

## CHAPTER 151.

## PHARMACY.

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**151.01 Board.** (1) The state board of pharmacy consists of 5 resident pharmacists, at the time of appointment actually engaged in practice, appointed by the governor, one each year for a term of 5 years. Each member of the board, except the secretary, shall be paid \$20 per day when actually and necessarily engaged in the performance of his duties. The secretary of the board shall be paid an annual salary to be fixed by the board. If the secretary is a member of the board, such salary shall be in lieu of per diem.

(2) Annual meeting shall be held in April, at which president and secretary-treasurer shall be elected for terms of one year. Meetings for examination shall be held at least semiannually. Time and place of meetings shall be fixed by president and secretary. Thirty days' public notice shall be given of examinations.

(3) The secretary-treasurer need not be a member. He shall keep a record of the proceedings and a register of the names and places of business of persons registered under this chapter, and the books, registers and records of the board as made and kept by the secretary or under his supervision, subject to the direction of the board, shall be prima facie evidence of the matters therein recorded. He shall give such bond and receive such salary as the board determines. Members and officers shall receive their actual and necessary expenses. The board shall have the right to employ inspectors, special investigators, chemists, agents and clerical help for the purpose of carrying on the work of the board and shall have authority to employ an attorney when it deems necessary. The board shall have a seal, and the president and secretary may issue subpoenas and administer oaths. The board may pay out of its own funds witness fees and such other expenses as may be necessary and incidental to the carrying out of its functions.

(4) The board may adopt by-laws, rules and regulations, and shall cause prosecution of violations of this chapter. It shall report annually, to the governor and the Wisconsin pharmaceutical association, its proceedings, registrations, and receipts and disbursements.

**History:** 1951 c. 319 s. 246; 1953 c. 173.

**151.02 Registration.** (1) All candidates for entrance to examination for registration as pharmacists must file application with the secretary of the board and pay the required fee of twenty dollars, at least fifteen days before the date of examination. The fee for all subsequent examinations shall be ten dollars. All candidates must be at least twenty-one years of age; must be of good moral character and temperate in habits; and if not citizens of the United States must have filed and proven their intentions of becoming citizens; and must be graduates of a standard, recognized high school, or must have acquired the equivalent of a high school education in some other institution of equal rank or standing, or must have passed an examination for the equivalent of high school given by a state university or by a state department or bureau of education, issuing a qualifying certificate for the necessary high school units recognized by the University of Wisconsin, or any other equivalent of a high school education recognized by the University of Wisconsin.

(2) Every such applicant for examination and registration as pharmacist must, in addition, file with the secretary proof satisfactory to the board, of having had at least 48 months of pharmaceutical training consisting of:

(a) Graduation from a school or college of pharmacy or a department of pharmacy of a university, which is recognized by the board and which requires for graduation at least a 4-year course. Credit for actual time of attendance at the school, college or department of pharmacy of a university shall be given on the required 48 months of pharmaceutical training; the remainder of the 48 months must be practice and experience in a retail pharmacy or drug store under the direction and supervision of a registered pharmacist, which practice and experience shall be predominantly work directly related to the selling of drugs, preparing and compounding of pharmaceutical preparations and physicians' prescriptions, and keeping of records and making of reports required under state and federal statutes. The said practice and experience shall include an aggregate of 12 calendar months commencing not earlier than the close of the sophomore college year.

Credit for such periods of practice and experience shall be allowed in the discretion of the board in accordance with such regulations as it may from time to time adopt. There shall be a fee of \$1 for registration of apprentices under this subsection.

(d) Any candidate who shall have been registered as an assistant pharmacist prior to the date of his application for examination, and continuously during the 4 years immediately prior thereto shall have been employed in a licensed drug store or drug stores on a full-time basis, or personally operated a drug store on a full-time basis, shall be eligible to take the examination for registered pharmacist. In computing such continuous 4-year period, service of the candidate in the armed forces of the United States shall not be deemed to have interrupted the required continuous drug store employment or operation.

(3) Applicants filing proofs, satisfactory to the board, of qualifications and training as outlined in the preceding subsection shall, after having passed examination by the board, and upon payment of a \$5 certificate fee, be granted certificates as registered pharmacists. Proof satisfactory to the board covering experience, preliminary education, college of pharmacy graduation and character herein required shall be filed with the secretary of the board. Every registered pharmacist may continue to be such by annually, at such time as the board may determine, renewing his certificate upon paying the fee of \$5. Failure to obtain such renewal for 60 days after the secretary of such board shall have given a second notice of the expiration of his registration, shall terminate the right of any person to be a registered pharmacist within the meaning of this section, and such right can only be acquired by compliance with the provisions concerning original registration, again applying for and passing an examination satisfactory to the board.

(5) Every registered assistant pharmacist may continue to be such by annually, at such time as the board of pharmacy may determine, making application thereto for the renewal of his certificate and paying the prescribed fee of \$4. Failure to obtain such renewal for 60 days after the secretary of such board shall have given a second notice of the expiration of his registration, shall terminate the right of any person to be a registered assistant pharmacist within the meaning of this section, and such right can only be acquired by compliance with the provisions concerning original registration, again applying for and passing an examination satisfactory to the board. The issuance of either of the certificates provided for in this section shall entitle the person to whom it is issued to be registered in the proper class.

(6) The board may in its discretion register as a pharmacist without examination, any person who is duly registered in some other state; provided, that the said person shall produce satisfactory evidence of having had the required secondary and professional education and training and is possessed of good character and habits demanded of applicants for registration as pharmacists under the laws of this state, and upon payment of \$25, excepting that persons of good character and habits who have become registered as pharmacists in some other state prior to July 31, 1927, shall be required to meet only the requirements which existed in this state at the time when they became registered in such other state, and provided also that the state from which the applicant applies shall, under like conditions, grant reciprocal registration as a pharmacist without examination to pharmacists duly registered in this state.

(7) The board, upon notice and hearing, may suspend or revoke the registration of one guilty of felony or gross immorality, or who is addicted to alcoholic liquors or narcotic drugs, or whose registration was secured by fraud or mistake or who has been guilty of a violation of this chapter or of violations of any of the rules or regulations of the board, or who has been guilty of acts of unprofessional conduct as herein defined. No such revocation shall become effective until 20 days after notice of the decision of the board has been served upon the person accused. Decisions of the board under this section shall be subject to review as provided in ch. 227 and in case the provisions thereof are invoked by the accused within such 20-day period, such order of revocation shall become effective only at such time as may be ordered by the court. Unprofessional conduct means:

(a) Sale of adulterated drugs as defined in s. 97.25.

(b) Compounding and dispensing a prescription by using substances not prescribed or called for, or by omitting substances prescribed or called for. This does not apply to the addition of emulsifiers, wetting agents, solvents or like items intended for proper pharmaceutical technique.

(8) No person shall use the title "pharmacist" or "assistant pharmacist" unless duly registered as such under the provisions of this chapter, nor shall any person, firm or corporation use or display the title "drug store," "pharmacy," "apothecary," or any other title, symbol, insignia (including without limitation because of enumeration, mortar and pestle, colored show globes, the sign Rx and the like) having the same or similar meaning for such place of business unless such place of business be one where drugs are sold in accordance with the provisions of section 151.04.

(9) No drug store, pharmacy, apothecary shop, or any similar place of business, shall be opened or kept open for the transaction of business until it has been registered with and a permit therefor has been issued by the state board of pharmacy; provided, however, that this section shall not be construed to apply to any store or stores opened for the sale of proprietary or so-called patent medicines which conform to state and federal laws. Every pharmacy and store conducted under the supervision of a registered pharmacist shall be annually registered on June 1 with the state board of pharmacy, on application forms provided for that purpose by the board, on request, and the board shall thereupon issue a suitable certificate of registration to such persons which permit shall be conspicuously displayed in a front window or door of such place of business. Applications for registration as a pharmacy or drug store shall include information regarding the names of all pharmacists, assistant pharmacists and registered apprentices who are employed therein. Only places in charge of a registered pharmacist and holding a permit as a pharmacy may use the title "pharmacy," "pharmacist," "apothecary" or "drug store," or use customary titles, symbols or insignia and each must be under the separate management of a registered pharmacist, who shall not engage to manage or supervise more than one such place, but nothing contained in this section shall prevent a person from owning and conducting more than one pharmacy; provided, each be under the separate supervision of a registered pharmacist. For the registration of every new drug store or any drug store upon a change of ownership herein required to be registered, there shall be paid an inspection fee of \$15 together with a registration fee of \$10. Upon annual renewal of registration all places shall pay a fee of \$10, payable on June 1 of each year. Any person failing to register his place of business as herein required, failing to have in charge of each pharmacy a registered pharmacist, who does not manage or supervise more than one pharmacy, or who otherwise fails to comply with the provisions of this section, shall, upon conviction, be fined not less than \$25 nor more than \$50 for each separate offense. Each day's violation shall be deemed a separate offense.

(10) Every pharmacy shall be equipped with proper pharmaceutical utensils so that compounding of prescriptions and dispensing of medicaments can be properly performed. The Wisconsin board of pharmacy, with the advice and consent of the faculty of the university of Wisconsin school of pharmacy, shall prescribe the minimum standards of such professional and technical equipment, which shall include copies of the latest revisions of the United States Pharmacopoeia and the National Formulary and any supplement to either of them. No permit shall be issued or continued for the conduct of a pharmacy unless the provisions of this subsection have been complied with. Failure to maintain a pharmacy equipped with proper sanitary appliances or in a clean and orderly manner constitute grounds for denial, suspension or revocation of a pharmacy permit. There shall be kept in every pharmacy a suitable book or file, in which every prescription compounded or dispensed shall be preserved for a period of not less than 5 years.

**History:** 1951 c. 62, 122, 727; 1953 c. 172, 173.

Pharmaceutical training obtained in a licensed retail pharmacy or drug store operated by a hospital under the direction and supervision of a registered pharmacist must be accepted by the state board of pharmacy as a part of the training course required of applicants for registration as pharmacists. 40 Atty. Gen. 244.

issued to applicants whose premises and equipment qualify under the provisions of (10), if the drug business is at all times under the separate management of a registered pharmacist. The ownership of the store is immaterial, as is the fact that other lines of business are conducted in connection therewith by non-pharmacists. 40 Atty. Gen. 290.

Drug store permits under (9) are to be

**151.03 Permit.** In rural districts with no registered pharmacist or assistant pharmacist within 3 miles, the board may issue to merchants permit to sell for one year drugs and medicines specified therein, upon payment of the fee fixed by the board, not exceeding \$10. An applicant for a permit for a new rural store or for a permit upon change of ownership of an existing rural store shall pay an inspection fee of \$15 in addition to the annual permit fee of \$10.

**History:** 1953 c. 173.

21 Atty. Gen. 25, to the effect that rural permit to sell drugs and medicines may not be issued to a person who is a resident of in-

corporated city or village, is withdrawn. 39 Atty. Gen. 283.

**151.04 Practice.** (1) Certificates of registration, renewals, and permits shall be conspicuously exposed to public view in the place of business.

(2) No person shall sell, give away, barter, compound or dispense drugs, medicines or poisons, nor permit it, in a town, village or city with a population of 500 or more unless he be a registered pharmacist, nor institute nor conduct a place therefor without a registered pharmacist in charge, except that a registered assistant pharmacist may do so under the personal supervision of a registered pharmacist, and may have charge during the pharmacist's necessary absence, not to exceed 10 days. If the population is less than 500, only a registered assistant pharmacist is required.

(3) This shall not interfere with the dispensing of drugs, medicines or other articles by physicians, nor with the sale of proprietary medicines in sealed packages, labeled to comply with the federal and state pure food and drug law, with directions for using, and the name and location of the manufacturer, nor with the sale of economic poisons for use in industrial arts, nor with the sale of economic poisons which comply with sections 94.67 to 94.71, nor with the sale of alum, ammonia, borax, bay rum, bicarbonate of soda, cream of tartar, concentrated lye, olive oil, sal ammoniac, sal soda, sulphur, copperas, epsom salts, glauber salts, castor oil, glycerine, senna leaves, indigo, blue vitriol, turpentine, wood alcohol and denatured alcohol.

(4) No person, firm or corporation shall manufacture, produce, package, pack or prepare within this state any drugs or medicines except under the personal and immediate supervision of a registered pharmacist or such other person as may be approved by the board after an investigation and a determination that such other person or persons are qualified by scientific training and education to perform such duties of supervision in a manner adequate to protect the public health and safety. No person, firm or corporation shall manufacture, produce, package, pack or prepare any drugs or medicines within this state without first obtaining a permit from the Wisconsin board of pharmacy. The issuance of such permit shall be subject to such rules and regulations as the board may from time to time adopt for the protection of the public health and safety.

(5) No person shall wilfully make a false statement in any prescription, order, report or record, required by this chapter, nor make or utter any false or forged prescription or written order.

**History:** 1953 c. 172.

Aspirin, milk of magnesia, and camphorated oil are not "proprietary medicines" within the meaning of 151.04 (3), excepting the sale of proprietary medicines from the provisions in (2) prohibiting the sale of drugs by persons other than registered pharmacists or assistants. State v. Wakeen, 263 W 401, 57 NW (2d) 364.

See note to 95.64, citing 40 Atty. Gen. 341. Dispensing of drugs by physician to pa-

tient in course of professional treatment is exempt from provisions of ch. 151, and no violation of 151.04 (2) or 151.07 (3) is involved where the particular prescription is delivered to the patient by the office girl who has been directed by the physician to select certain tablets from a designated container and package the same under the general supervision of the physician. 41 Atty. Gen. 23.

**151.05 Penalty.** (1) Anyone who violates subsection (1) of section 151.04 shall forfeit ten dollars for each failure, and anyone who wilfully makes a false representation to procure registration or permit for himself or another, or who violates this chapter shall be deemed guilty of a misdemeanor and shall be fined not less than fifty dollars nor more than one hundred dollars, or imprisoned in the county jail for not less than thirty days nor more than ninety days, or both.

(2) It is the duty of each member and officer of the board to investigate and institute actions for violations of this chapter and of chapter 161, section 146.20, and of section 351.235 and the district attorney shall promptly prosecute upon notice from any source.

**151.06 Definition of drug.** The term "drug", as used in this chapter, means:

(1) Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and

(2) All other articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and

(3) Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and

(4) Articles intended for use as a component of any articles specified in subsections (1), (2) or (3); but does not include surgical, dental or laboratory instruments, gases, oxygen therapy equipment, X-ray apparatus, or therapeutic lamps, their components, parts or accessories; or equipment, instruments, apparatus, or contrivances used to render such articles effective in medical, surgical or dental treatment; or articles intended for use or consumption in or for mechanical, industrial, manufacturing, or scientific applications or purposes.

151.06 (1) defining the term "drug" as used in ch. 151, to mean articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, "or any supplement to any of them," intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease, does not violate the constitution as being an unlawful delegation of legislative authority to the private organizations located outside of the state which compile the pub-

lications referred to therein. State v. Wakeen, 263 W 401, 57 NW (2d) 364.

151.06 (1) to (4), defining the term "drug" as used in ch. 151, is not unconstitutional as being vague and indefinite, and arbitrary and discriminatory, and thereby depriving persons, prohibited by 151.04 (2) from selling drugs, of property without due process of law and denying to them the equal protection of the laws. State v. Wakeen, 263 W 401, 57 NW (2d) 364.

151.07 Dangerous drugs. (1) As used in this section, unless the context otherwise requires:

(a) "Dangerous drug" means any drug unsafe for self-medication and shall be limited at the time of the effective date of this act [July 26, 1947] to include:

1. Barbiturates, the salts and derivatives of barbituric acid, also known as malonylurea, having hypnotic or somnifacient action, and compounds, preparations and mixtures thereof.

2. Sulfonamides or derivatives, compounds or mixtures thereof.

3. Thyroid and its contained or derived active compounds or mixtures thereof.

4. Cinchophen, neocinchophen, or compounds or mixtures thereof.

5. Aminopyrine, or compounds or mixtures thereof.

6. Amphetamine, desoxyephedrine, or compounds or mixtures thereof, except preparations for use in the nose and unfit for internal use.

7. Diethylstilbestrol, or compounds or mixtures thereof.

8. Ergot, cotton root or their contained or derived active compounds or mixtures thereof.

9. No compound, mixture or preparation shall be deemed a dangerous drug, if, in the case of barbiturates, it contains a sufficient quantity of another drug or drugs in addition to the salts or derivatives to cause it to produce an action other than its hypnotic or somnifacient action, or if it is intended for use as a spray or gargle or for external application and contains, in addition to such salts or derivatives, some other drug or drugs rendering it unfit for internal administration. No compound, mixture or preparation shall be deemed a dangerous drug if it is designed for the purpose of treating animals or poultry and so labeled.

(b) "Delivery" means selling, dispensing, giving away or supplying in any other manner.

(c) "Patient" means the individual for whom dangerous drugs are prescribed or to whom dangerous drugs are administered.

(d) "Person" includes an individual, corporation, partnership or association.

(e) "Practitioner" means a person licensed by law to prescribe and administer dangerous drugs.

(f) "Pharmacist" means a person duly registered with the state board of pharmacy as a compounder, dispenser and supplier of drugs.

(g) "Prescription" means a written order (or an oral order later reduced to writing) by a practitioner for a dangerous drug for a particular patient, which specifies the date of its issue, the name and address of such practitioner, the name and address of the patient, the name and quantity of the dangerous drug prescribed, directions for use of such drug and in case of a written order the signature of such practitioner.

(h) "Manufacturer" means persons other than pharmacists who manufacture dangerous drugs, and includes persons who prepare such drugs in dosage forms by mixing, compounding, encapsulating, entableting, or other process.

(i) "Wholesaler" means persons engaged in the business of distributing dangerous drugs to persons included in any of the classes named in subsection (8).

(j) "Warehouseman" means persons who store dangerous drugs for others and who have no control over the disposition of such dangerous drugs except for the purpose of such storage.

(2) No person except a practitioner shall deliver any dangerous drug except upon the prescription of a practitioner. An oral prescription, by telephone or otherwise, shall be promptly reduced to writing and filed by the pharmacist.

(3) No person, except a registered pharmacist or a practitioner shall prepare, compound, dispense or prepare for delivery for a patient any dangerous drug.

(4) No dangerous drug shall be delivered unless there is affixed to the immediate container a label disclosing:

(a) The name and address of the owner of the establishment from which such drug was delivered.

(b) The date on which the prescription for such drug was filled.

(c) The number of such prescription as filed in the prescription file of the pharmacist who filled such prescription.

(d) The name of the practitioner who prescribed such drug.

(e) The name and address of the patient.

(f) Directions for use of the drug as contained in the prescription.

(5) No prescription for a dangerous drug shall be refilled except as designated on such prescription, and unless accurate record of such refilling is entered on such prescription showing the date and amount thereof. No oral or written prescription shall be refilled unless the provisions of 151.07 (2) have been first complied with and unless either written or oral authority has been given by the prescriber.

(7) It shall be unlawful for any person to have any dangerous drug in his possession unless such drug was obtained in compliance with the provisions hereof.

(8) The provisions of subsections (2), (3), (4) and (7) shall not be applicable to the wholesale delivery of dangerous drugs to persons included in any of the classes hereinafter named; nor to the agents or employes of such persons for use in the usual course of their business or practice or in the performance of their official duties, as the case may be; nor to the possession of dangerous drugs by such persons or their agents or employes for such use:

(a) Pharmacists.

(b) Practitioners.

(c) Persons who procure dangerous drugs for the purpose of lawful research, teaching or testing and not for resale.

(d) Hospitals and other institutions which procure dangerous drugs for lawful administration by practitioners.

(e) Officers or employes of the federal government or state or local governments.

(f) Manufacturers and wholesalers.

(9) The state board of pharmacy is hereby authorized to promulgate necessary regulations for administration and enforcement of this section.

(10) Any person who violates any provision of this section shall be imprisoned not more than one year or fined not more than \$500, or both; but if a further violation is committed after a conviction of such person under this section has become final, such person shall be imprisoned not more than 2 years or fined not more than \$1,000, or both.

**History:** 1951 c. 261 s. 10; 1953 c. 391.

See note to 269.56, citing Wisconsin Pharmaceutical Asso. v. Lee, 264 W 325, 58 NW (2d) 700. See note to 151.04, citing 41 Atty. Gen. 23.