

REPRINTED

FILED MAR 13 1997

SENATE FILE **457**  
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 171)

Passed Senate, Date 3/25/97 (p. 782) Passed House, Date 4/9/97 (p. 1093)  
Vote: Ayes 47 Nays 0 Vote: Ayes 97 Nays 1  
Approved April 18, 1997

A BILL FOR

1 An Act relating to the Iowa pharmacy practice Act by permitting  
2 qualified individuals to transport emergency medications;  
3 permitting more than one emergency drug box in a licensed  
4 health care facility; providing for electronic signatures on  
5 prescriptions; establishing programs to aid impaired  
6 pharmacists, pharmacist interns, and pharmacy technicians;  
7 providing for board investigative subpoena power; and  
8 establishing a penalty.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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S.F.

SENATE FILE 457

S-3225

- 1 Amend Senate File 457 as follows:
- 2 1. Page 6, by striking lines 2 through 24.
- 3 2. Title page, line 7, by striking the words
- 4 "providing for board investigative subpoena power;"
- 5 3. By renumbering as necessary.

By JOHN REDWINE

S-3225 FILED MARCH 25, 1997  
ADOPTED (p. 782)

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DEFERRED

1 Section 1. Section 155A.4, subsection 2, Code 1997, is  
2 amended by adding the following new paragraph:

3 NEW PARAGRAPH. g. A qualified individual authorized to  
4 administer prescription drugs and employed by a home health  
5 agency or hospice to obtain, possess, and transport emergency  
6 prescription drugs as provided by state or federal law or by  
7 rules of the board.

8 Sec. 2. Section 155A.15, subsection 2, paragraph d,  
9 unnumbered paragraph 2, Code 1997, is amended to read as  
10 follows:

11 However, this chapter does not prohibit a pharmacy from  
12 furnishing a prescription drug or device to a licensed health  
13 care facility for storage in a secured emergency  
14 pharmaceutical supplies ~~container~~ containers maintained within  
15 the facility in accordance with rules of the department of  
16 inspections and appeals and rules of the board.

17 Sec. 3. Section 155A.27, subsection 1, unnumbered  
18 paragraph 1, Code 1997, is amended to read as follows:

19 If written or electronic, shall contain:

20 Sec. 4. Section 155A.27, subsection 1, paragraph e, Code  
21 1997, is amended to read as follows:

22 e. The name, address, and written or electronic signature  
23 of the practitioner issuing the prescription.

24 Sec. 5. NEW SECTION. 155A.39 PROGRAMS TO AID IMPAIRED  
25 PHARMACISTS, PHARMACIST INTERNS, OR PHARMACY TECHNICIANS --  
26 REPORTING, CONFIDENTIALITY, IMMUNITY, FUNDING.

27 1. A person or pharmaceutical peer review committee may  
28 report relevant facts to the board relating to the acts of a  
29 pharmacist in this state, a pharmacist intern as defined in  
30 section 155A.3, subsection 23, or a pharmacy technician in  
31 this state if the person or peer review committee has  
32 knowledge relating to the pharmacist, pharmacist intern, or  
33 pharmacy technician which, in the opinion of the person or  
34 pharmaceutical peer review committee, might impair competency  
35 due to chemical abuse, chemical dependence, or mental or

1 physical illness, or which might endanger the public health  
2 and safety, or which provide grounds for disciplinary action  
3 as specified in this chapter and in the rules of the board.

4 2. A committee of a professional pharmaceutical  
5 organization, its staff, or a district or local intervenor  
6 participating in a program established to aid pharmacists,  
7 pharmacist interns, or pharmacy technicians impaired by  
8 chemical abuse, chemical dependence, or mental or physical  
9 illness may report in writing to the board the name of the  
10 impaired pharmacist, pharmacist intern, or pharmacy technician  
11 together with pertinent information relating to the  
12 impairment. The board may report to a committee of a  
13 professional pharmaceutical organization or the organization's  
14 designated staff information which the board receives with  
15 regard to a pharmacist, pharmacist intern, or pharmacy  
16 technician who may be impaired by chemical abuse, chemical  
17 dependence, or mental or physical illness.

18 3. Upon determination by the board that a report submitted  
19 by a peer review committee or a professional pharmaceutical  
20 organization committee is without merit, the report shall be  
21 expunged from the pharmacist's, pharmacist intern's, or  
22 pharmacy technician's individual record in the board's office.  
23 A pharmacist, pharmacist intern, pharmacy technician, or an  
24 authorized representative of the pharmacist, pharmacist  
25 intern, or pharmacy technician shall be entitled on request to  
26 examine the peer review committee report or the pharmaceutical  
27 organization committee report submitted to the board and to  
28 place into the record a statement of reasonable length of the  
29 pharmacist's, pharmacist intern's, or pharmacy technician's  
30 view with respect to any information existing in the report.

31 4. Notwithstanding other provisions of the Code, the  
32 records and proceedings of the board, its authorized agents, a  
33 peer review committee, or a pharmaceutical organization  
34 committee as set out in subsections 1 and 2 shall be  
35 privileged and confidential and shall not be considered public

1 records or open records unless the affected pharmacist,  
2 pharmacist intern, or pharmacy technician so requests and  
3 shall not be subject to a subpoena or to a discovery  
4 proceeding. The board may disclose the records and  
5 proceedings only as follows:

6 a. In a criminal proceeding.

7 b. In a disciplinary hearing before the board or in a  
8 subsequent trial or appeal of a board action or order.

9 c. To the pharmacist licensing or disciplinary authorities  
10 of other jurisdictions.

11 d. To the pharmacy technician registering, licensing, or  
12 disciplinary authorities of other jurisdictions.

13 e. Pursuant to an order of a court of competent  
14 jurisdiction.

15 f. Pursuant to subsection 11.

16 g. As otherwise provided by law.

17 5. An employee or a member of the board, a peer review  
18 committee member, a professional pharmaceutical organization  
19 committee member, a professional pharmaceutical organization  
20 district or local intervenor, or any other person who  
21 furnishes information, data, reports, or records in good faith  
22 for the purpose of aiding the impaired pharmacist, pharmacist  
23 intern, or pharmacy technician, shall be immune from civil  
24 liability. This immunity from civil liability shall be  
25 liberally construed to accomplish the purpose of this section  
26 and is in addition to other immunity provided by law.

27 6. An employee or member of the board or a committee or  
28 intervenor program is presumed to have acted in good faith. A  
29 person alleging a lack of good faith has the burden of proof  
30 on that issue.

31 7. The board may contract with professional pharmaceutical  
32 associations or societies to provide a program for  
33 pharmacists, pharmacist interns, and pharmacy technicians who  
34 are impaired by chemical abuse, chemical dependence, or mental  
35 or physical illness. Such programs shall include, but not be

1 limited to, education, intervention, and posttreatment  
2 monitoring. A contract with a professional pharmaceutical  
3 association or society shall include the following  
4 requirements:

5 a. Periodic reports to the board regarding education,  
6 intervention, and treatment activities.

7 b. Immediate notification to the board's executive  
8 secretary or director or the executive secretary's or  
9 director's designee of the identity of the pharmacist,  
10 pharmacist intern, or pharmacy technician who is participating  
11 in a program to aid impaired pharmacists, pharmacist interns,  
12 or pharmacy technicians.

13 c. Release to the board's executive secretary or director  
14 or the executive secretary's or director's designee upon  
15 written request of all treatment records of a participant.

16 d. Quarterly reports to the board, by case number,  
17 regarding each participant's diagnosis, prognosis, and  
18 recommendations for continuing care, treatment, and  
19 supervision which maintain the anonymity of the participant.

20 e. Immediate reporting to the board of the name of an  
21 impaired pharmacist, pharmacist intern, or pharmacy technician  
22 who the treatment organization believes to be an imminent  
23 danger to either the public or to the pharmacist, pharmacist  
24 intern, or pharmacy technician.

25 f. Reporting to the board, as soon as possible, the name  
26 of a participant who refuses to cooperate with the program,  
27 who refuses to submit to treatment, or whose impairment is not  
28 substantially alleviated through intervention and treatment.

29 g. Immediate reporting to the board of the name of a  
30 participant where additional information is evident that known  
31 distribution of controlled substances or legend drugs to other  
32 individuals has taken place.

33 8. The board may add a surcharge of not more than ten  
34 percent of the applicable fee to a pharmacist license fee,  
35 pharmacist license renewal fee, pharmacist intern registration

1 fee, pharmacy technician registration fee, or pharmacy  
2 technician registration renewal fee authorized under this  
3 chapter to fund programs to aid impaired pharmacists,  
4 pharmacist interns, or pharmacy technicians.

5 9. The board may accept, transfer, and expend funds made  
6 available by the federal or state government or by another  
7 public or private source to be used in programs authorized by  
8 this section. The board may contract to provide funding on an  
9 annual basis to a professional pharmaceutical association or  
10 society for expenses incurred in management and operation of a  
11 program to aid impaired pharmacists, pharmacist interns, or  
12 pharmacy technicians. Documentation of the use of these funds  
13 shall be provided to the board not less than annually for  
14 review and comment.

15 10. Funds and surcharges collected under this section  
16 shall be deposited in an account and may be used by the board  
17 to administer programs authorized by this section, including  
18 the provision of education, intervention, and posttreatment  
19 monitoring to an impaired pharmacist, pharmacist intern, or  
20 pharmacy technician and to pay the administrative costs  
21 incurred by the board in connection with that funding and  
22 appropriate oversight, but not for costs incurred for a  
23 participant's initial evaluation, referral services,  
24 treatment, or rehabilitation subsequent to intervention.

25 11. The board may disclose that the license of a  
26 pharmacist, the registration of a pharmacist intern, or the  
27 registration of a pharmacy technician who is the subject of an  
28 order of the board that is confidential pursuant to subsection  
29 4 is suspended, revoked, canceled, restricted, or retired; or  
30 that the pharmacist, pharmacist intern, or pharmacy technician  
31 is in any manner otherwise limited in the practice of  
32 pharmacy; or other relevant information pertaining to the  
33 pharmacist, pharmacist intern, or pharmacy technician which  
34 the board deems appropriate.

35 12. The board may adopt rules necessary for the

1 implementation of this section.

2 Sec. 6. NEW SECTION. 155A.40 OATHS AND SUBPOENAS --  
3 CONTEMPT.

4 1. The board shall have the power to subpoena witnesses,  
5 to compel their appearance, to administer an oath, to examine  
6 any person under oath, and to require the production of any  
7 documentary or other evidence, whether or not privileged or  
8 confidential under law, which is relevant to a matter under  
9 investigation by the board and which is needed by the board to  
10 determine whether it should commence a disciplinary proceeding  
11 against a licensee.

12 2. Whenever any person subpoenaed pursuant to subsection 1  
13 of this section neglects or refuses to obey the terms of such  
14 subpoena, to produce documentary or other evidence, or to give  
15 testimony, the board may apply to a district court having  
16 jurisdiction for the enforcement of a subpoena or the issuance  
17 of an order compelling compliance. The court may sustain the  
18 subpoena to the extent that it is found to be in accordance  
19 with the law applicable to the issuance of subpoenas or  
20 discovery in civil actions. In proceedings for enforcement,  
21 the court may issue an order requiring the appearance of the  
22 witness or the production of the evidence or data within a  
23 reasonable time under penalty of punishment for contempt in  
24 cases of willful failure to comply.

25 Sec. 7. NEW SECTION. 155A.41 NITROUS OXIDE.

26 1. UNLAWFUL POSSESSION. Any person who possesses nitrous  
27 oxide or any substance containing nitrous oxide, with the  
28 intent to breathe, inhale, or ingest for the purpose of  
29 causing a condition of intoxication, elation, euphoria,  
30 dizziness, stupefaction, or dulling of the senses, or who  
31 knowingly and with the intent to do so is under the influence  
32 of nitrous oxide or any material containing nitrous oxide, is  
33 guilty of a serious misdemeanor. This subsection shall not  
34 apply to a person who is under the influence of nitrous oxide  
35 or any material containing nitrous oxide for the purpose of

1 medical, surgical, or dental care by a person duly licensed to  
2 administer such an agent.

3 2. UNLAWFUL DISTRIBUTION. Any person who distributes  
4 nitrous oxide, or possesses nitrous oxide with intent to  
5 distribute to any other person, if such distribution is with  
6 the intent to induce unlawful inhaling of the substance or is  
7 with the knowledge that the other person will unlawfully  
8 inhale the substance, is guilty of a serious misdemeanor.

9 EXPLANATION

10 This bill permits qualified individuals who are authorized  
11 to administer drugs and who are employed by a home health  
12 agency or hospice to obtain, possess, and transport emergency  
13 prescription drugs to home care or hospice patients. The bill  
14 also permits more than one emergency drug box in a licensed  
15 health care facility in accordance with rules of the board and  
16 rules of the department of inspections and appeals.

17 Electronic signatures on prescriptions would be permitted  
18 under this bill. The bill establishes programs to aid  
19 impaired pharmacists, pharmacist interns, and pharmacy  
20 technicians and provides for reporting, confidentiality,  
21 immunity, and funding. This bill provides for board  
22 investigative subpoena power. The bill also establishes  
23 penalties for the unlawful possession and unlawful  
24 distribution of nitrous oxide. Such unlawful possession or  
25 distribution shall constitute a serious misdemeanor.

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SENATE FILE 457  
FISCAL NOTE

The estimate for Senate File 457 is hereby submitted as a fiscal note pursuant to Joint Rule 17 and as a correctional impact statement pursuant to Section 2.56, Code of Iowa. Data used in developing this fiscal note and correctional impact statement are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

Senate File 457 makes changes to pharmacy practices and establishes programs to aid impaired pharmacists, pharmacist interns, and pharmacy technicians. The Bill also sets penalties for unlawful possession and unlawful distribution of nitrous oxide.

ASSUMPTIONS

1. Data from the U.S. Department of Health and Human Service's 1995 national household survey on drug abuse estimates that 1.1% of the U.S. population has used inhalants during the past year.
2. Of these inhalant users, 45.0% are between the ages of 12 and 17. The data indicates that 4.6% of all 12-17 year olds use inhalants. If this information is indicative of use within Iowa, one may estimate that 10,600 Iowans between 12 and 17 years old have used inhalants.
3. Persons 18-25 years old constituted 38.0% of inhalant users. The data indicates that 3.2% of all 18-25 year olds use inhalants. If this information is indicative of use within Iowa, one may estimate that 10,300 Iowans between 18 and 25 years old have used inhalants.
4. It is unknown how many inhalant cases involve nitrous oxide, but it is reasonable to assume that half of the inhalants were nitrous oxide.

FISCAL IMPACT

No General Fund impact is anticipated as a result of Sections 1-6 of SF 457.

Section 7, regarding nitrous oxide, may have a fiscal impact due to potential costs to the juvenile and adult justice systems, but the impact cannot be determined. Actual costs would depend on the vigorousness of efforts to detect, apprehend, and prosecute cases.

CORRECTIONAL IMPACT

The impact on jails will depend on the efforts to detect, apprehend, and prosecute cases.

SOURCES

Department of Public Health

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Criminal and Juvenile Justice Planning Division, Department of Human Rights  
1990 Iowa Census Data  
(LSB 1321sv.2, VMT)

FILED APRIL 7, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

**SENATE FILE 457  
FISCAL NOTE**

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**FISCAL IMPACT**

No General Fund impact is anticipated as a result of SF 457.

**CORRECTIONAL IMPACT**

The correctional impact cannot be determined at this time due to lack of data on the number of persons possessing and/or inhaling nitrous oxide.

**SOURCES**

Department of Public Health  
Criminal and Juvenile Justice Planning Division, Department of Human Rights  
(LSB 1321SV, VMT)

FILED MARCH 25, 1997

BY DENNIS PROUTY, FISCAL DIRECTOR

H-3/26/97 Human Res  
H-4-1-97 Do Pass

SENATE FILE 457  
BY COMMITTEE ON HUMAN RESOURCES

(SUCCESSOR TO SSB 171)

(AS AMENDED AND PASSED BY THE SENATE MARCH 25, 1997)

\* - Language Stricken by the Senate

Passed Senate, Date \_\_\_\_\_ Passed House, Date 4/9/97 (p. 1093)  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes 97 Nays 1  
Approved April 18, 1997

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S.F. 457

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32 knowledge relating to the pharmacist, pharmacist intern, or  
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2 and safety, or which provide grounds for disciplinary action  
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22 pharmacy technician's individual record in the board's office.  
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24 authorized representative of the pharmacist, pharmacist  
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31 4. Notwithstanding other provisions of the Code, the  
32 records and proceedings of the board, its authorized agents, a  
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8 subsequent trial or appeal of a board action or order.  
9 c. To the pharmacist licensing or disciplinary authorities  
10 of other jurisdictions.  
11 d. To the pharmacy technician registering, licensing, or  
12 disciplinary authorities of other jurisdictions.  
13 e. Pursuant to an order of a court of competent  
14 jurisdiction.  
15 f. Pursuant to subsection 11.  
16 g. As otherwise provided by law.

17 5. An employee or a member of the board, a peer review  
18 committee member, a professional pharmaceutical organization  
19 committee member, a professional pharmaceutical organization  
20 district or local intervenor, or any other person who  
21 furnishes information, data, reports, or records in good faith  
22 for the purpose of aiding the impaired pharmacist, pharmacist  
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24 liability. This immunity from civil liability shall be  
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35 12. The board may adopt rules necessary for the



1 implementation of this section.

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Redwine, chair  
Dvorsky  
Boettger

SSB 171  
Human Resources

Succeeded By  
SENATE/HOUSE FILE ~~FILE~~ 457  
BY (PROPOSED DEPARTMENT OF  
PUBLIC HEALTH/BOARD OF  
PHARMACY EXAMINERS BILL)

Passed Senate, Date \_\_\_\_\_ Passed House, Date \_\_\_\_\_  
Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_ Vote: Ayes \_\_\_\_\_ Nays \_\_\_\_\_  
Approved \_\_\_\_\_

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3 NEW PARAGRAPH. g. A qualified individual authorized to  
4 administer prescription drugs and employed by a home health  
5 agency or hospice to obtain, possess, and transport emergency  
6 prescription drugs as provided by state or federal law or by  
7 rules of the board.

8 Sec. 2. Section 155A.15, subsection 2, paragraph d,  
9 unnumbered paragraph 2, Code 1997, is amended to read as  
10 follows:

11 However, this chapter does not prohibit a pharmacy from  
12 furnishing a prescription drug or device to a licensed health  
13 care facility for storage in a secured emergency  
14 pharmaceutical supplies ~~container~~ containers maintained within  
15 the facility in accordance with rules of the department of  
16 inspections and appeals and rules of the board.

17 Sec. 3. Section 155A.27, subsection 1, unnumbered  
18 paragraph 1, Code 1997, is amended to read as follows:

19 If written or electronic, shall contain:

20 Sec. 4. Section 155A.27, subsection 1, paragraphs d and e,  
21 Code 1997, are amended to read as follows:

22 d. The directions for use and the purpose of the drug,  
23 medicine, or device prescribed.

24 e. The name, address, and written or electronic signature  
25 of the practitioner issuing the prescription.

26 Sec. 5. NEW SECTION. 155A.39 PROGRAMS TO AID IMPAIRED  
27 PHARMACISTS, PHARMACIST INTERNS, OR PHARMACY TECHNICIANS --  
28 REPORTING, CONFIDENTIALITY, IMMUNITY, FUNDING.

29 1. A person or pharmaceutical peer review committee may  
30 report relevant facts to the board relating to the acts of a  
31 pharmacist in this state, a pharmacist intern as defined in  
32 section 155A.3, subsection 23, or a pharmacy technician in  
33 this state if the person or peer review committee has  
34 knowledge relating to the pharmacist, pharmacist intern, or  
35 pharmacy technician which, in the opinion of the person or

1 pharmaceutical peer review committee, might impair competency  
2 due to chemical abuse, chemical dependence, or mental or  
3 physical illness, or which might endanger the public health  
4 and safety, or which provide grounds for disciplinary action  
5 as specified in this chapter and in the rules of the board.

6 2. A committee of a professional pharmaceutical  
7 organization, its staff, or a district or local intervenor  
8 participating in a program established to aid pharmacists,  
9 pharmacist interns, or pharmacy technicians impaired by  
10 chemical abuse, chemical dependence, or mental or physical  
11 illness may report in writing to the board the name of the  
12 impaired pharmacist, pharmacist intern, or pharmacy technician  
13 together with pertinent information relating to the  
14 impairment. The board may report to a committee of a  
15 professional pharmaceutical organization or the organization's  
16 designated staff information which the board receives with  
17 regard to a pharmacist, pharmacist intern, or pharmacy  
18 technician who may be impaired by chemical abuse, chemical  
19 dependence, or mental or physical illness.

20 3. Upon determination by the board that a report submitted  
21 by a peer review committee or a professional pharmaceutical  
22 organization committee is without merit, the report shall be  
23 expunged from the pharmacist's, pharmacist intern's, or  
24 pharmacy technician's individual record in the board's office.  
25 A pharmacist, pharmacist intern, pharmacy technician, or an  
26 authorized representative of the pharmacist, pharmacist  
27 intern, or pharmacy technician shall be entitled on request to  
28 examine the peer review committee report or the pharmaceutical  
29 organization committee report submitted to the board and to  
30 place into the record a statement of reasonable length of the  
31 pharmacist's, pharmacist intern's, or pharmacy technician's  
32 view with respect to any information existing in the report.

33 4. Notwithstanding other provisions of the Code, the  
34 records and proceedings of the board, its authorized agents, a  
35 peer review committee, or a pharmaceutical organization

1 committee as set out in subsections 1 and 2 shall be  
2 privileged and confidential and shall not be considered public  
3 records or open records unless the affected pharmacist,  
4 pharmacist intern, or pharmacy technician so requests and  
5 shall not be subject to a subpoena or to a discovery  
6 proceeding. The board may disclose the records and  
7 proceedings only as follows:

- 8 a. In a criminal proceeding.
- 9 b. In a disciplinary hearing before the board or in a  
10 subsequent trial or appeal of a board action or order.
- 11 c. To the pharmacist licensing or disciplinary authorities  
12 of other jurisdictions.
- 13 d. To the pharmacy technician registering, licensing, or  
14 disciplinary authorities of other jurisdictions.
- 15 e. Pursuant to an order of a court of competent  
16 jurisdiction.
- 17 f. Pursuant to subsection 11.
- 18 g. As otherwise provided by law.

19 5. An employee or a member of the board, a peer review  
20 committee member, a professional pharmaceutical organization  
21 committee member, a professional pharmaceutical organization  
22 district or local intervenor, or any other person who  
23 furnishes information, data, reports, or records in good faith  
24 for the purpose of aiding the impaired pharmacist, pharmacist  
25 intern, or pharmacy technician, shall be immune from civil  
26 liability. This immunity from civil liability shall be  
27 liberally construed to accomplish the purpose of this section  
28 and is in addition to other immunity provided by law.

29 6. An employee or member of the board or a committee or  
30 intervenor program is presumed to have acted in good faith. A  
31 person alleging a lack of good faith has the burden of proof  
32 on that issue.

33 7. The board may contract with professional pharmaceutical  
34 associations or societies to provide a program for  
35 pharmacists, pharmacist interns, and pharmacy technicians who

1 are impaired by chemical abuse, chemical dependence, or mental  
2 or physical illness. Such programs shall include, but not be  
3 limited to, education, intervention, and posttreatment  
4 monitoring. A contract with a professional pharmaceutical  
5 association or society shall include the following  
6 requirements:

7 a. Periodic reports to the board regarding education,  
8 intervention, and treatment activities.

9 b. Immediate notification to the board's executive  
10 secretary or director or the executive secretary's or  
11 director's designee of the identity of the pharmacist,  
12 pharmacist intern, or pharmacy technician who is participating  
13 in a program to aid impaired pharmacists, pharmacist interns,  
14 or pharmacy technicians.

15 c. Release to the board's executive secretary or director  
16 or the executive secretary's or director's designee upon  
17 written request of all treatment records of a participant.

18 d. Quarterly reports to the board, by case number,  
19 regarding each participant's diagnosis, prognosis, and  
20 recommendations for continuing care, treatment, and  
21 supervision which maintain the anonymity of the participant.

22 e. Immediate reporting to the board of the name of an  
23 impaired pharmacist, pharmacist intern, or pharmacy technician  
24 who the treatment organization believes to be an imminent  
25 danger to either the public or to the pharmacist, pharmacist  
26 intern, or pharmacy technician.

27 f. Reporting to the board, as soon as possible, the name  
28 of a participant who refuses to cooperate with the program,  
29 who refuses to submit to treatment, or whose impairment is not  
30 substantially alleviated through intervention and treatment.

31 g. Immediate reporting to the board of the name of a  
32 participant where additional information is evident that known  
33 distribution of controlled substances or legend drugs to other  
34 individuals has taken place.

35 8. The board may add a surcharge of not more than ten

1 percent of the applicable fee to a pharmacist license fee,  
2 pharmacist license renewal fee, pharmacist intern registration  
3 fee, pharmacy technician registration fee, or pharmacy  
4 technician registration renewal fee authorized under this  
5 chapter to fund programs to aid impaired pharmacists,  
6 pharmacist interns, or pharmacy technicians.

7 9. The board may accept, transfer, and expend funds made  
8 available by the federal or state government or by another  
9 public or private source to be used in programs authorized by  
10 this section. The board may contract to provide funding on an  
11 annual basis to a professional pharmaceutical association or  
12 society for expenses incurred in management and operation of a  
13 program to aid impaired pharmacists, pharmacist interns, or  
14 pharmacy technicians. Documentation of the use of these funds  
15 shall be provided to the board not less than annually for  
16 review and comment.

17 10. Funds and surcharges collected under this section  
18 shall be deposited in an account and may be used by the board  
19 to administer programs authorized by this section, including  
20 the provision of education, intervention, and posttreatment  
21 monitoring to an impaired pharmacist, pharmacist intern, or  
22 pharmacy technician and to pay the administrative costs  
23 incurred by the board in connection with that funding and  
24 appropriate oversight, but not for costs incurred for a  
25 participant's initial evaluation, referral services,  
26 treatment, or rehabilitation subsequent to intervention.

27 11. The board may disclose that the license of a  
28 pharmacist, the registration of a pharmacist intern, or the  
29 registration of a pharmacy technician who is the subject of an  
30 order of the board that is confidential pursuant to subsection  
31 4 is suspended, revoked, canceled, restricted, or retired; or  
32 that the pharmacist, pharmacist intern, or pharmacy technician  
33 is in any manner otherwise limited in the practice of  
34 pharmacy; or other relevant information pertaining to the  
35 pharmacist, pharmacist intern, or pharmacy technician which

1 the board deems appropriate.

2 12. The board may adopt rules necessary for the  
3 implementation of this section.

4 Sec. 6. NEW SECTION. 155A.40 OATHS AND SUBPOENAS --  
5 CONTEMPT.

6 1. The board shall have the power to subpoena witnesses,  
7 to compel their appearance, to administer an oath, to examine  
8 any person under oath, and to require the production of any  
9 documentary or other evidence, whether or not privileged or  
10 confidential under law, which is relevant to a matter under  
11 investigation by the board and which is needed by the board to  
12 determine whether it should commence a disciplinary proceeding  
13 against a licensee.

14 2. Whenever any person subpoenaed pursuant to subsection 1  
15 of this section neglects or refuses to obey the terms of such  
16 subpoena, to produce documentary or other evidence, or to give  
17 testimony, the board may apply to a district court having  
18 jurisdiction for the enforcement of a subpoena or the issuance  
19 of an order compelling compliance. The court may sustain the  
20 subpoena to the extent that it is found to be in accordance  
21 with the law applicable to the issuance of subpoenas or  
22 discovery in civil actions. In proceedings for enforcement,  
23 the court may issue an order requiring the appearance of the  
24 witness or the production of the evidence or data within a  
25 reasonable time under penalty of punishment for contempt in  
26 cases of willful failure to comply.

27 Sec. 7. NEW SECTION. 155A.41 NITROUS OXIDE.

28 1. UNLAWFUL POSSESSION. Any person who possesses nitrous  
29 oxide or any substance containing nitrous oxide, with the  
30 intent to breathe, inhale, or ingest for the purpose of  
31 causing a condition of intoxication, elation, euphoria,  
32 dizziness, stupefaction, or dulling of the senses, or who  
33 knowingly and with the intent to do so is under the influence  
34 of nitrous oxide or any material containing nitrous oxide, is  
35 guilty of a serious misdemeanor. This subsection shall not



1 apply to a person who is under the influence of nitrous oxide  
2 or any material containing nitrous oxide for the purpose of  
3 medical, surgical, or dental care by a person duly licensed to  
4 administer such an agent.

5 2. UNLAWFUL DISTRIBUTION. Any person who distributes  
6 nitrous oxide, or possesses nitrous oxide with intent to  
7 distribute to any other person, if such distribution is with  
8 the intent to induce unlawful inhaling of the substance or is  
9 with the knowledge that the other person will unlawfully  
10 inhale the substance, is guilty of a serious misdemeanor.

11 EXPLANATION

12 This bill permits qualified individuals who are authorized  
13 to administer drugs and who are employed by a home health  
14 agency or hospice to obtain, possess, and transport emergency  
15 prescription drugs to home care or hospice patients. The bill  
16 also permits more than one emergency drug box in a licensed  
17 health care facility in accordance with rules of the board and  
18 rules of the department of inspections and appeals.  
19 Electronic signatures on prescriptions would be permitted and  
20 the purpose of the drug prescribed would be required on  
21 prescription drug orders under this bill. The bill  
22 establishes programs to aid impaired pharmacists, pharmacist  
23 interns, and pharmacy technicians and provides for reporting,  
24 confidentiality, immunity, and funding. This bill provides  
25 for board investigative subpoena power. The bill also  
26 establishes penalties for the unlawful possession and unlawful  
27 distribution of nitrous oxide. Such unlawful possession or  
28 distribution shall constitute a serious misdemeanor.

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TERRY E. BRANSTAD, GOVERNOR

BOARD OF PHARMACY EXAMINERS  
LLOYD K. JESSEN, EXECUTIVE SECRETARY/DIRECTOR

**MEMORANDUM**

**TO:** Members of the General Assembly

**FROM:** Lloyd K. Jessen *YK*  
Executive Secretary/Director, Iowa Board of Pharmacy Examiners

**DATE:** February 3, 1997

**RE:** Background information for the legislative bill proposing changes to the Iowa Pharmacy Practice Act, 1997 Iowa Code Chapter 155A.

The following background information is provided by the Iowa Board of Pharmacy Examiners:

1. Section 155A.4, subsection 2, Code 1997, is amended to permit qualified individuals who are authorized to administer drugs and who are employed by a home health agency or hospice to obtain, possess, and transport emergency medications to home care or hospice patients. This is necessary in order to meet the emergency medication needs of home care patients and hospice patients. Typically, such patients may need a controlled substance analgesic for relief of pain. If a qualified individual is not permitted to possess and transport such medications, pain relief for the home care patient or hospice patient may be delayed. By permitting a qualified individual to provide such medications, as needed, on the order of a prescribing practitioner, the patient is not required to obtain a supply of medication which may or may not be used by the patient. This change in the law will provide better patient care and may also result in lower health care costs.
2. Section 155A.15, Code 1997, is amended to permit licensed health care facilities to have more than one secured emergency pharmaceutical supplies container (emergency drug box), if necessary and appropriate for the facility. Currently the law provides that a facility may have only one container. This section is also amended to clarify that emergency pharmaceutical supplies containers are regulated by both the department of inspections and appeals and the board of pharmacy examiners.
3. Section 155A.27, Code 1997, is amended to permit electronic signatures on prescriptions. The increasing use of new technologies, including computer-to-computer transmission of prescription information from prescribers to pharmacies, necessitates this change. The electronic signature would ensure the authenticity of an electronically transmitted prescription and would satisfy other security requirements.

4. Section 155A.27, Code 1997, is amended to require that the purpose of a prescription drug order be provided by the prescribing practitioner. The purpose of a prescription is critical information which is needed by the pharmacist in order to provide effective pharmaceutical care. When a pharmacist doesn't know the purpose of a prescription, he or she does not have complete patient medical information. A lack of accurate and complete medical information may prevent the pharmacist from providing the best pharmaceutical service. In December 1995, the American Medical Association (AMA) adopted Resolution 515 which provides, in part, the following: "That the AMA encourage physicians to add a brief notation of purpose (i.e., for cough, for constipation) on prescriptions, where appropriate, to avoid confusion on the part of either the pharmacists or the patients." In addition, the National Coordinating Council for Medication Error Reporting and Prevention has recently recommended that prescription orders should include a brief notation of purpose, unless considered inappropriate by the prescriber. Including the purpose on prescriptions will help reduce the number of dispensing errors that occur when orders are miscommunicated or misinterpreted.

5. Chapter 155A, Code 1997, is amended by adding a new section to provide programs to aid impaired pharmacists, pharmacy students, and pharmacy technicians. This new section also provides for reporting to the board, confidentiality, immunity, and funding. It is estimated by national experts that as many as ten percent of all pharmacists suffer from some form of impairment. In Iowa, this means that as many as 260 pharmacists may be impaired. However, under the present disciplinary system, the board takes formal disciplinary action against only about six impaired pharmacists each year. Most pharmacists fail to come forward for help voluntarily, for fear of public exposure and damage to their professional reputations. This means that a substantial number of pharmacists may be practicing while impaired and thereby posing a serious threat to the public health and safety. Non-punitive alternative programs to aid impaired pharmacists and other pharmacy personnel who suffer from an impairment are therefore needed. These programs require adequate funding in order to be successful. Program advocates need immunity. Pharmacists and other pharmacy personnel who seek help voluntarily need to be afforded confidentiality. This new section enables the board to maintain appropriate oversight over these alternative programs.

6. Chapter 155A, Code 1997, is amended by adding a new section to provide the board with investigative subpoena power. The board currently derives such authority from other provisions of the Iowa Code. However, it is desirable to have this power clearly stated in the Iowa Pharmacy Practice Act to ensure that the board will continue to have this authority. Without investigative subpoena power, the board would be unable to adequately investigate complaints relating to violations of Iowa pharmacy law and controlled substance law. This would prevent the board from protecting the public health, safety, and welfare.

7. Chapter 155A, Code 1997, is amended to establish penalties for the unlawful possession and distribution of nitrous oxide. Currently, nitrous oxide is legal to purchase without a prescription. There has been a growing concern by many in the medical

profession, government, and industry about an increase in the abuse of nitrous oxide. The Compressed Gas Association (CGA), a safety organization for industrial and medical gases, agrees that the abuse of nitrous oxide is a growing problem. Nitrous oxide, also known as "laughing gas," is a colorless, sweet-smelling gas which has a variety of uses. In the medical profession, nitrous oxide is most commonly used for minor oral surgery and dental work. Nitrous oxide is a central nervous system depressant.

Nitrous oxide also has a number of industrial uses. It is used as a propellant in aerosol food cans and is sold commercially in small canisters or cartridges called "whip-its" which are marketed under various brand names. It is also sold in cylinders or tanks for use as a fuel enhancement in race cars. Theft of cylinders from suppliers and medical sources and the deliberate purchase of tanks from distributors who are oblivious to its misuse has made nitrous oxide available to many persons. Some are entrepreneurs who seek to profit from its misuse while others are juveniles or young adults looking for a cheap high. Balloon parties with nitrous oxide are popular events among young people.

Nitrous oxide can induce a high which makes the user feel giddy and less inhibited, but it can also cause physical changes such as slurred speech, violent behavior, double vision, dizziness, loss of coordination, and blackouts. Prolonged use of nitrous oxide can damage the heart, lungs, brain, liver, and kidneys. It can also make the body slow down so much that the lungs stop working. Death can come after many uses or with the first use. Death by suffocation is a common result of the misuse of nitrous oxide.

The records of the CGA indicate that, nationwide, there is at least one fatality a month which is caused by nitrous oxide abuse (a conservative estimate). The CGA has identified over 35 deaths and many more injuries in the last three years which are either directly or indirectly related to nitrous abuse. Deaths and injuries from nitrous oxide abuse have occurred in Iowa. According to the Governor's Alliance on Substance Abuse, the use of nitrous oxide in Iowa is increasing. The overdose from nitrous oxide by an Iowa teenager on April 7, 1996 has led to increased attention and concern about the use of inhalants among young people in Iowa.

This legislative proposal would make the distribution of nitrous oxide for the purpose of abuse, as well as the actual abuse, a criminal offense (serious misdemeanor). The states of Illinois, Maryland, Georgia, and Ohio have recently enacted statutes criminalizing the abuse of nitrous oxide. This proposal is based on model legislation prepared by the CGA and the National Welding Supply Association (NWSA). It is hoped that this proposed law will be an effective tool in discouraging the abuse of nitrous oxide.

SENATE FILE 457

AN ACT

RELATING TO THE IOWA PHARMACY PRACTICE ACT BY PERMITTING QUALIFIED INDIVIDUALS TO TRANSPORT EMERGENCY MEDICATIONS; PERMITTING MORE THAN ONE EMERGENCY DRUG BOX IN A LICENSED HEALTH CARE FACILITY; PROVIDING FOR ELECTRONIC SIGNATURES ON PRESCRIPTIONS; ESTABLISHING PROGRAMS TO AID IMPAIRED PHARMACISTS, PHARMACIST INTERNS, AND PHARMACY TECHNICIANS; AND ESTABLISHING A PENALTY.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 155A.4, subsection 2, Code 1997, is amended by adding the following new paragraph:

NEW PARAGRAPH. g. A qualified individual authorized to administer prescription drugs and employed by a home health agency or hospice to obtain, possess, and transport emergency prescription drugs as provided by state or federal law or by rules of the board.

Sec. 2. Section 155A.15, subsection 2, paragraph d, unnumbered paragraph 2, Code 1997, is amended to read as follows:

However, this chapter does not prohibit a pharmacy from furnishing a prescription drug or device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container containers maintained within the facility in accordance with rules of the department of inspections and appeals and rules of the board.

Sec. 3. Section 155A.27, subsection 1, unnumbered paragraph 1, Code 1997, is amended to read as follows:

If written or electronic, shall contain:

Sec. 4. Section 155A.27, subsection 1, paragraph e, Code 1997, is amended to read as follows:

e. The name, address, and written or electronic signature of the practitioner issuing the prescription.

Sec. 5. NEW SECTION. 155A.39 PROGRAMS TO AID IMPAIRED PHARMACISTS, PHARMACIST INTERNS, OR PHARMACY TECHNICIANS -- REPORTING, CONFIDENTIALITY, IMMUNITY, FUNDING.

1. A person or pharmaceutical peer review committee may report relevant facts to the board relating to the acts of a pharmacist in this state, a pharmacist intern as defined in section 155A.3, subsection 23, or a pharmacy technician in this state if the person or peer review committee has knowledge relating to the pharmacist, pharmacist intern, or pharmacy technician which, in the opinion of the person or pharmaceutical peer review committee, might impair competency due to chemical abuse, chemical dependence, or mental or physical illness, or which might endanger the public health and safety, or which provide grounds for disciplinary action as specified in this chapter and in the rules of the board.

2. A committee of a professional pharmaceutical organization, its staff, or a district or local intervenor participating in a program established to aid pharmacists, pharmacist interns, or pharmacy technicians impaired by chemical abuse, chemical dependence, or mental or physical illness may report in writing to the board the name of the impaired pharmacist, pharmacist intern, or pharmacy technician together with pertinent information relating to the impairment. The board may report to a committee of a professional pharmaceutical organization or the organization's designated staff information which the board receives with regard to a pharmacist, pharmacist intern, or pharmacy technician who may be impaired by chemical abuse, chemical dependence, or mental or physical illness.

3. Upon determination by the board that a report submitted by a peer review committee or a professional pharmaceutical organization committee is without merit, the report shall be expunged from the pharmacist's, pharmacist intern's, or pharmacy technician's individual record in the board's office. A pharmacist, pharmacist intern, pharmacy technician, or an authorized representative of the pharmacist, pharmacist intern, or pharmacy technician shall be entitled on request to examine the peer review committee report or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's, pharmacist intern's, or pharmacy technician's view with respect to any information existing in the report.

4. Notwithstanding other provisions of the Code, the records and proceedings of the board, its authorized agents, a peer review committee, or a pharmaceutical organization committee as set out in subsections 1 and 2 shall be privileged and confidential and shall not be considered public records or open records unless the affected pharmacist, pharmacist intern, or pharmacy technician so requests and shall not be subject to a subpoena or to a discovery proceeding. The board may disclose the records and proceedings only as follows:

- a. In a criminal proceeding.
- b. In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order.
- c. To the pharmacist licensing or disciplinary authorities of other jurisdictions.
- d. To the pharmacy technician registering, licensing, or disciplinary authorities of other jurisdictions.
- e. Pursuant to an order of a court of competent jurisdiction.
- f. Pursuant to subsection 11.
- g. As otherwise provided by law.

5. An employee or a member of the board, a peer review committee member, a professional pharmaceutical organization committee member, a professional pharmaceutical organization district or local intervenor, or any other person who furnishes information, data, reports, or records in good faith for the purpose of aiding the impaired pharmacist, pharmacist intern, or pharmacy technician, shall be immune from civil liability. This immunity from civil liability shall be liberally construed to accomplish the purpose of this section and is in addition to other immunity provided by law.

6. An employee or member of the board or a committee or intervenor program is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue.

7. The board may contract with professional pharmaceutical associations or societies to provide a program for pharmacists, pharmacist interns, and pharmacy technicians who are impaired by chemical abuse, chemical dependence, or mental or physical illness. Such programs shall include, but not be limited to, education, intervention, and posttreatment monitoring. A contract with a professional pharmaceutical association or society shall include the following requirements:

- a. Periodic reports to the board regarding education, intervention, and treatment activities.
- b. Immediate notification to the board's executive secretary or director or the executive secretary's or director's designee of the identity of the pharmacist, pharmacist intern, or pharmacy technician who is participating in a program to aid impaired pharmacists, pharmacist interns, or pharmacy technicians.
- c. Release to the board's executive secretary or director or the executive secretary's or director's designee upon written request of all treatment records of a participant.

d. Quarterly reports to the board, by case number, regarding each participant's diagnosis, prognosis, and recommendations for continuing care, treatment, and supervision which maintain the anonymity of the participant.

e. Immediate reporting to the board of the name of an impaired pharmacist, pharmacist intern, or pharmacy technician who the treatment organization believes to be an imminent danger to either the public or to the pharmacist, pharmacist intern, or pharmacy technician.

f. Reporting to the board, as soon as possible, the name of a participant who refuses to cooperate with the program, who refuses to submit to treatment, or whose impairment is not substantially alleviated through intervention and treatment.

g. Immediate reporting to the board of the name of a participant where additional information is evident that known distribution of controlled substances or legend drugs to other individuals has taken place.

8. The board may add a surcharge of not more than ten percent of the applicable fee to a pharmacist license fee, pharmacist license renewal fee, pharmacist intern registration fee, pharmacy technician registration fee, or pharmacy technician registration renewal fee authorized under this chapter to fund programs to aid impaired pharmacists, pharmacist interns, or pharmacy technicians.

9. The board may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to be used in programs authorized by this section. The board may contract to provide funding on an annual basis to a professional pharmaceutical association or society for expenses incurred in management and operation of a program to aid impaired pharmacists, pharmacist interns, or pharmacy technicians. Documentation of the use of these funds shall be provided to the board not less than annually for review and comment.

10. Funds and surcharges collected under this section shall be deposited in an account and may be used by the board to administer programs authorized by this section, including the provision of education, intervention, and posttreatment monitoring to an impaired pharmacist, pharmacist intern, or pharmacy technician and to pay the administrative costs incurred by the board in connection with that funding and appropriate oversight, but not for costs incurred for a participant's initial evaluation, referral services, treatment, or rehabilitation subsequent to intervention.

11. The board may disclose that the license of a pharmacist, the registration of a pharmacist intern, or the registration of a pharmacy technician who is the subject of an order of the board that is confidential pursuant to subsection 4 is suspended, revoked, canceled, restricted, or retired; or that the pharmacist, pharmacist intern, or pharmacy technician is in any manner otherwise limited in the practice of pharmacy; or other relevant information pertaining to the pharmacist, pharmacist intern, or pharmacy technician which the board deems appropriate.

12. The board may adopt rules necessary for the implementation of this section.

Sec. 6. NEW SECTION. 155A.41 NITROUS OXIDE.

1. UNLAWFUL POSSESSION. Any person who possesses nitrous oxide or any substance containing nitrous oxide, with the intent to breathe, inhale, or ingest for the purpose of causing a condition of intoxication, elation, euphoria, dizziness, stupefaction, or dulling of the senses, or who knowingly and with the intent to do so is under the influence of nitrous oxide or any material containing nitrous oxide, is guilty of a serious misdemeanor. This subsection shall not apply to a person who is under the influence of nitrous oxide or any material containing nitrous oxide for the purpose of medical, surgical, or dental care by a person duly licensed to administer such an agent.

2. UNLAWFUL DISTRIBUTION. Any person who distributes nitrous oxide, or possesses nitrous oxide with intent to distribute to any other person, if such distribution is with the intent to induce unlawful inhaling of the substance or is with the knowledge that the other person will unlawfully inhale the substance, is guilty of a serious misdemeanor.

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MARY E. KRAMER  
President of the Senate

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RON J. CORBETT  
Speaker of the House

I hereby certify that this bill originated in the Senate and is known as Senate File 457, Seventy-seventh General Assembly.

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MARY PAT GUNDERSON  
Secretary of the Senate

Approved April 18, 1997

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TERRY E. BRANSTAD  
Governor