

FIRST REGULAR SESSION

# SENATE BILL NO. 479

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR STOLL.

Read 1st time February 13, 2001, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

1640S.021

## AN ACT

To repeal sections 338.030, 338.043, 338.055, 338.210, 338.220, 338.285 and 338.353, RSMo 2000, relating to pharmacists and pharmacies, and to enact in lieu thereof seven new sections relating to the same subject.

*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Sections 338.030, 338.043, 338.055, 338.210, 338.220, 338.285 and 338.353, RSMo 2000, are repealed and seven new sections enacted in lieu thereof, to be known as sections 338.030, 338.043, 338.055, 338.210, 338.220, 338.285 and 338.353, to read as follows:

338.030. An applicant for examination shall be twenty-one years of age and in addition shall furnish satisfactory evidence of his good moral character and [a certificate of graduation from an accredited high school or its equivalent,] have had one year practical experience under the supervision of a licensed pharmacist within a licensed pharmacy, or other location approved by the board, and shall be a graduate of a school or college of pharmacy whose requirements for graduation are satisfactory to and approved by the board of pharmacy.

338.043. 1. Notwithstanding any provision of law to the contrary, the board of pharmacy may grant a temporary license to an applicant who meets such requirements as the board may prescribe by rule and regulation.

2. [The temporary license provided in subsection 1 of this section shall limit the right of the licensee to practice only in locations approved by the board under the supervision of a pharmacist licensed to practice pharmacy in this state.

3.] The license shall be renewable at the discretion of and with the approval of the board of pharmacy. A temporary license fee shall accompany the original application for a temporary

**EXPLANATION--Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

license and a similar amount shall be paid in the event the temporary license is renewed.

338.055. 1. The board may refuse to issue any certificate of registration or authority, permit or license required pursuant to this chapter for one or any combination of causes stated in subsection 2 of this section. The board shall notify the applicant in writing of the reasons for the refusal and shall advise the applicant of his right to file a complaint with the administrative hearing commission as provided by chapter 621, RSMo.

2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his certificate of registration or authority, permit or license for any one or any combination of the following causes:

(1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of any profession licensed or regulated by this chapter;

(2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) Use of fraud, deception, misrepresentation or bribery in securing any certificate of registration or authority, permit or license issued pursuant to this chapter or in obtaining permission to take any examination given or required pursuant to this chapter;

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

(7) Impersonation of any person holding a certificate of registration or authority, permit or license or allowing any person to use his or her certificate of registration or authority, permit, license or diploma from any school;

(8) Disciplinary action against the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) A person is finally adjudged incapacitated by a court of competent jurisdiction;

(10) Assisting or enabling any person to practice or offer to practice any profession licensed

or regulated by this chapter who is not registered and currently eligible to practice under this chapter;

(11) Issuance of a certificate of registration or authority, permit or license based upon a material mistake of fact;

(12) Failure to display a valid certificate or license if so required by this chapter or any rule promulgated hereunder;

(13) Violation of any professional trust or confidence;

(14) Use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed;

(15) Violation of the drug laws or rules and [regulation] **regulations** of this state, any other state or the federal government;

(16) The intentional act of substituting or otherwise changing the content, formula or brand of any drug prescribed by written or oral prescription without prior written or oral approval from the prescriber for the respective change in each prescription; provided, however, that nothing contained herein shall prohibit a pharmacist from substituting or changing the brand of any drug as provided under section 338.056, and any such substituting or changing of the brand of any drug as provided for in section 338.056 shall not be deemed unprofessional or dishonorable conduct unless a violation of section 338.056 occurs;

**(17) Personal use or consumption of any controlled substance unless it is prescribed, dispensed or administered by a health care provider who is authorized by law to do so.**

3. After the filing of such complaint, the proceedings shall be conducted in accordance with the provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that the grounds, provided in subsection 2, for disciplinary action are met, the board may, singly or in combination, censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years, or may suspend, for a period not to exceed three years, or revoke the license, certificate, or permit. The board may impose additional discipline on a licensee, registrant or permittee found to have violated any disciplinary terms previously imposed under this section or by agreement. The additional discipline may include, singly or in combination, censure, placing the licensee, registrant or permittee named in the complaint on additional probation on such terms and conditions as the board deems appropriate, which additional probation shall not exceed five years, or suspension for a period not to exceed three years, or revocation of the license, certificate or permit.

4. If the board concludes that a pharmacist has committed an act or is engaging in a course of conduct which would be grounds for disciplinary action which constitutes a clear and present danger to the public health and safety, the board may file a complaint before the administrative hearing commission requesting an expedited hearing and specifying the activities which give rise

to the danger and the nature of the proposed restriction or suspension of the pharmacist's license. Within fifteen days after service of the complaint on the pharmacist, the administrative hearing commission shall conduct a preliminary hearing to determine whether the alleged activities of the pharmacist appear to constitute a clear and present danger to the public health and safety which justify that the pharmacist's license be immediately restricted or suspended. The burden of proving that a pharmacist is a clear and present danger to the public health and safety shall be upon the state board of pharmacy. The administrative hearing commission shall issue its decision immediately after the hearing and shall either grant to the board the authority to suspend or restrict the license or dismiss the action.

5. If the administrative hearing commission grants temporary authority to the board to restrict or suspend the pharmacist's license, such temporary authority of the board shall become final authority if there is no request by the pharmacist for a full hearing within thirty days of the preliminary hearing. The administrative hearing commission shall, if requested by the pharmacist named in the complaint, set a date to hold a full hearing under the provisions of chapter 621, RSMo, regarding the activities alleged in the initial complaint filed by the board.

6. If the administrative hearing commission dismisses the action filed by the board pursuant to subsection 4 of this section, such dismissal shall not bar the board from initiating a subsequent action on the same grounds.

338.210. [As used in sections 338.210 to 338.300 "pharmacy" shall mean any pharmacy, drug, chemical store, or apothecary shop, conducted for the purpose of compounding, and dispensing or retailing of any drug, medicine, chemical or poison when used in the compounding of a physician's prescription.] **1. Pharmacy refers to any location where the practice of pharmacy occurs or such activities are offered or provided by a pharmacist or another acting under the supervision and authority of a pharmacist, including every premises or other place:**

- (1) Where the practice of pharmacy is offered or conducted;**
- (2) Where drugs, chemicals, medicines, prescriptions, or poisons are compounded, prepared, dispensed or sold or offered for sale at retail;**
- (3) Where the symbol "Rx", or the words "pharmacist", "apothecary", "drugstore", "drugs", and any other symbols, words or phrases of similar meaning or understanding are used in any form to advertise retail products or services;**
- (4) Where patient records or other information is maintained for the purpose of engaging or offering to engage in the practice of pharmacy or to comply with any relevant laws regulating the acquisition, possession, handling, transfer, sale or destruction of drugs, chemicals, medicines, prescriptions or poisons.**

**2. All activity or conduct involving the practice of pharmacy as it relates to an identifiable prescription or drug order shall occur at the pharmacy location where such**

**identifiable prescription or drug order is first presented by the patient or the patient's authorized agent for preparation or dispensing, unless otherwise expressly authorized by the board.**

**3. The requirements set forth in subsection 2 of this section shall not be construed to bar the complete transfer of an identifiable prescription or drug order pursuant to a verbal request by or the written consent of the patient or the patient's authorized agent.**

**4. The board is hereby authorized to enact rules waiving the requirements of subsection 2 of this section and establishing such terms and conditions as it deems necessary, whereby any activities related to the preparation, dispensing or recording of an identifiable prescription or drug order may be shared between separately licensed facilities.**

**5. If a violation of this chapter or other relevant law occurs in connection with or adjunct to the preparation or dispensing of a prescription or drug order, any permit holder or pharmacist-in-charge at any facility participating in the preparation, dispensing, or distribution of a prescription or drug order may be deemed liable for such violation.**

338.220. 1. It shall be unlawful for any person, copartnership, association, corporation or any other business entity to open, establish, operate or maintain any pharmacy, as defined by statute without first obtaining a permit or license to do so from the Missouri board of pharmacy. The following classes of pharmacy permits or licenses are hereby established:

- (1) Class A: Community/ambulatory;
- (2) Class B: Hospital outpatient pharmacy;
- (3) Class C: Long-term care;
- (4) Class D: Home health care;
- (5) Class E: Radio pharmaceutical;
- (6) Class F: Renal dialysis;
- (7) Class G: Medical gas;
- (8) Class H: Sterile product compounding;
- (9) Class I: Consultant services;
- (10) Class J: Shared service.**

2. Application for such permit or license shall be made upon a form furnished to the applicant; shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing same, subject to the penalties of making a false affidavit or declaration; and shall be accompanied by a permit or license fee. The permit or license issued shall be renewable upon payment of a renewal fee. Separate applications shall be made and separate permits or licenses required for each

pharmacy opened, established, operated or maintained by the same owner.

3. All permits, licenses or renewal fees collected pursuant to the provisions of sections 338.210 to 338.370 shall be deposited in the state treasury to the credit of the Missouri board of pharmacy fund, to be used by the Missouri board of pharmacy in the enforcement of the provisions of sections 338.210 to 338.370, when appropriated for that purpose by the general assembly.

338.285. The board is hereby authorized and empowered, when examination or inspection of a pharmacy shall disclose to the board that the pharmacy is not being operated or conducted according to such legal rules and regulations and the laws of Missouri with respect thereto, to cause a complaint to be filed before the administrative hearing commission pursuant to chapter 621, RSMo, charging the holder of a permit to operate a pharmacy with conduct constituting grounds for [suspension or revocation of his permit] **discipline in accordance with section 338.055.**

338.353. 1. The board of pharmacy is hereby authorized and empowered, when complaints, examinations or inspection of a wholesale drug distributor or pharmacy distributor disclose to the board that a wholesale drug distributorship or pharmacy distributorship is not being operated or conducted according to such legal rules and regulations and the laws of Missouri or any other state or the federal government with respect thereto, to cause a complaint to be filed before the administrative hearing commission pursuant to chapter 621, RSMo, charging the holder of a license to operate a drug distributorship or pharmacy wholesale operation constituting grounds for [probation, suspension or revocation of the distributor license] **discipline in accordance with section 338.055.**

2. If the board concludes that a wholesale drug distributor or pharmacy distributor has committed an act or is engaging in a course of conduct which constitutes a clear and present danger to the public health and safety in Missouri, the board may file a complaint before the administrative hearing commission requesting an expedited hearing and specifying the activities which give rise to the danger and the nature of the proposed restriction or suspension of the wholesale drug distributor's or pharmacy distributor's license. Within fifteen days after service of the complaint on a wholesale drug distributor or pharmacy distributor, the administrative hearing commission shall conduct a preliminary hearing to determine whether the alleged activities of the wholesale drug distributor or pharmacy distributor appear to constitute a clear and present danger to the public health and safety which justify that the wholesale drug distributor's or pharmacy distributor's license be immediately restricted or suspended. The burden of proving that a wholesale drug distributor or pharmacy distributor is a clear and present danger to the public health and safety shall be upon the state board of pharmacy. The administrative hearing commission shall issue its decision immediately after the hearing and shall either grant to the board the authority to suspend or restrict the license or dismiss the action.

3. If the administrative hearing commission grants temporary authority to the board to restrict or suspend the wholesale drug distributor's or pharmacy distributor's license, such

temporary authority of the board shall become final authority if there is no request by the wholesale drug distributor or pharmacy distributor for a full hearing within thirty days of the preliminary hearing. The administrative hearing commission shall, if requested by the wholesale drug distributor or pharmacy distributor named in the complaint, set a date to hold a full hearing under the provisions of chapter 621, RSMo, regarding the activities alleged in the initial complaint filed by the board.

4. If the administrative hearing commission dismisses the action filed by the board pursuant to subsection 2 of this section, such dismissal shall not bar the board from initiating a subsequent action on the same grounds.

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