MISSISSIPPI LEGISLATURE REGULAR SESSION 2020

By: Senator(s) Bryan

To: Public Health and Welfare

SENATE BILL NO. 2310

AN ACT TO REENACT AND AMEND SECTION 73-21-69, MISSISSIPPI CODE OF 1972, TO EXTEND THE DATE OF REPEAL ON THE MISSISSIPPI PHARMACY PRACTICE ACT; TO REENACT SECTIONS 73-21-71 THROUGH 73-21-129, MISSISSIPPI CODE OF 1972, WHICH CONSTITUTE THE MISSISSIPPI PHARMACY PRACTICE ACT; TO AMEND REENACTED SECTIONS 73-21-73, 73-21-81, 73-21-99, 73-21-103, 73-21-111 AND 73-21-123, MISSISSIPPI CODE 1972, TO MAKE SOME MINOR, NONSUBSTANTIVE CHANGES; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

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

73-21-69. Sections 73-21-71 through 73-21-129, which create the State Board of Pharmacy and prescribe its duties and powers, shall stand repealed on July 1, *** * *** 2024.

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 and amended as follows:

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

(a) "Administer" means 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) "Biological product" means the same as that term is defined in 42 USC Section 262.

(c) "Board of Pharmacy," "Pharmacy Board," "MSBP" or "board" means the State Board of Pharmacy.

(d) "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.

(e) "Continuing education unit" means 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.

(f) "Deliver" or "delivery" means the actual, constructive or attempted transfer in any manner of a drug or device from one person to another, whether or not for a consideration, including, but not limited to, delivery by mailing or shipping.

(g) "Device" means 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.

(h) "Dispense" or "dispensing" means the interpretation of a valid prescription 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.

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

(j) "Drug" means:

(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.

(k) "Drugroom" means 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.

(l) "Extern" means 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.

(m) "Foreign pharmacy graduate" means 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.

(n) "Generic equivalent drug product" means 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.

(o) "Interchangeable biological product" or "I.B." means a biological product that the federal Food and Drug Administration:

(i) Has licensed and determined as meeting the standards for interchangeability under 42 USC Section 262(k)(4); or

(ii) Has determined is therapeutically equivalent as set forth in the latest edition of or supplement to the federal Food and Drug Administration's Approved Drug Products with Therapeutic Equivalence Evaluations.

(p) "Internet" means collectively the myriad of computer and telecommunications facilities, including equipment and operating software, which comprise the interconnected worldwide network of networks that employ the Transmission Control

Protocol/Internet Protocol, or any predecessor or successor protocol to such protocol, to communicate information of all kinds by wire or radio.

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

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

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

(t) "Manufacturer" means 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.

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

(v) "Manufacturing" of prescription products means 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.

(w) "Misappropriation of a prescription drug" means to illegally or unlawfully convert a drug, as defined in *** * *** paragraph (j) of this section, to one's own use or to the use of another.

(x) "Nonprescription drugs" means 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.

(y) "Person" means an individual, corporation, partnership, association or any other legal entity.

(z) "Pharmacist" means 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.

(aa) "Pharmacy" means 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.

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

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

(dd) "Practice of pharmacy" means 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 (nn) 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.

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

(ff) "Prescription" means 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. "Prescription" includes a standing order issued by a practitioner to an individual pharmacy that authorizes the pharmacy to dispense an opioid antagonist to certain persons without the person to whom the opioid antagonist is dispensed needing to have an individual prescription, as authorized by Section 41-29-319(3).

(gg) "Prescription drug" or "legend drug" means 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.

(hh) "Product selection" means the dispensing of a generic equivalent drug product or an interchangeable biological product in lieu of the drug product ordered by the prescriber.

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

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

(kk) "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.

(ll) "Reverse distributor" means a business operator that is responsible for the receipt and appropriate return or disposal of unwanted, unneeded or outdated stocks of controlled or uncontrolled drugs from a pharmacy.

(mm) "Supportive personnel" or "pharmacist technician" means 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.

(nn) "Written guideline or protocol" means 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.

(oo) "Wholesaler" means 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.

(pp) "Pharmacy benefit manager" has the same meaning as defined in Section 73-21-153.

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 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, the Mississippi Independent Pharmacies Association (MIPA), Mississippi Society of Health-System Pharmacists (MSHP) and Mississippi College of Clinical Pharmacy (MCCP) 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, the Mississippi Independent Pharmacies Association (MIPA), Mississippi Society of Health-System Pharmacists (MSHP) and Mississippi College of Clinical Pharmacy (MCCP) 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. If an election is required to narrow the number of potential candidates for nominations to the board, the Mississippi Pharmacists Association shall provide a ballot to each pharmacist holding a valid Mississippi license.

(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; and

(c) Have actively engaged in the practice of pharmacy in Mississippi for a period of at least five (5) years.

(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 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 and amended 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, 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 and the regulation of pharmacy benefit managers as defined in Section 73-21-153.

(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), except the initial licensure fee for pharmacy benefit managers shall be set by the board but shall not exceed Five Hundred Dollars ($500.00).

(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 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 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) The issuance of a license by reciprocity to a military-trained applicant or military spouse shall be subject to the provisions of Section 73-50-1.

(4) 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.

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 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 one (1) continuing education unit in the last licensure period;

(c) (i) Pay any 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 before renewal.

(ii) The license fee for a pharmacy benefit manager shall be set by the board, but shall not exceed Five Hundred Dollars ($500.00). Any license renewal received postmarked after December 31 of the renewal period will be returned and a Five Hundred Dollar ($500.00) late renewal fee will be assessed before 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 the 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.

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;

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

(m) Willful failure to submit drug monitoring information or willful submission of incorrect dispensing information as required by the Prescription Monitoring Program under Section 73-21-127;

(n) Failure to obtain the license, registration or permit required by this chapter; or

(o) Violation(s) of the provisions of Sections 41-121-1 through 41-121-9 relating to deceptive advertisement by health care practitioners. This paragraph shall stand repealed on July 1, 2020.

(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 and amended 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 basis, for no longer than * * * three (3) consecutive months at a time, 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 and amended 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, seeking to renew a license or permit under the provisions of this chapter, or practicing or doing business without a license, registration or permit, 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 * * * subparagraphs (i), (ii) and (iv) of this * * * paragraph (d) 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 * * * this subparagraph (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;

(v) The board may impose a monetary penalty for any dispenser, pharmacist or practitioner licensed to dispense controlled substance and specified noncontrolled substance drugs, who knowingly fails to submit drug monitoring information or knowingly submits incorrect dispensing information of not more than Ten Thousand Dollars ($10,000.00) per violation. Any penalty

collected under this * * * subparagraph (v) shall be deposited into the special fund of the State Pharmacy Board to support the operations of the Prescription Monitoring Program (PMP);

(vi) The board may impose a monetary penalty for any person who obtains prescription information and who knowingly discloses this information for misuse or purposely alters the reporting information, or uses the PMP in any manner other than for which it was intended, of not more than Fifty Thousand Dollars ($50,000.00) per violation. Any penalty collected under this * * * subparagraph (vi) shall be deposited into the special fund of the State Board of Pharmacy and used to support the operations of the Prescription Monitoring Program;

(vii) The board may impose a monetary penalty of not more than One Thousand Dollars ($1,000.00) per day upon any person or business that practices or does business without the license, registration or permit required by this chapter.

(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 engages 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, and every reverse distributor located in or outside of this state that conducts business with pharmacies in this state, shall register biennially or annually, to be determined by the board, 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 One Thousand Dollars ($1,000.00).

(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 73-21-106, Mississippi Code of 1972, is reenacted as follows:

73-21-106. (1) Any pharmacy located outside this state that ships, mails or delivers, in any manner, controlled substances or prescription or legend drugs or devices into this state shall be considered a nonresident pharmacy and shall be permitted by the board. The board shall establish by rule or regulation the criteria that each nonresident pharmacy must meet to qualify for a nonresident permit. After a permit has been issued, it may not be amended, transferred or reassigned. A pharmacist-in-charge of a nonresident pharmacy may not be the pharmacist-in-charge at any other location that has been issued a permit by the board.

(2) Each nonresident pharmacy shall:

(a) Comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board under this section. The nonresident

pharmacy shall maintain at all times a valid unexpired license, permit or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to being permitted by the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located;

(b) Maintain its records of controlled substances and prescription or legend drugs or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs dispensed; and

(c) Certify that it understands Mississippi pharmacy laws and regulations and agrees to comply with those laws and regulations and any other state or federal laws that apply to the practice of pharmacy. The pharmacist-in-charge must hold a Mississippi pharmacist license, be licensed to practice pharmacy in the state of residence of the nonresident pharmacy, and be current and in good standing with the licensing boards of both states.

(3) Any pharmacy subject to this section shall provide during its regular hours of operation, but not less than six (6) days per week and for a minimum of forty (40) hours per week, a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be

disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(4) The permit fee for nonresident pharmacies shall be the same as the fee as set by subsection (4) of Section 73-21-105.

(5) The permit requirements of this section shall apply to any nonresident pharmacy that dispenses, distributes, ships, mails or delivers controlled substances or prescription or legend drugs and devices into this state directly to a consumer.

(6) The board may deny, revoke or suspend a nonresident pharmacy permit only for:

(a) Failure to comply with any requirement of this section or Section 41-29-125;

(b) Conduct that causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within forty-five (45) days of the referral; or

(c) Violation of the Uniform Controlled Substances Law.

(7) It is unlawful for any nonresident pharmacy that is not permitted under this section to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy that is not permitted with the board, with the knowledge that the

advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

(8) When requested to do so by the board or the Mississippi Bureau of Narcotics, each nonresident pharmacy shall supply any inspection reports, controlled substances dispensing records, warning notices, notice of deficiency reports or any other related reports from the state in which it is located concerning the operation of a nonresident pharmacy for review of compliance with state and federal drug laws.

SECTION 21. 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 22. Section 73-21-108, Mississippi Code of 1972, is reenacted as follows:

73-21-108. (1) **Definitions.** For the purposes of this section:

(a) "Home medical equipment" means technologically sophisticated medical equipment and devices usable in a home care setting, including, but not limited to:

(i) Oxygen for human consumption, oxygen concentrators and/or oxygen delivery systems and equipment;

(ii) Ventilators;

(iii) Respiratory disease management devices;

(iv) Electronic and computer driven wheelchairs and seating systems;

(v) Apnea monitors;

(vi) Transcutaneous electrical nerve stimulator (TENS) units;

(vii) Low air loss cutaneous pressure management devices;

(viii) Sequential compression devices;

(ix) Neonatal home phototherapy devices;

(x) Feeding pumps; and

(xi) Other similar equipment as defined in regulations adopted by the board.

The term "home medical equipment" does not include medical equipment used in the normal course of treating patients by hospitals, hospices, long-term care facilities or home health agencies, or medical equipment used or dispensed by health care professionals licensed by the State of Mississippi if the professional is practicing within the scope of his or her professional practice. In addition, the term does not include items such as upper and lower extremity prosthetics, canes,

crutches, walkers, bathtub grab bars, standard wheelchairs, commode chairs and bath benches.

(b) "Home medical equipment services" means the delivery, installation, maintenance, replacement, and/or instruction in the use of home medical equipment, used by a sick or disabled individual, to allow the individual to be cared for and maintained in a home or noninstitutional environment.

(c) "Medical gas" means those gases and liquid oxygen intended for human consumption.

(d) "Order" means an order issued by a licensed practitioner legally authorized to order home medical equipment and/or medical gases.

(2) **Permit required.** (a) No person, business or entity located in this state or outside of this state that is subject to this section shall sell, rent or provide or offer to sell, rent or provide directly to patients in this state any home medical equipment, legend devices, and/or medical gas unless such person, business or entity first obtains a Medical Equipment Supplier Permit from the board.

(b) The permitting requirements of this section apply to all persons, companies, agencies and other business entities that are in the business of supplying home medical equipment to patients in their places of residence and that bill the patient or the patient's insurance, Medicare, Medicaid or other third party payor for the rent or sale of that equipment.

(c) The board shall require a separate permit for each facility location directly or indirectly owned or operated in this state.

(d) The application for a permit shall be made to the board on a form supplied by the board and shall be accompanied by a fee of not more than Three Hundred Dollars ($300.00), as prescribed by the board. Once issued, every permit must be renewed annually, and the renewal fee shall be not more than One Hundred Seventy-five Dollars ($175.00), as prescribed by the board.

(e) All permits issued under this section shall expire annually on June 30 of each year. Applications for renewal must be made to the board on or before June 30 and must be accompanied by the fee as prescribed by the board. A late renewal fee of One Hundred Dollars ($100.00) shall be added to all renewal applications received by the board after June 30 of each renewal period. The permit shall become void if the renewal application, renewal fee and the late renewal fee are not received by the board by September 30 of each year.

(3) **Exemptions.** (a) The permitting requirements of this section do not apply to the following entities or practitioners unless they have a separate business entity, company, corporation or division that is in the business of providing home medical equipment for sale or rent to patients at their places of residence:

(i) Home health agencies;

(ii) Hospitals;

(iii) Wholesalers and/or manufacturers;

(iv) Medical doctors, physical therapists, respiratory therapists, occupational therapists, speech pathologists, optometrists, chiropractors and podiatrists who use home medical equipment and/or legend devices in their individual practices;

(v) Pharmacies;

(vi) Hospice programs;

(vii) Nursing homes and/or long-term care facilities;

(viii) Veterinarians; dentists; and emergency medical services.

(b) Although community pharmacies are exempt from the permitting requirements of this section, they shall be subject to the same regulations that are applicable to permitted businesses or entities for the sale or rental of home medical equipment covered by this section.

(c) Nothing in this section shall prohibit trained individuals from using oxygen, liquid oxygen and/or legend devices in emergencies.

(d) Nothing in this section shall prohibit the prehospital emergency administration of oxygen by licensed health care providers, emergency medical technicians, first responders,

firefighters, law enforcement officers and other emergency personnel trained in the proper use of emergency oxygen.

(4) **Order required.** Home medical equipment suppliers shall not provide any home medical equipment to a patient without a valid order from an authorized licensed practitioner.

(5) **Regulations.** The board shall adopt regulations for the distribution and sale or rental of home medical equipment, legend devices and medical gases that promote the public health and welfare and comply with at least the minimum standards, terms and conditions of federal laws and regulations. The regulations shall include, without limitation:

(a) Minimum information from each home medical equipment, legend device and medical gas supplier required for permitting and renewal permits;

(b) Minimum qualifications of persons who engage in the distribution of home medical equipment;

(c) Appropriate education, training or experience of persons employed by home medical equipment suppliers;

(d) Minimum standards for storage of home medical equipment;

(e) Minimum requirements for the establishment and maintenance of all records for the sale, rental and servicing of home medical equipment; and

(f) Minimum standards of operation and professional conduct.

(6) **Medical Equipment Advisory Committee to the board.**

(a) A Medical Equipment Advisory Committee (MEAC), composed of three (3) members selected by the Mississippi Association of Medical Equipment Suppliers and approved by the board, shall review and make recommendations to the board regarding all regulations dealing with home medical equipment, legend devices and medical gases that are proposed by the board and before they are adopted by the board.

(b) All MEAC members must have been actively involved in the home medical equipment business for a minimum of five (5) years before the selection to the committee and shall hold and maintain, in good standing, a permit issued by the board under this section.

(c) The MEAC members shall meet at least quarterly and review all home medical equipment suppliers' inspection reports. All complaints and reports of investigations of violations of law or regulations regarding home medical equipment, legend devices and medical gases shall first be reviewed by the MEAC. After review, the MEAC may make recommendations to the board's Investigations Review Committee regarding further administrative action by the board.

(d) The MEAC shall keep and maintain minutes of all meetings of the MEAC and shall provide copies of the minutes to the board on a quarterly basis.

(7) **Revocation, suspension or restriction of permit and penalties.**

(a) The board may revoke, suspend, restrict or refuse to issue or renew a permit or impose a monetary penalty, in accordance with Section 73-21-103 except that the monetary penalty shall not exceed Ten Thousand Dollars ($10,000.00) per violation, if the business or holder of a permit or applicant for a permit issued under this section has committed or is found guilty by the board of any of the following:

(i) Violation of any federal, state or local law or regulations relating to home medical equipment, legend devices or medical gases.

(ii) Violation of any of the provisions of this section or regulations adopted under this section.

(iii) Commission of an act or engaging in a course of conduct that constitutes a clear and present danger to the public health and safety.

(iv) Filing a claim or assisting in the filing of a claim for reimbursement for home medical equipment or home medical equipment services that were not provided or that were not authorized to be provided.

(v) Failure to comply with any lawful order of the board.

(b) Disciplinary action by the board against a business or any person holding a permit under this section shall be in accordance with Section 73-21-99.

SECTION 23. 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, or such property or name was previously registered with the Mississippi State Board of Pharmacy or provided pharmaceutical services in excess of twenty (20) years. 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 24. Section 73-21-111, Mississippi Code of 1972, is reenacted and amended 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 25. 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 26. 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 27. 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 or an interchangeable biological 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 or an interchangeable biological product when:

(a) The purchaser requests the selection of a generic equivalent drug product or an interchangeable biological product; or

(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 or biological product as ordered by the prescriber, a pharmacist shall not select a generic equivalent drug product or an interchangeable biological product.

(4) Within five (5) business days following the dispensing of any biological product, the dispensing pharmacist or the pharmacist's designee shall make an entry of the specific product provided to the purchaser, including the name of the product and the manufacturer, and communicate that information to the prescriber. The communication shall be conveyed by making an entry that is electronically accessible to the prescriber through:

(a) An interoperable electronic medical records system;

(b) An electronic prescribing technology;

(c) A pharmacist benefit management system; or

(d) A pharmacy record.

(5) Entry into an electronic records system as described in subsection (4) of this section is presumed to provide notice to the prescriber. Otherwise, the pharmacist shall communicate the biological product dispensed to the prescriber using facsimile, telephone, electronic transmission, or other prevailing means, provided that communication shall not be required where:

(a) There is no federal Food and Drug Administration-approved interchangeable biological product for the product prescribed; or

(b) A refill prescription is not changed from the product dispensed on the prior filling of the prescription.

(6) The board shall maintain a link on its website to the federal Food and Drug Administration's List of Licensed Biological Products with Reference Product Exclusivity and Biosimilarity or Interchangeability Evaluations.

SECTION 28. 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. The label of the container of any biological product dispensed by a pharmacist shall include its nonproprietary name designated by the federal Food and Drug Administration for use and the name of the manufacturer of the product.

(2) Whenever product selection is made, the pharmacist shall indicate on the label of the dispensed container the initials "G.E." or "I.B.," as appropriate. The label for generic equivalent drugs shall include 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. The label for interchangeable biological products shall include its nonproprietary name designated by the federal Food and Drug Administration for use and the name of the manufacturer of the product.

SECTION 29. 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 30. Section 73-21-123, Mississippi Code of 1972, is reenacted and amended 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 *** * *** in a pharmacy or otherwise apply to or interfere with the sale or distribution of such drugs.

SECTION 31. Section 73-21-125, Mississippi Code of 1972, is reenacted as follows:

73-21-125. (1) Any community pharmacy, including a faith-based community pharmacy, or any licensed pharmacist who voluntarily provides charitable services in a community pharmacy, or any other person who serves as a volunteer in a community pharmacy, shall be immune from liability for any civil action arising out of supplying pharmaceutical products in the course of providing such charitable or gratuitous pharmaceutical products. This section shall not extend immunity to acts of gross negligence or willful or wanton misconduct or to the manufacturer or designer of products provided.

(2) Any community pharmacy seeking immunity under this section shall post a notice, in a conspicuous place adjacent to the area where prescriptions are picked up by consumers, reading substantially as follows: "NOTICE: If you are harmed by medication that you receive here, you do not have the same legal recourse as you have against other pharmacies." Failure to post the notice negates the immunity from liability provided under this section. The notice shall be no less than eleven (11) by fourteen (14) inches in size, and the type used shall be no smaller than thirty-six (36) point and surrounded by a one-inch solid black border.

(3) For purposes of this section, "community pharmacy" means a pharmacy operated solely for charitable purposes, whose only

function is to supply gratuitous pharmaceutical products, and which is operated by a nonprofit organization qualified or eligible for qualification as a tax-exempt organization under 26 USCS 501.

SECTION 32. Section 73-21-126, Mississippi Code of 1972, is reenacted as follows:

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 repackagers shipping into Mississippi. Requirements for new and/or 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) To ensure 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.

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

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

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

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

SECTION 33. Section 73-21-127, Mississippi Code of 1972, is reenacted as follows:

73-21-127. The Board of Pharmacy shall develop and implement a computerized program to track prescriptions for controlled substances and to report suspected abuse and misuse of controlled substances in compliance with the federal regulations promulgated under authority of the National All Schedules Prescription Electronic Reporting Act of 2005 and in compliance with the federal HIPAA law, under the following conditions:

(a) Submission or reporting of dispensing information shall be mandatory and required by the State Board of Pharmacy for any entity dispensing controlled substances in or into the State of Mississippi, except for the dispensing of controlled substance drugs by a veterinarian residing in the State of Mississippi.

(b) The prescriptions tracked shall be prescriptions for controlled substances listed in Schedule II, III, IV or V and specified noncontrolled substances identified by the State Board of Pharmacy that are dispensed to residents in the State of Mississippi by licensed pharmacies, nonresident pharmacies, institutions and dispensing practitioners, regardless of dispenser location.

(c) 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.

(d) The program shall provide information regarding the potential inappropriate use of controlled substances and the specified noncontrolled substances to practitioners, pharmacists-in-charge and appropriate state agencies in order to prevent the inappropriate or illegal use of these controlled substances. The specific purposes of the program shall be to: be proactive in safeguarding public health and safety; support the legitimate use of controlled substances; facilitate and encourage the identification, intervention with and treatment of individuals addicted to controlled substances and specified noncontrolled drugs; identify and prevent drug diversion; provide assistance to those state and federal law enforcement and regulatory agencies investigating cases of drug diversion or other misuse; and inform the public and health care professionals of the use and abuse trends related to controlled substance and specified noncontrolled drugs.

(e) (i) Access to collected data shall be confidential and not subject to the provisions of the federal Freedom of Information Act or the Mississippi Public Records Act. Upon request, the State Board of Pharmacy shall provide collected

information to: pharmacists or practitioners who are properly registered with the State Board of Pharmacy and are authorized to prescribe or dispense controlled substances for the purpose of providing medical and pharmaceutical care for their patients; local, state and federal law enforcement officials engaged in the administration, investigation or enforcement of the laws governing illicit drug use; regulatory and licensing boards in this state; Division of Medicaid regarding Medicaid and Medicare Program recipients; judicial authorities under grand jury subpoena; an individual who requests the individual's own prescription monitoring information; and prescription monitoring programs in other states through mutual agreement adhering to State Board of Pharmacy policies.

(ii) The Director of the Mississippi Bureau of Narcotics, or his designee, shall have access to the Prescription Monitoring Program (PMP) database for the purpose of investigating the potential illegal acquisition, distribution, dispensing, prescribing or administering of the controlled and noncontrolled substances monitored by the program, subject to all legal restrictions on further dissemination of the information obtained.

(iii) The State Board of Pharmacy may also provide statistical data for research or educational purposes if the board determines the use of the data to be of significant benefit to public health and safety. The board maintains the right to refuse any request for PMP data.

(iv) A pharmacist licensed by the Mississippi Board of Pharmacy must be a registered user of the PMP. Failure of a pharmacist licensed by the Mississippi Board of Pharmacy to register as a user of the PMP is grounds for disciplinary action by the board.

(v) All licensed practitioners as defined under Section 73-21-73(ee) holding an active DEA number shall register as users of the PMP.

(f) The Prescription Monitoring Program through the Board of Pharmacy may:

(i) Establish the cost of administration, maintenance, and operation of the program and charge to like agencies a fee based on a formula to be determined by the board with collaboration and input from participating agencies; and

(ii) Assess charges for information and/or statistical data provided to agencies, institutions and individuals. The amounts of those fees shall be set by the Executive Director of the Board of Pharmacy based on the recommendation of the Director of the PMP.

All such fees collected shall be deposited into the special fund of the State Board of Pharmacy and used to support the operations of the PMP.

(g) A dispenser pharmacist or practitioner licensed to dispense controlled substances and specified noncontrolled substance drugs who knowingly fails to submit drug-monitoring

information or knowingly submits incorrect dispensing information shall be subject to actions against the pharmacist's or practitioner's license, registrations or permit and/or an administrative penalty as provided in Sections 73-21-97 and 73-21-103. Any misuse of the PMP is subject to penalties as provided in Sections 73-21-97 and 73-21-103.

(h) The Board of Pharmacy and the Prescription Monitoring Program shall be immune from civil liability arising from inaccuracy of any of the information submitted to the program.

(i) "Practitioner," as used in this section, shall include any person licensed, registered or otherwise permitted to distribute, dispense, prescribe or administer a controlled substance, as defined under Section 41-29-105(y), and any person defined as a "practitioner" under Section 73-21-73(ee).

(j) In addition to any funds appropriated by the Legislature, the State 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 34. Section 73-21-129, Mississippi Code of 1972, is reenacted as follows:

73-21-129. (1) Each manufacturer whose products are distributed within the State of Mississippi shall make adequate provision for the return of outdated drugs from pharmacies, both full and partial containers, excluding biological, infused or

intravenously injected drugs and drugs that are inhaled during surgery, within six (6) months after the labeled expiration date, for prompt full credit or refund.

(2) Wholesale distributors and reverse distributors that are required to register with the board and have a permit under Section 73-21-105 shall implement and administer the return policies established by the manufacturer.

(3) If the board receives information that a manufacturer has failed to comply with this section, the board shall investigate the matter and present any evidence of the manufacturer's failure to comply to a review committee composed of the Dean of the University of Mississippi School of Pharmacy, the Executive Director of the State Board of Pharmacy and the Director of the Pharmacy Bureau of the Division of Medicaid, or the designee of any of those officials. The committee shall review the evidence of the manufacturer's failure to comply with this section and make a recommendation to the board regarding the discipline of the manufacturer for its failure to comply. After the board has received the recommendation of the committee, the board may discipline the manufacturer by providing that the manufacturer's products shall be ineligible for use in product selection in any state drug assistance programs.

(4) A pharmacist may not dispense a prescription drug or controlled drug unless the pharmacist has satisfactory evidence

that the manufacturer of the drug has a procedure for the return of expired drugs.

(5) Any manufacturer that had a repurchase program in place on January 1, 2008, shall be exempt from the provisions of this section, provided that the repurchase program makes provision for the repurchase of outdated drugs in either full or partial amounts within six (6) months after the labeled expiration date.

(6) As used in this section, the term "biological drug" or "biological product" means a virus, therapeutic serum, toxin, antitoxin, vaccine, blood, blood component or derivative, allergenic product or analogous product, or arsphenamine or derivative of arsphenamine or any other trivalent organic arsenic compound, applicable to the prevention, treatment or cure of a disease or condition of human beings.

SECTION 35. This act shall take effect and be in force from and after July 1, 2020.