professional degree program of a school or college of pharmacy that has been approved by the board and satisfactorily progressing toward meeting the requirements for licensure as a pharmacist; or
2. are graduates of an approved professional degree program of a school or college of pharmacy or are graduates who have established educational equivalency by obtaining a Foreign Pharmacy Graduate Examination Committee™ (FPGEC®) Certificate, who are currently licensed by the board of pharmacy for the purpose of obtaining practical experience as a requirement for licensure as a pharmacist; or
3. are qualified applicants awaiting examination for licensure or meeting board requirements for re-licensure; or
4. are participating in a residency or fellowship program; and
5. have undergone a state and federal fingerprint-based criminal background check as specified by board rule.

### Section 2. Identification.

The pharmacy intern shall be so designated in all professional relationships, and shall in no manner falsely assume, directly or by inference, to be a pharmacist. The board shall issue to the pharmacy Intern a license for purposes of identification and verification of the role of pharmacy intern. An individual not licensed by the board as a pharmacy intern shall not take, use, or exhibit the title of pharmacy intern, or any other term of similar like or import.

### Section 3. Supervision.

A pharmacy intern shall be allowed to engage in the practice of pharmacy provided that such activities are under the supervision of a pharmacist. A pharmacist shall be actively engaged in the supervision and instruction of the pharmacy intern during all professional activities throughout the entire pharmacy practice experience period. The pharmacist is responsible for supervising all the practice of pharmacy activities performed by the pharmacy intern, including but not limited to the accurate dispensing of the drug.[[152]](#footnote-153)

### Section 4. Notification required.

1. All pharmacy interns shall notify the board within 10 days upon change of name, enrollment status, employment, and required contact information such as residential address and/or email address.
2. The pharmacy intern, excluding those who are currently enrolled in a professional degree program of a school or college of pharmacy approved by the board and satisfactorily progressing toward meeting the requirements for licensure as a pharmacist, shall notify the board of pharmacy within two weeks of beginning practice as a pharmacy intern, in a manner designated by the board, of the identity of the pharmacy practice experience site and of the preceptor.

### Section 5. Evidence of Completion.

Applicants for licensure as pharmacists shall submit, or cause to be submitted, evidence that they have satisfactorily completed: (1) an objective assessment mechanism intended to evaluate achievement of desired competencies; and (2) not less than 1,740 hours of pharmacy practice experience credit under the instruction and supervision of a preceptor.[[153]](#footnote-154)

# Model Rules for Public Health Emergencies or Significant Public Health Concerns

### Section 1. Purpose and Scope.[[154]](#footnote-155)

By the provision of these rules by the board, the primary purpose of the Section is to enable pharmacists and pharmacies to assist in the management and containment of a public health emergency[[155]](#footnote-156) or significant public health concern within the confines of a regulatory framework that serves to protect the welfare and health of the public.

### Section 2. Definitions.

1. “Declared Disaster Areas” are areas designated by state or federal authorities as those that have been adversely affected by a natural or man-made disaster and require extraordinary measures to provide adequate, safe, and effective health care for the affected population.
2. “Emergency Dispensing” means dispensing of a prescription drug, including a controlled substance, during a significant public health concern or public health emergency, and:
   1. the prescriber cannot be contacted;
   2. the pharmacy has no record on file of prior dispensing of the drug; and
   3. the immediate needs of the patient must be met until a primary care provider can be seen, to prevent unnecessary harm and suffering.
3. “Emergency Standing Prescription Drug Order” means a standing prescription drug order issued by the state health officer for pharmacists to dispense designated prescription drugs during a public health emergency requiring mass dispensing to expeditiously treat or provide prophylaxis to large numbers of patients.[[156]](#footnote-157)
4. “Mobile Pharmacy” means a pharmacy that is self-propelled or movable by another vehicle that is self-propelled.
5. “NABP Emergency Passport Program” means a program, operated by NABP, that verifies pharmacists, certified pharmacy technicians, pharmacy interns, and pharmacies meet the standard of licensure and are in good standing in states of licensure in order to practice on a temporary or emergency basis according to state public health emergency orders or as otherwise determined by the state board of pharmacy.
6. “Public Health Emergency” means an imminent threat or occurrence of an illness or health condition caused by terrorism, bioterrorism, epidemic or pandemic disease, novel and highly fatal infectious agent or biological toxin, or natural or man-made disaster, that poses a substantial risk of a significant number of human fatalities or incidents of permanent or long-term disability that is beyond the capacity of local government or nongovernmental organizations to resolve.
7. “State of Emergency” means a governmental declaration, usually issued as a result of a public health emergency, which may suspend certain normal functions of government, alert citizens to alter their normal behaviors, and/or direct government agencies to implement emergency preparedness plans.
8. “Temporary Pharmacy Facility” means a facility established as a result of a public health emergency or state of emergency to temporarily provide pharmacy services within or adjacent to declared disaster areas or as otherwise determined in the interest of the public by board action..
9. “Significant Public Health Concern” means a potential threat or occurrence of a circumstance or health condition that poses a risk to the health of a significant number of patients that is beyond the capacity of local government or nongovernmental organizations to immediately resolve.

### Section 3. Emergency Standing Prescription Drug Order.

1. For the duration of a state of emergency issued due to a public health emergency, a pharmacist may dispense a prescription drug pursuant to an emergency standing prescription drug order if the pharmacist:
   1. performs, to the extent possible, a prospective drug utilization review (DUR) and patient counseling in accordance with these rules;[[157]](#footnote-158)
   2. reduces the information to a form that may be maintained for the time required by law or rule, indicates it is an “emergency standing prescription drug order,” and files and maintains the record as required by state and federal law.

### Section 4. Emergency Refills.

1. For the duration of the state of emergency issued due to a public health emergency, or for the duration of a significant public health concern, in the affected state and in other states engaged in disaster assistance pursuant to a governmental declaration or rule of the board, a pharmacist may dispense a refill of a prescription drug, not to exceed a thirty (30)-day supply, without practitioner authorization if:[[158]](#footnote-159)
   1. in the pharmacist’s professional judgment, the prescription drug is essential to the maintenance of the patient’s life or to the continuation of therapy;
   2. the pharmacist makes a good faith effort to reduce the information to a form that may be maintained for the time required by law or rule, indicates it is an “emergency refill prescription,” and maintains the record as required by state and federal law, as well as state and federal disaster agencies for consideration for possible reimbursement programs implemented to ensure continued provision of care during a disaster or emergency; and
   3. the pharmacist informs the patient or the patient’s agent at the time of dispensing that the prescription drug is being provided without the practitioner’s authorization and that authorization of the practitioner is required for future refills.
2. For the duration of the state of emergency, in an effort to provide patients with the best possible care in light of limited drug availability and/or limited information on patients’ current drug therapy, a pharmacist may initiate or modify drug therapy and dispense an amount of such drug to accommodate a patient’s health care needs until that patient may be seen by a practitioner. Pharmacists performing such activities must utilize currently accepted standards of care when initiating or modifying drug therapy. These activities may be undertaken if:
   1. in the pharmacist’s professional judgment, the prescription drug is essential to the maintenance of the patient’s life or to the continuation of therapy;
   2. the pharmacist makes a good faith effort to reduce the information to a form that may be maintained for the time required by law or rule, indicates that drug therapy has been initiated or modified due to a disaster or emergency, and maintains the record as required by state and federal law; and[[159]](#footnote-160)
   3. the pharmacist informs the patient or the patient’s agent at the time of dispensing that the prescription drug is being provided without the practitioner’s authorization and that authorization of the practitioner is required for future refills.
3. The practitioner and pharmacist shall not incur any liability as a result of the performance of these activities in good faith pursuant to this section.
4. The pharmacist shall inform the Prescriber of the emergency refill as soon as practicable.

### Section 5. Temporary Recognition of Nonresident State Licensure and NABP Emergency Passport for Pharmacists, Certified Pharmacy Technicians, Certified Pharmacy Technician Candidates, and Pharmacy Interns.

1. When a state of emergency is declared due to a public health emergency:
   1. A pharmacist not licensed in this state, but currently licensed in another state and registered with the NABP Emergency Passport Program, may dispense prescription drugs in declared disaster areas during the time that the state of emergency exists if:
      1. an application has been submitted in the form prescribed by the board;
      2. the board can verify current licensure in good standing of the pharmacist directly with the state or indirectly via a third-party verification system;[[160]](#footnote-161)
      3. the fee(s) specified by the board have been paid; and
      4. the pharmacist is engaged in a legitimate relief effort.

If the Board is supplied with proof of an active Emergency Passport, as administered by NABP, compliance with subsections (i) and (ii) above is demonstrated;

* 1. A certified pharmacy technician, certified pharmacy technician candidate, or pharmacy intern not licensed in this state, but currently licensed in another state and registered with the NABP Emergency Passport program, may assist the pharmacist in dispensing prescription drugs in declared disaster areas during the time that the state of emergency exists if:
     1. an application has been submitted in the form prescribed by the board;
     2. the board can verify current licensure in good standing of the certified pharmacy technician, certified pharmacy technician candidate, or pharmacy intern directly with the state or indirectly via a third-party verification system;
     3. the fee(s) specified by the board have been paid; and
     4. the certified pharmacy technician, certified pharmacy technician candidate, or pharmacy intern is engaged in a legitimate relief effort.

### Section 6. Temporary Recognition of Nonresident State Licensure for Manufacturers, Outsourcing Facilities, Repackagers, Third-Party Logistics Providers, and Wholesale Drug Distributors.

When a state of emergency is declared due to a public health emergency, or when there exists a significant public health concern:

1. A manufacturer, outsourcing facility, repackager, third-party logistics provider, or wholesale drug distributor not licensed in this state, but currently licensed in another state, may distribute prescription drugs in affected areas during the time that the state of emergency or significant public health concern exists if the board can verify that the entity is engaged in a legitimate relief effort and has current licensure in good standing in another state.
2. For wholesale drug distributors, verification of state licensure may take place directly with the state or indirectly via a third-party verification system.
3. For wholesale drug distributors, the temporary recognition of nonresident licensure or registration shall cease with the termination of the state of emergency or significant public health concern, or after 90 days, whichever comes first.
4. For manufacturers, the board must verify registration with FDA and shall review the most recent Current Good Manufacturing Practice (cGMP)[[161]](#footnote-162) inspection.

### Section 7. Temporary Pharmacy Facilities or Mobile Pharmacies.

1. Pharmacies located in declared disaster areas, nonresident pharmacies, and pharmacies licensed in another state but not licensed in this state, if necessary to provide pharmacy services during a state of emergency, may arrange to temporarily locate or relocate to a temporary pharmacy facility or mobile pharmacy if the temporary pharmacy facility or mobile pharmacy:[[162]](#footnote-163)
   1. is under the control and management of the pharmacist-in charge or designated supervising pharmacist;
   2. is located within the declared disaster area or affected areas;
   3. notifies the board of its location;[[163]](#footnote-164)
   4. is properly secured to prevent theft and diversion of drugs;
   5. maintains records in accordance with laws and regulations of the state in which the disaster occurred; and
   6. ceases the provision of services with the termination of the state of emergency, unless it is successfully licensed by the board of pharmacy in accordance with Article IV of this Act.
2. The board, in accordance with board rules, shall have the authority to approve or disapprove temporary pharmacy facilities and mobile pharmacies and shall make arrangements for appropriate monitoring and inspection of the temporary pharmacy facilities and mobile pharmacies on a case-by-case basis. Approval of temporary pharmacy facilities and mobile pharmacies will be based on the need, type, and scope of public health emergency, as well as the ability of the temporary pharmacy facilities or mobile pharmacies to comply with state and federal drug law.
3. A temporary pharmacy facility wishing to permanently operate at its temporary site must be licensed by the board of pharmacy in accordance with Article IV of this Act.
4. Mobile pharmacies, placed in operation during a state of emergency, may not operate permanently, unless approved by the board.[[164]](#footnote-165)

# Model Rules for Institutional Pharmacy

### Section 1. Applicability.

The following Rules are applicable to all institutional facilities and institutional pharmacies as defined in Section 105 of the *Model State Pharmacy Act*.

### Section 2. Absence of Pharmacist at a Pharmacy Located Within an Institutional Facility.

1. During such times as when a pharmacy, which is located within an institutional facility, may be unattended by a pharmacist, arrangements shall be made in advance by the pharmacist-in-charge for provision of drugs to the medical staff and other authorized personnel of the institutional facility by use of night cabinets and, in emergency circumstances, by access to the pharmacy. A pharmacist must be “on call” during all absences.
2. In the absence of a pharmacist, drugs shall be stored in a locked cabinet, automated pharmacy system, or other enclosure constructed and located outside of the pharmacy area, to which only specifically authorized personnel may obtain access by key or combination, and which is sufficiently secure to deny access to unauthorized persons. The pharmacist-in-charge shall, in conjunction with the appropriate committee of the institutional facility, develop inventory listings of those drugs to be included in such cabinet(s) and determine who may have access, and shall ensure that:
   1. drugs are properly labeled;
   2. only prepackaged drugs are available, in amounts sufficient for immediate therapeutic requirements;
   3. whenever access to the cabinet occurs, written or electronic practitioner’s orders and proofs-of-use are provided;
   4. all drugs therein are inventoried no less than once per week unless stored in an automated pharmacy system;
   5. a complete audit of all activity concerning such cabinet is conducted no less than once per month; and
   6. written policies and procedures are established to implement the requirements of this section.
3. Whenever any drug is not available from floor supplies or night cabinets, and such drug is required to treat the immediate needs of a patient whose health would otherwise be jeopardized, such drug may be obtained from the pharmacy in accordance with the requirements of this section. A supervisory nurse in any given shift is responsible for obtaining drugs from the pharmacy. The responsible nurse shall be designated in writing by the appropriate committee of the institutional facility. Removal of any drug from the pharmacy by an authorized nurse must be recorded on a suitable form showing the patient’s name, room number, name of drug, strength, amount, date, time, and signature of nurse. The form shall be left with the container from which the drug was removed.

### Section 3. Emergency Kit Use by Institutional Facilities.

1. Emergency kit drugs may be provided for use by authorized personnel of the institutional facility provided, however, such kits meet the following requirements:
   1. Emergency kit drugs are those drugs which may be required to meet the immediate therapeutic needs of patients and which are not available from any other authorized source in sufficient time to prevent risk of harm to patients by delay resulting from obtaining such drugs from such other sources.
   2. All emergency kit drugs shall be provided and sealed by a pharmacist or their designee in accordance with applicable security and inventory control policies and procedures.
   3. The supplying pharmacist and the medical staff of the institutional facility shall jointly determine the drugs, by identity and quantity, to be included in emergency kits.
   4. Emergency kits shall be stored in secured areas to prevent unauthorized access, and to ensure a proper environment for preservation of the drugs within them.
   5. The exterior of each emergency kit shall be labeled so as to clearly indicate that it is an emergency drug kit and that it is for use in emergencies only. The label shall contain a listing of the drugs contained in the kit, including name, strength, quantity, and expiration date of the contents, and the name, address(es), and telephone number(s) of the supplying pharmacy.
   6. Drugs shall be removed from emergency kits only pursuant to a valid chart order.
   7. Whenever an emergency kit is opened, the supplying pharmacy shall be notified, and the pharmacy shall restock and reseal the kit within a reasonable time so as to prevent risk of harm to patients.[[165]](#footnote-166)
   8. The expiration date of an emergency kit shall be the earliest date of expiration of any drug supplied in the kit. Upon the occurrence of the expiration date, the supplying pharmacy shall replace the expired drug.
   9. The pharmacy that supplies controlled substances for emergency kits must comply with applicable state and federal requirements.

### Section 4. Drug Distribution and Pharmacist Care Services.

1. The pharmacist-in-charge shall establish written procedures for the safe and efficient acquisition, handling, storage, and dispensing of drugs, including investigational drugs, patient-supplied drugs, and for the provision of pharmacist care services. An annual updated copy of such procedures shall be available for inspection by the board of pharmacy.
2. A pharmacist may engage in therapeutic interchange or formulary substitution as authorized by the facility’s interdisciplinary committee[[166]](#footnote-167) of health care providers, at a minimum to include a practitioner and a pharmacist.
3. To ensure continuous patient care, the facility’s director of nursing or their documented licensed health care designee may transmit the chart order to a pharmacy.[[167]](#footnote-168)
4. The pharmacist shall assess each patient’s medication regimen based on a review of the health record, either remotely or on site, in a timely manner that promotes improving patient clinical outcomes, medication safety and education, and appropriate care management.
5. If the institutional pharmacy is not located within an institutional facility, the pharmacist-in-charge may designate a licensed nurse to restock an automated pharmacy system using verification technology such as bar code scanning, electronic, or other technology in accordance with established policies and procedures.
6. Institutional pharmacies either located within or not within institutional facilities may dispense drugs to patients upon discharge in order to ensure a transition of care between settings until a new prescription drug order is issued.

### Section 5. Shared Pharmacy Services Utilization for Immediate Need.[[168]](#footnote-169)

1. In accordance with the Section addressing shared pharmacy services in the Model Rules for the Practice of Pharmacy, an institutional pharmacy may outsource services to another pharmacy for the limited purpose of ensuring that drugs or devices are available to meet the immediate needs of patients of the institutional facility or when the institutional pharmacy cannot provide services on an ongoing basis, provided that the institutional pharmacy:
   1. has obtained approval from the institutional facility to outsource shared pharmacy services for its inpatients; and
   2. shares a valid chart order with the pharmacy it has contracted with for the shared pharmacy services without the need to transfer the order.

### Section 6. Relabeling of Previously Dispensed Outpatient Drugs for Institutional Use.

1. At a patient’s or patient’s caregiver’s request, an institutional pharmacy may relabel for institutional use a drug previously dispensed by an outpatient pharmacy to the patient.
2. The institutional pharmacy providing relabeling services shall have established policies and procedures to:
   1. assess whether the drug may be adulterated or misbranded; and
   2. package and label the drug in compliance with state and federal requirements and USP standards.
3. An institutional pharmacy that relabels a previously dispensed outpatient drug shall retain all original prescription information in accordance with state record-keeping requirements.

### Section 7. Relabeling of Previously Dispensed or Administered Institutional Multidose Drugs for Outpatient Use.[[169]](#footnote-170)

1. At a patient’s or patient’s caregiver’s request, an institutional pharmacy may relabel for outpatient use a multidose drug previously dispensed for institutional use.
2. The institutional pharmacy providing relabeling services shall have in place policies and procedures to:
   1. assess whether the drug may be adulterated or misbranded; and
   2. package and label the drug in compliance with state and federal requirements and USP standards.
3. The institutional pharmacy that relabels a previously dispensed multidose drug shall retain all original chart order information in accordance with state record-keeping requirements.

### Section 8. Institutional Pharmacy Delivery Room.

Prescription drugs, devices, and other products must be stored in the pharmacy and must not be sold, delivered, or otherwise removed from a pharmacy unless a pharmacist is present, under the following:

1. Institutional pharmacies that are not located within an institutional facility may accept returns or otherwise deliver fulfilled, verified, and packaged prescription drugs in the absence of a pharmacist or when the pharmacy is closed for business if the pharmacy and the pharmacist-in-charge maintain written policies and procedures for secured delivery area storage and removal of prescriptions.
2. A pharmacist or a pharmacy, by means of its delivery personnel, may accept the return of the following drugs or devices to the secured delivery area:
   1. emergency kits;
   2. prescription drugs that were unsuccessfully delivered by the pharmacy personnel or delivery personnel; and
   3. prescription drugs eligible for return pursuant to applicable state and federal law.

# Model Rules for Nuclear Pharmacy/Radiopharmacy

### Section 1. Purpose and Scope.

The practice of nuclear pharmacy/radiopharmacy is hereby recognized as a specialty of pharmacy practice, regulated by state boards of pharmacy. As such, the following model rules are included to address those areas specific or unique to this specialty practice. Nuclear pharmacy/radiopharmacy practice refers to a patient-oriented service that embodies the scientific knowledge and professional judgment required to improve and promote health through the assurance of the safe and efficacious use of radiopharmaceuticals and other drugs.

### Section 2. Definitions.

1. “Authentication of Product History” means, but is not limited to, identifying the purchasing source, the ultimate fate, and any intermediate handling of any component of a radiopharmaceutical.
2. “Authorized Nuclear Pharmacist” means a currently licensed pharmacist in the state of practice, who is certified as a nuclear pharmacist by the state board of pharmacy or by a certification board recognized by the state board of pharmacy, or who meets the following standards:
   1. Minimum standards of training for “authorized user status” of radioactive material [cite state radiation control agency or NRC licensure guide].
   2. Has completed a total of 700 hours in a structured educational program consisting of both:

(i) 200 hours of classroom and laboratory training in the following areas:

1. radiation physics and instrumentation;
2. radiation protection;
3. mathematics pertaining to the use and measurement of radioactivity;
4. chemistry of byproduct material for medical use; and
5. radiation biology.
   * 1. 500 hours of supervised practical experience in a nuclear pharmacy involving:
        1. shipping, receiving, and performing related radiation surveys;
        2. using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;
        3. calculating, assaying, and safely preparing dosages for patients or human research subjects;
        4. using administrative controls to avoid medical events in the administration of byproduct material; and
        5. using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures.
   1. Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual has satisfactorily completed the requirements in paragraph (2)(b) of this Section and is able to independently fulfill the radiation safety-related duties as an authorized nuclear pharmacist.
6. “Compounding” means the combining, mixing, pooling, or otherwise altering (excluding preparation with minor deviations) of a conventionally manufactured radiopharmaceutical or synthesizing/formulating a radiopharmaceutical from bulk drug substances and radionuclides. See “preparation with minor deviations.”
7. ~~(b)~~“Dispensing” means the manipulation or labeling of a radiopharmaceutical to render it in its final form for administration, typically obtained from a single-dose or multiple-dose container (eg, withdrawing a volume of finished product or preparation from a vial into a syringe). Dispensing is performed under the supervision of a physician or pharmacist and, for radiopharmaceuticals, includes dilution with an appropriate diluent or adjusting the activity in an individual dosage.
8. “Internal Test Assessment” means, but is not limited to, conducting those tests of quality assurance necessary to ensure the integrity of the test.
9. “Nuclear Pharmacy/Radiopharmacy” means a pharmacy providing radiopharmaceutical services or, as provided in the Model Rules for Nuclear Pharmacy/Radiopharmacy, an appropriate area of any institutional facility.
10. “Preparation” means the act of combining a conventionally manufactured kit with a conventionally manufactured radionuclide following manufacturer’s recommended instructions. Mixing, reconstituting, combining, diluting, or repackaging of a radiopharmaceutical, or other such acts, performed in accordance with directions contained in the FDA-approved labeling.
11. “Preparation With Minor Deviations” means the act of preparing a conventionally manufactured kit with a conventionally manufactured radionuclide with volume, and/or radioactivity, and/or step-by-step deviations from the manufacturers recommended labeling while ensuring that the final preparation maintains appropriate radiochemical and radionuclidic purity for the entirety of the BUD. Examples of minor deviations include, but are not limited to, altering the amount of activity or volume added to the vial, changes in step-by-step operations (eg, dilute Tc-99m solution after, rather than before, addition to the vial, use of a venting needle or filter), using alternative devices or equipment (eg, a heating block rather than a hot water bath), and using alternative radiochemical purity testing methods.
12. “Qualified Licensed Professional” means a non-pharmacist individual (such as a physician, nurse, or technologist) who possesses a current state license, if applicable, and who has sufficient training and experience to safely handle and dispense radiopharmaceuticals as defined by the respective requirements of [cite appropriate Nuclear Regulatory Commission (NRC) or agreement state and state board of pharmacy law(s)].
13. “Radiopharmaceutical Quality Assurance” means, but is not limited to, the performance of appropriate chemical, biological, and physical tests on potential radiopharmaceuticals and the interpretation of the resulting data to determine their suitability for use in humans and animals, including internal test assessment, authentication of product history, and the keeping of proper records.
14. “Radiopharmaceutical Service” means, but shall not be limited to, the procurement, storage, handling, preparation, labeling, quality assurance testing, dispensing, delivery, record keeping, and disposal of radiopharmaceuticals and other drugs.
15. “Radiopharmaceuticals” are radioactive drugs as defined by food and drug administration and the \_\_\_\_\_\_\_\_\_\_\_ state board of pharmacy [cite appropriate law(s)].
16. “Repackaging” means the act of removing a conventionally manufactured radiopharmaceutical from the container in which it was distributed by the original manufacturer and placing it into a different container without further manipulation of the product. Repackaging also includes the act of placing the contents of multiple containers (eg, vials) of the same finished drug product into one container, as long as the container does not include other ingredients. Radiopharmaceutical manipulation in any other way, including reconstitution, dilution, mixing, or combination with another ingredient, is not considered repackaging.

### Section 3. General Requirements for Pharmacies Providing Radiopharmaceutical Services.

1. Nuclear Pharmacy/Radiopharmacy License

A license to operate a pharmacy providing radiopharmaceutical services shall only be issued to an authorized nuclear pharmacist. All personnel performing tasks in the preparation and distribution of radioactive drugs shall be under the direct supervision of an authorized nuclear pharmacist. An authorized nuclear pharmacist shall be responsible for all operations of the pharmacy and shall be in personal attendance at all times that the pharmacy is open for business. In emergency situations when an authorized nuclear pharmacist is not present, designated qualified licensed professionals may have access to the licensed area. These individuals may prepare single doses of radiopharmaceuticals for the immediate emergency, and must document such activities.

1. Nuclear pharmacies/radiopharmacies shall have adequate space and equipment, commensurate with the scope of services required and provided, meeting minimal space requirements established for all pharmacies in the state or as otherwise defined by the \_\_\_\_\_\_\_\_\_\_ state board of pharmacy.
2. The nuclear pharmacy/radiopharmacy area shall be secured from unauthorized personnel.
3. Nuclear pharmacies/radiopharmacies shall maintain records of acquisition, inventory, and disposition of all radioactive drugs and other radioactive materials in accordance with [cite appropriate pharmacy and radiological control agency or NRC Statute(s)].
4. All pharmacies handling radiopharmaceuticals shall provide a radioactive storage and product decay area. Detailed floor plans shall be submitted to the state board of pharmacy and the state radiation control agency or NRC before approval of the license.
5. Radiopharmaceuticals are to be dispensed only upon a prescription drug order from a practitioner authorized to possess, use, and administer radiopharmaceuticals.
6. The permit to operate a nuclear pharmacy/radiopharmacy is conditioned upon an approved state radiation control agency (RCA) or NRC license. Copies of the RCA or NRC inspection reports shall be made available upon request for board inspection.
7. Labeling
   1. No radiopharmaceutical may be dispensed unless a label is affixed to the immediate container bearing the following information:
      1. the standard radiation symbol;
      2. the words “Caution – Radioactive Material”; and
      3. the prescription number.
   2. No radiopharmaceutical may be dispensed unless a label is affixed to the outer or delivery container bearing the following information:
      1. the standard radiation symbol;
      2. the words “caution – radioactive material”;
      3. the radionuclide and chemical form;
      4. the activity and date and time of assay;
      5. the volume, if in liquid form;
      6. the requested activity and the calibrated activity;
      7. the prescription number;
      8. patient name or space for patient name. Where the patient’s name is not available at the time of dispensing, a 72-hour exemption is allowed to obtain the name of the patient. No later than 72 hours after dispensing the radiopharmaceutical, the patient’s name shall become a part of the prescription drug order to be retained for a period of three years;
      9. the name and address of the nuclear pharmacy/radiopharmacy;
      10. the name of the practitioner; and
      11. the lot number of the prescription.

### Section 4. Additional Labeling per USP <825>.

The additional requirements specified herein must be considered for the labeling of the inner container (eg, syringe, vial) and the outer shielding (eg, syringe or vial shielding).

The inner container must be additionally labeled with the following:

1. for all therapeutic and blood-products, the patient name/identifier;
2. radionuclide and chemical form (generic name); and
3. radioactivity at the date and time of calibration.

The outer shielding must be additionally labeled with the following:

1. for all therapeutic and blood-products, the patient name/identifier;
2. number of units dispensed (eg, 2 capsules), as applicable;
3. product expiration or BUD (see USP <825> Table 7), as applicable;
4. any special storage and handling instructions for nonimmediate use (eg, refrigeration, resuspension); and
5. route of administration.

### Section 5. Other Requirements.

All nuclear pharmacies/radiopharmacies shall also adhere to the principles outlined in the rules for pharmacist care services as these pertain to the practice of nuclear pharmacy/radiopharmacy.

# Model Rules for Compounded or Repackaged Drugs

### Section 1. Purpose and Scope.

The purpose of this Section is to ensure that compounded drugs are prepared and dispensed according to practice and quality standards through the provision of: (1) pharmacist care services; and (2) the preparation, labeling, and distribution of compounded or repackaged drugs by pharmacies, including nuclear pharmacies. These standards are intended to apply to all sterile and nonsterile compounded drugs, notwithstanding the location of the patient (eg, home, hospital, nursing home, hospice, doctor’s office). All facilities and practitioners engaging in sterile and nonsterile compounding or repackaging shall practice in accordance with federal law and these rules, as well as the United States Pharmacopeia–National Formulary (USP-NF) chapters addressing sterile and nonsterile compounding, the handling of hazardous drugs, and other applicable referenced general chapters. The procedures contained herein are considered to be the minimum current good compounding practices for the compounding of drug products by state-licensed pharmacies for dispensing and/or administration to humans or animals.[[170]](#footnote-171)

### Section 2. Notification.

1. On an annual basis, and within 90 days of the beginning of the calendar year, all licensed Persons shall report to an information sharing network approved by the Board[[171]](#footnote-172) the information required by the “Memorandum Of Understanding Addressing Certain Distributions Of Compounded Human Drug Products Between The [Insert State Board Of Pharmacy Or Other Appropriate State Agency] And The U.S. Food And Drug Administration.”
2. Upon request from the board, all licensed persons shall report to the board of pharmacy the number of compounded prescription drug orders dispensed in the state where the pharmacy is located and out of the state where the pharmacy is located during a specified time period, including the drugs’ active ingredients, strength, and dosage form(s).
3. The pharmacist shall notify patients if they may have received a product found to have a defect or an out-of-specification result and conduct a recall if the board deems necessary.

### Section 3. Policy and Procedure Manual.

A policy and procedure manual shall be prepared and maintained for the compounding, dispensing, delivery, administration, storage, and use of sterile and nonsterile compounded prescription drugs. The policy and procedure manual shall incorporate all applicable USP requirements and:

1. include a quality assurance program for the purpose of monitoring patient care and pharmacist care services outcomes; and
2. be current and available for inspection by a board of pharmacy-designated agent.

### Section 4. Physical Requirements.

1. Any pharmacy that engages in compounding shall adhere to physical, equipment, and environmental requirements established by USP.
2. Pharmacies shall have sufficient current reference materials applicable to compounding.

### Section 5. Records and Reports.

In addition to standard record-keeping and reporting requirements, the following records shall be maintained:

1. All dispensing of sterile compounded and nonsterile compounded preparations.
2. Any other records required to conform to and demonstrate compliance with USP standards and federal law.

### Section 6. Delivery Service.

The pharmacist-in-charge shall ensure the environmental control, stability, and sterility (if applicable) of all preparations shipped. Therefore, any compounded preparation shall be shipped or delivered to a patient or patient’s agent in appropriate temperature-controlled (as defined by USP standards) delivery containers and stored appropriately. Information on appropriate storage shall be provided to the patient or patient’s agent.

### Section 7. Disposal of Hazardous and/or Infectious Wastes.

The pharmacist-in-charge is responsible for ensuring that there is a system for the disposal of hazardous and/or infectious waste in accordance with applicable state and federal laws and USP requirements.

### Section 8. Quality Assurance.

1. There shall be a documented, ongoing quality assurance program that monitors personnel performance, component verification and usage, disinfection, sterilization, equipment, and facilities that are appropriate for the drug being prepared. Quality assurance programs shall at minimum conform to the requirements of USP .
2. The pharmacist has the responsibility and authority to inspect and approve or reject all components, drug product containers, closures, in-process materials, and/or labeling. The pharmacist shall have the authority to prepare and review all compounding records to ensure that no errors have occurred in the compounding process. If errors have occurred, the pharmacist is responsible for conducting a full investigation. A written record of the investigation shall be made and shall include conclusions and follow-up. The pharmacist is also responsible for the proper maintenance, cleanliness, and use of all facilities and equipment used in compounding.
3. All pharmacists who participate in compounding, including other pharmacy personnel who assist the pharmacist in compounding, shall be proficient in the science of compounding and shall acquire the education, training, and/or experience to maintain that proficiency through participation in seminars, studying appropriate literature, and consulting colleagues or by becoming certified by a compounding certification program approved by the board.
4. Pharmacists and other compounding pharmacy personnel (eg, pharmacy technicians) shall be trained and proficient in the particular operations that are performed by that individual.
5. Training shall be conducted by qualified individuals on a continuing basis and with sufficient frequency to ensure that compounding pharmacy personnel remain familiar with applicable operations and policies and procedures.
6. Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of compounding operations.
7. A compounded drug shall be deemed adulterated if it has been prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health.

### Section 9. Compounded Drug Preparations for Veterinary Use.

1. The use of bulk drug substances for compounded drug preparations is prohibited except when:
   1. compounding is pursuant to a patient-specific prescription for a non-food-producing animal or as an antidote to prevent animal suffering or death in food-producing animals;
   2. there is no marketed approved, conditionally approved, or indexed (in the index of legally marketed unapproved new animal drugs for minor species) drug that can be used as labeled to treat the condition;
   3. there is no marketed approved animal or human drug that can be used to treat the condition through off-label drug use;
   4. the drug cannot be appropriately compounded from an approved animal or human drug;
   5. immediate treatment with the compounded drug preparation is necessary to avoid animal suffering or death; and
   6. FDA has not identified a significant veterinary safety concern with the use of the bulk drug substance for compounding.
2. It is acceptable for any licensed pharmacy to compound veterinary drug preparations to be used by veterinarians in their offices for administration to clients’ animals.
3. Compounded office use drug preparations may be dispensed by a veterinarian to clients only in an urgent or emergency situation for use in a single course of treatment, not to exceed a 120-hour supply.
4. The compounded veterinary drug preparations shall not be distributed by an entity other than the pharmacy that compounded such veterinary drug preparations. This does not prohibit administration of a compounded drug preparation in a veterinary health care setting or dispensing of a compounded drug preparation pursuant to a prescription drug order executed in accordance with federal and state law.
5. Providing samples of compounded veterinary drug preparations is prohibited.
6. Upon becoming aware of any adverse event or preparation defect, the pharmacy shall report the event on the designated FDA form[[172]](#footnote-173) within 15 days and include the FDA statement about reporting adverse events on the prescription label.

# Model Rules for Outsourcing Facilities

### Section 1. Purpose and Scope.

The purpose of this Section is to ensure that outsourcing facilities are regulated by this state in a manner consistent with federal law and to ensure that this state has appropriate authority over such facilities.

### Section 2. Registration.

1. Any outsourcing facility located in this state or that distributes compounded drugs to this state must be inspected and registered as an outsourcing facility by FDA prior to applying for a license/registration with the board; and
2. The facility must undergo an inspection by the board or a third party recognized by the board such as drug distributor accreditation[[173]](#footnote-174) if the facility is registered with FDA but has not received an FDA inspection as an outsourcing facility.

### Section 3. Notification.

All licensed/registered outsourcing facilities shall report to the board the biannual reports they are required to provide to FDA identifying the drugs compounded in the previous six (6)-month period, including the drug’s active ingredients, strength, and dosage form.

### Section 4. Requirements.

Outsourcing Facilities must:

1. Designate a pharmacist-in-charge. Whenever an applicable rule requires or prohibits action by a pharmacy, responsibility shall be that of the owner and/or permit holder and the pharmacist-in-charge, whether the owner and/or permit holder is a sole proprietor, partnership, association, corporation, or otherwise;
2. Compound drugs by or under the direct supervision of a licensed pharmacist;
3. Compound drugs in accordance with current Good Manufacturing Practice (cGMP) as required by federal law;
4. Ensure that pharmacists conducting or overseeing compounding at an outsourcing facility must be proficient in the art of compounding and shall acquire the education, training, and/or experience to maintain that proficiency through participation in seminars, studying appropriate literature, and consulting colleagues, and/or by becoming certified by a compounding certification program approved by the board.
5. Label compounded drugs with:
   1. required drug and ingredient information,
   2. facility identification, and
   3. the following or similar statement: “this is a compounded drug. for office use only” or “not for resale.”
6. Only compound using bulk drug substances that meet specified FDA criteria. May also compound drugs that appear on an FDA shortage list if the bulk drug substances used comply with the aforementioned specified criteria.

# Model Rules for the Licensure of Manufacturers, Repackagers, Third-Party Logistics Providers, and Wholesale Distributors

### Section 1. Definitions.

1. “Designated Representative” means an individual designated by the wholesale distributor who will serve as the responsible individual of the wholesale distributor with the board who is actively involved in and aware of the actual daily operation of the wholesale distributor.[[174]](#footnote-175)
2. “Diversion Activity” means activity where evidence exists that drugs, including controlled substances or drugs of concern, are being diverted from legitimate channels.
3. “Illegitimate Product” means a product for which credible evidence shows that the product:
   1. is counterfeit, diverted, or stolen;
   2. is intentionally adulterated such that the product would result in serious adverse health consequences or death to humans;
   3. is the subject of a fraudulent transaction; or
   4. appears otherwise unfit for distribution such that the product would be reasonably likely to result in serious adverse health consequences or death to humans.
4. “Product” means a prescription drug in a finished dosage form for dispensing or administration to a patient without substantial further manufacturing (such as capsules, tablets, and lyophilized products before reconstitution), but does not include:
   1. blood or blood components intended for transfusion;
   2. radioactive drugs or radioactive biological products;
   3. imaging drugs;
   4. intravenous product that are intended to:
      1. replenish fluids and electrolytes;
      2. maintain the equilibrium of water and minerals; or
      3. irrigate.
   5. any medical gas;
   6. homeopathic drugs marketed in accordance with applicable federal law; or
   7. a drug compounded in compliance with federal law.
5. “Product Identifier” means a standardized graphic that includes, in both human-readable form and on a machine-readable data carrier that conforms to the standards developed by a widely recognized international standards development organization, the standardized numerical identifier, lot number, and expiration date of the product.
6. “Return” means providing product to the authorized immediate trading partner from which such product was purchased or received, or to a returns processor or reverse logistics provider for handling of such product.
7. “Returns Processor” or “Reverse Logistics Provider” means any person who owns or operates an establishment that dispositions or otherwise processes saleable or nonsaleable product received from an authorized trading partner such that the product may be processed for credit to the purchaser, manufacturer, or seller or disposed of for no further distribution.
8. “Suspicious Order” means a request to purchase one or more products, which includes, but is not limited to, an unsubstantiated order with the following characteristic(s):
   1. unusual size or frequency; or
   2. deviating substantially from a normal pattern.
9. “Trading Partner” means:
   1. a manufacturer, repackager, wholesale distributor, or dispenser from whom a manufacturer, repackager, wholesale distributor, or dispenser accepts direct ownership of a product or to whom a manufacturer, repackager, wholesale distributor, or dispenser transfers direct ownership of a product; or
   2. a third-party logistics provider from whom a manufacturer, repackager, wholesale distributor, or dispenser accepts direct possession of a product or to whom a manufacturer, repackager, wholesale distributor, or dispenser transfers direct possession of a product.
10. “Transaction” means the transfer of product between persons in which a change of ownership occurs. Transaction does not include:
    1. intracompany distribution of any product between members of an affiliate or within a manufacturer;
    2. the distribution of a product among hospitals or other health care entities that are under common control;
    3. the distribution of a product for emergency medical reasons, including a public health emergency declaration pursuant to state or federal law, except that a drug shortage not caused by a public health emergency shall not constitute an emergency medical reason;
    4. the dispensing of a product pursuant to a prescription;
    5. the distribution of product samples by a manufacturer or a licensed wholesale distributor in accordance with state and federal law;
    6. the distribution of blood or blood components intended for transfusion;
    7. the distribution of minimal quantities of product by a licensed retail pharmacy to a licensed practitioner for office use;
    8. the sale, purchase, or trade of a drug or an offer to sell, purchase, or trade a drug by a charitable organization to a nonprofit affiliate of the organization to the extent otherwise permitted by state and federal law;
    9. the distribution of a product pursuant to the sale or merger of a pharmacy or pharmacies or a wholesale distributor or wholesale distributors, except that any records required to be maintained for the product shall be transferred to the new owner of the pharmacy or pharmacies or wholesale distributor or wholesale distributors;
    10. the dispensing of a new animal drug product approved under federal law;
    11. products transferred to or from any facility that is licensed by the nuclear regulatory commission or by a state pursuant to an agreement with such commission;
    12. a combination product that is:
        1. a product composed of a device and one or more other regulated components (such as a drug/device, biologic/device, or drug/device/biologic) that are physically, chemically, or otherwise combined or mixed and produced as a single entity;
        2. two or more separate products packaged together in a single package or as a unit and composed of a drug and device or a device and biological product; or
        3. two or more finished medical devices plus one or more drug or biological products that are packaged together in what is referred to as a “medical convenience kit” as described in (155)(m);
    13. the distribution of a collection of finished medical devices, which may include a product or biological product, assembled in kit form strictly for the convenience of the purchaser or user if:
        1. the medical convenience kit is assembled in an establishment that is registered with FDA as a device manufacturer;
        2. the medical convenience kit does not contain a federally scheduled controlled substance;
        3. in the case of a medical convenience kit that includes a product, the person who manufactured the kit:
           1. purchased such product directly from the drug manufacturer or from a wholesale distributor that purchased the product directly from the drug manufacturer;
           2. does not alter the primary container or label of the product as purchased from the manufacturer or wholesale distributor; and
        4. in the case of a medical convenience kit that includes a product, the product is:
           1. an intravenous solution intended for the replenishment of fluids and electrolytes;
           2. a product intended to maintain the equilibrium of water and minerals in the body;
           3. a product intended for irrigation or reconstitution;
           4. an anesthetic;
           5. an anticoagulant;
           6. a vasopressor; or
           7. a sympathomimetic;
    14. the distribution of an intravenous product that, by its formulation, is intended for the replenishment of fluids and electrolytes (such as sodium, chloride, and potassium) or calories (such as dextrose and amino acids);
    15. the distribution of an intravenous product used to maintain the equilibrium of water and minerals in the body, such as dialysis solutions;
    16. the distribution of a product that is intended for irrigation, or sterile water, whether intended for such purposes or for injection;
    17. the distribution of a medical gas;
    18. the distribution or sale of any licensed biologic product that meets the definition of device under federal law.
11. “Transaction History” means a statement in paper or electronic form that includes the transaction information of each prior transaction going back to the manufacturer of the product.
12. “Transaction Information” means:
    1. the proprietary or established name or names of the product;
    2. the strength and dosage form of the product;
    3. the national drug code number of the product;
    4. the container size;
    5. the number of containers;
    6. the lot number of the product;
    7. the transaction date;
    8. the shipment date, if more than 24 hours after the transaction date;
    9. the business name and address of the transferring person; and
    10. the business name and address of the transferee person.
13. “Transaction Statement” means a statement in paper or electronic form that the entity transferring ownership in a transaction:
    1. is authorized under federal law;
    2. received the product from a person who is authorized as required under federal law;
    3. received transaction information and transaction statement from the prior owner of the product, as required by federal law;
    4. did not knowingly ship a suspect or illegitimate product;
    5. had systems and processes in place to comply with verification requirements outlined in federal law;
    6. did not knowingly provide false transaction information; and
    7. did not knowingly alter the transaction history.
14. “Verification” means determining whether the product identifier of a package or homogeneous case corresponds to the standardized numerical identifier or lot number and expiration date assigned to the product by the manufacturer or repackager in accordance with federal law.

### Section 2. Requirements for Licensure.

Manufacturers, repackagers, third-party logistics providers, and wholesale distributors that provide services within this state, whether located within this state or outside this state, shall be licensed by the board and shall annually renew their license with the board using an application provided by the board. Third-party logistics providers and wholesale drug distributors must report license status to FDA as outlined in federal law. Manufacturers, repackagers, third-party logistics providers, and wholesale distributors cannot operate from a place of residence. Where operations are conducted at more than one location, each such location shall be licensed by the board of pharmacy.[[175]](#footnote-176)

1. Every manufacturer, repackager, third-party logistics provider, or wholesale distributor who engages in the manufacturing, repackaging, or distribution of prescription drugs or devices shall license annually with the board by application and provide information required by the board on an application approved by the board, including but not limited to:
   1. All trade or business names used by the licensee (includes “doing business as” and “formerly known as”), which cannot be identical to the name used by another unrelated entity licensed to purchase prescription drugs or devices in the state;
   2. Name(s) of the owner and operator of the licensee (if not the same person), including:
      1. if a person: the name, business address, social security number, and date of birth;
      2. if a partnership: the name, business address, and social security number and date of birth of each partner, and the name of the partnership and federal employer identification number;
      3. if a corporation: the name, business address, social security number and date of birth, and title of each corporate officer and director, the corporate names, the state of incorporation, federal employer identification number, and the name of the parent company, if any; the name, business address, and social security number of each shareholder owning ten percent (10%) or more of the voting stock of the corporation, including over-the-counter (OTC) stock, unless the stock is traded on a major stock exchange and not OTC;
      4. if a sole proprietorship: the full name, business address, social security number, and date of birth of the sole proprietor and the name and federal employer identification number of the business entity;
      5. if a limited liability company: the name of each member, the name of each manager, their social security numbers or unique identifiers and their dates of birth, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and
      6. any other relevant information that the board requires.
   3. Name(s), business address(es), and telephone number(s) of a person(s) to serve as the designated representative(s) for each licensee;
   4. A list of all state and federal licenses, registrations, or permits, including the license, registration, or permit numbers issued to the manufacturer, repackager, third-party logistics provider, or wholesale distributor by any other state and federal authority that authorizes the manufacturer, repackager, third-party logistics provider, or wholesale distributor to manufacture, purchase, possess, repackage, or distribute prescription drugs;
   5. A list of all disciplinary actions by state and federal agencies against the manufacturer, repackager, third-party logistics provider, or wholesale distributor as well as any such actions against principals, owners, directors, or officers;
   6. A full description of each facility and warehouse, including all locations utilized for prescription drug storage and/or wholesale distribution. The description should include the following:
      1. square footage;
      2. security and alarm system descriptions;
      3. terms of lease or ownership;
      4. address; and
      5. temperature and humidity controls.
   7. A copy of the deed for the property on which the manufacturer’s, repackager’s, third-party logistics provider’s, or wholesale distributor’s establishment is located, if the property is owned by the manufacturer, repackager, third-party logistics provider, or wholesale distributor; or a copy of the manufacturer’s, repackager’s, third-party logistics provider’s, or wholesale distributor’s lease for the property on which the establishment is located that has an original term of not less than one (1) calendar year, if the establishment is not owned by the manufacturer, repackager, third-party logistics provider, or wholesale distributor;
   8. Information regarding general and product liability insurance, including copies of relevant policies;
   9. A description of the manufacturer’s, repackager’s, third-party logistics provider’s, or wholesale distributor’s drug import and export activities; and
   10. A copy of the manufacturer’s, repackager’s, third-party logistics provider’s, or wholesale distributor’s written policies and procedures as required in section 11 (policies and procedures).
   11. The information collected pursuant to section 2(1)(f) and (1)(j) shall be made available only to the board, a third party recognized by the board, and to state and federal law enforcement officials.

The board shall make provisions for protecting the confidentiality of the information collected under this section.

1. A surety bond of not less than $100,000, or other equivalent means of security acceptable to the board or a third party recognized by the board such as insurance, an irrevocable letter of credit, or funds deposited in a trust account or financial institution, to secure payment of any administrative penalties imposed by the board and any fees or costs incurred by the board regarding that licensee when those penalties, fees, or costs are authorized under state law and the licensee fails to pay thirty (30) days after the penalty, fee, or costs becomes final. A separate surety bond or other equivalent means of security is not required for each company’s separate locations or for affiliated companies/groups when such separate locations or affiliated companies/groups are required to apply for or renew their third-party logistics provider’s or wholesale distributor’s license with the board. The board may make a claim against such bond or other equivalent means of security until one year after the third-party logistics provider’s or wholesale distributor’s license ceases to be valid or until sixty (60) days after any administrative or legal proceeding before or on behalf of the board that involves the third-party logistics provider or wholesale distributor is concluded, including any appeal, whichever occurs later. Manufacturers and repackagers shall be exempt from securing a surety bond or other equivalent means of security acceptable to the board or a third party recognized by the board. The board may waive the bond requirement, if the third-party logistics provider or wholesale distributor:[[176]](#footnote-177)
   1. has previously obtained a comparable surety bond or other equivalent means of security for the purpose of licensure in another state, where the third-party logistics provider or wholesale distributor possesses a valid license in good standing; or
   2. is a publicly held company.
2. Every manufacturer, repackager, third party logistics provider, or wholesale distributor who engages in manufacturing, repackaging, or wholesale distribution shall submit a reasonable fee to be determined by the board.
3. Each facility that engages in distribution must undergo an inspection by the board or a third party recognized by the board for the purpose of inspecting the distribution operations prior to initial licensure and periodically thereafter in accordance with a schedule to be determined by the board.
4. All manufacturers, repackagers, third-party logistics providers, and wholesale distributors must publicly display or have.
5. Readily available all licenses and the most recent inspection report administered by the board if applicable.
6. Changes in any information in this Section shall be submitted to the board, or to a third party recognized by the board, within 30 days of such change (unless otherwise noted).
7. Information submitted by the manufacturer, repackager, third-party logistics provider, or wholesale distributor to the board or a third party recognized by the board that is considered trade secret or proprietary information, as defined under this state’s privacy and trade secret/proprietary statutes, shall be maintained by the board or a third party recognized by the board as private or trade secret/proprietary information and be exempt from public disclosure.[[177]](#footnote-178)
8. Per federal requirements, states shall license third-party logistics providers (those that provide storage and logistical operations related to drug distribution) separately from wholesale drug distributors. Minimum requirements for wholesale drug distributor licensure may also apply to third-party logistics providers if applicable.[[178]](#footnote-179)
9. Per federal requirements, states shall license repackagers and manufacturers separately from wholesale drug distributors. Minimum requirements for wholesale drug distributor licensure may also apply to repackagers and manufacturers if applicable.
10. Supply chain trading partners (wholesale drug distributors and third-party logistics providers) should report state licensure status and other required information to FDA.

### Section 3. Minimum Qualifications.

1. The board will consider the following factors in determining the eligibility for, and renewal of, licensure of persons who engage in the wholesale distribution of drugs or devices:
   1. any findings by the board that the applicant has violated or been disciplined by a regulatory agency in any state for violating any federal, state, or local laws relating to drug or device wholesale distribution;
   2. any criminal convictions of the applicant under federal, state, or local laws;
   3. the applicant’s past experience in the manufacture or wholesale distribution of drugs or devices;
   4. the furnishing by the applicant of false or fraudulent material in any application made in connection with drug or device manufacturing or wholesale distribution;
   5. suspension, sanction, or revocation by federal, state, or local government against any license currently or previously held by the applicant or any of its owners for violations of state or federal laws regarding drugs or devices;
   6. compliance with previously granted licenses of any kind;
   7. compliance with the requirements to maintain and/or make available to the board licensing authority or to federal, state, or local law enforcement officials those records required to be maintained by wholesale distributors; and
   8. any other factors or qualifications the board considers relevant to and consistent with the public health and safety.
2. The board shall consider the results of a criminal and financial background check of the applicant, including but not limited to, all key personnel involved in the operations of the manufacturer, repackager, third-party logistics provider, or wholesale distributor, including the most senior person responsible for facility operations, purchasing, and inventory control and the person or persons they report to; and all company officers, key management, principals, and owners with ten percent (10%) or greater ownership interest in the company (applying to non-publicly held companies only) to determine if an applicant or others associated with the ownership, management, or operations of the manufacturer, repackager, third-party logistics provider, or wholesale distributor have committed criminal acts that would constitute grounds for denial of licensure. The background check will be conducted in compliance with any applicable state and federal laws, at the applicant’s expense, and will be sufficient to include all states of residence since the person has been an adult. Manufacturers shall be exempt from criminal and financial background checks.
3. The applicant shall provide, and attest to, a statement providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding drugs or devices or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts.

### Section 4. Personnel.

Each person that is issued an initial or renewal license as a manufacturer, repackager, third-party logistics provider, or wholesale distributor, whether in state or out of state, must designate in writing on a form required by the board, a person for each facility to serve as the designated representative.

1. To be certified as a designated representative, a person must:
   1. submit an application on a form furnished by the board and provide information that includes, but is not limited to:
      1. information required to complete the criminal and financial background checks required under Section 3(2); [[179]](#footnote-180)
      2. date and place of birth;
      3. occupations, positions of employment, and offices held during the past seven (7) years;
      4. principal business and address of any business corporation, or other organization in which each such office of the person was held or in which each such occupation or position of employment was carried on;
      5. whether the person, during the past seven (7) years, 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 wholesale distribution of prescription drugs or devices, together with details of such events;
      6. description of any involvement by the person 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, repackaged, wholesale distributed, or stored prescription drugs and devices in which such businesses were named as a party in a lawsuit;
      7. description of any criminal offense (not including minor traffic violations) of which the person, as an adult, was found guilty, regardless of whether adjudication of guilt was withheld or whether the person pled guilty or nolo contendere if the person indicates that a criminal conviction is under appeal and submits a copy of the notice of appeal of the criminal offense, the applicant must, within 15 days after the disposition of the appeal, submit to the board a copy of the final written order of disposition;
      8. photograph of the person taken within the previous 30 days under procedures as specified by the board;
      9. name, address, occupation, and date and place of birth for each member of the person’s immediate family, unless the person is employed by a manufacturer, repackager, third-party logistics provider, or wholesale distributor that is a publicly held company as used in this subparagraph, the term “member of the immediate family” includes the person’s spouse(s), children, parents, siblings, the spouses of the person’s children, and the spouses of the person’s siblings; and
      10. any other information the board deems relevant.
   2. have a minimum of two years of verifiable full-time managerial or supervisory experience in a pharmacy or wholesale distribution facility licensed in this state or another state, where the person’s responsibilities included but were not limited to record keeping, storage, and shipment of prescription drugs or devices;
   3. may serve as the designated representative for only one manufacturer, repackager, third-party logistics provider, or wholesale distributor at any one time, except where more than one licensed manufacturer, repackager, third-party logistics provider, or wholesale distributor is co-located in the same facility and such entities are members of an affiliated group, as defined in Section 1504 of the Internal Revenue Code;
   4. be actively involved in and aware of the actual daily operations of the manufacturer, repackager, third-party logistics provider, or wholesale distributor:
      1. employed full-time in a managerial position by the manufacturer, repackager, third-party logistics provider, or wholesale distributor;
      2. physically present at the manufacturer, repackager, third-party logistics provider, or

wholesale distributor during normal business hours, except for time periods when absent due to illness, family illness or death, scheduled vacation, or other authorized absence; and

* + 1. aware of, and knowledgeable about, all policies and procedures pertaining to the operations of the manufacturer, repackager, third-party logistics provider, or wholesale distributor.

1. The information collected pursuant to Section 4(1) shall be made available only to the board, a third party recognized by the board, and to state and federal law enforcement officials. The board and a third party recognized by the board shall make provisions for protecting the confidentiality of the information collected under this section.
2. Each licensed manufacturer, repackager, third-party logistics provider, or wholesale distributor located outside of this state that distributes prescription drugs or devices in this state shall designate a registered agent in this state for service of process. Any licensed distributor that does not so designate a registered agent shall be deemed to have designated the secretary of state of this state to be its true and lawful attorney, upon who may be served all legal processes in any action or proceeding against such licensed manufacturer, repackager, third-party logistics provider, or wholesale distributor growing out of or arising from such manufacturing, repackaging, or distribution. A copy of any such service of process shall be mailed to such manufacturer, repackager, third-party logistics provider, or wholesale distributor by the board by certified mail, return receipt requested, postage prepaid, at the address such licensed entity has designated on its application for licensure in this state. If any such manufacturer, repackager, third-party logistics provider, or wholesale distributor is not licensed in this state, service on the secretary of state only shall be sufficient service.
3. A designated representative must complete:[[180]](#footnote-181)
   1. continuing education programs specified by the board regarding federal and state laws in regard to the wholesale distribution, handling, and storage of prescription drugs or devices; or
   2. if no formal continuing education is specified by the board, training programs that address applicable federal and state laws and are provided by qualified in-house specialists, outside counsel, or consulting specialists with capabilities to help ensure compliance.

### Section 5. Minimum Requirements for the Storage and Handling of Prescription Drugs and for Establishment and Maintenance of Prescription Drug Records.

The following are required for the storage, handling, transport, and shipment of prescription drugs or devices, and for the establishment and maintenance of wholesale distribution records by wholesale distributors, authorized trading partners, and their officers, agents, representatives, and employees.

1. All facilities at which prescription drugs and devices are received, stored, warehoused, handled, held, offered, marketed, displayed, or transported from shall:
   1. be of suitable construction to ensure that all prescription drugs and devices in the facilities are maintained in accordance with the product labeling of such prescription drugs and devices, or in compliance with official compendium standards such as the United States Pharmacopeia – National Formulary (USP-NF);
   2. be of suitable size and construction to facilitate cleaning, maintenance, and proper wholesale distribution operations;
   3. have adequate storage areas to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions;
   4. have a quarantine area for storage of prescription drugs and devices that are outdated, damaged, deteriorated, misbranded, or adulterated, counterfeit, or suspected of being counterfeit, otherwise unfit for distribution, or that are in immediate or sealed secondary containers that have been opened;
   5. be maintained in a clean and orderly condition;
   6. be free from infestation of any kind;
   7. be a commercial location and not a personal dwelling or residence;
   8. provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of the information;
   9. provide and maintain appropriate inventory controls in order to detect and document any theft, counterfeiting, or diversion of prescription drugs or devices.
2. wholesale distributors, third-party logistics providers, or other trading partners involved in the wholesale distribution of controlled substances shall be duly registered with Drug Enforcement Administration (DEA) and appropriate state controlled substance agency and in compliance with all applicable laws and rules for the storage, handling, transport, shipment, and wholesale distribution of controlled substances.

### Section 6. Security.

1. All facilities used for wholesale distribution shall be secure from unauthorized entry:
   1. access from outside the premises shall be kept to a minimum and be well-controlled;
   2. the outside perimeter of the premises shall be well-lighted; and
   3. entry into areas where prescription drugs or devices are held shall be limited to authorized personnel; all facilities shall be equipped with an alarm system to detect entry after hours.
2. All facilities shall be equipped with a security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.
3. All facilities shall be equipped with inventory management and control systems that protect against, detect, and document any instances of theft, diversion, or counterfeiting.
4. All common carriers used by a wholesale distributor or third-party logistics provider shall ensure security via one of the following:
   1. a verifiable security system; or
   2. a board-approved accreditation or certification program.
5. All facilities shall be equipped with security systems to protect the integrity and confidentiality of data and documents and make such data and documents readily available to the board and other state and federal law enforcement officials.

### Section 7. Storage.

All prescription drugs and devices shall be stored at appropriate temperatures and under appropriate conditions in accordance with requirements, if any, in the product labeling of such prescription drugs and devices, or with requirements in the current edition of an official compendium such as the USP-NF.

1. If no storage requirements are established for a prescription drug, the prescription drug may be held at “controlled” room temperature, as defined in an official compendium such as USP-NF, to help ensure that its identity, strength, quality, and purity are not adversely affected.
2. Appropriate manual, electromechanical, or electronic temperature and humidity recording equipment and/or logs shall be utilized to document proper storage of prescription drugs and devices.
3. Packaging of the prescription drugs and devices should be in accordance with an official compendium such as USP-NF and identify any compromise in the integrity of the prescription drugs or devices due to tampering or adverse storage conditions.
4. Controlled substance drugs should be isolated from non-controlled substance drugs and stored in a secure area in accordance with DEA security requirements and standards.
5. The record-keeping requirements in Section 10 (Record Keeping) shall be followed for the wholesale distribution of all prescription drugs and devices.

### Section 8. Operations/Reporting Requirements.

1. Manufacturers, repackagers, third-party logistics providers, and wholesale drug distributors must comply with all reporting requirements and exchange transaction history, transaction information, and transaction statements with authorized trading partners as outlined in federal law.
2. Manufacturers, repackagers, third-party logistics providers, and wholesale distributors shall design and operate a system to identify and report suspicious orders of controlled substances and drugs of concern to a program approved by the board.
   1. Suspicious orders shall be submitted electronically to an approved program within five days of the order being identified as suspicious by the manufacturer, repackager, third-party logistics provider, or wholesale distributor, and must include, but not be limited to:
      1. customer name;
      2. NABP e-Profile ID;
      3. customer address;
      4. customer DEA registration number;
      5. state license number(s);
      6. transaction date;
      7. drug name;
      8. NDC number;
      9. quantity ordered; and
      10. indication of whether the drug was shipped, and if not, the factual basis for the refusal to supply.
   2. Zero reports shall be submitted if no suspicious orders have been identified in a calendar month, and such reports shall be submitted within 15 days of the end of the calendar month.
   3. Manufacturers, repackagers, third-party logistics providers, and wholesale distributors may apply to the board for an exemption from the reporting requirements if they do not distribute controlled substances or drugs of concern.
3. Except as described in paragraph 9(4), a manufacturer, repackager, third-party logistics provider, or wholesale distributor shall exercise due diligence to identify customers ordering or seeking to order controlled substances or drugs of concern and establish the normal and expected transactions conducted by those customers, as well as to identify and prevent the sale of controlled substances or drugs of concern that are likely to be diverted from legitimate channels. Such due diligence measures shall include, but are not limited to, the following, which shall be conducted prior to an initial sale and on a regular basis, as necessary:
   1. questionnaires and affirmative steps by the manufacturer, repackager, third-party logistics provider, or wholesale distributor to confirm the accuracy and validity of the information provided;
   2. for a customer who is a prescriber, confirmation of prescriber type, specialty practice area, and if the prescriber personally furnishes controlled substances or drugs of concern, the quantity furnished;
   3. review of drug utilization reports; and
   4. obtaining and conducting a review of the following:
      1. methods of payment accepted and in what ratios;
      2. the ratio of controlled versus non-controlled drug orders and overall sales;
      3. orders for controlled substances or drugs of concern from other manufacturers, repackagers, third-party logistics providers, or wholesale distributors made available by US DEA’s Automation of Reports and Consolidated Orders System (ARCOS); and
      4. the ratio of out-of-state patients served compared to in-state patients.
4. A manufacturer, repackager, third-party logistics provider, or wholesale distributor receiving a request for an initial sale of a controlled substance or drug of concern may conduct the sale before complying with paragraph 8(3) if all the following apply:
   1. the sale is to a new customer;
   2. the manufacturer, repackager, third-party logistics provider, or wholesale distributor documents that the order is to meet an emergent need;
   3. the manufacturer, repackager, third-party logistics provider, or wholesale distributor completes the requirements of paragraph 8(3) no later than 60 days from the date of sale.
5. A manufacturer, repackager, third-party logistics provider, or wholesale distributor receiving a request from an existing customer to purchase a controlled substance or drug of concern, the size/quantity of which exceeds the established algorithm limitations or quota restrictions for such customer, may sell the drug of concern or controlled substance provided that the customer submits documentation of an emergent need for a specific patient.
6. Any customer that is believed to be engaged in potential diversion activities, including those to whom a manufacturer, repackager, third-party logistics provider, or wholesale distributor refuses to sell, shall be electronically reported to a program approved by the board. Such reports shall include:
   1. customer name;
   2. NABP e-Profile ID;
   3. customer address;
   4. DEA number;
   5. state license number(s); and
   6. a detailed explanation of why the manufacturer, repackager, third-party logistics provider, or wholesale distributor identified the customer as a possible diversion risk.

Such reports shall be submitted within 30 days of refusal, cessation, or identification by the manufacturer, repackager, third-party logistics provider, or wholesale distributor.

1. Within 90 days of the effective date of this rule, a manufacturer, repackager, third-party logistics provider, or wholesale distributor shall provide to a program approved by the board, information on all customers in the state where the manufacturer, repackager, third-party logistics provider, or wholesale distributor has refused to sell or has stopped selling within the past year because the manufacturer, repackager, third-party logistics provider, or wholesale distributor has identified the customer(s) as engaging in potential diversion activity that may cause reported drugs to be diverted from legitimate channels.
2. All licensed manufacturers, repackagers, third-party logistics providers, and wholesale distributors shall submit all reports to a board-approved program in a DEA ARCOS format.

### Section 9. Due Diligence.

1. Supply chain trading partners (manufacturers, repackagers, wholesale distributors, and dispensers) shall exercise due diligence when conducting business to expeditiously identify a suspect product and determine whether it is suspect (and after investigation, whether it is illegitimate).
2. Supply chain trading partners (manufacturers, repackagers, wholesale distributors, and dispensers) shall establish a system to:
   1. quarantine and investigate suspect product to determine if it is illegitimate.
   2. notify FDA, the board, and immediate trading partners if illegitimate product is found.
3. Manufacturers, repackagers, wholesale distributors, and dispensers shall establish processes for identifying their trading partners and transactions that require heightened vigilance in preventing the receipt of suspect products.
4. Heightened vigilance includes the examination of required records (invoices, shipping documents, transaction history, and transaction statement) for suspicious business practices and the physical examination of products for factors that increase the risk of a product being suspect, such as:
   1. a trading partner that has been involved in business transactions where they sold or delivered illegitimate product;
   2. a trading partner that has a history of problematic or potentially false transaction histories or pedigrees, such as those that contain misspelled words or incomplete information;
   3. a trading partner that is reluctant to provide a transaction history associated with the product being purchased or does not do so in a timely manner;
   4. a trading partner that provides transaction information, a transaction statement, and/or transaction history that appears to be incomplete or suspicious;
   5. the price of a product is suspicious;
   6. the product has been previously or is currently the subject of a drug shortage;
   7. a product that is in higher demand because of its potential or perceived relationship to a public health or other emergency;
   8. the appearance of the package is suspicious; or
   9. the package exhibits unusual or excessive adhesive residue.

### Section 10. Record Keeping.

1. Manufacturers, repackagers, third-party logistics providers, and wholesale distributors shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs and devices as outlined in federal law. These records shall include:
   1. dates of receipt and wholesale distribution; or
   2. other disposition of the prescription drugs and devices.
2. Such records shall include the inventories and records and shall be made available for inspection and photocopying by any authorized official of any state, federal, or local governmental agency for a period of six (6) years following their creation date.
3. All records related to the wholesale distribution of prescription drugs, including, but not limited to, invoices of purchase, packing slips, shipping records, and sales invoices will accurately reflect the name of the wholesale distributor as it appears on the facility’s license issued by the state in which the wholesale distributor is engaged in wholesale distribution. Wholesale distributors to which a license has been issued in the same name and at the same address as another licensee authorized to purchase prescription drugs must utilize a method to distinguish purchases and distributions that are specific to the wholesale distributor.
4. Records described in this Section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of any state or federal governmental agency charged with enforcement of these rules.
5. Wholesale distributors, third-party logistics providers, repackagers, and manufacturers should maintain an ongoing list of persons with whom they do business.
6. All facilities shall establish and maintain procedures for reporting suspect or illegitimate products or activities related to suspect or illegitimate products to the board and FDA.
7. Wholesale distributors shall maintain a system for the mandatory reporting of any theft, suspected theft, diversion, or other significant loss of any prescription drug or device to the board and FDA, and, where applicable, to DEA.[[181]](#footnote-182)

### Section 11. Policies and Procedures.

Manufacturers, repackagers, third-party logistics providers, and wholesale distributors shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, inventory, transport, and shipping and wholesale distribution of prescription drugs, including policies and procedures for identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories. Manufacturers, repackagers, third-party logistics providers, and wholesale distributors shall include in their written policies and procedures the following:[[182]](#footnote-183)

1. A procedure to be followed for handling recalls and withdrawals of prescription drugs and devices. Such procedure shall be adequate to deal with recalls and withdrawals due to:
   1. any action initiated at the request of FDA or any other federal, state, or local law enforcement or other government agency, including the board of pharmacy; or
   2. any volunteer action by the manufacturer to remove defective or potentially defective prescription drugs or devices from the market.
2. A procedure to ensure that manufacturers, repackagers, third-party logistics providers, and wholesale distributors prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of a strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.
3. A procedure to ensure that any outdated prescription drugs shall be segregated from other prescription drugs and either returned to the manufacturer or destroyed in accordance with federal and state laws, including all necessary documentation and the appropriate witnessing. This procedure shall provide for written documentation of the disposition of outdated prescription drugs.
4. A procedure for the destruction of outdated prescription drugs in accordance with federal and state laws.
5. A procedure for the disposing and destruction of containers, labels, and packaging to ensure that the containers, labels, and packaging cannot be used in counterfeiting activities, including all necessary documentation, maintained for a minimum of three (3) years, and the appropriate witnessing of the destruction of any labels, packaging, immediate containers, or containers in accordance with all applicable federal and state requirements.
6. A procedure for identifying, investigating and reporting significant prescription drug inventory discrepancies involving suspect or illegitimate products, in the inventory and reporting of such discrepancies as required to FDA, board and/or appropriate federal or state agency upon discovery of such discrepancies.
7. A procedure for reporting criminal or suspected criminal activities involving the inventory of prescription drug(s) and device(s) as required to the board, FDA, and, if applicable, DEA.
8. A procedure for verifying security provisions of Common Carriers.
9. Procedures addressing:
   1. the design and operation of the Suspicious Order monitoring and reporting system;
   2. mandatory annual training for staff responsible for identifying and reporting Suspicious Orders and potential Diversion Activities. Such training must include the following:
      1. the Manufacturer, Repackager, Third-Party Logistics Provider, or Wholesale Distributor’s Suspicious Order monitoring system;
      2. the process to collect all relevant information on customers in accordance with paragraph 8(3);
      3. the requirement and process for submission of Suspicious Orders and information on customers who engage in potential Diversion Activities.
10. A procedure for timely responding to customers who submit purchase orders for patients with emergent needs.

### Section 12. Prohibited Acts.[[183]](#footnote-184)

It is unlawful for a Person to knowingly and willfully perform or cause the performance of or aid and abet any of the following acts in this state:

1. The manufacture, repackaging, sale, delivery, or holding or offering for sale any prescription drug or device that is adulterated, misbranded, counterfeit, suspected of being counterfeit, or has otherwise been rendered unfit for distribution or wholesale distribution;
2. The adulteration, misbranding, or counterfeiting of any prescription drug or device;
3. The receipt of any prescription drug or device that is adulterated, misbranded, stolen, obtained by fraud or deceit, counterfeit, or suspected of being counterfeit, or the delivery or proffered delivery of such prescription drug or device for pay or otherwise;
4. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the product labeling of a prescription drug or device or the commission of any other act with respect to a prescription drug or device that results in the prescription drug or device being misbranded;
5. The forging, counterfeiting, simulating, or falsely representing of any prescription drug or device without the authority of the manufacturer, or using any mark, stamp, tag, label, or other identification device without the authorization of the manufacturer;
6. The purchase or receipt of a prescription drug or device from a person that is not licensed to distribute prescription drugs or devices to that purchaser or recipient;
7. The sale or transfer of a prescription drug or device to a person who is not legally authorized to receive a prescription drug or device;
8. The sale or transfer of a prescription drug or device from pharmacies to distributors for resale;[[184]](#footnote-185)
9. The failure to maintain or provide records as required by this Act and Rules;
10. Providing the board or any of its representatives or any state or federal official with false or fraudulent records or making false or fraudulent statements regarding any matter within the provisions of this Act and Rules;
11. The wholesale distribution of any prescription drug or device that was:
    1. purchased by a public or private hospital or other health care entity;
    2. donated or supplied at a reduced price to a charitable organization; or
    3. stolen or obtained by fraud or deceit.
12. The failure to obtain a license or operating without a valid license when a license is required;
13. The obtaining of or attempting to obtain a prescription drug or device by fraud, deceit, misrepresentation or engaging in misrepresentation or fraud in the distribution or wholesale distribution of a prescription drug or device;
14. The distributing of a prescription drug or device to the patient without a prescription or prescription order from a practitioner licensed by law to use or prescribe the prescription drug or device;
15. The distributing or wholesale distributing of a prescription drug or device that was previously dispensed by a pharmacy or distributed by a practitioner; or
16. The failure to report any prohibited act as listed in these Rules.

### Section 13. Criminal Acts.[[185]](#footnote-186)

1. A person who, with intent to defraud or deceive, performs the act of adulteration, misbranding, or counterfeiting of any prescription drug or device commits a felony of the third degree.
2. A person who engages in the wholesale distribution of prescription drug(s) who, with intent to defraud or deceive, falsely swears or certifies that they have authenticated any documents related to the wholesale distribution of prescription drugs, commits a felony of the third degree.
3. A person who engages in the wholesale distribution of prescription drug(s) or device(s) and knowingly purchases or receives prescription drug(s) or device(s) from a person, not legally authorized to wholesale distribute prescription drug(s) or device(s), in wholesale distribution commits a felony of the third degree.
4. A person who engages in the wholesale distribution of prescription drug(s) or device(s) and knowingly sells, barters, brokers, or transfers prescription drug(s) or device(s) to a person not legally authorized to purchase prescription drug(s) or device(s), under the jurisdiction in which the person receives the prescription drug(s) or device(s) in a wholesale distribution, commits a felony of the third degree.
5. A person who knowingly possesses, actually or constructively, any amount of an illegitimate product, who knowingly sells or delivers, or who possesses with intent to sell or deliver any amount of and illegitimate product commits a felony of the third degree.
6. A person who knowingly forges, counterfeits, or falsely creates any label for a prescription drug(s) or device(s) or who falsely represents any factual matter contained in any label of a prescription drug(s) or device(s) commits a felony of the third degree.
7. A person who knowingly manufactures, purchases, sells, delivers, or brings into the state, or who is knowingly in actual or constructive possession of any amount of illegitimate product, commits a felony of the third degree.
8. A person who knowingly manufactures, purchases, sells, delivers, or brings into the state, or who is knowingly in actual or constructive possession of any amount of illegitimate product, and whose acts result in the death of a person, commits a felony in the first degree.
9. A person found guilty of any offense under this section, under the authority of the court convicting and sentencing the person, shall be ordered to forfeit to the state any real or personal property:
   1. used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and
   2. constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense.

Any property or assets subject to forfeiture under this section may be seized pursuant to a warrant obtained in the same manner as a search warrant or as otherwise permitted by law, and held until the case against a defendant is adjudicated. Monies ordered forfeited, or proceeds from the sale of other assets ordered forfeited, shall be equitably divided between the board and other agencies involved in the investigation and prosecution that led to the conviction. Other property ordered forfeited after conviction of a defendant may, at the discretion of the investigating agencies, be placed into official use by the board or the agencies involved in the investigation and prosecution that led to the conviction.

### Section 14. Salvaging and Reprocessing.

Wholesale distributors, third-party logistics providers, and trading partners shall be subject to the provisions of any applicable federal, state, or local laws or rules that relate to prescription drug product salvaging or reprocessing, including Chapter 21, parts 207, 210, and 211k of the Code of Federal Regulations.

### Section 15. Inspection and Accreditation by a Third Party.

1. The board shall have the authority to recognize a third party to inspect and accredit wholesale distributors.
2. The board may license by reciprocity a wholesale distributor and third-party logistics provider that is licensed under the laws of another state, if:
   1. the requirements of that state are deemed by the board to be substantially equivalent; or
   2. the applicant is accredited by a third party recognized by the board.

An applicant that is accredited by a third party recognized and approved by the board, shall not be subject to duplicative requirements set by the board. If an applicant is inspected, but not accredited by a third party, that applicant must comply with the requirements set by the board through regulation.

1. Any applicant that is denied accreditation described under paragraph (a), shall have the right of review of the accreditation body’s decision, by:
   1. the accreditation body; and
   2. the board.
2. The board-recognized accreditation body shall ensure that the proprietary information obtained during the accreditation process remains confidential and privileged.
3. The board may waive requirements of this chapter, by regulation, for wholesale distributors that have obtained and maintain a board-approved accreditation.

# Model Rules for the Licensure of Medical Gas and Medical Gas Related Equipment Wholesale Distributors

### Section 1. Definitions.

1. “Adulterated Medical Gas or Medical Gas Related Equipment.” A medical gas or medical gas related equipment shall be deemed to be adulterated:
   1. if:
      1. it consists in whole or in part of any impurities or deleterious substances exceeding normal specifications;
      2. it has been produced, prepared, packed, or held under conditions whereby the medical gas may have been contaminated causing it to be rendered injurious to health; or if the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practices to ensure that the medical gas meets the requirements of this part as to safety and has the identity and strength, and meets the quality and purity characteristics that it purports or is represented to possess; or
      3. its container interior is contaminated with any poisonous or deleterious substance that may render the contents injurious to health; or
   2. if it purports to be or is represented as a medical gas, the name of which is recognized in the United States Pharmacopeia – National Formulary (USP-NF), and its strength differs from, or its quality or purity falls below, the standard set forth in the USP-NF. Such a determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in the USP-NF, or validated equivalent, or in the absence of or inadequacy of these tests or methods of assay, those prescribed under authority of the federal act. No medical gas defined in USP-NF shall be deemed to be adulterated under this paragraph because it differs from the standard of strength, quality, or purity therefore set forth in the compendium, if its difference in strength, quality, or purity from that standard is plainly stated on its label; or
   3. if it is not subject to paragraph (b) and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.
2. “Authorized Distributor of Record of Medical Gases or Medical Gas Related Equipment” means a distributor with whom a manufacturer has established an ongoing relationship to distribute the manufacturer’s products. An ongoing relationship is deemed to exist between such wholesale distributor and a manufacturer when the wholesale distributor, including any affiliated group of the wholesale distributor, as defined in Section 1504 of the internal revenue code, complies with the following:
   1. the wholesale distributor has a written agreement currently in effect with the manufacturer evidencing such ongoing relationship; and
   2. the wholesale distributor is listed on the manufacturer’s current list of authorized distributors of record, which must be updated by the manufacturer when changes are made.
3. “Common Carrier of Medical Gases or Medical Gas Related Equipment” means any person or entity who undertakes, whether directly or by any other arrangement, to transport, load, or offload property including medical gas or medical gas related equipment for compensation.[[186]](#footnote-187)
4. “Designated Representative of Medical Gas or Medical Gas Related Equipment Wholesale Distributors” means any and all individuals designated by the wholesale distributor of medical gases or medical gas related equipment who will serve as a responsible individual of such wholesale distributor with the board who is actively involved in and aware of the actual daily operation of such wholesale distributor.
5. “Distribute Medical Gas or Medical Gas Related Equipment” or “Distribution of Medical Gas or Medical Gas Related Equipment” means to sell, offer to sell, deliver, offer to deliver, broker, give away, or transfer a medical gas or medical gas related equipment, whether by passage of title, physical movement, or both. the term does not include:
   1. to dispense or administer; or
   2. delivering or offering to deliver a medical gas or medical gas related equipment by a common carrier in the usual course of business as a common carrier.
6. “Emergency Medical Reasons for the distribution of medical gases or medical gas related equipment” include, but are not limited to, transfers of a medical gas or medical gas related equipment between a wholesale distributor of medical gases or medical gas related equipment or pharmacy to alleviate a temporary shortage of a medical gas or medical gas related equipment arising from delays in or interruption of regular distribution schedules; sales to nearby emergency medical services, eg, ambulance companies and firefighting organizations in the same state or same marketing or service area, or nearby licensed practitioners allowed to dispense medical gases or medical gas related equipment for use in the treatment of acutely ill or injured persons; provision of minimal emergency supplies of medical gases or medical gas related equipment to nearby nursing homes for use in emergencies or during hours of the day when necessary medical gases or medical gas related equipment cannot be obtained; and transfers of medical gases or medical gas related equipment by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage.
7. “Emergency Use Oxygen” means Oxygen USP administered in emergency situations without a prescription. The container must be labeled in accordance with federal FDA requirements: “For emergency use only when administered by properly trained personnel for oxygen deficiency and resuscitation. For all other medical applications, Rx Only.”
8. “FDA” means the Food and Drug Administration, a federal agency within the United States Department of Health and Human Services, established to set safety and quality standards for drugs, food, cosmetics, and other consumer products.
9. “Federal Act” means the Federal Food, Drug, and Cosmetic Act.
10. “Health Care Entity” means any person that provides diagnostic, medical, surgical, dental treatment, or rehabilitative care, including home respiratory care providers and (in the case of Oxygen USP) to an authorized administrator of “Emergency Use Oxygen,” but does not include any retail pharmacy or wholesale distributor.
11. “Immediate Container for Medical Gases” means compressed gas cylinders and liquid containers containing a medical gas, but does not include large bulk liquid or high-pressure containers such as storage tanks, vehicle mounted vessels, trailers, and/or railcars.
12. “Intracompany Transaction” means any transaction between a division, subsidiary, parent, and/or affiliated or related company under the common ownership and control of a corporate entity.
13. “Label for Medical Gases” means a display of written, printed, or graphic matter upon the immediate container of any medical gas.
14. “Label for Medical Gas Related Equipment” means a display of written, printed, or graphic matter upon the immediate container of any medical gas related equipment.
15. “Legally Authorized to Receive” means persons that are licensed manufacturers of medical gases or medical gas related equipment, wholesale distributors of medical gases or medical gas related equipment, home respiratory care companies, and pharmacies. Also includes health care entities, persons authorized to receive emergency use oxygen without a prescription, and companies that require the use of a medical gas in the installation and refurbishment of piping and equipment, including medical gas related equipment that will be used to distribute or contain a medical gas.
16. “Medical Gas” means gases (including liquefied gases) classified by FDA as drugs or devices that are used for medical applications and which may be stored and administered through the use of medical gas related equipment, which may or may not be required under federal or state law for the immediate container to bear the label, “Rx only” or “Caution: federal or state law prohibits dispensing without a prescription.”
17. “Manufacturer of Medical Gases” means persons manufacturing bulk medical gases or persons transferring gas or liquefied gas product from one container to another (eg, liquid to gas, gas to gas, liquid to liquid).
18. “Medical Gas Related Equipment” means a device used as a component part or accessory used to contain or control the flow, delivery, and/or pressure during the administration of a medical gas (eg, liquid oxygen base and portable units, pressure regulators and flow meters, oxygen concentrators).
19. “misbranded medical gas or medical gas related equipment” means a medical gas or medical gas related equipment shall be deemed to be misbranded if the label is false or misleading in any particular; or the label does not bear the name and address of the manufacturer, packer, or distributor and does not have an accurate statement of the quantities of the active ingredients in the case of a medical gas; or the label does not show an accurate monograph for the medical gas.
20. “Prescription Medical Gas” means a medical gas which is required under law to be labeled with the following statement: “Rx Only.”
21. “Product Labeling” means all labels and other written, printed, or graphic matter upon any article or any of its containers or wrappers, or accompanying such article.
22. “USP Standards” means standards published in the current official United States Pharmacopeia or National Formulary.
23. “Wholesale Distribution of Medical Gases or Medical Gas Related Equipment” means the distribution of medical gas or medical gas related equipment, by wholesale distributors of medical gases or medical gas related equipment to persons other than consumers or patients. To the extent permitted by the prescription drug marketing act, wholesale distribution of medical gases, or medical gas related equipment does not include:
    1. the sale, purchase, or trade of a medical gas or medical gas related equipment, an offer to sell, purchase, or trade a prescription drug or device, or the dispensing of a medical gas or medical gas related equipment pursuant to a prescription;
    2. the sale, purchase, or trade of a medical gas or medical gas related equipment or an offer to sell, purchase, or trade a medical gas or medical gas related equipment for emergency medical reasons;
    3. intracompany transactions, unless in violation of own use provisions;
    4. the sale, purchase, or trade of a medical gas or medical gas related equipment or an offer to sell, purchase, or trade a medical gas or medical gas related equipment among hospitals, pharmacies, or other health care entities that are under common control;
    5. the sale, purchase, or trade of a medical gas or medical gas related equipment or the offer to sell, purchase, or trade a medical gas or medical gas related equipment by a charitable organization described in 503(c)(3) of the Internal Revenue Code of 1954 to a nonprofit affiliate of the organization to the extent otherwise permitted by law;
    6. the purchase or other acquisition by a hospital or other similar health care entity that is a member of a group purchasing organization of a medical gas or medical gas related equipment for its own use from the group purchasing organization or from other hospitals or similar health care entities that are members of these organizations;
    7. the return of residual medical gas that may be reprocessed in accordance with manufacturer’s procedures, or the return of recalled, expired, damaged, or otherwise non-salable medical gas or medical gas related equipment, when conducted by a hospital, health care entity, pharmacy, or charitable institution in accordance with the board’s regulations; or
    8. other transactions excluded from the definition of “wholesale distribution” under 21 CFR 203.3(CC), including any amendments thereto.
24. “Wholesale Distributor of Medical Gases or Medical Gas Related Equipment” means any person engaged in wholesale distribution of medical gas or medical gas related equipment in or into the state, including but not limited to manufacturers, own-label distributors, private-label distributors, warehouses, including manufacturers’ and distributors’ warehouses, and wholesale medical gas or medical gas related equipment warehouses.

### Section 2. Requirements for Licensure.

Wholesale distributors of medical gases or medical gas related equipment that reside in this state and provide services within this state or other states shall be licensed by the board and shall periodically renew their license with the board using an application provided by the board. Wholesale distributors of medical gases or medical gas related equipment that provide services within this state though are not residents of this state shall maintain a valid license with the state board in which they reside and in all states in which they distribute, if required. Wholesale distributors of medical gases or medical gas related equipment cannot operate from a place of residence, except when that place of residence is used for “on call” delivery of homecare oxygen and oxygen related equipment by a home respiratory care technician. Where operations are conducted at more than one location within this state, each such location shall be licensed by the board of pharmacy.

1. Subject to the Federal Act and all applicable federal law and regulations, an FDA-registered medical gas or medical gas related equipment manufacturer, including its affiliates, subsidiaries, agents, and other entities under common ownership and control of the manufacturer, that exclusively distributes its own medical gas or medical gas related equipment, may be exempted from the requirements for licensure.
2. Every wholesale distributor of medical gases or medical gas related equipment shall license with the board by application and provide information required by the board on an application approved by the board, including but not limited to:
   1. all trade or business names used by the licensee (includes “doing business as (dba)” and “formerly known as”), which cannot be identical to the name used by another unrelated wholesale distributor of medical gas or medical gas related equipment in the state;
   2. name(s) of the owner and operator of the licensee (if not the same person), including:[[187]](#footnote-188)
      1. if a person: the name, business address, social security number, and date of birth;
      2. if a partnership: the name, business address, and social security number, and date of birth of each partner, the name of the partnership, and federal employer identification number;
      3. if a corporation: the name, business address, and title of each corporate officer and director, the corporate names, the state of incorporation, federal employer identification number, and the name and business address of the parent company, if any;
      4. if a sole proprietorship: the full name and business address of the sole proprietor and the name and federal employer identification number of the business entity;
      5. if a limited liability company: the name, business address, and title of each company officer, the name of the limited liability company and federal employer identification number, and the name of the state in which the limited liability company was organized; and
      6. any other relevant information that the board requires.
   3. name(s), business address(es), and telephone number(s) of a person(s) to serve as the designated representative(s) for each facility of the wholesale distributor of medical gas or medical gas related equipment and additional information as required in Section 11 (Record Keeping);
   4. a list of all state and federal licenses, registrations, or permits, including the license, registration, or permit numbers issued to the wholesale distributor of medical gas or medical gas related equipment by any other state and federal authority that authorizes the wholesale distributor of medical gas or medical gas related equipment to purchase, possess, and engage in wholesale distribution of medical gas or medical gas related equipment in this state;
   5. a list of all disciplinary actions pertinent to wholesale distributors of medical gas or medical gas related equipment by any state and federal agencies against the wholesale distributor of medical gas or medical gas related equipment into the state as well as any such actions against principals, owners, directors, or officers;
   6. an address and description of each facility and warehouse, including all locations utilized for medical gas or medical gas related equipment storage or medical gas or medical gas related equipment wholesale distribution including a description of the security system;
   7. information regarding general and product liability insurance, including copies of relevant policies;
   8. a description of import and export activities;
   9. a copy of the written policies and procedures as required in Section 12 (Policies and Procedures); and
   10. the information collected by the board pursuant to Section 2(2) shall be made available only to the board, a third party recognized by the Board, and to state and federal law enforcement officials. The board shall make provisions for protecting the confidentiality of the information collected under this section.
3. A surety bond of not less than $100,000, or other equivalent means of security acceptable to the board or a third party recognized by the board such as insurance, an irrevocable letter of credit, or funds deposited in a trust account or financial institution, to secure payment of any administrative penalties imposed by the board and any fees or costs incurred by the board regarding that licensee when those penalties, fees, or costs are authorized under state law and the licensee fails to pay thirty (30) days after the penalty, fee, or costs becomes final. A separate surety bond or other equivalent means of security is not required for each company’s separate locations or for affiliated companies/groups when such separate locations or affiliated companies/groups are required to apply for or renew their wholesale distributor of medical gases or medical gas related equipment license with the board. The board may make a claim against such bond or other equivalent means of security until one year after the medical gas or medical gas related equipment wholesale distributor’s license ceases to be valid or until sixty (60) days after any administrative or legal proceeding before or on behalf of the board that involves the medical gas or medical gas related equipment wholesale distributor is concluded, including any appeal, whichever occurs later. Manufacturers of medical gases shall be exempt from securing a surety bond or other equivalent means of security acceptable to the board. The board may waive the bond requirement, if the wholesale distributor of medical gases or medical gas related equipment:
   1. has previously obtained a comparable surety bond or other equivalent means of security for the purpose of licensure in another state, where the medical gas or medical gas related equipment wholesale distributor possesses a valid license in good standing; or
   2. is a publicly held company.
4. Every wholesale distributor of medical gases or medical gas related equipment who engages in wholesale distribution of medical gases or medical gas related equipment shall submit a reasonable fee to be determined by the board.
5. Manufacturing facilities of medical gases are exempt from inspection by the board, if the manufacturing facilities:
   1. are currently registered with FDA in accordance with Section 510 of the Federal Act and can provide proof of such registration, such as a copy of the online verification page; and
   2. can provide proof of inspection by the FDA, or other regulatory body within the past three (3) years.
6. The board may require each facility that engages in wholesale distribution of medical gases or medical gas related equipment to undergo an inspection in accordance with Section 16 of this rule and in accordance with a schedule to be determined by the board.[[188]](#footnote-189)
7. All wholesale distributors of medical gases or medical gas related equipment must publicly display or have readily available all state licenses and the most recent inspection report administered by the board.
8. Changes in any information in this Section shall be submitted to the board, or to a third party recognized by the board, within 30 days of such change (unless otherwise noted).
9. Information submitted by the wholesale distributor of medical gases or medical gas related equipment to the board or a third party recognized by the board that is considered trade secret or proprietary information, as defined under this state’s privacy and trade secret/proprietary statutes, shall be maintained by the board or a third party recognized by the board as private or trade secret/proprietary information and be exempt from public disclosure.

### Section 3. Minimum Qualifications.

1. The board will consider the following factors in determining the eligibility for, and renewal of, licensure of persons who engage in the wholesale distribution of medical gas or medical gas related equipment:
   1. any findings by the board that the applicant has violated or been disciplined by a regulatory agency in any state for violating any federal, state, or local laws relating to or the wholesale distribution of medical gases or medical gas related equipment;
   2. any criminal convictions of the applicant under federal, state, or local laws;
   3. the applicant’s past experience in the manufacture or wholesale distribution of medical gases or medical gas related equipment;
   4. the furnishing by the applicant of false or fraudulent material in any application made in connection with the or manufacturing or wholesale distribution of medical gases or medical gas related equipment;
   5. suspension, sanction, or revocation by federal, state, or local government against any license currently or previously held by the applicant or any of its owners for violations of state or federal laws regarding medical gas or medical gas related equipment;
   6. compliance with previously granted licenses of any kind;
   7. compliance with the requirements to maintain and/or make available to the board licensing authority or to federal, state, or local law enforcement officials those records required to be maintained by wholesale distributors of medical gases or medical gas related equipment; and
   8. any other factors or qualifications the board considers relevant to and consistent with the public health and safety.
2. The Board shall consider the results of a criminal and financial background check of the applicant, including but not limited to, all key personnel involved in the operations of the wholesale distributor of medical gases or medical gas related equipment, including the most senior person responsible for facility operations, purchasing, and inventory control and the person or persons they report to; and all company officers, key management, principals, and owners with ten percent (10%) or greater ownership interest in the company (applying to non-publicly held companies only) to determine if an applicant or others associated with the ownership, management, or operations of the wholesale distributor of medical gases or medical gas related equipment have committed criminal acts that would constitute grounds for denial of licensure. the background check will be conducted in compliance with any applicable state and federal laws, at the applicant’s expense, and will be sufficient to include all states of residence since the person has been an adult. manufacturers of medical gases or medical gas related equipment shall be exempt from criminal and financial background checks.
3. The applicant shall provide, and attest to, a statement providing a complete disclosure of any past criminal convictions and violations of the state and federal laws regarding medical gases or medical gas related equipment or an affirmation and attestation that the applicant has not been involved in, or convicted of, any criminal or prohibited acts.

### Section 4. Personnel.

each person that is issued an initial or renewal license as a wholesale distributor of medical gases or medical gas related equipment, whether in state or out of state, must designate in writing, person(s) for each facility to serve as designated representatives of such medical gas or medical gas related equipment wholesale distributor. the members of the quality control unit, per 21 CFR 211.22, shall act as the designated representatives for the medical gas or medical gas related equipment wholesale distributer.

1. To be certified as a designated representative for a wholesale distributor of medical gases or medical gas related equipment, a person:
   1. must have the appropriate amount of education, training and experience or any combination thereof to perform the functions required to serve as the designated representative of such medical gas or medical gas related equipment wholesale distributor; and
   2. must be actively involved in and aware of the daily operations of the medical gas or medical gas related equipment wholesale distributor location(s) including all policies and procedures pertaining to those operations and may cover multiple locations. The designated representative is therefore not required to be present at each site during normal business hours.
2. The information collected pursuant to Section 3(1) shall be made available only to the board, a third party recognized by the board, and to state and federal law enforcement officials. The board and a third party recognized by the board shall make provisions for protecting the confidentiality of the information collected under this section.
3. Each licensed wholesale distributor of medical gases or medical gas related equipment located outside of this state that wholesale distributes medical gases or medical gas related equipment in this state shall designate a registered agent in this state for service of process. Any licensed wholesale distributor of medical gases or medical gas related equipment that does not so designate a registered agent shall be deemed to have designated the secretary of state of this state to be its true and lawful attorney, upon who may be served all legal processes in any action or proceeding against such licensed medical gas or medical gas related equipment wholesale distributor growing out of or arising from such medical gas or medical gas related equipment wholesale distribution. A copy of any such service of process shall be mailed to such wholesale distributor by the board by certified mail, return receipt requested, postage prepaid, at the address such licensed medical gas or medical gas related equipment wholesale distributor has designated on its application for licensure in this state. If any such medical gas or medical gas related equipment wholesale distributor is not licensed in this state, service on the secretary of state only shall be sufficient service.
4. A designated representative must complete either:
   1. continuing education programs specified by the board regarding federal and state laws in regard to the wholesale distribution, handling, and storage of medical gases or medical gas related equipment; or
   2. training programs that address applicable federal and state laws and are provided by qualified in-house specialists, outside counsel, or consulting specialists with capabilities to help ensure compliance.

### Section 5. Minimum Requirements for the Storage and Handling of Medical Gases or Medical Gas Related Equipment and for Establishment and Maintenance of Medical Gas or Medical Gas Related Equipment Records.

The following are required for the storage, handling, transport, and shipment of medical gases or medical gas related equipment and for the establishment and maintenance of medical gas or medical gas related equipment wholesale distribution records by wholesale distributors of medical gases and medical gas related equipment and their officers, agents, representatives, and employees.

1. All facilities at which a medical gas or medical gas related equipment is received, stored, warehoused, handled, held, offered, marketed, displayed, or transported from shall:
   1. be of suitable construction to ensure that all medical gases or medical gas related equipment in the facilities are maintained in accordance with the product labeling of such medical gas or medical gas related equipment, or in compliance with official compendium standards such as the USP-NF;
   2. be of suitable size and construction to facilitate cleaning, maintenance, and proper medical gas or medical gas related equipment wholesale distribution operations;
   3. have adequate storage areas with appropriate lighting, ventilation, sanitation, space, equipment, and security conditions;
   4. have a quarantine area for storage of medical gas or medical gas related equipment that are suspected of being outdated, misbranded, or adulterated, or otherwise unfit for distribution or medical gas or medical gas related equipment wholesale distribution;
   5. be maintained in a clean and orderly condition;
   6. be free from infestation that may impact the identity, strength, quality, or purity of the medical gas;
   7. be a commercial location and not a personal dwelling or residence, except when that personal dwelling is used for “on call” delivery of Oxygen USP and oxygen related equipment for homecare use;[[189]](#footnote-190)
   8. provide for the secure and confidential storage of information with restricted access and policies and procedures to protect the integrity and confidentiality of the information; and
   9. provide and maintain appropriate inventory controls in order to detect and document any theft of nitrous oxide.

### Section 6. Security.

1. All facilities used for wholesale distribution of medical gases or medical gas related equipment shall be secure from unauthorized entry:
   1. access from outside the premises shall be kept to a minimum and be well-controlled;
   2. the outside perimeter of the premises shall be well-lighted; and
   3. entry into areas where medical gas or medical gas related equipment are held shall be limited to authorized personnel; all facilities shall be equipped with a system to detect or deter entry after hours.
2. All facilities shall be equipped with a system that will provide suitable protection against theft. When appropriate, the system shall provide protection against theft that is facilitated or hidden by tampering with computers or electronic records.
3. All facilities shall be equipped with inventory management and control systems that protect against, detect, and document any instances of theft of nitrous oxide.
4. Where wholesale distributors of medical gases or medical gas related equipment use electronic distribution records, they shall employ, train, and document the training of personnel in the proper use of such technology and equipment.
5. All facilities shall be equipped with security systems to protect the integrity and confidentiality of data and documents and make such data and documents readily available to the board and other state and federal law enforcement officials.
6. Vehicles utilized for on-call delivery of Oxygen USP and oxygen related equipment for home care use by home care providers may be parked at a place of residence and shall be locked and equipped with an audible alarm while not attended.
7. All wholesale distributors of medical gases or medical gas related equipment shall maintain records documenting from whom medical gases or medical gas related equipment are received and to whom medical gases and/or medical gas related equipment are distributed with information sufficient to perform a recall of medical gases or medical gas related equipment received and distributed in compliance with 21 CFR 150b, 21 CFR 211.196, and 21 CFR 820.160b.

### Section 7. Storage.

All medical gases or medical gas related equipment shall be stored under appropriate conditions in accordance with regulations or, in the absence of regulations, in accordance with applicable industry standards, and the manufacturers’ recommendations on the product labeling.

1. Packaging of the medical gas or medical gas related equipment should be in accordance with an official compendium such as USP-NF, if applicable.
2. The record-keeping requirements in Section 11 (Record Keeping) shall be followed for the wholesale distribution of all medical gases or medical gas related equipment.

### Section 8. Examination of Materials.

1. Upon receipt, each medical gas container and related equipment shall be visually examined for identity and to determine if it is damaged or otherwise unfit for medical gas or medical gas related equipment wholesale distribution. This examination shall be adequate to reveal container damage that would suggest possible adulteration or misbranding.
2. The medical gas or medical gas related equipment found to be unacceptable under paragraph (1) should be quarantined from the rest of stock until the examination and determination that the medical gas or medical gas related equipment are not misbranded or adulterated.
3. Each outgoing shipment shall be carefully inspected for identity of the medical gas or medical gas related equipment and to ensure that there is no delivery of medical gas or medical gas related equipment that have been damaged in storage or held under improper conditions.
4. Upon receipt, a wholesale distributor of medical gases or medical gas related equipment must review records for the acquisition of medical gases or medical gas related equipment for accuracy and completeness.
5. The record-keeping requirements in Section 11 (Record Keeping) shall be followed for all incoming and outgoing medical gases or medical gas-related equipment.

### Section 9. Returned, Damaged, and Outdated Medical Gases or Medical Gas Related Equipment.

1. Medical gas that has left the control of the medical gas or medical gas related equipment wholesale distributor may be returned to the medical gas or medical gas related equipment wholesale distributor or manufacturer from which it was acquired but may not be resold as a medical gas even if the integrity of the product is maintained, unless it is reprocessed by the manufacturer employing proper and adequate controls to ensure the identity, strength, quality, and purity of the reprocessed medical gas.
2. Reusable medical gas related equipment that has left the control of the medical gas or medical gas related equipment wholesale distributor may be returned to medical gas or medical gas related equipment wholesale distributor or manufacturer for inspection. The medical gas related equipment may be repaired and or refurbished, if necessary, provided the medical gas or medical gas related equipment manufacturer or wholesale distributor employs proper and adequate controls to return the medical gas related equipment to proper condition.
3. Any medical gas, including its container, that is damaged, misbranded, or adulterated shall be quarantined and physically separated from other medical gases until it is destroyed or returned to either the medical gas or medical gas related equipment manufacturer or wholesale distributor from which it was acquired. External contamination to medical gas containers or closure system, not impacting the integrity of the medical gas, is not considered damage or adulteration for purposes of this paragraph. When medical gas or medical gas related equipment are adulterated, misbranded, or suspected of being adulterated, or misbranded, notice of the adulteration, misbranding, or suspected adulteration, or misbranding shall be provided to the manufacturer or wholesale distributer from which they were acquired and also the appropriate boards and federal regulatory bodies.
4. Any medical gas container that has been opened or used, but is not adulterated or misbranded, shall be considered empty, quarantined and physically separated from non-empty medical gas containers and returned to the manufacturer for destruction or reprocessing.
5. Any medical gas, its container, or medical gas related equipment including its associated documentation or labeling, suspected of being involved in a criminal activity shall be retained and not destroyed until its disposition is authorized by the board, or applicable law enforcement agency.
6. The record-keeping requirements in Section 11 (Record Keeping) of this rule shall be followed for all misbranded or adulterated medical gases.

### Section 10. Due Diligence.

A wholesale distributor of medical gases or medical gas related equipment licensed in accordance with these rules shall comply with the following due diligence requirements:

1. Prior to the initial wholesale distribution or acquisition of medical gases or medical gas related equipment to or from any medical gas or medical gas related equipment wholesale distributor (or prior to any wholesale distribution to a medical gas or medical gas related equipment wholesale distributor by a manufacturer), the distributing medical gas or medical gas related equipment wholesale distributor (or manufacturer) shall provide the following information to the acquiring medical gas or medical gas related equipment wholesale distributor:
   1. If a medical gas or medical gas related equipment manufacturer is distributing to a medical gas or medical gas related equipment wholesale distributor, evidence that the medical gas or medical gas related equipment manufacturer is registered, and the medical gas or medical gas related equipment is listed with FDA;
   2. If a medical gas or medical gas related equipment wholesale distributor is distributing to a medical gas or medical gas related equipment wholesale distributor, evidence that the medical gas or medical gas related equipment wholesale distributor supplying the medical gas or medical gas related equipment is licensed to provide product into the state, if required by the state;
   3. The name(s) of the responsible facility contact person(s) at the supplying medical gas or medical gas related equipment manufacturer or wholesale distributor; and
   4. A certification that the medical gas or medical gas related equipment manufacturer or wholesale distributor’s policies and procedures comply with this Act.
2. A medical gas or medical gas related equipment manufacturer or wholesale distributor that wholesale distributes or acquires medical gases or medical gas related equipment to or from another wholesale distributor of medical gases or medical gas related equipment shall provide to or obtain from the distributing or acquiring entities as applicable the information set forth in Section 11 (Record Keeping).
3. Wholesale distributors of medical gases or medical gas related equipment are exempt from inspecting and obtaining the information from manufacturers of medical gases or medical gas related equipment as required in Section 10 (Due Diligence) when the manufacturer is registered with FDA in accordance with Section 510 of the Federal Act and can:[[190]](#footnote-191)
   1. provide proof of such registration; and
   2. either:
      1. can provide proof of inspection by the FDA, or other regulatory body within the past three (3) years; or
      2. in the event that no regulatory body has inspected within the past three (3) years, conformance with industry standards or guidelines, as identified by the board.

### Section 11. Record Keeping.

1. Wholesale distributors of medical gases or medical gas related equipment shall establish and maintain records of all transactions regarding the receipt and wholesale distribution or other disposition of medical gases or medical gas related equipment. These records shall include:
   1. dates of receipt and wholesale distribution or other disposition of the medical gas or medical gas related equipment; and
   2. information sufficient to perform a recall of medical gases or medical gas related equipment received and distributed.
2. Such records shall be made available for inspection and photocopying by any authorized official of any state, federal, or local governmental agency for a period of:[[191]](#footnote-192)
   1. three (3) years following their creation date for high pressure medical gases;
   2. one (1) year following their creation date for cryogenic or refrigerated liquid medical gases; and
   3. three (3) years following their creation date for medical gas related equipment.
3. Records described in this Section that are kept at the inspection site or that can be immediately retrieved by computer or other electronic means shall be readily available for authorized inspection during the retention period. Records kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two (2) working days of a request by an authorized official of any state or federal governmental agency charged with enforcement of these rules.
4. Wholesale distributors and manufacturers of medical gases or medical gas related equipment should maintain an ongoing list of persons from whom they receive or to whom they distribute medical gases or medical gas related equipment.
5. Wholesale distributors of medical gases or medical gas related equipment shall maintain a system for the mandatory reporting of any theft, suspected theft, or other significant loss of nitrous oxide to the board and other appropriate law enforcement agencies.

### Section 12. Policies and Procedures.

Wholesale distributors of medical gases or medical gas related equipment shall establish, maintain, and adhere to written policies and procedures, which shall be followed for the receipt, security, storage, transport, and shipping and wholesale distribution of medical gases or medical gas related equipment, including policies and procedures for maintaining inventories, identifying, recording, and reporting losses or thefts and for correcting all errors and inaccuracies in inventories associated with nitrous oxide. Wholesale distributors of medical gases or medical gas related equipment shall include in their written policies and procedures the following:

1. A procedure to be followed for handling recalls and withdrawals of medical gases or medical gas related equipment. such procedure shall be adequate to deal with recalls and withdrawals due to:
   1. any action initiated at the request of FDA or any other federal, state, or local law enforcement or other government agency, including the board of pharmacy; or
   2. any volunteer action by the manufacturer of medical gases or medical gas related equipment to remove defective or potentially defective medical gases or medical gas related equipment from the market.
2. A procedure to ensure that wholesale distributors of medical gases or medical gas related equipment prepare for, protect against, and handle any crisis that affects security or operation of any facility in the event of a strike, fire, flood, or other natural disaster, or other situations of local, state, or national emergency.
3. A procedure for reporting criminal or suspected criminal activities involving the inventory of nitrous oxide to the board, and applicable law enforcement agencies, within three (3) business days of becoming aware of the criminal or suspect criminal activity.
4. A procedure for verifying security provisions of common carriers.

### Section 13. Prohibited Acts.

It is unlawful for a Person to knowingly and willfully perform or cause the performance of or aid and abet any of the following acts in this state:

1. The manufacture, repackaging, sale, delivery, or holding or offering for sale any medical gas or medical gas related equipment that is adulterated, misbranded, or has otherwise been rendered unfit for distribution or wholesale distribution;
2. The adulteration, or misbranding of any medical gas or medical gas related equipment;
3. The receipt of any medical gas or medical gas related equipment that is adulterated, misbranded, stolen, obtained by fraud or deceit, or the delivery or proffered delivery of such medical gas or medical gas related equipment for pay or otherwise;
4. The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the product labeling of a medical gas or medical gas related equipment or the willful commission of any other act with respect to a medical gas or medical gas related equipment that results in the medical gas or medical gas related equipment being misbranded;
5. The purchase or receipt of a medical gas or medical gas related equipment from a person that is not licensed to wholesale distribute medical gas or medical gas related equipment to that purchaser or recipient;
6. The sale or transfer of a medical gas or medical gas related equipment to a person who is not legally authorized to receive a medical gas or medical gas related equipment;
7. The failure to maintain or provide records as required by this Act and Rules;
8. Providing the board or any of its representatives or any state or federal official with false or fraudulent records or making false or fraudulent statements regarding any matter within the provisions of this Act and Rules;
9. The medical gas or medical gas related equipment wholesale distribution of any medical gas or medical gas related equipment that was:
   1. Purchased by a public or private hospital or other health care entity;
   2. Donated or supplied at a reduced price to a charitable organization; or
   3. Stolen or obtained by fraud or deceit.
10. The failure to obtain a license or operating without a valid license when a license is required;
11. The obtaining of or attempting to obtain a medical gas or medical gas related equipment by fraud, deceit, misrepresentation, or engaging in misrepresentation or fraud in the distribution or wholesale distribution of a medical gas/or medical gas related equipment;
12. The distributing of a medical gas or medical gas related equipment to a patient without a prescription or prescription order from a practitioner licensed by law to use or prescribe the medical gas or medical gas related equipment;
13. The distributing or wholesale distributing of a medical gas or medical gas related equipment that was previously dispensed by a pharmacy or distributed by a practitioner;
14. The distributing of a medical gas or medical gas related equipment to a patient without providing appropriate information and counseling on use, storage, and disposal;
15. The failure to report any prohibited act as listed in these rules; or
16. The failure to exercise due diligence as provided in Section 10 (due diligence) of these regulations.

### Section 14. Criminal Acts.

1. A person who, with intent to defraud or deceive, performs the act of adulteration or misbranding of any medical gas or medical gas related equipment commits a felony of the third degree.
2. a person who engages in the medical gas or medical gas related equipment wholesale distribution and knowingly purchases or receives medical gas or medical gas related equipment from a person, not legally authorized to wholesale distribute medical gas or medical gas related equipment, in wholesale distribution commits a felony of the third degree.
3. a person who engages in the medical gas or medical gas related equipment wholesale distribution and knowingly sells, barters, brokers, or transfers medical gases or medical gas related equipment to a person not legally authorized to purchase medical gases or medical gas related equipment, under the jurisdiction in which the person receives the medical gas or medical gas related equipment in wholesale distribution, commits a felony of the third degree.
4. a person who knowingly falsely creates any label for a medical gas or medical gas related equipment or who falsely represents any factual matter contained in any label of a medical gas or medical gas related equipment commits a felony of the third degree.
5. a person found guilty of any offense under this section, under the authority of the court convicting and sentencing the person, shall be ordered to forfeit to the state any real or personal property:
   1. used or intended to be used to commit, to facilitate, or to promote the commission of such offense; and
   2. constituting, derived from, or traceable to the gross proceeds that the defendant obtained directly or indirectly as a result of the offense. Any property or assets subject to forfeiture under this Section may be seized pursuant to a warrant obtained in the same manner as a search warrant or as otherwise permitted by law, and held until the case against a defendant is adjudicated. Monies ordered forfeited, or proceeds from the sale of other assets ordered forfeited, shall be equitably divided between the Board and other agencies involved in the investigation and prosecution that led to the conviction. Other property ordered forfeited after conviction of a defendant may, at the discretion of the investigating agencies, be placed into official use by the Board or the agencies involved in the investigation and prosecution that led to the conviction.

### Section 15. Salvaging and Reprocessing.

1. Medical gas or medical gas related equipment that has been subjected to improper conditions such as a fire, accident or natural disaster, shall not be salvaged or reprocessed;
2. Medical gas product in a medical gas container that has left the control of the medical gas or medical gas related equipment wholesale distributor may be returned to the medical gas or medical gas related equipment manufacturer and reprocessed provided the medical gas or medical gas related equipment manufacture employs proper and adequate controls to assure the identity, strength, quality, and purity of the reprocessed medical gas; and
3. Reusable medical gas related equipment that has left the control of the medical gas or medical gas related equipment wholesale distributor may be returned to the medical gas or medical gas related equipment wholesale distributor or manufacturer for inspection. The medical gas related equipment may be repaired and or refurbished (servicing), if necessary, provided the medical gas or medical gas related equipment manufacturer or wholesale distributor employs proper and adequate controls to ensure the medical gas related equipment complies with the manufacturers’ design and performance specifications following completion of servicing.

### Section 16. Inspection.

1. The board shall have the authority to recognize a third party to inspect wholesale distributors of medical gases or medical gas related equipment in that state or in other state(s).
2. The board shall have the authority to recognize other state(s) inspections of wholesale distributors of medical gases or medical gas related equipment operations in other state(s), if such state’s laws are deemed to be substantially equivalent.
3. The board may license by reciprocity, a wholesale distributor of medical gases or medical gas related equipment that is licensed under the laws of another state, if the requirements of that state are deemed by the board to be substantially equivalent.
4. Any applicant that is denied a license due to an inspection shall have the right of review of the board’s decision.
5. The board shall ensure that the proprietary information obtained during the inspection process remains confidential and privileged.
6. The board may waive requirements of this chapter.

# Appendix A Guidelines for Disciplinary Sanctions

**Improperly Obtaining or Attempting to Obtain a License**

1. Fraud or misrepresentation in applying for or procuring a license issued by the board of pharmacy or in connection with applying for or procuring periodic reregistration of such license.   
   Range of action: from fine to revocation or denial
2. Cheating on or attempting to subvert the pharmacist licensure examination(s).  
   Range of action: revocation or denial

**Misdemeanors/Felonies**

1. The commission or conviction of a gross misdemeanor or a felony, whether or not related to the practice of pharmacy, or the entry of a guilty or nolo contendere plea to a gross misdemeanor or a felony charge.  
   Range of action: from probation to revocation

**Deception/Fraud/Misrepresentation**

1. Conduct likely to deceive, defraud, or harm the public.  
   Range of action: from censure to revocation
2. Making a false or misleading statement regarding one’s skill of the efficacy or value of the medicine, treatment, or remedy dispensed in the treatment of any disease or other condition of the body or mind.  
   Range of action: from probation to revocation
3. The use of any false, fraudulent, or deceptive statement in any document connected with the practice of pharmacy.  
   Range of action: from warning to revocation
4. Practicing pharmacy under a false or assumed name.  
   Range of action: from probation to revocation

**Patient Confidentiality/Records**

1. Improper management of pharmacy patient records, including illegal use or disclosure of protected health information.  
   Range of action: from warning to suspension

**Negligence/Incompetence/Disability/Malpractice**

1. negligence in the practice of pharmacy as determined by the board.  
   range of action: from warning to revocation
2. being found mentally incompetent or insane by any court of competent jurisdiction.  
   range of action: from suspension to revocation
3. being physically or mentally unable to engage safely in the practice of pharmacy.  
   range of action: from probation to revocation
4. demonstration of incapacity or incompetence to practice pharmacy.  
   range of action: from probation to revocation
5. any adverse judgment, award, or settlement against the licensee resulting from a professional malpractice claim related to conduct that would constitute grounds for action as defined in this section.  
   range of action: from censure to revocation

**Sexual Misconduct**

1. Commission of any act of sexual abuse, misconduct, or exploitation related to a licensee’s practice of pharmacy.  
   Range of action: from probation to revocation

**Drug- and Alcohol-Related Offenses**

1. Being dependent on or habituated to a drug or intoxicant.  
   Range of action: from probation to revocation
2. Dispensing, prescribing, selling, administering, distributing, ordering, or giving any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug for any purposes other than medically accepted as therapeutic.  
   Range of action: from probation to revocation
3. Except as otherwise permitted by law, dispensing, prescribing, selling, administering, distributing, ordering, or giving to an habitué, addict, or any person previously drug dependent any drug legally classified as a controlled substance or recognized as an addictive or dangerous drug.  
   Range of action: from probation to revocation
4. Violating any state or federal law or regulation relating to controlled substances.  
   Range of action: from warning to revocation

**Misuse of License**

1. Aiding or abetting the practice of pharmacy by an unlicensed, incompetent, or impaired person.  
   Range of action: from reprimand to revocation
2. Allowing another person to use one’s license to practice pharmacy.  
   Range of action: from reprimand to revocation

**Disciplinary Action by Other Jurisdictions**

1. Disciplinary action of another state or jurisdiction against a license or other authorization to practice pharmacy based upon conduct by the licensee similar to conduct that would constitute grounds for action as defined in this section.  
   Range of action: same as for similar offense in this state

**Failure to Report to and/or Cooperate with Board**

1. Failure to report to the board any adverse action taken by another licensing jurisdiction (united states or foreign), government agency, law enforcement agency, or court for conduct that would constitute grounds for action as defined in this section.  
   Range of action: from censure to revocation
2. Failure to report to the board one’s surrender of a license or authorization to practice pharmacy in another state or jurisdiction while under disciplinary investigation by any of those authorities or bodies for conduct that would constitute grounds for action as defined in this section.  
   Range of action: from censure to revocation
3. Failure to report to the board any adverse judgment, settlement, or award arising from a malpractice claim related to conduct that would constitute grounds for action as defined in this section.  
   Range of action: from censure to suspension
4. Failure to cooperate with a lawful investigation conducted by the board.  
   Range of action: from censure to revocation
5. Failure to furnish to the board, its investigators, or representatives any information legally requested by the board.  
   Range of action: from censure to revocation

**Other Violations**

1. Violation of any provision(s) of the pharmacy practice act, any rules and regulations of the board, or any action, stipulation, or agreement of the board.  
   Range of action: corresponds to related actions above

1. the practice of pharmacy, from time to time, has been erroneously viewed, even by government agencies, as a commercial business rather than a profession. The status of pharmacy as a profession has been, and will continue to be, of particular importance in litigation. [↑](#footnote-ref-2)
2. The Statement of Purpose is designed to define the general scope of the Pharmacy Act. It provides for the control and regulation of the practice of pharmacy and the licensure of facilities engaged in the distribution of drugs and related devices. A board will have full knowledge of the whereabouts of drugs in the legitimate stream of intrastate and interstate commerce, providing it with the ability to better prevent diversion, effectuate recalls, ensure the quality of drugs dispensed or administered to patients, and effectively protect the public. [↑](#footnote-ref-3)
3. The definition of the “practice of pharmacy” is one of the most important, and perhaps one of the most discussed, clauses in the NABP *Model Act*. The definition is purposely expressed in broad terms to provide substantial latitude to the board of pharmacy in the adoption of implementing rules. Inclusion of or authorization for specific activities, such as the administration of drugs, is purposely not delineated in the definition in order to be empowering and not proscriptive. To assist states in the interpretation of the revised definition of the “practice of pharmacy,” the *Model Act* includes the definition of “pharmacist care services” and Model Rules for the Provision of Pharmacist Care Services for those states that need to include specific lists of activities or authorizations due to legislative and/or administrative policies and procedures.

   The definition also acknowledges that pharmacy is a dynamic profession, and a broad definition of the practice will permit the board to make necessary changes from time to time to meet the changing practice. Such changes may be affected by new or amended rules, which would be promulgated pursuant to the requirements of the state Administrative Procedures Act, affording all interested parties an opportunity to review and comment on any proposed rules. [↑](#footnote-ref-4)
4. Objectives of pharmacist care services include cure of a disease, elimination or reduction of a patient’s symptomatology, arresting or slowing of a disease process, or prevention of a disease or symptomatology. Pharmacist care services should be provided by all pharmacists within the standard of care to the extent of their abilities regardless of the practice setting. [↑](#footnote-ref-5)
5. Pharmacists may prescribe drugs for emergency use pursuant to specific statewide protocols or standing orders. [↑](#footnote-ref-6)
6. Providing it is within the same FDA drug class and not prohibited by the prescriber. [↑](#footnote-ref-7)
7. Most recent version. [↑](#footnote-ref-8)
8. In determining a beyond-use date for a specific drug product, the pharmacist may use the recommendations provided in the most recent edition of the United States Pharmacopeia – National Formulary (USP-NF). [↑](#footnote-ref-9)
9. No proof of actual damage is required for issuance of a cease and desist order. [↑](#footnote-ref-10)
10. The *Model Act* defines certified pharmacy technician and certified pharmacy technician candidate separately to distinguish between the activities that can be performed. A certified pharmacy technician is recognized, because of the completion of a board-approved certification program, as having knowledge and skills that qualify them to assist the pharmacist in the practice of pharmacy with limited patient care tasks that exceed routine dispensing or drug storage activities. Certified pharmacy technician candidates are limited to routine dispensing activities, drug storage, medical coverage claims processing, and cashiering. [↑](#footnote-ref-11)
11. A practitioner’s signature for chart orders is only required to be maintained at the institutional facility unless otherwise required for controlled substances by state and federal law. [↑](#footnote-ref-12)
12. The definition of “common carrier” specifically excludes wholesale distributors, which are defined separately. [↑](#footnote-ref-13)
13. Anticipatorily compounded drugs may not be dispensed until receipt of a patient-specific prescription drug order. [↑](#footnote-ref-14)
14. Reconstitution of an FDA-approved drug according to FDA-approved labeling is not considered compounding according to FDA rules. Reconstitution is considered compounding according to USP Standards addressing nonsterile compounding. [↑](#footnote-ref-15)
15. States at their option may want to consider limiting the definition of “devices” to those devices associated with the dispensing, administration, or use of drugs. [↑](#footnote-ref-16)
16. “Dispensing” includes the delivery of a drug or device to the patient or the patient’s agent by the pharmacist or the pharmacist’s agent. drugs and/or devices mailed or shipped to a patient are not dispensed until the drugs and/or devices are actually received by the patient or the patient’s agent. [↑](#footnote-ref-17)
17. The official compendium recognized by Food and Drug Administration (FDA) and many state boards of pharmacy is the USP-NF. [↑](#footnote-ref-18)
18. DUR is also known to mean “drug use review”; however, “drug utilization review” is the preferred term. [↑](#footnote-ref-19)
19. A “reasonable” dose, duration of use, and route of administration under “drug utilization review” would be determined by taking into consideration patient-specific factors, including but not limited to, age, gender, and other patient factors, but dependent upon the information about the patient known to the pharmacist. [↑](#footnote-ref-20)
20. Although traditionally characterized as being physically part of an institutional facility, the model rules recognize that an institutional pharmacy may or may not be physically attached to an institutional facility. [↑](#footnote-ref-21)
21. States should recognize that hospitals, in order to prepare for a disaster or emergency, may be stocking emergency supplies of drugs in areas outside the licensed pharmacy. Hospitals should be encouraged to expand the space allotted to the licensed pharmacy area to accommodate the need to store emergency supplies. [↑](#footnote-ref-22)
22. Manufacturing also includes the compounding of drugs for office use of which can only be done by an FDA-registered outsourcing facility. [↑](#footnote-ref-23)
23. Compliance refers to taking actions necessary to ensure that patients receive prescribed medications initially, whereas adherence refers to taking actions necessary to ensure that medication therapy is continued. [↑](#footnote-ref-24)
24. The Substance Abuse and Mental Health Services Administration also refers to MAT as “medications for opioid use disorder” (MOUD), which are FDA-approved medications for the treatment of opioid use disorders and currently include methadone, naltrexone, and buprenorphine. [↑](#footnote-ref-25)
25. Medication synchronization can be effective in improving medication adherence and eliminating gaps in therapy by reducing the number of pharmacy visits for patients on multiple-medication regimens. It is recommended that patients receive their synchronized refills by regular appointment with their pharmacist, which allows for increased patient-pharmacist interaction and the provision of comprehensive medication therapy management services for chronic illnesses. In addition to facilitating medication adherence and improving patient outcomes, medication synchronization may also offer pharmacies a mechanism to improve workload and inventory control. Other demonstrated advantages of medication synchronization include minimization of overall health costs and increased convenience for patients.

    Medication synchronization extends the pharmacist’s authority to adjust medication use and quantities, not to exceed the total quantity prescribed or what is otherwise allowed by law.

    “Medication refill consolidation,” “medication schedule synchronization,” and “medication refill synchronization” are other terms used for these types of services.

    Medication synchronization is used in the dispensing of maintenance medications (excluding controlled substances (Schedules II-V) or those designated “as needed”) for patients with chronic illnesses. Chronic illnesses are those diseases or conditions that are of long duration, require ongoing treatment, and can be controlled but not completely cured. The US National Center for Health Statistics defines a chronic disease as a condition lasting for three or more months. According to the Centers for Medicare and Medicaid Services, the most common chronic conditions among Medicare beneficiaries are hypertension, high cholesterol, heart disease, diabetes, and arthritis. Other common chronic illnesses include heart failure, depression, chronic kidney disease, osteoporosis, Alzheimer’s disease, chronic obstructive pulmonary disease, atrial fibrillation, cancer, asthma, and stroke. [↑](#footnote-ref-26)
26. The information sharing network was built by NABP pursuant to the NABP-FDA “Cooperative Agreement to Develop a System for the Collection, Management, and Sharing of Information on Compounding Pharmacies Distributing Interstate.” [↑](#footnote-ref-27)
27. Outsourcing facilities may engage in compounding for animal use. [↑](#footnote-ref-28)
28. Boards may choose to license an outsourcing facility as a pharmacy; however, if a pharmacy and an outsourcing facility are located at the same geographic location or address, or are located adjacent to said location or address, there must be a clear delineation between the two entities and both must comply with current Good Manufacturing Practices as defined by the federal FD&C Act. [↑](#footnote-ref-29)
29. A peer review committee may be established to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care. Peer review committees may review documentation of quality-related activities in a pharmacy, assess system failures and personnel deficiencies, determine facts, and make recommendations or issue decisions in a written report that can be used for continuous quality improvement purposes. A peer review committee may include the members, employees, and agents of the committee, including assistants, investigators, attorneys, and any other agents that serve the committee in any capacity. [↑](#footnote-ref-30)
30. It is the performance of activities that encompass the practice of pharmacy that distinguishes pharmacy benefits managers from pharmacy benefits processors. The activities that may encompass the practice of pharmacy by pharmacy benefits managers include, but are not limited to, the following:

    • disease state management;

    • disease compliance management;

    • drug adherence management;

    • drug interaction management;

    • drug utilization management;

    • formulary management;

    • generic alternative program management;

    • generic incentive program management;

    • medical and/or drug data analysis

    • patient drug utilization review (DUR) services;

    • prior authorization services;

    • provider profiling and outcomes assessment;

    • refill reminder program management;

    • therapy guidelines management;

    • stop therapy protocol management;

    • wellness management;

    • maintenance of confidential patient information;

    • direction or design of the clinical programs for a pharmacy or a group of pharmacies. [↑](#footnote-ref-31)
31. Most pharmacy interns are either enrolled in a professional degree program or postgraduate program (residency or fellowship), or have graduated from a board-approved professional degree program and are awaiting examination. In some cases, however, boards of pharmacy also designate pharmacists whose licenses have lapsed or been inactive for a significant period of time as “pharmacy intern,” allowing these pharmacists to obtain practical experience so that their licenses can be reactivated. Additionally, boards may grant the “pharmacy intern” designation to those pharmacists seeking practical experience following a period of license suspension or revocation.

    Boards of pharmacy may consider limiting the pharmacy interns’ duration of registration especially if the boards find that pharmacy interns are not successfully progressing toward pharmacist licensure in an acceptable and reasonable time frame. [↑](#footnote-ref-32)
32. The definition of “practitioner” anticipates that those persons other than pharmacists who are permitted to prescribe and administer drugs will be specifically so authorized in other legislation. [↑](#footnote-ref-33)
33. Preceptors should be appropriately qualified and possess ample experience for the proper instructional training of pharmacy interns. it is strongly encouraged that preceptors pursue continuing professional development for their practitioner-educator role expectations. [↑](#footnote-ref-34)
34. Licensee may be placed on probation for a period of time subject to specific conditions determined by the board. Probation may result from the board’s decision to stay a license revocation or suspension judgment. The licensee may be permitted to continue practice only within conditions established by the board, and violation of those conditions will end the stay and result in revocation or suspension. [↑](#footnote-ref-35)
35. Is not intended to include a pharmacy, pharmacist, or outsourcing facility that dispenses or distributes repackaged drugs. [↑](#footnote-ref-36)
36. Some factors to consider in determining a significant loss include:

    (a) the actual quantity of prescription drugs or controlled substances lost in relation to the type of business;

    (b) the specific prescription drugs or controlled substances lost;

    (c) whether the loss of the prescription drugs or controlled substances can be associated with access to those prescription drugs or controlled substances by specific individuals, or whether the loss can be attributed to unique activities that may take place involving the prescription drugs or controlled substances;

    (d) a pattern of losses over a specific time period, whether the losses appear to be random, and the results of efforts taken to resolve the losses;

    (e) whether the specific prescription drugs or controlled substances are likely candidates for diversion; and

    (f) local trends and other indicators of the diversion potential of the missing Prescription Drug or controlled substance.

    If it is determined that the loss is not significant, a record of the occurrence should be kept for future reference. When a significant loss occurs in a pharmacy that is registered in multiple states, all applicable boards should be notified. [↑](#footnote-ref-37)
37. If the board believes it necessary to protect the public health and safety, it may summarily suspend a license and order a prompt hearing on the matters in question. [↑](#footnote-ref-38)
38. A valid patient-practitioner relationship includes a relationship with a consulting practitioner or a practitioner to which a patient has been referred, or a covering practitioner, or an appropriate practitioner-board-approved telemedicine practitioner providing that a physical examination had been previously performed by the patient’s practitioner.

    To best protect the public, the issue of a valid patient-practitioner relationship should be addressed in each jurisdiction’s Medical Practice Act and the Consumer Fraud Protection Act or their equivalent.

    A face-to-face physical examination is not required to establish a valid patient-practitioner relationship if:

    (a) the prescribing practitioner is issuing a prescription or dispensing a non-controlled substance legend drug in accordance with the expedited partner therapy in the management of sexually transmitted diseases guidance document issued by the United States centers for disease control and prevention;

    (b) the prescription, administration, or dispensing is through a public health clinic or other distribution mechanism approved by the state health authority in order to prevent, mitigate, or treat a pandemic illness, infectious disease outbreak, or intentional or accidental release of a biological, chemical, or radiological agent; or

    (c) the prescribing practitioner is issuing a prescription through a telemedicine practice approved by the appropriate state agency that provides health care delivery, diagnosis, consultation, or treatment by means of audio, video, or data communications. standard telephone, facsimile transmission, or both, in the absence of other integrated information or data, do not constitute telemedicine practices.

    (d) the state allows third-party prescribing of opioid reversal agents, such as naloxone, or other drugs as allowed by state law to a person other than the patient. [↑](#footnote-ref-39)
39. A warning may require that the licensee provide the board with clarifying information. (may also be known as a letter of concern or letter of admonition.) [↑](#footnote-ref-40)
40. Although “devices” is included in both definitions of “wholesale distribution” and “wholesale distributor,” federal law and some state laws do not define “wholesale distribution” as such. Wherever appropriate under the model rules, the term is included and recognized that wholesale distribution also includes devices. A disparity could be caused if those persons who only distribute devices are not currently licensed by the state and, therefore, not subject to regulation by the board. Different requirements and standards would exist for these persons than would apply for persons who distribute both drugs and devices. It is NABP’s position that persons who manufacture and/or distribute devices should be licensed with the board and adhere to the same requirements as those in place for persons who manufacture and/or distribute drugs. In developing laws and rules, states may need to review their current regulations regarding licensure for persons who solely manufacture and/or distribute devices in order to determine the applicability of the model rules to persons who manufacture and/or distribute devices. [↑](#footnote-ref-41)
41. Excludes compounded drugs unless the pharmacy is registered under federal law and distributing such compounded drugs as an outsourcing facility. [↑](#footnote-ref-42)
42. In states where shared pharmacy services are not permitted, states may consider allowing the performance of such activities in a declared state of emergency. [↑](#footnote-ref-43)
43. The number of board members should be determined by each individual state according to its particular requirements. Individual states may wish to consider a board composition that represents the diversity of practice sites and interests within a state. Variable factors, such as state population, number of pharmacists, number of pharmacies, and other local considerations, may all be relevant in determining the number of board members needed to most effectively enforce the Act. [↑](#footnote-ref-44)
44. Section 203(1) of the Act requires that a pharmacist be engaged in the practice of pharmacy at the time of their appointment as a board member and that they have at least five (5) years of experience in the practice of pharmacy in the state prior thereto. Since the practice of pharmacy is defined in Section 104 in broad terms, it renders a pharmacist actively engaged in almost any phase of the practice eligible for appointment. This provides for candidates who have divergent backgrounds and experiences and who are knowledgeable in the affairs of the profession.

    However, it should be noted from the definition of pharmacy practice in Section 104 that those persons actively engaged in the practice of pharmacy would basically be limited to those individuals who are working within settings where drugs/devices are dispensed and pharmacist care services is provided. To include persons who are in positions related to the practice but who are not engaged in dispensing and pharmacist care services functions would wrongfully cause the inclusion of individuals, such as personnel employed by drug manufacturers, wholesale distributors, and the like, who may be licensed to practice but who do not practice pharmacy under the terms of the applicable Practice Act. The determination as to whether or not an individual is actively engaged in the practice of pharmacy will undoubtedly be rendered on a case-by-case basis. The general criteria described above, however, would most probably be applicable in making the determination. Under the terms of a Practice Act, which includes a definition of pharmacy practice, only those persons who are actively engaged in the basic functions set forth in the definition would be individuals “actively engaged in the practice of pharmacy.” [↑](#footnote-ref-45)
45. Specific qualifying criteria for the public member have been deliberately omitted from this Section. Reliance has been placed in the Governor to determine what attributes an individual should possess in order to meaningfully serve on a Board of Pharmacy. In order to help ensure that such a member would be truly independent in their judgments, those persons who have a possible substantial relationship with the profession are rendered ineligible by this Section. [↑](#footnote-ref-46)
46. The purpose of Section 204(2) is to provide a mechanism through which any interested person or group may designate a candidate for the board. Since nominations are recommendations only, the Governor retains complete discretion in regard to the appointees. As an alternative to appointment of board of pharmacy members by the Governor, some state laws call for the election of such members by the states’ pharmacists. [↑](#footnote-ref-47)
47. In certain jurisdictions, there may be general statutory provisions that establish the procedures and grounds for the removal of appointed public officials. In these jurisdictions, you may wish to disregard Section 207. [↑](#footnote-ref-48)
48. NABP urges that every board have a permanent administrative official, an executive director who is a currently licensed pharmacist, to perform and supervise the administrative duties and functions for which the board is responsible on a day-to-day basis. The responsibilities of the executive director should include the hiring of necessary staff to assist in fulfilling the responsibilities of the board. [↑](#footnote-ref-49)
49. Many states have adopted “sunshine” laws that provide for open meetings. Section 210(5) may not be necessary or may need revision to eliminate or to curtail the use of executive sessions. [↑](#footnote-ref-50)
50. Inspectors employed by the board of pharmacy may be pharmacists. boards may wish to consider whether inspectors must be pharmacists. [↑](#footnote-ref-51)
51. The “practice of pharmacy in this state” includes shipping prescription drugs into this state from another jurisdiction. [↑](#footnote-ref-52)
52. Great care should be exercised by the boards with respect to this Section. Many states have statutes or rules which provide that approved or accredited degree programs of schools or colleges of pharmacy are those approved by the Accreditation Council for Pharmacy Education (ACPE). It is a well-established rule of administrative law that any delegation of governmental power must carry with it appropriate limitations and procedural safeguards for affected individuals. Thus, a direct, unequivocal grant of the accreditation function to a private organization, such as ACPE, might be deemed an unauthorized, improper, and invalid delegation of board or legislative authority. An NABP study of this question discovered at least one case where a court overturned a board action based upon such invalid delegation to a private body. See *Garces v Department of Registration and Education*, 254 N.E.2d 622 (Ill, 1969). NABP urges all boards to adopt, in their Rules, the Standards of Accreditation for Doctor of Pharmacy Degree Programs established from time to time by the ACPE, the nationally recognized accrediting agency for pharmacy degree programs. Of note, ACPE International-Accreditation is awarded based on the ACPE quality criteria, which are not equivalent to the ACPE Standards. [↑](#footnote-ref-53)
53. Under this Act, “protected health information” may be used or disclosed without acknowledgement, authorization, or opportunity to agree or object in the situations described in 45 CFR 164.512(a) – (l), and which include:

    • as required by law;

    • for certain public health activities;

    • for certain health oversight activities;

    • pursuant to judicial or administrative proceedings;

    • for law enforcement purposes;

    • for military or national security purposes;

    • as necessary to comply with worker compensation laws;

    • in situations presenting a serious threat to health or safety.

    Investigative activities of the boards of pharmacy are considered health oversight activities and, therefore, fall under this disclosure exemption. [↑](#footnote-ref-54)
54. A Patient’s Bill of Rights establishes the professional services that a patient may expect when obtaining drugs or devices from a pharmacist. The Bill of Rights would normally contain patient expectations that could translate into standards of professional practice and/or codes of conduct for the pharmacist. Accordingly, if a board should choose to establish a Patient’s Bill of Rights, the Bill should be consistent with standards of practice, codes of ethics, and regulations that the board has adopted under the Pharmacy Practice Act. If care is not taken, a board could inadvertently expand the role and the responsibilities of the pharmacist through the establishment of a Patient’s Bill of Rights. [↑](#footnote-ref-55)
55. The purpose of this subsection is to ensure quality, purity, and correct labeling of drugs, devices, and other materials. [↑](#footnote-ref-56)
56. The “\_\_\_\_\_\_\_\_” interspersed throughout this Section may be filled with the terms: “administrative law judge,” “hearing officer,” or “presiding officer,” as determined by individual states. [↑](#footnote-ref-57)
57. Boards of pharmacy are often confronted with the problem of preventing unlicensed individuals from engaging in one or more facets of the practice of pharmacy. The regulation of the practice of pharmacy, including the control of unlicensed practice in the profession, has a reasonable and rational relationship to public health, safety, and welfare. See, for example, *State v Wakeen*, 57 N.W.2d 364 (Wis, 1953). Cf. *State v VanKeegan*, 113 A.2d 141 (Conn, 1955) and *Williamson v Lee Optical of Oklahoma*, 348 U.S. 483 (1955), concerning prohibitions on the unlicensed practice of a health care profession. For this reason, vesting the power in the board to regulate illicit practice would not appear to violate the constitutional due process requirements.

    Monetary fines are another enforcement action boards can utilize to protect the public health. Although monetary fines are not generally considered criminal sanctions, it can be forcibly argued that there are no constitutional barriers impeding the imposition of fines by a Board of Pharmacy. See, for example, *City of Waukegan v Pollution Control Board*, 311 N.E.2d 146 (Ill, 1974); *County Council for Montgomery County v Investors Funding Corp*, 312 A.2d 225 (Md, 1973); and *Rody v Hollis*, 500 P.2d 97 (Wash, 1972).

    One area that could present a serious question of law in regard to this Article of the *Model Act*, however, involves the constitutional limitation on the delegation of authority to administrative agencies. It is likely that the delegation contemplated in this Article of the *Model Act* would be valid in a majority of jurisdictions. See, for example, *Jordan v Board of Insurance*, 334 S.W. 2d 278 (Tex, 1960); *Sutherland v Ferguson*, 397 P. 2d 335 (Kan, 1964); and *Kovack v Licensing Board of City of Waterville*, 173 A. 2d 554 (Me, 1961). Be cautioned, however, that certain jurisdictions require very specific standards in a delegation of authority that could render Article III constitutionally suspect. See, for example, *People v Tibbits*, 305 N.E. 2d 152 (Ill, 1973); *Sarasota County v Barg*, 302 So. 2d 737 (Fla, 1974). In these jurisdictions, revisions of Article III may be necessary. [↑](#footnote-ref-58)
58. Unless practicing within a licensed nonresident facility or utilizing shared services. [↑](#footnote-ref-59)
59. NABP recognizes that protection of the public health should extend across state borders. Accordingly, the NABP *Model Act* requires an independently practicing pharmacist located outside this state to obtain full licensure or be credentialed by NABP Verify for providing pharmacist care services from outside the state to patients within the state. [↑](#footnote-ref-60)
60. It is contemplated that boards will report a person who is providing pharmacist care services in its jurisdiction without first obtaining a nonresident license or NABP Verify credential to the board of which the person is licensed. [↑](#footnote-ref-61)
61. It is contemplated that boards will approve those programs whose standards are at least equivalent to the ACPE Standards of Accreditation for Doctor of Pharmacy Degree Programs. This would include college-structured pharmacy practice experience programs and continuing education programs. See the footnote to Section 213(1)(d) above for further discussion of the board’s proper role in the accreditation process. [↑](#footnote-ref-62)
62. Graduates of a professional pharmacy degree program based outside the US and its territories that have been awarded Precertification, Provisional Certification, or Certification by ACPE are not eligible for US pharmacy licensing exams (NAPLEX or MPJE) and must complete the Foreign Pharmacy Graduate Examination Committee (FPGEC) program to be eligible to take the pharmacy licensing exams in the US. Similarly, graduates from an ACPE-accredited post-baccalaureate pharmacy program where the initial pharmacy degree is from a pharmacy program that is not an entry-level, ACPE-accredited pharmacy program, must complete the PFGEC program. [NOTE: ACPE will be changing the terminology that will be used within the ACPE International Services Program. As of January 1, 2023, the ACPE International Services Program will offer “International-Accreditation,” “International Pre-Accreditation,” and “Provisional International-Accreditation” to qualifying pharmacy degree programs outside the United States of America and its Territories. These will replace ACPE’s current “Certification,” “Precertification” and “Provisional Certification” statuses.] [↑](#footnote-ref-63)
63. Boards should avoid mention of specific examinations or other contracted services in their practice act and regulations to avoid challenges related to an unconstitutional delegation of authority. It is contemplated that boards will utilize the Foreign Pharmacy Graduate Equivalency Examination® (FPGEE®) as part of their assessment of pharmacy education equivalence. [↑](#footnote-ref-64)
64. Boards of Pharmacy are strongly encouraged to utilize the North American Pharmacist Licensure Examination (NAPLEX) and the Multistate Pharmacy Jurisprudence Examination (MPJE) for this purpose. [↑](#footnote-ref-65)
65. Boards of pharmacy are strongly encouraged to utilize the ACPE Standards of Accreditation for Doctor of Pharmacy Degree Programs as a basis for establishment and revision of board standards for pharmacy practice experiences. These Standards of Accreditation also contain additional guidance on the desired behaviors, qualities, and values of preceptors. [↑](#footnote-ref-66)
66. Although boards of pharmacy mandate a specified number of hours of pharmacy practice experiences as a prerequisite to licensure, boards of pharmacy are also encouraged to deem those requirements met if boards find that the college-based pharmacy practice experiences meet or exceed the hourly pharmacy practice experience requirements.

    As indicated in the Model Rules for Pharmacy Interns, applicants for licensure as pharmacists shall submit evidence that they have satisfactorily completed: (1) an objective assessment mechanism intended to evaluate achievement of desired competencies as delineated in the ACPE Standards of Accreditation for Doctor of Pharmacy Degree Programs and (2) not less than 1,740 hours of pharmacy practice experience credit under the instruction and supervision of a preceptor. Boards may consider moving away from requiring a specific number of contact hours should it be determined that the ACPE Standards of Accreditation for Doctor of Pharmacy Degree Programs result in appropriate preparation for students and objective assessment mechanisms demonstrate such. [↑](#footnote-ref-67)
67. Boards of pharmacy are strongly encouraged to utilize the ACPE Standards of Accreditation for Doctor of Pharmacy Degree Programs as a basis for establishment and revision of board standards for pharmacy practice experiences. These Standards of Accreditation also contain additional guidance on the desired behaviors, qualities, and values of preceptors. [↑](#footnote-ref-68)
68. See the NABP Model Rules for Public Health Emergencies or Significant Public Health Concerns for language that addresses the temporary recognition of nonresident pharmacist licensure in the case of a declared state of emergency issued due to a public health emergency. [↑](#footnote-ref-69)
69. It is intended that NABP’s National Disciplinary Clearinghouse would be utilized by state boards for verifying information provided by applicants. [↑](#footnote-ref-70)
70. The board may specifically authorize a pharmacist whose license has been disciplined to register as a certified pharmacy technician or certified pharmacy technician candidate under terms and conditions deemed appropriate. [↑](#footnote-ref-71)
71. Boards should avoid mention of specific examinations or other contracted services in their practice act and regulations to avoid challenges related to an unconstitutional delegation of authority. It is contemplated that boards will utilize the certified pharmacy technician candidate certification board examination as part of their assessment of technician competence to assist in the practice of pharmacy. [↑](#footnote-ref-72)
72. It is recommended that states adopt this requirement, if not currently required, through a process that incorporates provisions for grandfathering. [↑](#footnote-ref-73)
73. It is contemplated that boards will approve those certified pharmacy technician candidate training programs whose standards are at least equivalent to the minimum standards developed by an accrediting organization recognized by state boards, such as ACPE, ASHP, and ABHES. See the footnote to Section 213(1)(d) above for further discussion of the board’s proper role in the accreditation process. [↑](#footnote-ref-74)
74. The board may specifically authorize a pharmacist whose license has been disciplined to register as a certified pharmacy technician or certified pharmacy technician candidate under terms and conditions deemed appropriate. [↑](#footnote-ref-75)
75. Licensed dispensing practitioners authorized under the laws of this state to compound drugs and to dispense drugs to their patients in the practice of their respective professions shall meet the same standards, record-keeping requirements, counseling, and all other requirements for the compounding and the dispensing of drugs applicable to pharmacists. [↑](#footnote-ref-76)
76. Boards may consider waiving requirements for “live” continuing pharmacy education in the case of a state of emergency or significant public health concern. [↑](#footnote-ref-77)
77. The Board may delay a license renewal date in the case of a State of Emergency or Significant Public Health Concern. [↑](#footnote-ref-78)
78. State may require additional licensing/registration requirements. [↑](#footnote-ref-79)
79. Includes remote dispensing machines and/or devices such as kiosks. [↑](#footnote-ref-80)
80. It is contemplated that dispensing practitioners’ facilities should only compound nonsterile human drug products and that sterile compounded human drug products should be obtained from outsourcing facilities. [↑](#footnote-ref-81)
81. Licensed Dispensing Practitioners’ facilities authorized under the laws of this State to compound drugs and to dispense drugs to their patients in the practice of their respective professions shall meet the same standards, record-keeping requirements, patient counseling, and all other requirements for the compounding and the dispensing of drugs applicable to pharmacists. [↑](#footnote-ref-82)
82. Section 401(2) contemplates that the criteria for licensure, beyond minimum requirements for all persons and pharmacies, established in an individual entity classification could differ. For example, the criteria that must be met by a nuclear pharmacy will certainly differ from that of the community pharmacy. This type of latitude places the responsibility on the board to adopt appropriate rules to meet the situation at hand. It also provides a forum for change to meet the changing concepts of professional practice and the distribution of drugs and/or devices. [↑](#footnote-ref-83)
83. This Section provides for service of process on any person who dispenses, distributes, or delivers drugs or devices within the state. [↑](#footnote-ref-84)
84. State resources may have to be considered when evaluating inspection scheduling in combination with risk assessment consideration. [↑](#footnote-ref-85)
85. Boards of pharmacy are strongly encouraged to utilize the NABP Verified Pharmacy Program for this purpose. [↑](#footnote-ref-86)
86. Boards of pharmacy are strongly encouraged to utilize the NABP Verified Pharmacy Program for this purpose. [↑](#footnote-ref-87)
87. Boards may want to consider requesting the following information on applications for pharmacy and wholesale distributor licensure:

    (a) personal information;

    (b) marital information;

    (c) family information (parents, siblings, in-laws);

    (d) education;

    (e) military information;

    (f) arrests, detentions, litigations, and arbitrations;

    (g) residences (past 25 years);

    (h) employment (back to age 18);

    (i) character references;

    (j) safe deposit box or other depository information;

    (k) privileged, occupational, or professional licensure;

    (l) out-of-state business, venture, or industry licensure or financial interest in such;

    (m) appearances before any licensing agency or similar authority in or outside the state;

    (n) denials of a personal license, permit, certificate, or registration for a privileged, occupational, or professional activity;

    (o) denials of a business or industry license or related finding of suitability, or participation in a group that has been denied a business or industry license or related finding of suitability;

    (p) administrative actions or proceedings related to the Drug industry or participation in a group that has been the subject of such administrative actions or proceedings;

    (q) guilty findings or pleadings or pleas of nolo contendere to any offense, federal or state, related to prescription drugs and/or controlled substances or participation in a group that has been found or pled guilty or that has pled nolo contendere to any such offense;

    (r) surrender, voluntary or otherwise, of licensure, permit, or certificate of registration relating to the Drug industry, or participation in a group that has surrendered, voluntary or otherwise, any such licensure, permit, or certificate of registration; and

    (s) any relatives within the fourth degree of consanguinity associated with or employed in the drug or drug-related industry. [↑](#footnote-ref-88)
88. Applicants who engage or intend to engage in compounding shall submit concurrently with their application for licensure responses to a questionnaire regarding the applicant’s compounding operations. [↑](#footnote-ref-89)
89. The questionnaire contemplated in 402(3) shall request, at a minimum, the following information: 1) the name and address of the location at which compounding occurs or will occur; 2) whether nonsterile compounding occurs or will occur; 3) whether sterile compounding occurs or will occur; 4) whether the applicant compounds or will compound with hazardous drugs; and 5) whether the applicant ships or will ship compounded preparations across state lines. [↑](#footnote-ref-90)
90. This includes any report or inspectional observations and any related correspondence with the federal or state agency. FDA Form 483 Inspectional Observations alone should not be grounds for discipline. [↑](#footnote-ref-91)
91. Guidelines for the imposition of sanctions for certain designated offenses can be found in Appendix A: Guidelines for Disciplinary Sanctions of the *Model Act*. [↑](#footnote-ref-92)
92. The penalties provided in Section 502 give the board wide latitude to make the disciplinary action fit the offense. The “reasonable intervals” in 502(3) would be determined by the board. [↑](#footnote-ref-93)
93. It is particularly important to emphasize the need for specificity in defining the grounds upon which a pharmacist’s or pharmacy intern’s license to practice pharmacy, or a certified pharmacy technician’s or certified pharmacy technician candidate’s registration to assist in the practice of pharmacy, may be revoked or suspended. The term “unprofessional conduct” is particularly susceptible to judicial challenge for being unconstitutionally vague. Each offense included within the meaning of this term must be capable of being understood with reasonable precision by the persons regulated so that it can be readily enforced and relied upon during disciplinary proceedings, and so that those regulated by it may easily conform their professional conduct to its meaning(s).

    These potential problems make it essential for boards to issue appropriate rules making the grounds for disciplinary action specific, understandable, and reasonable. In addition, the boards must ensure that such rules are published for the benefit of all licensees within their jurisdiction. Only by doing so can boards be assured of authority to take successful and meaningful disciplinary actions that will not later be overturned by the courts.

    This Section must be examined in light of other state laws since some states, for example, restrict the circumstances under which a license may be denied to an individual because of the commission of a felony. In addition, an individual who has been convicted of a felony and who has paid his debt to society has restored constitutional protections that may curtail a strict application of Section 502(1)(c). [↑](#footnote-ref-94)
94. Boards need to consider the issue of impairment if a registrant or licensee tests positive for a substance of misuse and/or abuse. [↑](#footnote-ref-95)
95. It is contemplated that boards of pharmacy will consider state and federal law, including any discrepancies between state and federal law, when evaluating complaints against a registrant or licensee related to a positive result on a cannabinoid drug test. It is also contemplated that any complaint of this nature will be assessed on a case-by-case basis. [↑](#footnote-ref-96)
96. This is not intended to include performance metrics that may be related to the ability and competency of pharmacy personnel. [↑](#footnote-ref-97)
97. It is recommended that the following rule be adopted defining subversion or the attempt to subvert any licensing examination.

    (1) Conduct which subverts or attempts to subvert any licensing examination or the administration of any examination shall include, but not be limited to, the following:

    (a) Conduct which violates the security of the examination materials; removing from the examination room any examination materials without authorization; the unauthorized reproduction by any means of any portion of the actual licensing examination; aiding by any means the unauthorized reproduction of any portion of the actual licensing examination; paying or using professional or paid examination takers for the purpose of reconstructing any portion of the licensing examination; obtaining examination questions or other examination materials, except by specific authorization either before, during, or after an examination; or selling, distributing, buying, receiving, or having unauthorized possession of any portion of a future, current, or previously administered licensing examination.

    (b) Unauthorized communication of examination information with any other examinee during the administration of a licensing examination; copying answers from another examinee or permitting one’s answers to be copied by another examinee; having in one’s possession during the administration of the licensing examination any books, equipment, notes, written or printed materials, or data of any kind other than the examination materials distributed, or otherwise authorized to be in one’s possession during the examination; or impersonating any examinee or having an impersonator take the licensing examination on one’s behalf. [↑](#footnote-ref-98)
98. This Section restricts distribution of drugs or devices to licensed entities to help ensure against clandestine distribution to unauthorized and unlicensed persons. [↑](#footnote-ref-99)
99. A pharmacist who is under investigation or who has been charged with a violation of the pharmacy practice act may agree to voluntarily surrender their pharmacist license. When this occurs, the board should formally enter stipulated findings and an order describing the terms and conditions of the surrender including any agreed upon time limitations. This establishes statutory grounds that would support disciplinary action and prevents a pharmacist who has surrendered a license from applying for reinstatement within a time frame unacceptable to the board. [↑](#footnote-ref-100)
100. The procedures which must be followed before disciplinary action can be taken in many of the states are determined by the Administrative Procedures Act. The *Model Act* was drafted on the assumption that such an Act was in effect. [↑](#footnote-ref-101)
101. Boards of Pharmacy are strongly encouraged to recognize the NABP Healthcare Merchant Accreditation or, if a higher standard is desired, the Digital Pharmacy Accreditation for this purpose. [↑](#footnote-ref-102)
102. While it is strongly encouraged that all pharmacy personnel be licensed, there may still be jurisdictions that allow non-licensed individuals, such as cashiers, to work in a pharmacy, and in such instances the pharmacist-in-charge is responsible for their supervision. [↑](#footnote-ref-103)
103. If states require the pharmacist-in-charge or other person in charge of the pharmacy to submit information regarding the separation of employment of licensees, especially in circumstances of suspected or confirmed abuse, theft, or diversion of drugs, states should also be aware of confidentiality and employment laws that may restrict the release of information and be cautioned that the release of such information may create a liability for the reporting pharmacy.

     In instances where the pharmacist-in-charge and the owner and/or pharmacy permit holder are the same person and that person is no longer employed or designated as the person in charge, then the board must take action to cease operation of the pharmacy. [↑](#footnote-ref-104)
104. All training programs should be subject to approval by the board of pharmacy. [↑](#footnote-ref-105)
105. The owner and/or pharmacy permit holder, along with the pharmacist-in-charge, are responsible for these policies and procedures. [↑](#footnote-ref-106)
106. The pharmacist-in-charge, as part of the responsibilities to manage as effectively as possible a patient’s therapy to avoid a harmful interruption of therapy because of a shortage or limited distribution of drugs, can proactively improve pharmacy operations by developing a systematic approach to address such circumstances. References, such as the American Society of Health-System Pharmacists (ASHP) Guidelines in Managing Drug Product Shortages, could be used as resources for developing policies and procedures if appropriate. Additionally, Food and Drug Administration maintains a list of current and resolved drug shortages, as well as discontinued drugs on the agency’s Drug Shortages web page at [*www.fda.gov/cder/drug/shortages*](http://www.fda.gov/cder/drug/shortages). [↑](#footnote-ref-107)
107. See Section 9. Automated Pharmacy Systems [↑](#footnote-ref-108)
108. See Section 8. Shared Pharmacy Services [↑](#footnote-ref-109)
109. States should recognize that hospitals, in order to prepare for a disaster or emergency, may be stocking emergency supplies of drugs in areas outside the licensed pharmacy. Hospitals should be encouraged to expand the space allotted to the licensed pharmacy area to accommodate the need to store emergency supplies. [↑](#footnote-ref-110)
110. The pharmacist-in-charge, if the practice setting warrants, may also consider implementing diversion prevention and detection policies and procedures that address the following: periodic reviews of employee access to any secure controlled substance storage areas, which may include:

     * + alarm codes and lock combinations;
       + passwords; and
       + keys and access badges.

     [↑](#footnote-ref-111)
111. The pharmacy shall have policies and procedures to ensure that the patient is provided an opportunity to receive patient counseling. [↑](#footnote-ref-112)
112. Examples of security features for prescription paper include those that prevent copying, such as hidden background words or darker-colored areas of the paper (which, when photocopied appear as black), those that prevent adulteration, such as solvent dye and brownstain features, and those that verify authenticity, such as the incorporation of fluorescent threads or watermarks. [↑](#footnote-ref-113)
113. Electronically transmitted prescriptions should be transmitted from prescriber to pharmacy with no intervening persons making illegal alterations that may be considered as engaging in the practice of pharmacy without the authority to do so or without being licensed to do so to such prescriptions. Evolving technologies and systems have alleviated previous concerns regarding the routes by which electronic prescriptions are transmitted, but any attempts to return to illegal prescription altering practices will be halted. [↑](#footnote-ref-114)
114. While pharmacists have a corresponding responsibility to ensure that a controlled substance is dispensed only pursuant to a valid prescription drug order written for a legitimate medical purpose, this should not impede patients from receiving legitimately prescribed controlled substances or non-controlled substances, as patient care should be the primary consideration. [↑](#footnote-ref-115)
115. According to 21 CFR §1306.25 (b)(1), the transfer of original prescription information for a controlled substance listed in Schedule III, IV, or V for the purpose of refill dispensing must be communicated directly between two licensed pharmacists. [↑](#footnote-ref-116)
116. The pharmacist should have access to clinical and laboratory data concerning each patient, and should monitor each patient’s response to drug therapy. Any unexpected or untoward response should be reported to the prescribing physician. If the pharmacist is not doing this monitoring, the identity of the health care provider that has assumed this responsibility should be documented in the patient’s profile.

     It is acceptable for new prescription drug order data to be added to the patient profile, but original entries may not be altered. [↑](#footnote-ref-117)
117. If a board requires the presentation of identification or patient signature in order for a patient to receive prescribed drugs, it may consider waiving such requirements during a state of emergency, in compliance with federal law. [↑](#footnote-ref-118)
118. States that require pharmacies that ship drugs by mail, common carrier, or other type of delivery service to implement a mechanism to verify that the patient or caregiver has actually received the delivered drug may want to consider allowing the mechanism to include a waiver provision that allows the patient or caregiver to request delivery without verification and advises the patient or caregiver of the possible consequences of receiving delivery without verification. [↑](#footnote-ref-119)
119. Pharmacist may prescribe drugs for emergency use pursuant to specific statewide protocols or standing orders. [↑](#footnote-ref-120)
120. Provided it is within the same FDA Drug class and not prohibited by the prescriber. [↑](#footnote-ref-121)
121. Provided it is within the same FDA Drug class and not prohibited by the prescriber. [↑](#footnote-ref-122)
122. Most recent version. [↑](#footnote-ref-123)
123. Pharmacists should be permitted to use computer software, if available, to accomplish this review. [↑](#footnote-ref-124)
124. The intent of this Section is to require that the pharmacist personally initiate patient counseling for all new prescription drug orders and to exercise their professional judgment for refills. Situations may arise, however, where the prescriber specifically indicates that a patient should not be counseled. In such circumstances, it is the responsibility of the pharmacist to provide the best patient care through appropriate communication with the prescriber and to document the reason(s) for not providing counseling to the patient. [↑](#footnote-ref-125)
125. It is contemplated that for long-term treatment, pharmacists should be prescribing under a collaborative practice agreement rather than under an emergency use provision. [↑](#footnote-ref-126)
126. Boards may consider contacting US Drug Enforcement Administration ahead of time to ensure that these provisions are applicable to controlled substances. [↑](#footnote-ref-127)
127. Boards of pharmacy may have more or less authority to inspect CQI records, depending on state law. When authorizing the implementation of CQI Programs the extent of authority needed to obtain these materials must be determined. [↑](#footnote-ref-128)
128. States should continue efforts to develop and implement requirements for CQI programs in pharmacies recognizing that CQI programs enhance patient safety and operate most effectively when privilege of discovery laws or rules protecting CQI data and information are enacted and included as a component of CQI. [↑](#footnote-ref-129)
129. The Board may want to consider the extent to which this General Requirements Section is applicable to institutional-based shared pharmacy services pharmacies, as such application may be subject to interpretation of existing state and federal law governing institutional facilities. [↑](#footnote-ref-130)
130. In order to ensure accountability, the pharmacist-in-charge of a pharmacy engaging in shared pharmacy services must possess a license to practice pharmacy in all jurisdictions that they are engaging in such series until such a time in which provisions for multistate practice exist. [↑](#footnote-ref-131)
131. Often the terms “licensure,” “registration,” and “permit” are used interchangeably throughout the *Model Act*. In the case of shared pharmacy services pharmacies that utilize automated pharmacy systems, boards may determine that it is appropriate to issue a permit for the automated pharmacy system but not for the physical site where the automated pharmacy system is located. [↑](#footnote-ref-132)
132. In order to facilitate communication between the pharmacy and the site where the automated pharmacy system is located, a pharmacy should provide a toll-free telephone number so that the pharmacist is accessible at all times the automated pharmacy system is operational. [↑](#footnote-ref-133)
133. Although an “outpatient” generally refers to a person who receives drugs for use outside of an institutional facility, the definition of “outpatient” must be defined by each state. For example, although the *Model Act* classifies penal institutions as a type of institutional facility and therefore its inmates as inpatients, the pharmacist is exempt from providing patient counseling. However, some states may consider inmates of penal institutions as outpatients and therefore should decide if a video/audio communication system is required in such facilities so that the pharmacist is able to provide patient counseling. [↑](#footnote-ref-134)
134. This Section anticipates that decisions regarding which health care professionals may access the automated pharmacy system and the level of access allowed (eg, access to drugs, access to patient profiles for viewing only, access to patient profiles for modification) will be left up to the individual(s) responsible for the automated pharmacy system; however, states may decide to take on this responsibility and define those who may have access to the system and the levels of access allowed. [↑](#footnote-ref-135)
135. This Section anticipates that states will allow non-pharmacist personnel to fill/stock automated pharmacy systems under a pharmacist’s supervision; however, the state may decide to only allow a pharmacist to perform this function. Should the state allow non-pharmacist personnel to perform this function, it should define the level of pharmacist supervision necessary (eg, immediate, direct, or general). [↑](#footnote-ref-136)
136. The state may require that each licensed pharmacy or facility have in place written policies and procedures to address situations in which drugs removed from the system remain unused and must be secured and accounted for. [↑](#footnote-ref-137)
137. Unit-of-use is not intended to include co-mingled, multi-drug unit-of-use packages also known as compliance packs. [↑](#footnote-ref-138)
138. Except for federally scheduled controlled substance drugs that may be prescribed for substance use disorders and as allowed by federal and state laws and regulations. [↑](#footnote-ref-139)
139. Boards may give hospitals the authority to dispose of wasted quantities of controlled substances without prior authorization under specified conditions. [↑](#footnote-ref-140)
140. The owner and/or pharmacy permit holder, along with the Pharmacist-in-Charge, are responsible for these policies and procedures. [↑](#footnote-ref-141)
141. It is anticipated that boards use the current *Pharmacists’ Patient Care Process* approved by the Joint Commission of Pharmacy Practitioners. [↑](#footnote-ref-142)
142. This may also be referred to as Approval of Rule Waiver Requests. [↑](#footnote-ref-143)
143. Boards may want to develop language addressing the time frame within which they will take action on an application for approval of a pharmacy practice initiative. [↑](#footnote-ref-144)
144. This reporting exception also applies to situations where a patient, who has been dispensed controlled substance drugs during a stay in an institutional facility, is allowed to retain any remaining drugs upon discharge. [↑](#footnote-ref-145)
145. It is recommended that boards of pharmacy consider using practitioner’s NPI number for identification purposes when applicable. Consider using state license numbers for veterinarians. [↑](#footnote-ref-146)
146. For veterinary prescriptions, use the pet owner’s name, address, telephone number, gender, and date of birth. [↑](#footnote-ref-147)
147. It is recommended that the date prescription was dispensed be clarified to mean the date of delivery to the patient. [↑](#footnote-ref-148)
148. This Section is intended to allow boards of pharmacy to evaluate prescription monitoring program information and determine appropriate information to provide to law enforcement entities. It is not intended to allow law enforcement officials open access to all data. [↑](#footnote-ref-149)
149. It is recommended that other appropriate entities include drug courts, district attorneys’ offices, addiction treatment professionals, or other similar entities, and only for the purpose of ensuring appropriate patient treatment, as opposed to efforts to search for information without knowledge of whether such information exists. [↑](#footnote-ref-150)
150. Boards of pharmacy are strongly encouraged to utilize the ACPE Standards of Accreditation for Doctor of Pharmacy Degree Programs as a basis for the establishment and revision of Board standards for Pharmacy practice experiences. [↑](#footnote-ref-151)
151. See the most recent ACPE standards for professional degree programs leading to a Doctor of Pharmacy degree for Pre-Advanced Pharmacy Practice Experience (Pre-APPE) and Advanced Pharmacy Practice Experience (APPE) Curricula.

     It is also encouraged that boards of pharmacy allow pharmacy students to be registered as pharmacy interns as early as initial enrollment in a board-approved professional program as long as the pharmacy student has begun to take professional degree courses. [↑](#footnote-ref-152)
152. According to the ACPE Standards of Accreditation for Doctor of Pharmacy Degree Programs, most pharmacy practice experiences must be under the supervision of a qualified pharmacist preceptor licensed in the United States. Realizing that in some cases non-pharmacist preceptors can also provide valuable learning opportunities, it is hoped that boards of pharmacy recognize these experiences and that schools and colleges of pharmacy ensure, in most cases through faculty, that the desired competencies are being met.

     Supervision includes an actual review of the prescription drug order and the dispensed drug or product to ensure public protection. [↑](#footnote-ref-153)
153. These requirements coincide with the ACPE Standards of Accreditation for Doctor of Pharmacy Degree Programs. Boards of pharmacy are strongly encouraged to utilize these Standards of Accreditation as a basis for the establishment and revision of board standards for pharmacy practice experiences.

     Introductory pharmacy practice experiences, which are not less than 300 contact hours, are in addition to the advanced practice experiences taken during the final professional year, which account for not less than 25% of the curricular length or 1,440 contact hours. The total pharmacy practice experience hour requirement, therefore, is not less than 1,740 hours. Boards may consider moving away from requiring a specific number of contact hours should it be determined that the ACPE Standards of Accreditation for Doctor of Pharmacy Degree Programs result in appropriate preparation for students and objective assessment mechanisms demonstrate such. [↑](#footnote-ref-154)
154. States may consider adding the following, more detailed language, which specifically addresses drug disposal and reporting requirements in the case of an emergency or disaster, to their emergency rules or guidelines:

     **Disposal of Prescription Drugs in Pharmacies Affected by Certain Disasters**

     For pharmacies that sustain flood and/or fire damage in the prescription department or other damage resulting in an irrevocable loss of the drug inventory, the entire drug inventory, including drugs awaiting pick up by patients, becomes unfit for dispensing. In such a case, an accurate record of prescription drug losses should be prepared by the pharmacy.

     For pharmacies that experience a loss of power for an extended period of time, the drug inventory must be evaluated for continued product integrity using USP standards. For example, drugs with labeling requiring storage at “controlled room temperature” must be kept at between 68º F and 77º F, with brief deviations of between 56º F and 86ºF. Drug inventories found to have been stored outside of USP standards become unfit for dispensing. In such a case, an accurate record of prescription drug losses should be prepared by the pharmacy. For pharmacies with questions on USP Product integrity standards, contact USP at 800/227-8772.

     **Reporting of Theft or Loss of Controlled Substances During an Emergency or Disaster**

     In circumstances of theft by looting, burglary, etc, where evidence or witnesses indicate the drugs were taken by someone, the nearest DEA Diversion Field Office must be notified by telephone, facsimile, or brief written message of the circumstances of the theft immediately upon discovery. In addition, the pharmacy must complete DEA Form 106 – Report of Theft or Loss of Controlled Substances, found at *www.deadiversion.usdoj.gov*, to formally document the actual circumstances of the theft and the quantity of controlled substances involved, once this information has been conclusively determined.

     In circumstances of damage or where drugs were irrevocably lost to flooding or other circumstance, such information must be reported on DEA Form 41 – Registrants Inventory of Drugs Surrendered, found at *www.deadiversion.usdoj.gov*.

     The amount stolen or lost may need to be calculated by taking the most recent controlled substances inventory, adding the amount purchased since that date, then subtracting the amount dispensed and distributed since that date. Absent a calculated amount, a best estimate should be reported.

     **Disposal of Prescription Drugs Irrevocably Lost in an Emergency or Disaster**

     Controlled Substances

     Reverse distributors, either individually or in concert with other contractors, are equipped to dispose of controlled substances. Contact your primary distributor for their recommendations for a reverse distributor or contact a reverse distributor directly.

     Contaminated Medical Debris

     Non-controlled substance prescription drugs and devices contaminated with flood water or other contaminants should be disposed of using a medical waste transportation, processing, and disposal system vendor. Such vendors must be licensed by the state.

     Hazardous Debris

     Materials are deemed hazardous if they are ignitable, corrosive, toxic, or reactive. Prescription drugs considered hazardous include, but are not limited to, epinephrine, nicotine, nitroglycerin, physostigmine, reserpine, selenium sulfide, chloral hydrate, and many chemotherapy agents, such as cyclophosphamide, chlorambucil, and daunomycin. Other hazardous items that might be found in a pharmacy include paints, varnishes and thinners, alcohol, batteries, mercury thermometers, and blood pressure cuffs. It is recommended that pharmacies handle all contaminated drugs as hazardous debris and dispose of it using a hazardous waste collection and disposal company. These companies must be licensed by the state.

     Commercial Waste

     Over-the-counter drugs and other store shelf material may be disposed of in the commercial waste stream. [↑](#footnote-ref-155)
155. During a public health emergency, boards of pharmacy should issue waivers that mirror waivers issued by federal and other state entities. [↑](#footnote-ref-156)
156. Boards may consider identifying the official who has authority to issue an “emergency standing prescription drug order” and reviewing this on a regular basis. [↑](#footnote-ref-157)
157. Although these services are important, in times of a disaster or emergency, it may not be possible to perform a prospective drug review or provide patient counseling on dispensed drugs. [↑](#footnote-ref-158)
158. Boards may consider contacting US Drug Enforcement Administration ahead of time to ensure that these provisions are applicable to controlled substances. [↑](#footnote-ref-159)
159. Boards should be cognizant that state and federal disaster agencies, to ensure continued provision of care during disasters or emergencies, have programs that consider reimbursement requests for Drug providers and may request Board assistance in the dispersal of funds. Records of dispensing will likely be needed for possible reimbursement consideration. In addition, records may also be used for post-event evaluation of care. [↑](#footnote-ref-160)
160. If the information cannot be verified directly by the state board of pharmacy in which the nonresident pharmacist is licensed, the NABP Disciplinary Clearinghouse may be utilized to verify that a nonresident pharmacist has not had disciplinary action taken against their license. [↑](#footnote-ref-161)
161. US Food and Drug Administration inspection is preferred. [↑](#footnote-ref-162)
162. Boards may consider contacting the US Drug Enforcement Administration ahead of time to ensure that controlled substances may be delivered to and dispensed from temporary or mobile pharmacy facilities. [↑](#footnote-ref-163)
163. Boards may choose to require “approval” of a temporary pharmacy facility or a mobile pharmacy, as opposed to requiring only “notification.” “notification” may imply that the board of pharmacy has approved the location of the temporary pharmacy facility or mobile pharmacy. [↑](#footnote-ref-164)
164. Although many states do not allow the permanent or temporary licensure of mobile pharmacies, states that do allow the licensure of mobile pharmacies may consider implementing special requirements for permanent licensure; for example, a state may limit mobile pharmacies to operation only by nonprofit organizations and only in communities that are medically underserved. [↑](#footnote-ref-165)
165. When the pharmacist restocks and reseals the emergency kit drugs, it is recommended that a lock or other similar device be used to assure that unauthorized access to the kit is minimized. [↑](#footnote-ref-166)
166. This is often referred to as the pharmacy and therapeutics committee or the quality assessment and assurance committee. [↑](#footnote-ref-167)
167. Federal law may restrict who can transmit a chart order for a controlled substance. [↑](#footnote-ref-168)
168. Although institutional pharmacies primarily outsource services to another pharmacy for the purposes of meeting the immediate needs of patients and residents when the institutional pharmacy is closed, it is also recognized that other services may be outsourced that the institutional pharmacy is not able to provide on an ongoing basis. [↑](#footnote-ref-169)
169. Controlled substance dispensing by an institutional pharmacy for outpatient use shall be reported to the state’s prescription monitoring program. [↑](#footnote-ref-170)
170. The compounding of drugs for animals must be done in accordance with the algorithm contained in the Animal Medicinal Drug Use Clarification Act of 1994 and associated FDA Guidance. [↑](#footnote-ref-171)
171. Boards of pharmacy are encouraged to strongly consider recognizing the NABP Information Sharing Network. [↑](#footnote-ref-172)
172. FDA Form 1932a or most current version. [↑](#footnote-ref-173)
173. States may require authentication and tracking of product, whereby the exchange of information for compounded product is traced. [↑](#footnote-ref-174)
174. The designated representative should serve as a liaison to the board who is extremely knowledgeable about and involved in the daily operations of the wholesale distributor. If a wholesale distributor is licensed by multiple states, it is not necessary for the wholesale distributor to have multiple designated representatives. One designated representative per wholesale distributor facility is sufficient. [↑](#footnote-ref-175)
175. The application and screening process for licensing entities engaging in the distribution of product represents a critical point in efforts to prevent the introduction of illegitimate products into the drug distribution system. an application that requires detailed information about the applicant and key individuals involved in the operations of the entity is critical. [↑](#footnote-ref-176)
176. Although wholesale distributors may be licensed in multiple states, it is not intended for wholesale distributors to procure a separate “surety” bond (or other equivalent means) for each state of licensure. States should consider waiving this requirement if the wholesale distributor has procured a “surety” bond (or other equivalent means) for the purposes of licensure in another state, or if the wholesaler is a publicly traded company. [↑](#footnote-ref-177)
177. The board may designate a third party to conduct inspections and ensure that all requirements for licensure established by the legislature and board are fulfilled. The NABP Drug Distributor Accreditation program is available to the states. [↑](#footnote-ref-178)
178. If a State does not have a licensure category for third-party logistics providers, facilities that engage in interstate transport of prescription drugs must obtain federal registration. [↑](#footnote-ref-179)
179. Fingerprints represent one of the current means of verifying the identity of the person as well as providing a reliable means to conduct criminal background checks. As technology changes and other means become available to the Board such as retinal scanning or DNA sampling, the board must stay current with such technologies and amend rules as necessary and appropriate. [↑](#footnote-ref-180)
180. The board will need to ensure that continuing education programs for the desired content areas are available when considering the implementation of this requirement. [↑](#footnote-ref-181)
181. This information should be reported to NABP, if serving as a data collection repository, in addition to the other relevant authorities. [↑](#footnote-ref-182)
182. In developing policies and procedures for the management and quality improvement of the wholesale distribution activities of a wholesale distributor, the board may want to refer to the healthcare distribution management association and the National Association of Chain Drug Stores. [↑](#footnote-ref-183)
183. Boards should be advised that statutory amendments may be necessary in the State practice acts in order to properly integrate the prohibited and criminal acts. It is highly recommended that boards confer with Board Counsel before adopting the Model Rules to make certain that the appropriate statutory language exists in the state pharmacy practice act to support the Model Rules. [↑](#footnote-ref-184)
184. Returned purchases from pharmacies to wholesale distributors are not considered to be “transfers, distributions, or sales,” and are not affected by this language. [↑](#footnote-ref-185)
185. Boards should be advised that statutory amendments may be necessary in the state practice acts in order to properly integrate the prohibited and criminal acts. It is highly recommended that boards confer with board counsel before adopting the Model Rules to make certain that the appropriate statutory language exists in the state pharmacy practice act to support the Model Rules. [↑](#footnote-ref-186)
186. Common carriers frequently use the terms “to load,” which means placing property from the shipping location onto the transport vehicle, and “to offload,” which means removing property from the transport vehicle at the delivery location. [↑](#footnote-ref-187)
187. The risk of diversion and adulteration are not concerns for medical gases. With this in mind, the depth of personal identification information required for licensure of Wholesale Distributors of Medical Gases or Medical Gas Related Equipment is less than that of Wholesale Distributors of Prescription Drugs. In addition, the provision of facility details such as square footage, lease details, and temperature and humidity controls is not required as it is for Wholesale Distributors of Prescription Drugs. [↑](#footnote-ref-188)
188. Although a board may allow a firm to be third-party accredited, wholesale distributors of medical gases or medical gas related equipment do not qualify for the NABP Drug Distributor Accreditation program as the inspection criteria is not applicable to medical gas or medical gas equipment related operations. [↑](#footnote-ref-189)
189. Some home respiratory care providers provide “on call” services to patients. This requires home respiratory care technicians to keep parked at their personal dwelling the company vehicle stocked with medical gases or medical gas related equipment. [↑](#footnote-ref-190)
190. The board may refer to the following industry guideline: CGA M-7, *Guideline for Qualifying Suppliers Used by Medical Gas Manufacturers and Distributors.* [↑](#footnote-ref-191)
191. Record retention requirements are determined based on cryogenic and liquefied gas product profiles. [↑](#footnote-ref-192)