

HOUSE BILL 301

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By: **Delegate Reznik**

Introduced and read first time: January 21, 2014

Assigned to: Health and Government Operations

A BILL ENTITLED

AN ACT concerning

Health Occupations – Dentists With Permits to Prepare and Dispense Dental Products – Exclusion From Maryland Pharmacy Act

FOR the purpose of providing that the Maryland Pharmacy Act does not apply, under certain circumstances, to a licensed dentist who obtains a certain permit from the State Board of Dental Examiners and who personally prepares and dispenses certain products or rinses; providing that certain provisions of law do not apply to a licensed dentist who obtains a certain permit under a certain provision of this Act; and generally relating to the exclusion of licensed dentists from the Maryland Pharmacy Act.

BY repealing and reenacting, without amendments,
Article – Health Occupations
Section 12–102(a)(1) and (3)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY adding to
Article – Health Occupations
Section 12–102(h)
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

BY repealing and reenacting, with amendments,
Article – Health Occupations
Section 12–102(h), (i), and (j), 12–102.1, 12–102.2, and 12–403
Annotated Code of Maryland
(2009 Replacement Volume and 2013 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Health Occupations

12–102.

(a) (1) In this section the following terms have the meanings indicated.

(3) “Personally preparing and dispensing” means that the licensed dentist, physician, or podiatrist:

(i) Is physically present on the premises where the prescription is filled; and

(ii) Performs a final check of the prescription before it is provided to the patient.

(H) THIS TITLE DOES NOT PROHIBIT A LICENSED DENTIST WHO OBTAINS A PERMIT FROM THE STATE BOARD OF DENTAL EXAMINERS THAT ALLOWS THE LICENSED DENTIST TO DISPENSE ONLY PRESCRIPTION STRENGTH HOME FLUORIDE PRODUCTS, DENTIN/ENAMEL REMINERALIZING PRODUCTS, AND ANTIMICROBIAL RINSE FROM PERSONALLY PREPARING AND DISPENSING THE PRODUCT OR RINSE WHEN:

(1) THE PRODUCT OR RINSE IS DISPENSED TO A PATIENT OF THE LICENSED DENTIST; AND

(2) THE LICENSED DENTIST ENTERS AN APPROPRIATE RECORD IN THE PATIENT’S CHART THAT THE PRODUCT OR RINSE WAS DISPENSED TO THE PATIENT.

[(h)] (I) This title does not limit the right of a general merchant to sell:

(1) Any nonprescription drug or device;

(2) Any commonly used household or domestic remedy; or

(3) Any farm remedy or ingredient for a spraying solution, in bulk or otherwise.

[(i)] (J) The Board of Pharmacy, the Board of Dental Examiners, the Board of Physicians, and the Board of Podiatric Medical Examiners annually shall report to the Division of Drug Control:

(1) The names and addresses of its licensees who are authorized to personally prepare and dispense prescription drugs; and

(2) The names and addresses of its licensees who have reported, in accordance with subsection (c)(2)(iv)12 of this section, that they have personally prepared and dispensed prescription drugs within the previous year.

[(j)] (K) A dentist, physician, or podiatrist who fails to comply with the provisions of this section governing the dispensing of prescription drugs or devices shall:

- (1) Have the dispensing permit revoked; and
- (2) Be subject to disciplinary actions by the appropriate licensing board.

12-102.1.

(a) THIS SECTION DOES NOT APPLY TO A LICENSED DENTIST WHO OBTAINS A PERMIT FROM THE STATE BOARD OF DENTAL EXAMINERS UNDER § 12-102(H) OF THIS SUBTITLE.

(B) The Division of Drug Control shall enter and inspect the office of a dentist, physician, or podiatrist who holds:

- (1) An initial dispensing permit:
 - (i) Within 6 months after receiving the report required under § 12-102(i)(1) of this subtitle; and
 - (ii) At least one more time during the duration of the permit;
- and
- (2) A renewed dispensing permit at least two times during the duration of the permit.

[(b)] (C) The Division of Drug Control promptly shall report the results of the inspections required under subsection **[(a)] (B)** of this section to the respective board of licensure.

12-102.2.

(a) THIS SECTION DOES NOT APPLY TO A LICENSED DENTIST WHO OBTAINS A PERMIT FROM THE STATE BOARD OF DENTAL EXAMINERS UNDER § 12-102(H) OF THIS SUBTITLE.

(B) The Board of Dental Examiners, the Board of Physicians, and the Board of Podiatric Medical Examiners shall charge a fee to a dentist, physician, or podiatrist who holds a dispensing permit in an amount that will produce funds to approximate

but not exceed the documented costs to the Division of Drug Control for inspections of dispensing permit holders.

[(b)] (C) Revenues collected by the Board of Dental Examiners, the Board of Physicians, and the Board of Podiatric Medical Examiners under this section shall be paid into the General Fund of the State.

12-403.

(a) THIS SECTION DOES NOT APPLY TO A LICENSED DENTIST WHO OBTAINS A PERMIT FROM THE STATE BOARD OF DENTAL EXAMINERS UNDER § 12-102(H) OF THIS TITLE.

(B) This section does not require a nonresident pharmacy to violate the laws or regulations of the state in which it is located.

[(b)] (C) Except as otherwise provided in this section, a pharmacy for which a pharmacy permit has been issued under this title:

(1) Shall be operated in compliance with the law and with the rules and regulations of the Board;

(2) Shall be located and equipped so that the pharmacy may be operated without endangering the public health or safety;

(3) Shall ensure that a licensed pharmacist be immediately available on the premises to provide pharmacy services at all times the pharmacy is in operation;

(4) Shall be supervised by a licensed pharmacist who is responsible for the operations of the pharmacy at all times the pharmacy is in operation;

(5) Shall provide complete pharmaceutical service by preparing and dispensing all prescriptions that reasonably may be expected of a pharmacist;

(6) Shall provide services to the general public and may not restrict or limit its services to any group of individuals unless granted a waiver from this requirement by the Board;

(7) May not offer pharmaceutical services under any term or condition that tends to interfere with or impair the free and complete exercise of professional pharmaceutical judgment or skill;

(8) May not make any agreement that denies a patient a free choice of pharmacist or pharmacy services;

(9) May not participate in any activity that is a ground for Board action against a licensed pharmacist under § 12–313 of this title or a registered pharmacy technician under § 12–6B–09 of this title;

(10) (i) Shall maintain at all times a current reference library that is appropriate to meet the needs of:

1. The practice specialty of that pharmacy; and
2. The consumers the pharmacy serves; and

(ii) Shall comply with any regulations adopted by the Board establishing the types of texts required to be included in the reference libraries in each of the various practice specialty pharmacies;

(11) (i) Shall maintain at all times the minimum professional and technical equipment and sanitary appliances that are necessary in a pharmacy:

1. To prepare and dispense prescriptions properly; and
2. To otherwise operate a pharmacy; and

(ii) Shall:

1. Be equipped with the minimum equipment and appliances specified by the Board under this section; and
2. Be kept in a clean and orderly manner;

(12) Shall store all prescription or nonprescription drugs or devices properly and safely subject to the rules and regulations adopted by the Board;

(13) Shall:

(i) Make and keep on file for at least 5 years a record of each prescription prepared or dispensed in the pharmacy;

(ii) Disclose the records and files maintained of prescriptions for drugs or devices that identify or may be readily associated with the identity of a patient only in accordance with the provisions of Title 4, Subtitle 3 of the Health – General Article; and

(iii) Keep additional records as required by the rules and regulations adopted by the Board;

(14) Except as otherwise provided under federal law, shall establish and maintain mechanisms to ensure that all prescription drugs or devices used within

institutions that provide acute, subacute, or long-term care, or within their related corporate subsidiaries, but stored outside a pharmacy, are stored properly and safely, subject to rules and regulations adopted by the Board and policies established by the institution;

(15) Shall provide such personnel, automation, and technology as are necessary to allow the licensed pharmacist employee sufficient time to utilize the pharmacist's knowledge and training and to perform competently the functions of a licensed pharmacist as required by law;

(16) Shall provide such personnel, automation, and technology as are necessary to comply with the labeling requirements specified in § 12-505 of this title;

(17) With regard to a prescription drug that is delivered in this State by the United States mail, a common carrier, or a delivery service and is not personally hand delivered directly to a patient or to the agent of the patient at the residence of the patient or at another location designated by the patient, shall:

(i) Provide a general written notice in each shipment of a prescription drug that alerts a consumer that, under certain circumstances, a medication's effectiveness may be affected by exposure to extremes of heat, cold, or humidity; and

(ii) Provide a specific written notice in each shipment of a prescription drug that provides a consumer with a toll-free or local consumer access telephone number accessible during regular hours of operation, which is designed to respond to consumer questions pertaining to medications;

(18) (i) May maintain a record log of any prescription that is requested to be filled or refilled by a patient in accordance with the provisions of Title 4, Subtitle 3 of the Health – General Article;

(ii) If the prescription record of a patient includes the patient's Social Security number, shall keep the Social Security number confidential;

(iii) May not list in the record log the type of illness, disability, or condition that is the basis of any dispensing or distribution of a drug by a pharmacist; and

(iv) May not list a patient's Social Security number, illness, disability, or condition, or the name and type of drug received in the record log if the log is available to other pharmacy customers;

(19) May not allow an unauthorized individual to represent that the individual is a pharmacist or registered pharmacy technician;

(20) Shall provide information regarding the process for resolving incorrectly filled prescriptions in accordance with existing regulations by:

(i) Posting a sign that is conspicuously positioned and readable by consumers at the point where prescription drugs are dispensed to consumers; or

(ii) Including written information regarding the process with each prescription dispensed; and

(21) Shall dispense or dispose of prescription drugs or medical supplies in accordance with Title 15, Subtitle 6 of the Health – General Article.

[(c)] (D) (1) The Board may waive any of the requirements of this section for the University of Maryland School of Pharmacy, for nuclear pharmacy and dental pharmacy experimental and teaching programs.

(2) The Board may waive the requirements of subsection **[(b)(5) and (6)] (C)(5) AND (6)** of this section for pharmacies that are engaged in pharmaceutical specialties which are recognized by the Board under rules and regulations adopted by the Board.

(3) The Board may waive the requirements of subsection **[(b)(3) through (6) and (15)] (C)(3) THROUGH (6) AND (15)** of this section for pharmacies that only dispense devices in accordance with rules and regulations adopted by the Board.

(4) The Board shall waive the requirements of subsection **[(b)(20)] (C)(20)** of this section for a pharmacy owned and operated by a hospital, nursing facility, or clinic to which the public does not have access to purchase pharmaceuticals on a retail basis.

[(d)] (E) A nonresident pharmacy shall:

(1) Hold a pharmacy permit issued by the Board; and

(2) Have a pharmacist on staff who is:

(i) Licensed by the Board; and

(ii) Designated as the pharmacist responsible for providing pharmaceutical services to patients in the State.

[(e)] (F) (1) In order to obtain a pharmacy permit from the Board, a nonresident pharmacy shall:

(i) Submit an application to the Board on the form that the Board requires;

(ii) Pay to the Board an application fee set by the Board;

(iii) 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 the nonresident pharmacy is located; and

(iv) On the required permit application, identify the name and current address of an agent located in this State officially designated to accept service of process.

(2) A nonresident pharmacy shall report a change in the name or address of the resident agent in writing to the Board 30 days prior to the change.

[(f)] (G) Notwithstanding subsection **[(a)] (B)** of this section, a nonresident pharmacy shall:

(1) Comply with the requirements of subsection **[(b)(2), (7) through (12), and (19)] (C)(2), (7) THROUGH (12), AND (19)** of this section when:

(i) Dispensing prescription drugs or prescription devices to a patient in this State; or

(ii) Otherwise engaging in the practice of pharmacy in this State;

(2) On an annual basis and within 30 days after a change of office, corporate officer, or pharmacist, disclose to the Board the location, names, and titles of all principal corporate officers and all pharmacists who are dispensing prescriptions for drugs or devices to persons in this State;

(3) Comply with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is located and all requests for information made by the Board pursuant to this section;

(4) Maintain at all times a valid, unexpired permit to conduct a pharmacy in compliance with the laws of the state in which it is located;

(5) Maintain its records of prescription drugs or devices dispensed to patients in this State so that the records are readily retrievable;

(6) During its regular hours of operation, but not less than 6 days a week, and for a minimum of 40 hours per week, provide toll-free telephone service to facilitate communication between patients in this State and a pharmacist or an individual who:

- (i) Has access to the patient's prescription records; and
 - (ii) Is required to refer patients in the State to the responsible pharmacist licensed in the State, as appropriate;
- (7) Disclose its toll-free telephone number on a label affixed to each container of drugs or devices;
- (8) Comply with the laws of this State relating to the confidentiality of prescription records if there are no laws relating to the confidentiality of prescription records in the state in which the nonresident pharmacy is located; and
- (9) Comply with the requirements of subsection **[(b)(17) and (20)] (C)(17) AND (20)** of this section.

[(g)] (H) Subject to the hearing provisions of § 12-411 of this subtitle, if a pharmacy or a nonresident pharmacy is operated in violation of this section, the Board may suspend the applicable pharmacy permit until the pharmacy complies with this section.

[(h)] (I) The Board may waive the following requirements for nonresident pharmacies that only dispense devices in accordance with rules and regulations adopted by the Board:

- (1) Subsections **[(d)(2) and (f)(6)(ii)] (E)(2) AND (G)(6)(II)** of this section; and
- (2) If not applicable, subsections **[(e)(1)(iii) and (f)(4)] (F)(1)(III) AND (G)(4)** of this section.

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2014.