

CHAPTER 39**PHARMACY PRACTICE AND PROCEDURES — NITROUS OXIDE**

S.F. 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.

Approved April 18, 1997