Senate Amendments to House Bill No. 542

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

SECTION 1. Section 73-21-69, Mississippi Code of 1972, is reenacted as follows:

73-21-69. Sections 73-21-71 through 73-21-123, which create the State Board of Pharmacy and prescribe its duties and powers, shall stand repealed on July 1, 2011.

SECTION 2. Section 73-21-71, Mississippi Code of 1972, is reenacted as follows:

73-21-71. This chapter shall be known as the "Mississippi Pharmacy Practice Act."

SECTION 3. Section 73-21-73, Mississippi Code of 1972, is reenacted as follows:

73-21-73. As used in this chapter, unless the context requires otherwise:

(a) "Administer" shall mean the direct application of a prescription drug pursuant to a lawful order of a practitioner to the body of a patient by injection, inhalation, ingestion or any other means.

(b) "Board of Pharmacy," "Pharmacy Board," "MSBP" or "board" shall mean the State Board of Pharmacy.

(c) "Compounding" means (i) the production, preparation, propagation, conversion or processing of a sterile or nonsterile drug or device either directly or indirectly by extraction from substances of natural origin or independently by means of chemical or biological synthesis or from bulk chemicals or the preparation, mixing, measuring, assembling, packaging or labeling of a drug or device as a result of a practitioner's

prescription drug order or initiative based on the practitioner/patient/pharmacist relationship in the course of professional practice, or (ii) for the purpose of, as an incident to, research, teaching or chemical analysis and not for sale or dispensing. Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine regularly observed prescribing patterns.

(d) "Continuing education unit" shall mean ten (10) clock hours of study or other such activity as may be approved by the board, including, but not limited to, all programs which have been approved by the American Council on Pharmaceutical Education.

(e) "Deliver" or "delivery" shall mean the actual, constructive or attempted transfer of a drug or device from one person to another, whether or not for a consideration.

(f) "Device" shall mean an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component part or accessory which is required under federal or state law to be prescribed by a practitioner and dispensed by a pharmacist.

(g) "Dispense" or "dispensing" shall mean the interpretation of a valid prescription, order of a practitioner by a pharmacist and the subsequent preparation of the drug or device for administration to or use by a patient or other individual entitled to receive the drug.

(h) "Distribute" shall mean the delivery of a drug or device other than by administering or dispensing to persons other than the ultimate consumer.

(i) "Drug" shall mean:

(i) Articles recognized as drugs in the official United States Pharmacopeia, official National Formulary, official Homeopathic Pharmacopeia, other drug compendium or any supplement to any of them;

(ii) Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;

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

(iv) Articles intended for use as a component of any articles specified in subparagraph (i), (ii) or (iii) of this paragraph.

(j) "Drugroom" shall mean a business, which does not require the services of a pharmacist, where prescription drugs or prescription devices are bought, sold, maintained or provided to consumers.

(k) "Extern" shall mean a student in the professional program of a school of pharmacy accredited by the American Council on Pharmaceutical Education who is making normal progress toward completion of a professional degree in pharmacy.

(l) "Foreign pharmacy graduate" shall mean a person whose undergraduate pharmacy degree was conferred by a recognized school of pharmacy outside of the United States, the District of Columbia and Puerto Rico. Recognized schools of pharmacy are those colleges and universities listed in the World Health Organization's World Directory of Schools of Pharmacy, or otherwise approved by the Foreign Pharmacy Graduate Examination Committee (FPGEC) certification program as established by the National Association of Boards of Pharmacy.

(m) "Generic equivalent drug product" shall mean a drug product which (i) contains the identical active chemical ingredient of the same strength, quantity and dosage form; (ii) is of the same generic drug name as determined by the United States Adoptive Names and accepted by the United States Food and Drug Administration; and (iii) conforms to such rules and regulations as may be adopted by the board for the protection of the public to assure that such drug product is therapeutically equivalent.

(n) "Interested directly" shall mean being employed by, having full or partial ownership of, or control of, any facility permitted or licensed by the Mississippi State Board of Pharmacy.

(o) "Interested indirectly" shall mean having a spouse who is employed by any facility permitted or licensed by the Mississippi State Board of Pharmacy.

(p) "Intern" shall mean a person who has graduated from a school of pharmacy but has not yet become licensed as a pharmacist.

(q) "Manufacturer" shall mean a person, business or other entity engaged in the production, preparation, propagation, conversion or processing of a prescription drug or device, if such actions are associated with promotion and marketing of such drugs or devices.

(r) "Manufacturer's distributor" shall mean any person or business who is not an employee of a manufacturer, but who distributes sample drugs or devices, as defined under subsection (i) of this section, under contract or business arrangement for a manufacturer to practitioners.

(s) "Manufacturing" of prescription products shall mean the production, preparation, propagation, conversion or processing of a drug or device, either directly or indirectly, by extraction from substances from natural origin or independently by means of chemical or biological synthesis, or from bulk chemicals and includes any packaging or repackaging of the substance(s) or labeling or relabeling of its container, if such actions are associated with promotion and marketing of such drug or devices.

(t) "Misappropriation of a prescription drug" shall mean to illegally or unlawfully convert a drug, as defined in subsection (i) of this section, to one's own use or to the use of another.

(u) "Nonprescription drugs" shall mean nonnarcotic medicines or drugs that may be sold without a prescription and are prepackaged and labeled for use by the consumer in accordance with the requirements of the statutes and regulations of this state and the federal government.

(v) "Person" shall mean an individual, corporation, partnership, association or any other legal entity.

(w) "Pharmacist" shall mean an individual health care provider licensed by this state to engage in the practice of pharmacy. This recognizes a pharmacist as a learned professional who is authorized to provide patient services.

(x) "Pharmacy" shall mean any location for which a pharmacy permit is required and in which prescription drugs are maintained, compounded and dispensed for patients by a pharmacist. This definition includes any location where pharmacy-related services are provided by a pharmacist.

(y) "Prepackaging" shall mean the act of placing small precounted quantities of drug products in containers suitable for dispensing or administering in anticipation of prescriptions or orders.

(z) Unlawful or unauthorized "possession" shall mean physical holding or control by a pharmacist of a controlled substance outside the usual and lawful course of employment.

(aa) "Practice of pharmacy" shall mean a health care service that includes, but is not limited to, the compounding, dispensing, and labeling of drugs or devices; interpreting and evaluating prescriptions; administering and distributing drugs and devices; the compounding, dispensing and labeling of drugs and devices; maintaining prescription drug records; advising and consulting concerning therapeutic values, content, hazards and uses of drugs and devices; initiating or modifying of drug therapy in accordance with written guidelines or protocols previously established and approved by the board; selecting drugs; participating in drug utilization reviews; storing prescription drugs and devices; ordering lab work in accordance with written guidelines or protocols as defined by paragraph (jj) of this section; providing pharmacotherapeutic consultations; supervising supportive personnel and such other acts, services, operations or transactions necessary or incidental to the conduct of the foregoing.

(bb) "Practitioner" shall mean a physician, dentist, veterinarian, or other health care provider authorized by law to diagnose and prescribe drugs.

(cc) "Prescription" shall mean a written, verbal or electronically transmitted order issued by a practitioner for a drug or device to be dispensed for a patient by a pharmacist.

(dd) "Prescription drug" or "legend drug" shall mean a drug which is required under federal law to be labeled with either of the following statements prior to being dispensed or delivered:

(i) "Caution: Federal law prohibits dispensing without prescription," or

(ii) "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or a drug which is required by any applicable federal or state law or regulation to be dispensed on prescription only or is restricted to use by practitioners only.

(ee) "Product selection" shall mean the dispensing of a generic equivalent drug product in lieu of the drug product ordered by the prescriber.

(ff) "Provider" or "primary health care provider" shall include a pharmacist who provides health care services within his or her scope of practice pursuant to state law and regulation.

(gg) "Registrant" shall mean a pharmacy or other entity which is registered with the Mississippi State Board of Pharmacy to buy, sell or maintain controlled substances.

(hh) "Repackager" means a person registered by the Federal Food and Drug Administration as a repackager who removes a prescription drug product from its marketed container and places it into another, usually of smaller size, to be distributed to persons other than the consumer.

(ii) "Supportive personnel" or "pharmacist technician" shall mean those individuals utilized in pharmacies whose responsibilities are to provide nonjudgmental technical services concerned with the preparation and distribution of drugs under the direct supervision and responsibility of a pharmacist.

(jj) "Written guideline or protocol" shall mean an agreement in which any practitioner authorized to prescribe drugs delegates to a pharmacist authority to conduct specific prescribing functions in an institutional setting, or with individual patients, provided that a specific protocol agreement is signed on each patient and is filed as required by law or by rule or regulation of the board.

(kk) "Wholesaler" shall mean a person who buys or otherwise acquires prescription drugs or prescription devices for resale or distribution, or for repackaging for resale or distribution, to persons other than consumers.

SECTION 4. Section 73-21-75, Mississippi Code of 1972, is reenacted as follows:

73-21-75. (1) The State Board of Pharmacy created by former Section 73-21-9 is hereby continued and reconstituted as follows: The board shall consist of seven (7) appointed members. At least one (1) appointment shall be made from each congressional district. Each appointed member of the board shall be appointed by the Governor, with the advice and consent of the Senate, from a list of five (5) names submitted by the Mississippi Pharmacists Association, with input from the Magnolia Pharmaceutical Society and other pharmacist associations or societies. Of the members appointed, one (1) shall, at the time of appointment, have had five (5) years' experience as a pharmacist at a facility holding an institutional permit, and one (1) shall, at the time of appointment, have had five (5) years' experience as a pharmacist at a facility holding a retail permit. Any person appointed to the board shall be limited to two (2) full terms of office during any fifteen-year period, including any member serving on May 14, 1992.

(2) The members of the board appointed and serving prior to July 1, 1983, whose terms have not expired by July 1, 1983, shall serve the balance of their terms as members of the reconstituted board, and they shall be considered to be from the same congressional districts from which they were originally appointed

if they still reside therein, even if the district boundaries have changed subsequent to their original appointments. The Governor shall appoint the remaining members of the reconstituted board in the manner prescribed in subsection (1) of this section on July 1, 1983. The initial members of the reconstituted board shall serve terms of office as follows:

(a) The term of the member from the First Congressional District shall expire on July 1, 1984; and from and after July 1, 1996, this appointment shall be designated as Post 1.

(b) The term of the member from the Second Congressional District shall expire on July 1, 1988; and from and after July 1, 1996, this appointment shall be designated as Post 2.

(c) The term of the member from the Third Congressional District shall expire on July 1, 1986; and from and after July 1, 1996, this appointment shall be designated as Post 3.

(d) The term of the member from the Fourth Congressional District shall expire on July 1, 1985; and from and after July 1, 1996, this appointment shall be designated as Post 4.

(e) The term of the member from the Fifth Congressional District shall expire on July 1, 1987; and from and after July 1, 1996, this appointment shall be designated as Post 5.

(f) The term of one (1) of the members from the state at large shall expire on July 1, 1985; and from and after July 1, 1996, this appointment shall be designated as Post 6.

(g) The term of the other member from the state at large shall expire on July 1, 1988; and from and after July 1, 1996, this appointment shall be designated as Post 7.

The appointments of members from congressional districts as provided under this section shall be made from the congressional districts as they existed on July 1, 2001.

(3) At the expiration of a term, members of the board shall be appointed in the manner prescribed in subsection (1) of this section for terms of five (5) years from the expiration date of

the previous terms. Any vacancy on the board prior to the expiration of a term for any reason, including resignation, removal, disqualification, death or disability, shall be filled by appointment of the Governor in the manner prescribed in subsection (1) of this section for the balance of the unexpired term. The Mississippi Pharmacists Association, with input from the Magnolia Pharmaceutical Society and other pharmacist associations or societies, shall submit a list of nominees no more than thirty (30) days after a vacancy occurs, and the Governor shall fill such vacancies within ninety (90) days after each such vacancy occurs.

(4) To be qualified to be a member of the board, a person shall:

(a) Be an adult citizen of Mississippi for a period of at least five (5) years preceding his appointment to the board;

(b) Be a pharmacist licensed and in good standing to practice pharmacy in the State of Mississippi;

(c) Have at least five (5) years' experience as a pharmacist; and

(d) Be actively engaged full time in the practice of pharmacy in Mississippi.

(5) The Governor may remove any or all members of the board on proof of unprofessional conduct, continued absence from the state, or for failure to perform the duties of his office. Any member who shall not attend two (2) consecutive meetings of the board for any reason other than illness of such member shall be subject to removal by the Governor. The president of the board shall notify the Governor in writing when any such member has failed to attend two (2) consecutive regular meetings. No removal shall be made without first giving the accused an opportunity to be heard in refutation of the charges made against him, and he shall be entitled to receive a copy of the charges at the time of filing.

SECTION 5. Section 73-21-77, Mississippi Code of 1972, is reenacted as follows:

73-21-77. (1) Each person appointed as a member of the board shall qualify by taking the oath prescribed by the Constitution for the state officers, and shall file certificate thereof in the Office of the Secretary of State within fifteen (15) days after his appointment.

(2) There shall be a president of the board and such other officers as deemed necessary by the board elected by and from its membership.

(3) The board shall meet at least once each quarter to transact business, and may meet at such additional times as it may deem necessary. Such additional meetings may be called by the president of the board or a majority of the members of the board.

(4) The place for each meeting shall be determined prior to giving notice of such meeting and shall not be changed after such notice is given without adequate subsequent notice.

(5) A majority of the members of the board shall constitute a quorum for the conduct of the meeting and all actions of the board shall be by a majority.

(6) Each member of the board shall receive a per diem as provided in Section 25-3-69, not to exceed thirty (30) days in any one (1) period of twelve (12) months, for each day actually engaged in meetings of the board, together with necessary traveling and other expenses as provided in Section 25-3-41.

SECTION 6. Section 73-21-79, Mississippi Code of 1972, is reenacted and amended as follows:

73-21-79. (1) The board shall employ an executive director of the board. The executive director shall be a citizen of Mississippi and a pharmacist licensed and in good standing to practice pharmacy in the State of Mississippi, who has had five (5) years' experience as a pharmacist.

(2) The executive director shall receive a salary to be set by the board, subject to the approval of the State Personnel Board, and shall be entitled to necessary expenses incurred in the performance of his official duties. He shall devote full time to

the duties of his office and shall not be * * * engaged in any other business that will interfere with the duties of his office.

(3) The duties and responsibilities of the executive director shall be defined by rules and regulations prescribed by the board.

(4) The board may, in its discretion, employ persons in addition to the executive director in such other positions or capacities as it deems necessary to the proper conduct of board business. Any pharmacist-investigator employed by the board may have other part-time employment, provided that he shall not accept any employment that would cause a conflict of interest in his pharmacist-investigator duties. The board may employ legal counsel to assist in the conduct of its business.

SECTION 7. Section 73-21-81, Mississippi Code of 1972, is reenacted as follows:

73-21-81. The responsibility for the enforcement of the provisions of this chapter shall be vested in the board. The board shall have all of the duties, powers and authority specifically granted by and necessary to the enforcement of this chapter. The board may make, adopt, amend and repeal such rules and regulations as may be deemed necessary by the board from time to time for the proper administration and enforcement of this chapter, in accordance with the provisions of the Mississippi Administrative Procedures Law (Section 25-43-1 et seq.).

SECTION 8. Section 73-21-83, Mississippi Code of 1972, is reenacted as follows:

73-21-83. (1) The board shall be responsible for the control and regulation of the practice of pharmacy, to include the regulation of pharmacy externs or interns and pharmacist technicians, in this state, the regulation of the wholesaler distribution of drugs and devices as defined in Section 73-21-73, and the distribution of sample drugs or devices by manufacturer's distributors as defined in Section 73-21-73 by persons other than the original manufacturer or distributor in this state.

(2) A license for the practice of pharmacy shall be obtained by all persons prior to their engaging in the practice of pharmacy. However, the provisions of this chapter shall not apply to physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of the State of Mississippi and are authorized to dispense and administer prescription drugs in the course of their professional practice.

(3) The initial licensure fee shall be set by the board but shall not exceed Two Hundred Dollars ($200.00).

(4) All students actively enrolled in a professional school of pharmacy accredited by the American Council on Pharmaceutical Education who are making satisfactory progress toward graduation and who act as an extern or intern under the direct supervision of a pharmacist in a location permitted by the Board of Pharmacy must obtain a pharmacy student registration prior to engaging in such activity. The student registration fee shall be set by the board but shall not exceed One Hundred Dollars ($100.00).

(5) All persons licensed to practice pharmacy prior to July 1, 1991, by the State Board of Pharmacy under Section 73-21-89 shall continue to be licensed under the provisions of Section 73-21-91.

SECTION 9. Section 73-21-85, Mississippi Code of 1972, is reenacted and amended as follows:

73-21-85. (1) To obtain a license to engage in the practice of pharmacy by examination, or by score transfer, the applicant shall:

(a) Have submitted a written application on the form prescribed by the board;

(b) Be of good moral character;

(c) Have graduated from a school or college of pharmacy accredited by the American Council of Pharmaceutical Education and have been granted a pharmacy degree therefrom;

(d) Have successfully passed an examination approved by the board;

(e) Have paid all fees specified by the board for examination, not to exceed the cost to the board of administering the examination;

(f) Have paid all fees specified by the board for licensure; and

(g) Have submitted evidence of externship and/or internship as specified by the board.

(2) To obtain a license to engage in the practice of pharmacy, a foreign pharmacy graduate applicant shall obtain the National Association of Boards of Pharmacy's Foreign Pharmacy Graduate Examination Committee's certification, which shall include, but not be limited to, successfully passing the Foreign Pharmacy Graduate Equivalency Examination and attaining a total score of at least five hundred fifty (550) on the Test of English as a Foreign Language (TOEFL), and shall:

(a) Have submitted a written application on the form prescribed by the board;

(b) Be of good moral character;

(c) Have graduated and been granted a pharmacy degree from a college or school of pharmacy recognized and approved by the National Association of Boards of Pharmacy's Foreign Pharmacy Graduate Examination Committee;

(d) Have paid all fees specified by the board for examination, not to exceed the cost to the board of administering the examination;

(e) Have successfully passed an examination approved by the board;

(f) Have completed the number of internship hours as set forth by regulations of the board; and

(g) Have paid all fees specified by the board for licensure.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64.

(4) To insure that all applicants are of good moral character, the board shall conduct a criminal history records check on all applicants for a license. In order to determine the applicant's suitability for licensing, the applicant shall be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety for a check of the state criminal records and forwarded to the Federal Bureau of Investigation for a check of the national criminal records. The Department of Public Safety shall disseminate the results of the state check and the national check to the board for a suitability determination. The board shall be authorized to collect from the applicant the amount of the fee that the Department of Public Safety charges the board for the fingerprinting, whether manual or electronic, and the state and national criminal history records checks.

(5) To insure that all applicants are of good moral character, the board, upon request of the Dean of the University of Mississippi School of Pharmacy, shall be authorized to conduct a criminal history records check on all applicants for enrollment into the School of Pharmacy. In order to determine the applicant's suitability for enrollment and licensing, the applicant shall be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety for a check of the state criminal records and forwarded to the Federal Bureau of Investigation for a check of the national criminal records. The Department of Public Safety shall disseminate the results of the state check and the national check to the board for a suitability determination and the board shall forward the results to the Dean of the School of Pharmacy. The board shall be authorized to collect from the applicant the amount of the fee that the Department of Public Safety charges the board for the fingerprinting, whether manual or electronic, and the state and national criminal history records checks.

SECTION 10. Section 73-21-87, Mississippi Code of 1972, is reenacted as follows:

73-21-87. (1) To obtain a license to engage in the practice of pharmacy by reciprocity or license transfer, the applicant shall:

(a) Have submitted a written application on the form prescribed by the board;

(b) Be of good moral character;

(c) Have possessed at the time of initial licensure as a pharmacist such other qualifications necessary to have been eligible for licensure at that time in that state;

(d) Have presented to the board proof that any license or licenses granted to the applicant by any other states have not been suspended, revoked, cancelled or otherwise restricted for any reason except nonrenewal or the failure to obtain required continuing education credits; and

(e) Have paid all fees specified by the board for licensure.

(2) No applicant shall be eligible for licensure by reciprocity or license transfer or unless the state in which the applicant was initially licensed also grants a reciprocal license or transfer license to pharmacists licensed by this state under like circumstances and conditions.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SECTION 11. Section 73-21-89, Mississippi Code of 1972, is reenacted as follows:

73-21-89. (1) The board shall issue a license to practice pharmacy to any person, if such person be otherwise qualified, upon presentation to the board of:

(a) Satisfactory proof that the applicant has been graduated from the University of Mississippi School of Pharmacy;

(b) Written application for licensure; and

(c) Payment of all fees specified by the board for licensure.

(2) The board shall not issue any new licenses pursuant to this section after June 30, 1987.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SECTION 12. Section 73-21-91, Mississippi Code of 1972, is reenacted and amended as follows:

73-21-91. (1) Every pharmacist shall renew his license annually. To renew his license, a pharmacist shall:

(a) Submit an application for renewal on the form prescribed by the board;

(b) Submit satisfactory evidence of the completion in the last licensure period of such continuing education units as shall be required by the board, but in no case less than two (2) continuing education units in the last licensure period;

(c) Pay such renewal fees as required by the board, not to exceed One Hundred Dollars ($100.00) for each annual licensing period, provided that the board may add a surcharge of not more than Five Dollars ($5.00) to a license renewal fee to fund a program to aid impaired pharmacists or pharmacy students. Any pharmacist license renewal received postmarked after December 31 of the renewal period will be returned and a Fifty Dollar ($50.00) late renewal fee will be assessed prior to renewal.

(2) Any pharmacist who has defaulted in license renewal may be reinstated within two (2) years upon payment of renewal fees in arrears and presentation of evidence of the required continuing education. Any pharmacist defaulting in license renewal for a period in excess of two (2) years shall be required to successfully complete the examination given by the board pursuant to Section 73-21-85 before being eligible for reinstatement as a pharmacist in Mississippi, or shall be required to appear before the board to be examined for his competence and knowledge of the practice of pharmacy, and may be required to submit evidence of continuing education. If such person is found fit by the board to practice pharmacy in this state, the board may reinstate his

license to practice pharmacy upon payment of all renewal fees in arrears.

(3) Each application or filing made under this section shall include the social security number(s) of the applicant in accordance with Section 93-11-64, Mississippi Code of 1972.

SECTION 13. Section 73-21-93, Mississippi Code of 1972, is reenacted as follows:

73-21-93. (1) The examination for licensure required under Section 73-21-85 shall be given by the board at least once during each year. The board shall determine the content and subject matter of each examination, the place, time and date of the administration of the examination and those persons who have successfully passed the examination.

(2) The examination shall be prepared to measure the competence of the applicant to engage in the practice of pharmacy. The board may employ and cooperate with any organization or consultant in the preparation and grading of an appropriate examination, but shall retain the sole discretion and responsibility of determining which applicants have successfully passed such an examination.

(3) The board shall have authority to use the laboratories of the school of pharmacy and other facilities of the University of Mississippi for the purpose of examining applicants.

SECTION 14. Section 73-21-95, Mississippi Code of 1972, is reenacted as follows:

73-21-95. The assistant pharmacist license is hereby abolished after April 30, 1984. The board shall issue a license to practice pharmacy to those persons presently holding an assistant pharmacist license upon their meeting the requirements of Section 73-21-91.

SECTION 15. Section 73-21-97, Mississippi Code of 1972, is reenacted as follows:

73-21-97. (1) The board may refuse to issue or renew, or may suspend, reprimand, revoke or restrict the license,

registration or permit of any person upon one or more of the following grounds:

(a) Unprofessional conduct as defined by the rules and regulations of the board;

(b) Incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, confidence and safety to the public;

(c) Being found guilty by a court of competent jurisdiction of one or more of the following:

(i) A felony;

(ii) Any act involving moral turpitude or gross immorality; or

(iii) Violation of pharmacy or drug laws of this state or rules or regulations pertaining thereto, or of statutes, rules or regulations of any other state or the federal government;

(d) Fraud or intentional misrepresentation by a licensee or permit holder in securing the issuance or renewal of a license or permit;

(e) Engaging or aiding and abetting an individual to engage in the practice of pharmacy without a license;

(f) Violation of any of the provisions of this chapter or rules or regulations adopted pursuant to this chapter;

(g) Failure to comply with lawful orders of the board;

(h) Negligently or willfully acting in a manner inconsistent with the health or safety of the public;

(i) Addiction to or dependence on alcohol or controlled substances or the unauthorized use or possession of controlled substances;

(j) Misappropriation of any prescription drug;

(k) Being found guilty by the licensing agency in another state of violating the statutes, rules or regulations of that jurisdiction; or

(l) The unlawful or unauthorized possession of a controlled substance.

(2) In lieu of suspension, revocation or restriction of a license as provided for above, the board may warn or reprimand the offending pharmacist.

(3) In addition to the grounds specified in subsection (1) of this section, the board shall be authorized to suspend the license, registration or permit of any person for being out of compliance with an order for support, as defined in Section 93-11-153. The procedure for suspension of a license, registration or permit for being out of compliance with an order for support, and the procedure for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, and the payment of any fees for the reissuance or reinstatement of a license, registration or permit suspended for that purpose, shall be governed by Section 93-11-157 or 93-11-163, as the case may be. If there is any conflict between any provision of Section 93-11-157 or 93-11-163 and any provision of this chapter, the provisions of Section 93-11-157 or 93-11-163, as the case may be, shall control.

SECTION 16. Section 73-21-99, Mississippi Code of 1972, is reenacted as follows:

73-21-99. (1) Disciplinary action by the board against a licensee, registrant or permit holder, or license, registration or permit shall require the following:

(a) A sworn affidavit filed with the board charging a licensee or permit holder with an act which is grounds for disciplinary action as provided in Section 73-21-97; and

(b) An order of the Investigations Review Committee of the board which shall cause the executive director of the board to fix a time and place for a hearing by the board. The executive director shall cause a written notice specifying the offense or offenses for which the licensee or permit holder is charged and notice of the time and place of the hearing to be served upon the licensee or permit holder at least thirty (30) days prior to the hearing date. Such notice may be served by mailing a copy thereof

by certified mail, postage prepaid, to the last known residence or business address of the licensee or permit holder.

(2) The board shall designate two (2) of its members to serve on a rotating no longer than three-consecutive-month basis with the executive director and legal counsel for the board as an Investigations Review Committee, and the board's investigators shall provide status reports solely to the Investigations Review Committee during monthly meetings of the board. Such reports shall be made on all on-going investigations, and shall apply to any routine inspections which may give rise to the filing of a complaint. In the event any complaint on a licensee comes before the board for possible disciplinary action, the members of the board serving on the Investigations Review Committee which reviewed the investigation of such complaint shall recuse themselves and not participate in the disciplinary proceeding.

(3) The board acting by and through its Investigation Review Committee may, if deemed necessary, issue a letter of reprimand to any licensee, registrant or permit holder in lieu of formal action by the board.

(4) The board, acting by and through its executive director, is hereby authorized and empowered to issue subpoenas for the attendance of witnesses and the production of books and papers at such hearing. Process issued by the board shall extend to all parts of the state and shall be served by any person designated by the board for such service.

(5) The accused shall have the right to appear either personally or by counsel or both to produce witnesses or evidence in his behalf, to cross-examine witnesses and to have subpoenas issued by the board.

(6) At the hearing, the board shall administer oaths as may be necessary for the proper conduct of the hearing. All hearings shall be conducted by the board, which shall not be bound by strict rules of procedure or by the laws of evidence in the conduct of its proceedings, but the determination shall be based upon sufficient evidence to sustain it.

(7) Where, in any proceeding before the board, any witness fails or refuses to attend upon a subpoena issued by the board, refuses to testify, or refuses to produce any books and papers the production of which is called for by a subpoena, the attendance of such witness, the giving of his testimony or the production of the books and papers shall be enforced by any court of competent jurisdiction of this state in the manner provided for the enforcement of attendance and testimony of witnesses in civil cases in the courts of this state.

(8) The board shall, within thirty (30) days after conclusion of the hearing, reduce its decision to writing and forward an attested true copy thereof to the last known residence or business address of such licensee or permit holder by way of United States first-class, certified mail, postage prepaid.

SECTION 17. Section 73-21-101, Mississippi Code of 1972, is reenacted as follows:

73-21-101. (1) The right to appeal from the action of the board in denying, revoking, suspending or refusing to renew any license, registration or permit issued by the board, or fining or otherwise disciplining any person is hereby granted. Such appeal shall be to the chancery court of the county of the residence of the licensee or permit holder on the record made, including a verbatim transcript of the testimony at the hearing. The appeal shall be taken within thirty (30) days after notice of the action of the board in denying, revoking, suspending or refusing to renew the license or permit, or fining or otherwise disciplining the person. The appeal shall be perfected upon filing notice of the appeal and by the prepayment of all costs, including the cost of the preparation of the record of the proceedings by the board, and the filing of a bond in the sum of Two Hundred Dollars ($200.00), conditioned that if the action of the board in denying, revoking, suspending or refusing to renew the license or permit, or fining or otherwise disciplining the person, be affirmed by the chancery court, the licensee or permit holder will pay the costs of the appeal and the action in the chancery court.

(2) If there is an appeal, such appeal shall act as a supersedeas. The chancery court shall dispose of the appeal and enter its decision promptly. The hearing on the appeal may, in the discretion of the chancellor, be tried in vacation. The scope of review of the chancery court shall be limited to a review of the record made before the board to determine if the action of the board is unlawful for the reason that it was (a) not supported by substantial evidence, (b) arbitrary or capricious, (c) beyond the power of the board to make, or (d) in violation of some statutory or constitutional right of the appellant. The decision of the chancery court may be appealed to the Supreme Court in the manner provided by law.

(3) Actions taken by the board in suspending a license, registration or permit when required by Section 93-11-157 or 93-11-163 are not actions from which an appeal may be taken under this section. Any appeal of a suspension of a license, registration or permit that is required by Section 93-11-157 or 93-11-163 shall be taken in accordance with the appeal procedure specified in Section 93-11-157 or 93-11-163, as the case may be, rather than the procedure specified in this section.

SECTION 18. Section 73-21-103, Mississippi Code of 1972, is reenacted as follows:

73-21-103. (1) Upon the finding of the existence of grounds for action against any permitted facility or discipline of any person holding a license, registration or permit, seeking a license, registration or permit, or seeking to renew a license or permit under the provisions of this chapter, the board may impose one or more of the following penalties:

(a) Suspension of the offender's license, registration and/or permit for a term to be determined by the board;

(b) Revocation of the offender's license, registration and/or permit;

(c) Restriction of the offender's license, registration and/or permit to prohibit the offender from performing certain

acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board;

(d) Imposition of a monetary penalty as follows:

(i) For the first violation, a monetary penalty of not less than Two Hundred Fifty Dollars ($250.00) nor more than One Thousand Dollars ($1,000.00) for each violation;

(ii) For the second violation and subsequent violations, a monetary penalty of not less than Five Hundred Dollars ($500.00) nor more than Five Thousand Dollars ($5,000.00) for each violation.

Money collected by the board under Section 73-21-103, subsection (1)(d)(i), (ii) and (iv) shall be deposited to the credit of the State General Fund of the State Treasury;

(iii) The board may assess a monetary penalty for those reasonable costs that are expended by the board in the investigation and conduct of a proceeding for licensure revocation, suspension or restriction, including, but not limited to, the cost of process service, court reporters, expert witnesses and investigators.

Money collected by the board under Section 73-21-103, subsection (1)(d)(iii), shall be deposited to the credit of the Special Fund of the Pharmacy Board;

(iv) The board may impose a monetary penalty for those facilities/businesses registered with the Pharmacy Board as wholesalers/manufacturers of not less than Three Hundred Dollars ($300.00) per violation and not more than Fifty Thousand Dollars ($50,000.00) per violation;

(e) Refusal to renew offender's license, registration and/or permit;

(f) Placement of the offender on probation and supervision by the board for a period to be determined by the board;

(g) Public or private reprimand.

Whenever the board imposes any penalty under this subsection, the board may require rehabilitation and/or additional education

as the board may deem proper under the circumstances, in addition to the penalty imposed.

(2) Any person whose license, registration and/or permit has been suspended, revoked or restricted pursuant to this chapter, whether voluntarily or by action of the board, shall have the right to petition the board at reasonable intervals for reinstatement of such license, registration and/or permit. Such petition shall be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may, in its discretion, grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications. The procedure for the reinstatement of a license, registration or permit that is suspended for being out of compliance with an order for support, as defined in Section 93-11-153, shall be governed by Section 93-11-157 or 93-11-163, as the case may be.

(3) Nothing herein shall be construed as barring criminal prosecutions for violation of this chapter where such violations are deemed as criminal offenses in other statutes of this state or of the United States.

(4) A monetary penalty assessed and levied under this section shall be paid to the board by the licensee, registrant or permit holder upon the expiration of the period allowed for appeal of such penalties under Section 73-21-101, or may be paid sooner if the licensee, registrant or permit holder elects.

(5) When payment of a monetary penalty assessed and levied by the board against a licensee, registrant or permit holder in accordance with this section is not paid by the licensee, registrant or permit holder when due under this section, the board shall have the power to institute and maintain proceedings in its name for enforcement of payment in the chancery court of the county and judicial district of residence of the licensee, registrant or permit holder, or if the licensee, registrant or permit holder is a nonresident of the State of Mississippi, in the Chancery Court of the First Judicial District of Hinds County,

Mississippi. When such proceedings are instituted, the board shall certify the record of its proceedings, together with all documents and evidence, to the chancery court and the matter shall thereupon be heard in due course by the court, which shall review the record and make its determination thereon. The hearing on the matter may, in the discretion of the chancellor, be tried in vacation.

(6) The board shall develop and implement a uniform penalty policy which shall set the minimum and maximum penalty for any given violation of board regulations and laws governing the practice of pharmacy. The board shall adhere to its uniform penalty policy except in such cases where the board specifically finds, by majority vote, that a penalty in excess of, or less than, the uniform penalty is appropriate. Such vote shall be reflected in the minutes of the board and shall not be imposed unless such appears as having been adopted by the board.

SECTION 19. Section 73-21-105, Mississippi Code of 1972, is reenacted as follows:

73-21-105. (1) Every facility/business that shall engage in the wholesale distribution of prescription drugs, to include without limitation, manufacturing in this state, distribution into this state, or selling or offering to sell in this state, or distribution from or within this state, shall register biennially with the Mississippi State Board of Pharmacy by applying for a permit on a form supplied by the board and accompanied by a fee as set by subsection (4) of this section. The Pharmacy Board shall by regulation determine the classification of permit(s) that shall be required.

(2) Every business/facility/pharmacy located in this state that engages in or proposes to engage in the dispensing and delivery of prescription drugs to consumers shall register with the Mississippi State Board of Pharmacy by applying for a permit on a form supplied by the board and accompanied by a fee as set by subsection (4) of this section. The Pharmacy Board shall by

regulation determine the classification of permit(s) that shall be required.

(3) The board shall establish by rule or regulation the criteria which each business shall meet to qualify for a permit in each classification. The board shall issue a permit to any applicant who meets the criteria as established. The board may issue various types of permits with varying restrictions to businesses where the board deems it necessary by reason of the type of activities conducted by the business requesting a permit.

(4) The board shall specify by rule or regulation the registration procedures to be followed, including, but not limited to, specification of forms for use in applying for such permits and times, places and fees for filing such applications. However, the biennial fee for an original or renewal permit shall not exceed Three Hundred Dollars ($300.00).

(5) Applications for permits shall include the following information about the proposed business:

(a) Ownership;

(b) Location;

(c) Identity of the responsible person or pharmacist licensed to practice in the state, who shall be the pharmacist in charge of the pharmacy, where one is required by this chapter, and such further information as the board may deem necessary.

(6) Permits issued by the board pursuant to this section shall not be transferable or assignable.

(7) The board shall specify by rule or regulation minimum standards for the responsibility in the conduct of any business/facility and/or pharmacy that has been issued a permit. The board is specifically authorized to require that the portion of the facility located in this state to which a pharmacy permit applies be operated only under the direct supervision of no less than one (1) pharmacist licensed to practice in this state, and to provide such other special requirements as deemed necessary. Nothing in this subsection shall be construed to prevent any person from owning a pharmacy.

(8) All businesses permitted by the board shall report to the board the occurrence of any of the following changes:

(a) Permanent closing;

(b) Change of ownership, management, location or pharmacist in charge;

(c) Any and all other matters and occurrences as the board may require by rule or regulation.

(9) Disasters, accidents and emergencies which may affect the strength, purity or labeling of drugs, medications, devices or other materials used in the diagnosis or the treatment of injury, illness and disease shall be immediately reported to the board.

(10) No business that is required to obtain a permit shall be operated until a permit has been issued for such business by the board. Any person, firm or corporation violating any of the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than One Thousand Dollars ($1,000.00), or imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days, or by both such fine and imprisonment. However, the provisions of this chapter shall not apply to physicians, dentists, veterinarians, osteopaths or other practitioners of the healing arts who are licensed under the laws of the State of Mississippi and are authorized to dispense and administer prescription drugs in the course of their professional practice.

SECTION 20. Section 73-21-107, Mississippi Code of 1972, is reenacted as follows:

73-21-107. (1) The board or its representative may enter and inspect, during reasonable hours, a facility which has obtained or applied for a permit under Section 73-21-105 relative to the following:

(a) Drug storage and security;

(b) Equipment;

(c) Sanitary conditions; or

(d) Records, reports, or other documents required to be kept or made under this chapter or the Uniform Controlled Substances Law (Section 41-29-101 et seq.) or rules and regulations adopted under such laws.

(2) Prior to an entry and inspection, the board representative shall state his purpose and present appropriate credentials to the owner, pharmacist or agent in charge of a facility.

(3) The board representative may:

(a) Inspect and copy records, reports, and other documents required to be kept or made under this chapter, the Uniform Controlled Substances Law, or rules and regulations adopted under such laws;

(b) Inspect, within reasonable limits and in a reasonable manner, a facility's storage, equipment, security, records, or prescription drugs or devices; or

(c) Inventory any stock of any prescription drugs or devices in the facility.

(4) Unless the owner, pharmacist, or agent in charge of the facility consents in writing, an inspection authorized by this section may not extend to:

(a) Financial data;

(b) Sales data other than shipment data; or

(c) Pricing data.

SECTION 21. Section 73-21-109, Mississippi Code of 1972, is reenacted as follows:

73-21-109. No person shall make use of the terms "drugstore," "pharmacy," "apothecary" or words of similar meaning which indicate that pharmaceutical services are performed in any sign, letterhead or advertisement unless such person is a permit holder as provided in Section 73-21-105. Any person violating this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than One Hundred Dollars ($100.00) nor more than Three Hundred Dollars ($300.00),

or by imprisonment in the county jail for not less than thirty (30) days nor more than ninety (90) days, or by both.

SECTION 22. Section 73-21-111, Mississippi Code of 1972, is reenacted as follows:

73-21-111. (1) The board shall make, adopt, amend and repeal from time to time such rules and regulations for the regulation of supportive personnel as may be deemed necessary by the board.

(2) Every person who acts or serves as a pharmacy technician in a pharmacy that is located in this state and permitted by the board shall obtain a registration from the board. To obtain a pharmacy technician registration the applicant must:

(a) Have submitted a written application on a form(s) prescribed by the board; and

(b) Be of good moral character; and

(c) Have paid the initial registration fee not to exceed One Hundred Dollars ($100.00).

(3) Each pharmacy technician shall renew his or her registration annually. To renew his or her registration, a technician must:

(a) Submit an application on a form prescribed by the board; and

(b) Pay a renewal fee not to exceed One Hundred Dollars ($100.00) for each annual registration period. The board may add a surcharge of not more than Five Dollars ($5.00) to the registration renewal fee to assist in funding a program that assists impaired pharmacists, pharmacy students and pharmacy technicians.

(4) To insure that all applicants are of good moral character, the board shall conduct a criminal history records check on all applicants for a license. In order to determine the applicant's suitability for licensing, the applicant shall be fingerprinted. The board shall submit the fingerprints to the Department of Public Safety for a check of the state criminal records and forwarded to the Federal Bureau of Investigation for a

check of the national criminal records. The Department of Public Safety shall disseminate the results of the state check and the national check to the board for a suitability determination. The board shall be authorized to collect from the applicant the amount of the fee that the Department of Public Safety charges the board for the fingerprinting, whether manual or electronic, and the state and national criminal history records checks.

SECTION 23. Section 73-21-113, Mississippi Code of 1972, is reenacted as follows:

73-21-113. All fees received by the board from examinations, licenses, permits and monetary penalties, and any other funds received by the board, shall be paid to the State Treasurer, who shall issue receipts therefor and deposit such funds in the State Treasury in a special fund to the credit of the board. All such funds shall be expended only pursuant to appropriation approved by the Legislature and as provided by law.

SECTION 24. Section 73-21-115, Mississippi Code of 1972, is reenacted as follows:

73-21-115. (1) Every prescription written in this state by a person authorized to issue such prescription shall be on prescription forms containing two (2) lines for the prescriber's signature. There shall be a signature line in the lower right-hand corner of the prescription form beneath which shall be clearly imprinted the words "substitution permissible." There shall be a signature line in the lower left-hand corner of the prescription form beneath which shall be clearly imprinted the words "dispense as written." The prescriber's signature on either signature line shall validate the prescription and shall designate approval or disapproval of product selection.

(2) If a prescription form which does not contain the two (2) signature lines required in subsection (1) of this section is utilized by the prescriber, he shall write in his own handwriting the words "dispense as written" thereupon to prevent product selection.

(3) A pharmacist licensed by the Mississippi State Board of Pharmacy may dispense a one-time emergency dispensing of a prescription of up to a seventy-two-hour supply of a prescribed medication in the event the pharmacist is unable to contact the prescriber to obtain refill authorization, provided that:

(a) The prescription is not for a controlled substance;

(b) In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;

(c) The dispensing pharmacist notifies the prescriber or his agent of the emergency dispensing within seven (7) working days after the one-time emergency dispensing;

(d) The pharmacist properly records the dispensing as a separate nonrefillable prescription. Said document shall be filed as is required of all other prescription records. This document shall be serially numbered and contain all information required of other prescriptions. In addition it shall contain the number of the prescription from which it was refilled; and

(e) The pharmacist shall record on the new document the circumstances which warrant this emergency dispensing.

This emergency dispensing shall be done only in the permitted facility which contains the nonrefillable prescription.

SECTION 25. Section 73-21-117, Mississippi Code of 1972, is reenacted as follows:

73-21-117. (1) A pharmacist may select a generic equivalent drug product only when such selection results in lower cost to the purchaser, unless product selection is expressly prohibited by the prescriber.

(2) A pharmacist shall select a generic equivalent drug product when:

(a) The purchaser requests the selection of a generic equivalent drug product;

(b) The prescriber has not expressly prohibited product selection; and

(c) Product selection will result in lower cost to the purchaser.

Before product selection is made, the pharmacist shall advise the purchaser of his prerogatives under this subsection.

(3) When requested by the purchaser to dispense the drug product as ordered by the prescriber, a pharmacist shall not select a generic equivalent drug product.

SECTION 26. Section 73-21-119, Mississippi Code of 1972, is reenacted as follows:

73-21-119. (1) The label of the container of any drug product which is sold within the State of Mississippi for resale at retail and which requires a prescription to be dispensed at retail shall contain at a minimum the name of the manufacturer of the final dosage unit, expiration date if applicable, batch or lot number and national drug code.

(2) Whenever product selection is made, the pharmacist shall indicate on the label of the dispensed container the initials "G.E." and the proprietary name of the product dispensed or the generic name of the product dispensed and its manufacturer either written in full or appropriately abbreviated, unless the prescriber indicates that the name of the drug product shall not appear on the label.

SECTION 27. Section 73-21-121, Mississippi Code of 1972, is reenacted as follows:

73-21-121. (1) Product selection as authorized by Sections 73-21-115 through 73-21-119 shall not constitute evidence of negligence by the dispensing pharmacist when such product selection is in accordance with reasonable and prudent pharmacy practice. No prescriber shall be liable for civil damages or in any criminal prosecution arising from the incorrect product selection by a pharmacist.

(2) Any person having knowledge relating to a pharmacist or to a pharmacy student which might provide grounds for disciplinary action by the board may report relevant facts to the board, and

shall by reason of reporting such facts in good faith be immune from civil liability.

(3) Any person furnishing information in the form of data, reports or records to the board or to a pharmacist organization approved by the board to receive such information, where such information is furnished for the purpose of aiding a pharmacist or a pharmacy student impaired by chemical abuse or by mental or by physical illness, shall by reason of furnishing such information in good faith be immune from civil liability.

(4) The records of the board or the records of a pharmacist organization approved by the board to aid pharmacists or pharmacy students impaired by chemical abuse, where such records relate to the impairment, shall be confidential and are not considered open records; provided, however, the board may disclose this confidential information only:

(a) In a disciplinary hearing before the board, or in an appeal of an action or order of the board;

(b) To the pharmacist licensing or disciplinary authorities of other jurisdictions in the case of a pharmacist who is licensed in, or seeking transfer to, another state; or

(c) Pursuant to an order of a court of competent jurisdiction.

SECTION 28. Section 73-21-123, Mississippi Code of 1972, is reenacted as follows:

73-21-123. Nothing in this chapter shall be construed to prevent, or in any manner interfere with, or to require a permit for the sale of nonnarcotic nonprescription drugs which may be lawfully sold under the United States Food, Drug and Cosmetic Act (21 USCS 301 et seq. as now or hereafter amended) without a prescription, nor shall any rule or regulation be adopted by the board under the provisions of this chapter which shall require the sale of nonprescription drugs by a licensed pharmacist of in a pharmacy or otherwise apply to or interfere with the sale or distribution of such drugs.

SECTION 29. The following provision shall be codified as Section 73-21-125, Mississippi Code of 1972:

73-21-125. The Board of Pharmacy shall develop and implement a computerized program to track prescriptions for controlled substances and to report illegal activity, under the following conditions:

(a) The prescriptions tracked shall be prescriptions for controlled substances listed in Schedule II, III, IV or V that are filled by a pharmacy. The program shall provide information regarding the inappropriate use of controlled substances in Schedule II, III, IV and V to pharmacies, practitioners and appropriate state agencies in order to prevent the improper or illegal use of such controlled substances. The program shall not infringe on the legal use of controlled substances for the management of severe or intractable pain.

(b) The Board of Pharmacy shall report any activity it reasonably suspects may be fraudulent or illegal to the appropriate law enforcement agency or occupational licensing board and provide them with the relevant information obtained for further investigation.

(c) Information obtained from the program is confidential and must not be disclosed to any person. Information must be disclosed upon the request of a person about whom the information requested concerns or upon the request on his behalf by his attorney.

(d) Licensed physicians, dentists and pharmacists may obtain patient specific information in the program by request.

(e) The Board of Pharmacy may apply for any available grants and accept any gifts, grants or donations to assist in future development or in maintaining the program.

SECTION 30. The following provision shall be codified as Section 73-21-126, Mississippi Code of 1972:

73-21-126. (1) The State Board of Pharmacy shall promulgate rules regarding the issuance and renewal of licenses and permits for new or renewal application requirements for both in and out of

state wholesale distributors, chain pharmacy warehouses and re-packagers shipping into Mississippi. Requirements for new and on renewal applications, if information has not been previously provided to the board, will include, but not be limited to, the following:

(a) Type of ownership (individual, partnership or corporation);

(b) Names of principal owners or officers and social security numbers;

(c) Names of designated representatives and social security numbers;

(d) Criminal background checks of applicants and designated representatives as required by rule;

(e) Copy of license in home state;

(f) Bond requirements.

(2) The board shall promulgate rules for the establishment of a pedigree or electronic file to be used by wholesale distributors, chain pharmacy warehouses and re-packagers for the purpose of ensuring the integrity of drugs owned, purchased, distributed, returned, transferred and sold when the products leave the normal distribution channel.

(3) The board is authorized to use an outside agency to accredit wholesale distributors and re-packagers, including the National Association of Boards of Pharmacy's (NABP) Verified Accredited Wholesale Distributors (VAWD) program.

(4) Pharmacies shall not be responsible for verification or adjudication of the pedigree for pharmaceuticals.

(5) The board may exempt wholesalers accredited by the VAWD program from the above requirements.

SECTION 31. Sections 31 through 35 of this act shall be known as the "Pharmacy Benefit Prompt Pay Act."

SECTION 32. For purposes of Sections 31 through 35 of this act, the following words and phrases shall have the meanings ascribed herein unless the context clearly indicates otherwise:

(a) "Board" means the State Board of Pharmacy.

(b) "Commissioner" means the Mississippi Commissioner of Insurance.

(c) "Day" means a calendar day, unless otherwise defined or limited.

(d) "Electronic claim" means the transmission of data for purposes of payment of covered prescription drugs, other products and supplies, and pharmacist services in an electronic data format specified by a pharmacy benefit manager and approved by the department.

(e) "Electronic adjudication" means the process of electronically receiving, reviewing and accepting or rejecting an electronic claim.

(f) "Enrollee" means an individual who has been enrolled in a pharmacy benefit management plan.

(g) "Health insurance plan" means benefits consisting of prescription drugs, other products and supplies, and pharmacist services provided directly, through insurance or reimbursement, or otherwise and including items and services paid for as prescription drugs, other products and supplies, and pharmacist services under any hospital or medical service policy or certificate, hospital or medical service plan contract, preferred provider organization agreement, or health maintenance organization contract offered by a health insurance issuer, unless preempted as an employee benefit plan under the Employee Retirement Income Security Act of 1974. However, "health insurance coverage" shall not include benefits due under the workers compensation laws of this or any other state.

(h) "Pharmacy benefit manager" means a business that administers the prescription drug/device portion of pharmacy benefit management plans or health insurance plans on behalf of plan sponsors, insurance companies, unions and health maintenance organizations. For purposes of Sections 31 through 35 of this act, a "pharmacy benefit manager" shall not include an insurance company that provides an integrated health benefit plan and that does not separately contract for pharmacy benefit management

services. The pharmacy benefit manager of the Mississippi State and School Employees Health Insurance Plan or the Mississippi Division of Medicaid or its contractors when performing services for the Division of Medicaid shall not be subject to Sections 31 through 35 of this act because of those activities, but, if they are conducting business as a pharmacy benefit manager other than with those agencies, they shall be subject to Sections 31 through 35 of this act for those activities only.

(i) "Pharmacy benefit management plan" means an arrangement for the delivery of pharmacist's services in which a pharmacy benefit manager undertakes to administer the payment or reimbursement of any of the costs of pharmacist's services for an enrollee on a prepaid or insured basis which (i) contains one or more incentive arrangements intended to influence the cost or level of pharmacist's services between the plan sponsor and one or more pharmacies with respect to the delivery of pharmacist's services; and (ii) requires or creates benefit payment differential incentives for enrollees to use under contract with the pharmacy benefit manager. A pharmacy benefit management plan does not mean any employee welfare benefit plan if preempted by the Employee Retirement Income Security Act of 1974, which is self-insured or self-funded, the Mississippi State and School Employees Health Insurance Plan or the programs operated by the Mississippi Division of Medicaid.

(j) "Pharmacist," "pharmacist services" and "pharmacy" or "pharmacies" shall have the same definitions as provided in Section 73-21-73.

(k) "Uniform claim form" means a form prescribed by rule by the State Board of Pharmacy, provided however that, for purposes of Sections 31 through 35 of this act, the board shall adopt the same definition or rule where the State Department of Insurance has adopted a rule covering the same type of claim. The board may modify the terminology of the rule and form when necessary to comply with the provisions of Sections 31 through 35 of this act.

(l) "Plan sponsors" means the employers, insurance companies, unions and health maintenance organizations that contract with a pharmacy benefit manager for delivery of prescription services.

SECTION 33. (1) Reimbursement under a contract to a pharmacist or pharmacy for prescription drugs and other products and supplies that is calculated according to a formula that uses a nationally recognized reference in the pricing calculation shall use the most current nationally recognized reference price or amount in the actual or constructive possession of the pharmacy benefit manager, its agent, or any other party responsible for reimbursement for prescription drugs and other products and supplies on the date of electronic adjudication or on the date of service shown on the nonelectronic claim.

(2) Pharmacy benefit managers, their agents and other parties responsible for reimbursement for prescription drugs and other products and supplies shall be required to update the nationally recognized reference prices or amounts used for calculation of reimbursement for prescription drugs and other products and supplies no less than every three (3) business days.

(3) (a) All benefits payable under a pharmacy benefit management plan shall be paid within fifteen (15) days after receipt of due written proof of a clean claim where claims are submitted electronically, and shall be paid within thirty-five (35) days after receipt of due written proof of a clean claim where claims are submitted in paper format. Benefits due under the plan and claims are overdue if not paid within fifteen (15) days or thirty-five (35) days, whichever is applicable, after the pharmacy benefit manager receives a clean claim containing necessary information essential for the pharmacy benefit manager to administer preexisting condition, coordination of benefits and subrogation provisions under the plan sponsor's health insurance plan. A "clean claim" means a claim received by any pharmacy benefit manager for adjudication and which requires no further information, adjustment or alteration by the pharmacist or

pharmacies or the insured in order to be processed and paid by the pharmacy benefit manager. A claim is clean if it has no defect or impropriety, including any lack of substantiating documentation, or particular circumstance requiring special treatment that prevents timely payment from being made on the claim under this subsection. A clean claim includes resubmitted claims with previously identified deficiencies corrected.

(b) A clean claim does not include any of the following:

(i) A duplicate claim, which means an original claim and its duplicate when the duplicate is filed within thirty (30) days of the original claim;

(ii) Claims which are submitted fraudulently or that are based upon material misrepresentations;

(iii) Claims that require information essential for the pharmacy benefit manager to administer preexisting condition, coordination of benefits or subrogation provisions under the plan sponsor's health insurance plan; or

(iv) Claims submitted by a pharmacist or pharmacy more than thirty (30) days after the date of service; if the pharmacist or pharmacy does not submit the claim on behalf of the insured, then a claim is not clean when submitted more than thirty (30) days after the date of billing by the pharmacist or pharmacy to the insured.

(c) Not later than fifteen (15) days after the date the pharmacy benefit manager actually receives an electronic claim, the pharmacy benefit manager shall pay the appropriate benefit in full, or any portion of the claim that is clean, and notify the pharmacist or pharmacy (where the claim is owed to the pharmacist or pharmacy) of the reasons why the claim or portion thereof is not clean and will not be paid and what substantiating documentation and information is required to adjudicate the claim as clean. Not later than thirty-five (35) days after the date the pharmacy benefit manager actually receives a paper claim, the pharmacy benefit manager shall pay the appropriate benefit in

full, or any portion of the claim that is clean, and notify the pharmacist or pharmacy (where the claim is owed to the pharmacist or pharmacy) of the reasons why the claim or portion thereof is not clean and will not be paid and what substantiating documentation and information is required to adjudicate the claim as clean. Any claim or portion thereof resubmitted with the supporting documentation and information requested by the pharmacy benefit manager shall be paid within twenty (20) days after receipt.

(4) If the board finds that any pharmacy benefit manager, agent or other party responsible for reimbursement for prescription drugs and other products and supplies has not paid ninety-five percent (95%) of clean claims as defined in subsection (3) of this section received from all pharmacies in a calendar quarter, he shall be subject to administrative penalty of not more than Twenty-five Thousand Dollars ($25,000.00) to be assessed by the State Board of Pharmacy.

(a) Examinations to determine compliance with this subsection may be conducted by the board. The board may contract with qualified impartial outside sources to assist in examinations to determine compliance. The expenses of any such examinations shall be paid by the pharmacy benefit manager examined.

(b) Nothing in the provisions of this section shall require a pharmacy benefit manager to pay claims that are not covered under the terms of a contract or policy of accident and sickness insurance or prepaid coverage.

(c) If the claim is not denied for valid and proper reasons by the end of the applicable time period prescribed in this provision, the pharmacy benefit manager must pay the pharmacy (where the claim is owed to the pharmacy) or the patient (where the claim is owed to a patient) interest on accrued benefits at the rate of one and one-half percent (1-1/2%) per month accruing from the day after payment was due on the amount of the benefits that remain unpaid until the claim is finally settled or adjudicated. Whenever interest due pursuant to this provision is

less than One Dollar ($1.00), such amount shall be credited to the account of the person or entity to whom such amount is owed.

(d) Any pharmacy benefit manager and a pharmacy may enter into an express written agreement containing timely claim payment provisions which differ from, but are at least as stringent as, the provisions set forth under subsection (3) of this section, and in such case, the provisions of the written agreement shall govern the timely payment of claims by the pharmacy benefit manager to the pharmacy. If the express written agreement is silent as to any interest penalty where claims are not paid in accordance with the agreement, the interest penalty provision of subsection (4)(d) of this section shall apply.

(e) The State Board of Pharmacy may adopt rules and regulations necessary to ensure compliance with this subsection.

SECTION 34. (1) Each pharmacy benefit manager providing pharmacy management benefit plans in this state shall file a statement with the commissioner annually by March 1 or within sixty (60) days of the end of its fiscal year if not a calendar year. The statement shall be verified by at least two (2) principal officers and shall cover the preceding calendar year or the immediately preceding fiscal year of the pharmacy benefit manager.

(2) The statement shall be on forms prescribed by the commissioner and shall include:

(a) A financial statement of the organization, including its balance sheet and income statement for the preceding year; and

(b) Any other information relating to the operations of the pharmacy benefit manager required by the commissioner under this section.

(3) If the pharmacy benefit manager is audited annually by an independent certified public accountant, a copy of the certified audit report shall be filed annually with the commissioner by June 30 or within thirty (30) days of the report being final.

(4) The commissioner may extend the time prescribed for any pharmacy benefit manager for filing annual statements or other reports or exhibits of any kind for good cause shown. However, the commissioner shall not extend the time for filing annual statements beyond sixty (60) days after the time prescribed by subsection (1) of this section. The commissioner may waive the requirements for filing financial information for the pharmacy benefit manager if an affiliate of the pharmacy benefit manager is already required to file such information under current law.

(5) The expense of administering this section shall be assessed annually by the commissioner against all pharmacy benefit managers operating in this state.

(6) The pharmacy benefit manager shall also file a copy of its annual statement with the Mississippi Board of Pharmacy. The board shall notify the commissioner of the failure of a pharmacy benefit manager to file its annual statement.

SECTION 35. (1) In lieu of or in addition to making its own financial examination of a pharmacy benefit manager, the commissioner may accept the report of a financial examination of other persons responsible for the pharmacy benefit manager under the laws of another state certified by the applicable official of such other state.

(2) The commissioner shall coordinate financial examinations of a pharmacy benefit manager that provides pharmacy management benefit plans in this state to ensure an appropriate level of regulatory oversight and to avoid any undue duplication of effort or regulation. The pharmacy benefit manager being examined shall pay the cost of the examination. The cost of the examination shall be deposited in a special fund that shall provide all expenses for the registration, supervision and examination of all entities subject to regulation under Sections 31 through 35 of this act.

(3) The commissioner shall provide to the board a copy of any financial examination conducted or caused to be conducted by him of a pharmacy benefit manager. The commissioner and the board

may provide a copy of the financial examination to any person or entity who provides or operates a health insurance plan or to a pharmacist or pharmacy.

SECTION 36. This act shall take effect and be in force from and after June 30, 2006.

Further, amend by striking the title in its entirety and inserting in lieu thereof the following:

AN ACT TO REENACT SECTIONS 73-21-71 THROUGH 73-21-123, MISSISSIPPI CODE OF 1972, WHICH IS THE MISSISSIPPI PHARMACY PRACTICE ACT; TO AMEND SECTION 73-21-69, MISSISSIPPI CODE OF 1972, TO EXTEND THE AUTOMATIC REPEALER ON THE MISSISSIPPI PHARMACY PRACTICE ACT; TO AMEND SECTION 73-21-79, MISSISSIPPI CODE OF 1972, TO CLARIFY CERTAIN CONDITIONS ON THE RESPONSIBILITIES OF THE EXECUTIVE DIRECTOR OF THE STATE BOARD OF PHARMACY; TO AMEND SECTION 73-21-85, MISSISSIPPI CODE OF 1972, TO AUTHORIZE THE STATE BOARD OF PHARMACY TO CONDUCT CRIMINAL RECORD BACKGROUND CHECKS ON STUDENTS AT THE UNIVERSITY OF MISSISSIPPI SCHOOL OF PHARMACY; TO AMEND SECTION 73-21-91, MISSISSIPPI CODE OF 1972, TO PROVIDE FOR ANNUAL RENEWAL FEES; TO CODIFY SECTION 73-21-125, MISSISSIPPI CODE OF 1972, TO AUTHORIZE AND DIRECT THE BOARD OF PHARMACY TO DEVELOP AND IMPLEMENT A COMPUTER PROGRAM TO TRACK PRESCRIPTIONS FOR CONTROLLED SUBSTANCES AND TO REPORT ILLEGAL ACTIVITY; TO CODIFY SECTION 73-21-126, MISSISSIPPI CODE OF 1972, TO AUTHORIZE AND DIRECT THE STATE BOARD OF PHARMACY TO PROMULGATE RULES REGARDING PERMITS FOR IN AND OUT OF STATE WHOLESALE DISTRIBUTORS, CHAIN PHARMACY WAREHOUSES AND RE-PACKAGERS; TO ENACT THE PHARMACY BENEFIT PROMPT PAY ACT; TO PROVIDE DEFINITIONS TO REQUIRE THE USE OF THE MOST CURRENT NATIONALLY RECOGNIZED REFERENCE PRICE BY PHARMACY BENEFIT MANAGERS; TO REQUIRE PHARMACY BENEFIT MANAGERS TO UPDATE SUCH PRICES AT LEAST EVERY THREE BUSINESS DAYS; TO REQUIRE PAYMENTS BY PHARMACY BENEFIT MANAGEMENT PLANS TO BE MADE WITHIN 15 DAYS IF IN ELECTRONIC FORMAT AND WITHIN 35 DAYS IF IN PAPER FORMAT; TO CLARIFY CLEAN CLAIMS REQUIREMENTS; TO PROVIDE FOR ADMINISTRATIVE PENALTIES TO BE ASSESSED BY THE STATE BOARD OF PHARMACY AGAINST PHARMACY BENEFIT MANAGERS WHO FAIL TO COMPLY WITH THE PROMPT PAY PROVISIONS; TO REQUIRE CERTAIN FINANCIAL STATEMENTS TO BE MADE BY PHARMACY BENEFIT MANAGERS WITH THE COMMISSIONER OF INSURANCE AND THE STATE BOARD OF PHARMACY; AND FOR RELATED PURPOSES.

SS26\HB542PS.J

John O. Gilbert
Secretary of the Senate