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CHAPTER 90
MEDICINE AND ALLIED OCCUPATIONS
Article 4A.
North Carolina Pharmacy Practice Act.

Part 1. North Carolina Pharmacy Practice Act.

§ 90-85.2. Legislative findings.

The General Assembly of North Carolina finds that mandatory licensure of all who engage in the practice of pharmacy is necessary to insure minimum standards of competency and to protect the public from those who might otherwise present a danger to the public health, safety and welfare.

§ 90-85.3. Definitions.

(a) "Administer" means the direct application of a drug to the body of a patient by injection, inhalation, ingestion or other means.

(b) "Board" means the North Carolina Board of Pharmacy.

(b1) "Clinical pharmacist practitioner" means a licensed pharmacist who meets the guidelines and criteria for such title established by the joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and is authorized to enter into drug therapy management agreements with physicians in accordance with the provisions of G.S. 90-18.4.

(c) "Compounding" means taking two or more ingredients and combining them into a dosage form of a drug, exclusive of compounding by a drug manufacturer, distributor, or packer.

(d) "Deliver" means the actual, constructive or attempted transfer of a drug, a device, or medical equipment from one person to another.

(e) "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article including any component part or accessory, whose label or labeling bears the statement "Caution: federal law requires dispensing by or on the order of a physician." The term does not include:

- (1) Devices used in the normal course of treating patients by health care facilities and agencies licensed under Chapter 131E or Article 2 of Chapter 122C of the General Statutes;
- (2) Devices used or provided in the treatment of patients by medical doctors, dentists, physical therapists, occupational therapists, speech pathologists, optometrists, chiropractors, podiatrists, and nurses licensed under Chapter 90 of the General Statutes, provided they do not dispense devices used to administer or dispense drugs.

(f) "Dispense" means preparing and packaging a prescription drug or device in a container and labeling the container with information required by State and federal law. Filling or refilling drug containers with prescription drugs for subsequent use by a patient is "dispensing". Providing quantities of unit dose prescription drugs for subsequent administration is "dispensing".

(g) "Drug" means:

- (1) Any article recognized as a drug in the United States Pharmacopeia, or in any other drug compendium or any supplement thereto, or an article recognized as a drug by the United States Food and Drug Administration;
- (2) Any article, other than food or devices, intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals;
- (3) Any article, other than food or devices, intended to affect the structure or any function of the body of man or other animals; and
- (4) Any article intended for use as a component of any articles specified in clause (1), (2) or (3) of this subsection.

(h) "Emancipated minor" means any person under the age of 18 who is or has been married or who is or has been a parent; or whose parents or guardians have surrendered their rights to the minor's services and earnings as well as their right to custody and control of the minor's person; or who has been emancipated by an appropriate court order.

(i) "Health care provider" means any licensed health care professional; any agent or employee of any health care institution, health care insurer, health care professional school; or a member of any allied health profession.

(i1) "Immunizing pharmacist" means a licensed pharmacist who meets all of the following qualifications:

- (1) Holds a current provider level cardiopulmonary resuscitation certification issued by the American Heart Association or the American Red Cross, or an equivalent certification.
- (2) Has successfully completed a certificate program in vaccine administration accredited by the Centers for Disease Control and Prevention, the Accreditation Council for Pharmacy Education, or a similar health authority or professional body approved by the Board.
- (3) Maintains documentation of three hours of continuing education every two years, designed to maintain competency in the disease states, drugs, and vaccine administration.

- (4) Has successfully completed training approved by the Division of Public Health's Immunization Branch for participation in the North Carolina Immunization Registry.
- (5) Has notified the North Carolina Board of Pharmacy and the North Carolina Medical Board of immunizing pharmacist status.
- (6) Administers vaccines or immunizations in accordance with G.S. 90-18.15B.
- (j) "Label" means a display of written, printed or graphic matter upon the immediate or outside container of any drug.
- (k) "Labeling" means preparing and affixing a label to any drug container, exclusive of labeling by a manufacturer, packer or distributor of a nonprescription drug or a commercially packaged prescription drug or device.
- (l) "License" means a license to practice pharmacy including a renewal license issued by the Board.
- (l 1) "Medical equipment" means any of the following items that are intended for use by the consumer in the consumer's place of residence:
 - (1) A device.
 - (2) Ambulation assistance equipment.
 - (3) Mobility equipment.
 - (4) Rehabilitation seating.
 - (5) Oxygen and respiratory care equipment.
 - (6) Rehabilitation environmental control equipment.
 - (7) Diagnostic equipment.
 - (8) A bed prescribed by a physician to treat or alleviate a medical condition.

The term "medical equipment" does not include (i) medical equipment used or dispensed in the normal course of treating patients by or on behalf of home care agencies, hospitals, and nursing facilities licensed under Chapter 131E of the General Statutes or hospitals or agencies licensed under Article 2 of Chapter 122C of the General Statutes; (ii) medical equipment used or dispensed by professionals licensed under Chapters 90 or 93D of the General Statutes, provided the professional is practicing within the scope of that professional's practice act; (iii) upper and lower extremity prosthetics and related orthotics; or (iv) canes, crutches, walkers, and bathtub grab bars.

- (l 2) "Mobile pharmacy" means a pharmacy that meets all of the following conditions:
 - (1) Is either self-propelled or moveable by another vehicle that is self-propelled.
 - (2) Is operated by a nonprofit corporation.
 - (3) Dispenses prescription drugs at no charge or at a reduced charge to persons whose family income is less than two hundred percent (200%) of the federal poverty level and who do not receive reimbursement for the cost of the dispensed prescription drugs from Medicare, Medicaid, a private insurance company, or a governmental unit.
- (m) "Permit" means a permit to operate a pharmacy, deliver medical equipment, or dispense devices, including a renewal license issued by the Board.
- (n) "Person" means an individual, corporation, partnership, association, unit of government, or other legal entity.
- (o) "Person in loco parentis" means the person who has assumed parental responsibilities for a child.
- (p) "Pharmacist" means a person licensed under this Article to practice pharmacy.
- (q) "Pharmacy" means any place where prescription drugs are dispensed or compounded.
- (q1) "Pharmacy personnel" means pharmacists and pharmacy technicians.
- (q2) "Pharmacy technician" means a person who may, under the supervision of a pharmacist, perform technical functions to assist the pharmacist in preparing and dispensing prescription medications.
- (q3) "Certified pharmacy technician" means a pharmacy technician who (i) has passed a nationally recognized pharmacy technician certification board examination, or its equivalent, that has been approved by the Board and (ii) obtains and maintains certification from a nationally recognized pharmacy technician certification board that has been approved by the Board.
- (r) "Practice of pharmacy" is as specified in G.S. 90-85.3A.
- (s) "Prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement:
 "Caution: Federal law prohibits dispensing without prescription."
- (t) "Prescription order" means a written or verbal order for a prescription drug, prescription device, or pharmaceutical service from a person authorized by law to prescribe such drug, device, or service. A prescription order includes an order entered in a chart or other medical record of a patient.
- (u) "Unit dose medication system" means a system in which each dose of medication is individually packaged in a properly sealed and properly labeled container.

§ 90-85.3A. Practice of pharmacy.

(a) A pharmacist is responsible for interpreting and evaluating drug orders, including prescription orders; compounding, dispensing, and labeling prescription drugs and devices; properly and safely storing drugs and devices; maintaining proper records; and controlling pharmacy goods and services.

(b) A pharmacist may advise and educate patients and health care providers concerning therapeutic values, content, uses, and significant problems of drugs and devices; assess, record, and report adverse drug and device reactions; take and record patient histories relating to drug and device therapy; monitor, record, and report drug therapy and device usage; perform drug utilization reviews; and participate in drug and drug source selection and device and device source selection as provided in G.S. 90-85.27 through G.S. 90-85.31.

(c) An immunizing pharmacist is authorized and permitted to administer drugs as provided in G.S. 90-85.15B, and in accordance with rules adopted by each of the Board of Pharmacy, the Board of Nursing, and the North Carolina Medical Board. These rules shall be designed to ensure the safety and health of the patients for whom such drugs are administered.

(d) An approved clinical pharmacist practitioner may collaborate with physicians in determining the appropriate health care for a patient subject to the provisions of G.S. 90-18.4.

§ 90-85.4. North Carolina Pharmaceutical Association.

The North Carolina Pharmaceutical Association, and the persons composing it, shall continue to be a body politic and corporate under the name and style of the North Carolina Pharmaceutical Association, and by that name have the right to sue and be sued, to plead and be impleaded, to purchase and hold real estate and grant the same, to have and to use a common seal, and to do any other things and perform any other acts as appertain to bodies corporate and politic not inconsistent with the Constitution and laws of the State.

§ 90-85.5. Objective of Pharmaceutical Association.

The objective of the Association is to unite the pharmacists of this State for mutual aid, encouragement, and improvement; to encourage scientific research, develop pharmaceutical talent and to elevate the standard of professional thought.

§ 90-85.6. Board of Pharmacy; creation; membership; qualification of members.

(a) Creation. – The responsibility for enforcing the provisions of this Article and the laws pertaining to the distribution and use of drugs is vested in the Board. The Board shall adopt reasonable rules for the performance of its duties. The Board shall have all of the duties, powers and authorities specifically granted by and necessary for the enforcement of this Article, as well as any other duties, powers and authorities that may be granted from time to time by other appropriate statutes. The Board may establish a program for the purpose of aiding in the recovery and rehabilitation of pharmacists who have become addicted to controlled substances or alcohol, and the Board may use money collected as fees to fund such a program.

(b) Membership. – The Board shall consist of six members, one of whom shall be a representative of the public, and the remainder of whom shall be pharmacists.

(c) Qualifications. – The public member of the Board shall not be a health care provider or the spouse of a health care provider. He shall not be enrolled in a program to prepare him to be a health care provider. The public member of the Board shall be a resident of this State at the time of his appointment and while serving as a Board member. The pharmacist members of the Board shall be residents of this State at the time of their appointment and while serving as Board members.

§ 90-85.7. Board of Pharmacy; selection; vacancies; commission; term; per diem; removal.

(a) The Board of Pharmacy shall consist of six persons. Five of the members shall be licensed as pharmacists within this State and shall be elected and commissioned by the Governor as hereinafter provided. Pharmacist members shall be chosen in an election held as hereinafter provided in which every person licensed to practice pharmacy in North Carolina and residing in North Carolina shall be entitled to vote. Each pharmacist member of said Board shall be elected for a term of five years and until his successor shall be elected and shall qualify. Members chosen by election under this section shall be elected upon the expiration of the respective terms of the members of the present Board of Pharmacy. No pharmacist shall be nominated for membership on said Board, or shall be elected to membership on said Board, unless, at the time of such nomination, and at the time of such election, he is licensed to practice pharmacy in North Carolina. In case of death, resignation or removal from the State of any pharmacist member of said Board, the pharmacist members of the Board shall elect in his place a pharmacist who meets the criteria set forth in this section to fill the unexpired term.

One member of the Board shall be a person who is not a pharmacist and who represents the interest of the public at large. The Governor shall appoint this member.

All Board members serving on June 30, 1989, shall be eligible to complete their respective terms. No member appointed or elected to a term on or after July 1, 1989, shall serve more than two complete consecutive

five-year terms. The Governor may remove any member appointed by him for good cause shown and may appoint persons to fill unexpired terms of members appointed by him.

It shall be the duty of a member of the Board of Pharmacy, within 10 days after receipt of notification of his appointment and commission, to appear before the clerk of the superior court of the county in which he resides and take and subscribe an oath to properly and faithfully discharge the duties of his office according to law.

(b) All nominations and elections of pharmacist members of the Board shall be conducted by the Board of Pharmacy, which is hereby constituted a Board of Pharmacy Elections. Every pharmacist with a current North Carolina license residing in this State shall be eligible to vote in all elections. The list of pharmacists shall constitute the registration list for elections. The Board of Pharmacy Elections is authorized to make rules and regulations relative to the conduct of these elections, provided such rules and regulations are not in conflict with the provisions of this section and provided that notice shall be given to all pharmacists residing in North Carolina. All such rules and regulations shall be adopted subject to the procedures of Chapter 150B of the General Statutes of North Carolina. From any decision of the Board of Pharmacy Elections relative to the conduct of such elections, appeal may be taken to the courts in the manner otherwise provided by Chapter 150B of the General Statutes.

(c) All rules, regulations, and bylaws of the North Carolina Board of Pharmacy so far as they are not inconsistent with the provisions of this Article, shall continue in effect.

(d) Notwithstanding G.S. 93B-5, Board members shall receive as compensation for their services per diem not to exceed one hundred dollars (\$100.00) for each day during which they are engaged in the official business of the Board.

§ 90-85.8. Organization.

The Board shall elect from its members a president, vice-president, and other officers as it deems necessary. The officers shall serve one-year terms and until their successors have been elected and qualified.

§ 90-85.9. Meetings.

The Board shall meet at least twice annually for the purpose of administering examinations and conducting other business. Four Board members constitute a quorum. The Board shall keep a record of its proceedings, a register of all licensed persons, and a register of all persons to whom permits have been issued. The Board shall report, in writing, annually to the Governor and the presiding officer of each house of the General Assembly.

§ 90-85.10. Employees; Executive Director.

The Board shall employ as Executive Director a pharmacist to serve as a full-time employee of the Board. The Executive Director shall serve as secretary and treasurer of the Board and shall perform administrative functions as authorized by the Board. The Board shall have the authority to employ other personnel as it may deem necessary to carry out the requirements of this Article.

§ 90-85.11. Compensation of employees.

The Board shall determine the compensation of its employees. Employees shall be reimbursed for all necessary expenses incurred in the performance of their official duties.

§ 90-85.11A. Acquisition of real property; equipment; liability insurance.

(a) The Board shall have the power to acquire, hold, rent, encumber, alienate, and otherwise deal with real property in the same manner as a private person or corporation, subject only to approval of the Governor and the Council of State. Collateral pledged by the Board for an encumbrance is limited to the assets, income, and revenues of the Board.

(b) The Board may purchase, rent, or lease equipment and supplies and purchase liability insurance or other insurance to cover the activities of the Board, its operations, or its employees.

§ 90-85.12. Executive Director to make investigations and prosecute.

(a) Upon receiving information concerning a violation of this Article that is a threat to the public safety, health, or welfare, the Executive Director shall promptly conduct an investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing. If the Executive Director receives information concerning a violation of this Article that does not pose a threat to the public safety, health, or welfare, the Executive Director may conduct an investigation, and if he finds evidence of the violation, he may file a complaint and prosecute the offender in a Board hearing.

(b) In all prosecutions of unlicensed persons for the violation of any of the provisions of this Article, a certificate signed under oath by the Executive Director shall be competent and admissible evidence in any court of this State that the person is not licensed, as required by law.

§ 90-85.13. Approval of schools and colleges of pharmacy.

The Board shall approve schools and colleges of pharmacy upon a finding that students successfully completing the course of study offered by the school or college can reasonably be expected to practice pharmacy safely and properly.

§ 90-85.14. Practical experience program.

The Board shall issue regulations governing a practical experience program. These regulations shall assure that the person successfully completing the program will have gained practical experience that will enable him to safely and properly practice pharmacy.

§ 90-85.15. Application and examination for licensure as a pharmacist; prerequisites.

(a) Any person who desires to be licensed as a pharmacist shall file an application with the Executive Director on the form furnished by the Board, verified under oath, setting forth the applicant's name, age, the place at which and the time that he has spent in the study of pharmacy, and his experience in compounding and dispensing prescriptions under the supervision of a pharmacist. The applicant shall also appear at a time and place designated by the Board and submit to an examination as to his qualifications for being licensed. The applicant must demonstrate to the Board his physical and mental competency to practice pharmacy.

(b) On or after July 1, 1982, all applicants shall have received an undergraduate degree from a school of pharmacy approved by the Board. Applicants shall be required to have had up to one year of experience, approved by the Board, under the supervision of a pharmacist and shall pass the required examination offered by the Board. Upon completing these requirements and upon paying the required fee, the applicant shall be licensed.

(c) The Department of Justice may provide a criminal record check to the Board for a person who has applied for a license through the Board. The Board shall provide to the Department of Justice, along with the request, the fingerprints of the applicant, any additional information required by the Department of Justice, and a form signed by the applicant consenting to the check of the criminal record and to the use of the fingerprints and other identifying information required by the State or national repositories. The applicant's fingerprints shall be forwarded to the State Bureau of Investigation for a search of the State's criminal history record file, and the State Bureau of Investigation shall forward a set of the fingerprints to the Federal Bureau of Investigation for a national criminal history check. The Board shall keep all information pursuant to this subsection privileged, in accordance with applicable State law and federal guidelines, and the information shall be confidential and shall not be a public record under Chapter 132 of the General Statutes.

The Department of Justice may charge each applicant a fee for conducting the checks of criminal history records authorized by this subsection.

§ 90-85.15A. Pharmacy technicians.

(a) Registration, Generally. – A registration program for pharmacy technicians is established for the purposes of identifying those persons who are employed or are eligible for employment as pharmacy technicians. The Board must maintain a registry of pharmacy technicians that contains the name of each pharmacy technician, the name and location of a pharmacy in which the pharmacy technician works, the pharmacist-manager who employs the pharmacy technician, and the dates of that employment.

(a1) Registration of Noncertified Pharmacy Technicians. – The Board must register a pharmacy technician who pays the fee required under G.S. 90-85.24, is employed by a pharmacy holding a valid permit under this Article, and completes a required training program provided by the supervising pharmacist-manager as specified in subsection (b) of this section. A pharmacy technician must register with the Board within 30 days after the date the pharmacy technician completes a training program provided by the supervising pharmacist-manager. The registration must be renewed annually by paying a registration fee.

(a2) Registration of Certified Pharmacy Technicians. – The Board must register a certified pharmacy technician who pays the fee required under G.S. 90-85.24 and provides proof of current certification. The registration must be renewed annually by paying a registration fee and providing proof of current certification.

(b) Responsibilities of Pharmacist-Manager to Noncertified Pharmacy Technicians. – A pharmacist-manager may hire a person who has a high school diploma or equivalent or is currently enrolled in a program that awards a high school diploma or equivalent to work as a pharmacy technician. Pursuant to G.S. 90-85.21, a pharmacist-manager must notify the Board within 21 days of the date the pharmacy technician began employment. The pharmacist-manager must provide a training program for a pharmacy technician that includes pharmacy terminology, pharmacy calculations, dispensing systems and labeling requirements, pharmacy laws and regulations, record keeping and documentation, and the proper handling and storage of medications. The requirements of a training program may differ depending upon the type of employment. The training program must be provided and completed within 180 days of the date the pharmacy technician began employment.

(b1) Responsibilities of Pharmacist-Manager to Certified Pharmacy Technicians. – A pharmacist-manager may hire a certified pharmacy technician who has registered with the Board pursuant to subsection (a2) of this section. Pursuant to G.S. 90-85.21, a certified pharmacy technician shall notify the Board within 10 days of

beginning employment as a pharmacy technician. The supervising pharmacist-manager and certified pharmacy technician shall be deemed to have satisfied the pharmacy technician training program requirements of subsection (b) of this section.

(c) Supervision. – A pharmacist may not supervise more than two pharmacy technicians unless the pharmacist-manager receives written approval from the Board. The Board may not allow a pharmacist to supervise more than two pharmacy technicians unless the additional pharmacy technicians are certified pharmacy technicians. The Board must respond to a request from a pharmacist-manager to allow a pharmacist to supervise more than two pharmacy technicians within 60 days of the date it received the request. The Board must respond to the request in one of three ways:

- (1) Approval of the request.
- (2) Approval of the request as amended by the Board.
- (3) Disapproval of the request. A disapproval of a request must include a reasonable explanation of why the request was not approved.

(d) Disciplinary Action. – The Board may, in accordance with Chapter 150B of the General Statutes and rules adopted by the Board, issue a letter of reprimand or suspend, restrict, revoke, or refuse to grant or renew the registration of a pharmacy technician if the pharmacy technician has done one or more of the following:

- (1) Made false representations or withheld material information in connection with registering as a pharmacy technician.
- (2) Been found guilty of or plead guilty or nolo contendere to a felony involving the use or distribution of drugs.
- (3) Indulged in the use of drugs to an extent that it renders the pharmacy technician unfit to assist a pharmacist in preparing and dispensing prescription medications.
- (4) Developed a physical or mental disability that renders the pharmacy technician unfit to assist a pharmacist in preparing and dispensing prescription medications.
- (4a) Been negligent in assisting a pharmacist in preparing and dispensing prescription medications.
- (5) Failed to comply with the laws governing pharmacy technicians, including any provision of this Article or rules adopted by the Board governing pharmacy technicians.

(e) Exemption. – This section does not apply to pharmacy students who are enrolled in a school of pharmacy approved by the Board under G.S. 90-85.13.

(f) Rule-Making Authority. – The Board may adopt rules necessary to implement this section.

§ 90-85.15B. Immunizing pharmacists.

(a) Except as provided in subsection (b) and (c) of this section, an immunizing pharmacist may administer vaccinations or immunizations only if the vaccinations or immunizations are recommended or required by the Centers for Disease Control and Prevention and administered to persons at least 18 years of age pursuant to a specific prescription order.

(b) An immunizing pharmacist may administer the vaccinations or immunizations listed in subdivisions (1) through (5) of this subsection to persons at least 18 years of age if the vaccinations or immunizations are administered under written protocols as defined in 21 NCAC 46 .2507(b)(12) and 21 NCAC 32U .0101(b)(12) and in accordance with the supervising physician's responsibilities as defined in 21 NCAC 46 .2507(e) and 21 NCAC 32U .0101(e), and the physician is licensed in and has a practice physically located in North Carolina:

- (1) Pneumococcal polysaccharide or pneumococcal conjugate vaccines.
- (2) Herpes zoster vaccine.
- (3) Hepatitis B vaccine.
- (4) Meningococcal polysaccharide or meningococcal conjugate vaccines.
- (5) Tetanus-diphtheria, tetanus and diphtheria toxoids and pertussis, tetanus and diphtheria toxoids and acellular pertussis, or tetanus toxoid vaccines. However, a pharmacist shall not administer any of these vaccines if the patient discloses that the patient has an open wound, puncture, or tissue tear.

(c) An immunizing pharmacist may administer the influenza vaccine to persons at least 14 years of age pursuant to 21 NCAC 46 .2507 and 21 NCAC 32U .0101.

(d) An immunizing pharmacist who administers a vaccine or immunization to any patient pursuant to this section shall do all of the following:

- (1) Maintain a record of any vaccine or immunization administered to the patient in a patient profile.
- (2) Within 72 hours after administration of the vaccine or immunization, notify any primary care provider identified by the patient. If the patient does not identify a primary care provider, the immunizing pharmacist shall direct the patient to information describing the benefits to a patient of having a primary care physician, prepared by any of the following:

North Carolina Medical Board, North Carolina Academy of Family Physicians, North Carolina Medical Society, or Community Care of North Carolina.

- (3) Except for influenza vaccines administered under G.S. 90-85.15B(b)(6), access the North Carolina Immunization Registry prior to administering the vaccine or immunization and record any vaccine or immunization administered to the patient in the registry within 72 hours after the administration. In the event the registry is not operable, an immunizing pharmacist shall report as soon as reasonably possible.

§ 90-85.16. Examination.

The license examination shall be given by the Board at least twice each year. The Board shall determine the subject matter of each examination and the place, time and date for administering the examination. The Board shall also determine which persons have passed the examination. The examination shall be designed to determine which applicants can reasonably be expected to safely and properly practice pharmacy.

§ 90-85.17. License renewal.

In accordance with Board regulations, each license to practice pharmacy shall expire on December 31 and shall be renewed annually by filing with the Board on or after December 1 an application for license renewal furnished by the Board, accompanied by the required fee. It shall be unlawful to practice pharmacy more than 60 days after the expiration date without renewing the license. All licensees shall give the Board notice of a change of mailing address or a change of place of employment within 30 days after the change. The Board may require licensees to obtain up to 30 hours of continuing education every two years from Board-approved providers as a condition of license renewal, with a minimum of 10 hours required per year.

§ 90-85.18. Approval of continuing education programs.

The Board shall approve providers of continuing education programs upon finding that the provider is competent to and does offer an educational experience designed to enable those who successfully complete the program to more safely and properly practice pharmacy.

§ 90-85.19. Reinstatement.

Whenever a pharmacist who has not renewed his license for five or more years seeks to renew or reinstate his license, he must appear before the Board and submit evidence that he can safely and properly practice pharmacy.

§ 90-85.20. Licensure without examination.

(a) The Board may issue a license to practice pharmacy, without examination, to any person who is licensed as a pharmacist in another jurisdiction if the applicant shall present satisfactory evidence of possessing the same qualifications as are required of licensees in this State, that he was licensed by examination in such other jurisdiction, and that the standard of competence required by such other jurisdiction is substantially equivalent to that of this State at that time. The Board must be satisfied that a candidate for licensure has a satisfactory understanding of the laws governing the practice of pharmacy and distribution of drugs in this State.

(b) Repealed by Session Laws 1991, c. 125, s. 2.

§ 90-85.21. Pharmacy permit.

(a) In accordance with Board regulations, each pharmacy in North Carolina shall annually register with the Board on a form provided by the Board. The application shall identify the pharmacist-manager of the pharmacy and all pharmacy personnel employed in the pharmacy. All pharmacist-managers shall notify the Board of any change in pharmacy personnel within 30 days of the change. In addition to identifying the pharmacist-manager, a pharmacy may identify a pharmacy permittee's designated agent that the Board shall notify of any investigation of the pharmacy or a pharmacist employed by the pharmacy. The notice shall include the specific reason for the investigation and be given prior to the initiation of any disciplinary proceedings.

(a1) A mobile pharmacy shall register annually with the Board in the manner prescribed in subsection (a) of this section, and the registration shall be renewed annually. A mobile pharmacy shall be considered a single pharmacy and shall not be required to pay a separate registration fee for each location but shall pay the annual registration fee prescribed in G.S. 90-85.24. A mobile pharmacy shall provide the Board with the address of every location from which prescription drugs will be dispensed by the mobile pharmacy.

(b) Each physician who dispenses prescription drugs, for a fee or other charge, shall annually register with the Board on the form provided by the Board, and with the licensing board having jurisdiction over the physician. Such dispensing shall comply in all respects with the relevant laws and regulations that apply to pharmacists governing the distribution of drugs, including packaging, labeling, and record keeping. Authority and responsibility for disciplining physicians who fail to comply with the provisions of this subsection are vested in the licensing board having jurisdiction over the physician. The form provided by the Board under this subsection shall be as follows:

Application For Registration
With The Pharmacy Board
As A Dispensing Physician

1.
Name and Address of Dispensing
Physician

2.
Affix Dispensing Label Here

3. Physician's North Carolina License Number _____

4. Are you currently practicing in a professional association registered with the North Carolina Medical Board?

_____ Yes _____ No. If yes, enter the name and registration number of the professional corporation:

5. I certify that the information is correct and complete.

Signature

Date

§ 90-85.21A. Applicability to out-of-state operations.

(a) Any pharmacy operating outside the State which ships, mails, or delivers in any manner a dispensed legend drug into this State shall annually register with the Board on a form provided by the Board. In order to satisfy the registration requirements of this subsection, a pharmacy shall certify that the pharmacy employs a pharmacist who is responsible for dispensing, shipping, mailing, or delivering dispensed legend drugs into this State or in a state approved by the Board and has met requirements for licensure equivalent to the requirements for licensure in this State. In order for the pharmacy's certification of the pharmacists to be valid, a pharmacist shall agree in writing, on a form approved by the Board, to be subject to the jurisdiction of the Board, the provisions of this Article, and the rules adopted by the Board. If the Board revokes this certification, the pharmacy shall no longer have authority to dispense, ship, mail, or deliver in any manner a dispensed legend drug into this State.

(b) Any pharmacy subject to this section shall at all times maintain a valid unexpired license, permit, or registration necessary to conduct such pharmacy in compliance with the laws of the state in which such pharmacy is located. No pharmacy operating outside the State may ship, mail, or deliver in any manner a dispensed legend drug into this State unless such drug is lawfully dispensed by a licensed pharmacist in the state where the pharmacy is located.

(c) The Board shall be entitled to charge and collect not more than five hundred dollars (\$500.00) for original registration of a pharmacy under this section, and for renewal thereof, not more than two hundred dollars (\$200.00), and for reinstatement thereof, not more than two hundred dollars (\$200.00).

(d) The Board may deny a nonresident pharmacy registration upon a determination that the pharmacy has a record of being formally disciplined in its home state for violations that relate to the compounding or dispensing of legend drugs and presents a threat to the public health and safety.

(e) Except as otherwise provided in this subsection, the Board may adopt rules to protect the public health and safety that are necessary to implement this section. Notwithstanding G.S. 90-85.6, the Board shall not adopt rules pertaining to the shipment, mailing, or other manner of delivery of dispensed legend drugs by pharmacies required to register under this section that are more restrictive than federal statutes or regulations governing the delivery of prescription medications by mail or common carrier. A pharmacy required to register under this section shall comply with rules adopted pursuant to this section.

(f) The Board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of this section.

§ 90-85.21B. Unlawful practice of pharmacy.

It shall be unlawful for any person, firm, or corporation not licensed or registered under the provisions of this Article to:

- (1) Use in a trade name, sign, letter, or advertisement any term, including "drug", "pharmacy", "prescription drugs", "prescription", "Rx", or "apothecary", that would imply that the person, firm, or corporation is licensed or registered to practice pharmacy in this State.
- (2) Hold himself or herself out to others as a person, firm, or corporation licensed or registered to practice pharmacy in this State.

§ 90-85.22. Device and medical equipment permits.

(a) Devices. – Each place, whether located in this State or out-of-state, where devices are dispensed or delivered to the user in this State shall register annually with the Board on a form provided by the Board and obtain a device permit. A business that has a current pharmacy permit does not have to register and obtain a device permit. Records of devices dispensed in pharmacies or other places shall be kept in accordance with rules adopted by the Board.

(b) Medical Equipment. – Each place, whether located in this State or out-of-state, that delivers medical equipment to the user of the equipment in this State shall register annually with the Board on a form provided by the Board and obtain a medical equipment permit. A business that has a current pharmacy permit or a current device permit does not have to register and obtain a medical equipment permit. Medical equipment shall be delivered only in accordance with requirements established by rules adopted by the Board.

(c) This section shall not apply to either of the following:

- (1) A pharmaceutical manufacturer registered with the Food and Drug Administration.
- (2) A wholly owned subsidiary of a pharmaceutical manufacturer registered with the Food and Drug Administration.

§ 90-85.23. License and permit to be displayed.

Every pharmacist-manager's license, every permit, and every current renewal shall be conspicuously posted in the place of business owned by or employing the person to whom it is issued. The licenses and every last renewal of all other pharmacists employed in the pharmacy must be readily available for inspection by agents of the Board. Failure to display any license or permit and the most recent renewal shall be a violation of this Article and each day that the license or permit or renewal is not displayed shall be a separate and distinct offense.

§ 90-85.24. Fees collectible by Board.

(a) The Board of Pharmacy shall be entitled to charge and collect not more than the following fees:

- (1) For the examination of an applicant for license as a pharmacist, two hundred dollars (\$200.00), plus the cost of the test material;
- (2) For renewing the license as a pharmacist, one hundred thirty-five dollars (\$135.00);
- (3) For reinstatement of a license as a pharmacist, one hundred thirty-five dollars (\$135.00);
- (4) For annual registration of a pharmacy technician, thirty dollars (\$30.00);
- (5) For reinstatement of a registration of a pharmacy technician, thirty dollars (\$30.00);
- (6) For licenses without examination as provided in G.S. 90-85.20, original, six hundred dollars (\$600.00);
- (7) For original registration of a pharmacy, five hundred dollars (\$500.00), and renewal thereof, two hundred dollars (\$200.00);
- (8) For reinstatement of the registration of a pharmacy, two hundred dollars (\$200.00);
- (9) For annual registration as a dispensing physician under G.S. 90-85.21(b), seventy-five dollars (\$75.00);
- (10) For reinstatement of registration as a dispensing physician, seventy-five dollars (\$75.00);
- (11) For annual registration as a dispensing physician assistant under G.S. 90-18.1, seventy-five dollars (\$75.00);
- (12) For reinstatement of registration as a dispensing physician assistant, seventy-five dollars (\$75.00);
- (13) For annual registration as a dispensing nurse practitioner under G.S. 90-18.2, seventy-five dollars (\$75.00);
- (14) For reinstatement of registration as a dispensing nurse practitioner, seventy-five dollars (\$75.00);
- (15) For registration of any change in pharmacist personnel as required under G.S. 90-85.21(a), thirty-five dollars (\$35.00);
- (16) For a duplicate of any license, permit, or registration issued by the Board, twenty-five dollars (\$25.00);

- (17) For original registration to dispense devices, deliver medical equipment, or both, five hundred dollars (\$500.00);
- (18) For renewal of registration to dispense devices, deliver medical equipment, or both, two hundred dollars (\$200.00);
- (19) For reinstatement of a registration to dispense devices, deliver medical equipment, or both, two hundred dollars (\$200.00).

(b) All fees under this section shall be paid before any applicant may be admitted to examination or the applicant's name may be placed upon the register of pharmacists or before any license or permit, or any renewal or reinstatement thereof, may be issued by the Board.

§ 90-85.25. Disasters and emergencies.

(a) In the event of an occurrence which the Governor of the State of North Carolina has declared a state of emergency, or in the event of an occurrence for which a county or municipality has enacted an ordinance to deal with states of emergency under G.S. 166A-19.31, or to protect the public health, safety, or welfare of its citizens under G.S. 160A-174(a) or G.S. 153A-121(a), as applicable, the Board may waive the requirements of this Article in order to permit the provision of drugs, devices, and professional services to the public.

(b) The pharmacist in charge of a pharmacy shall report within 10 days to the Board any disaster, accident, theft, or emergency which may affect the strength, purity, or labeling of drugs and devices in the pharmacy.

§ 90-85.26. Prescription orders preserved.

(a) Every pharmacist-manager of a pharmacy shall maintain for at least three years the original of every prescription order and refill compounded or dispensed at the pharmacy except for prescription orders recorded in a patient's medical record. An automated data processing system may be used for the storage and retrieval of refill information for prescriptions pursuant to the regulations of the Board. A pharmacist-manager may comply with this section by capturing and maintaining an electronic image of a prescription order or refill. An electronic image of a prescription order or refill shall constitute the original prescription order, and a hard copy of the prescription order or refill is not required to be maintained. If a pharmacist-manager elects to maintain prescription orders by capturing electronic images of prescription orders or refills, the pharmacy's computer system must be capable of maintaining, printing, and providing in an electronic or paper format, upon a request by the Board, all of the information required by this Chapter or rules adopted pursuant to this Chapter within 48 hours of such a request.

(b) Every pharmacy permittee's designated agent shall maintain documentation of alleged medication errors and incidents described in G.S. 90-85.47(e)(1) for which the pharmacy permittee has knowledge.

§ 90-85.26A. Clinical pharmacist practitioners subcommittee.

The North Carolina Board of Pharmacy shall appoint and maintain a subcommittee of the Board consisting of four licensed pharmacists to work jointly with the subcommittee of the North Carolina Medical Board to develop rules to govern the provision of drug therapy management by clinical pharmacist practitioners and to determine reasonable fees to accompany an application for approval or renewal of such approval as provided in G.S. 90-6. The rules developed by this subcommittee shall govern the performance of acts by clinical pharmacist practitioners and shall become effective when they have been adopted by both Boards.

§ 90-85.27. Definitions.

As used in G.S. 90-85.28 through G.S. 90-85.31:

- (1) "Equivalent drug product" means a drug product which has the same established name, active ingredient, strength, quantity, and dosage form, and which is therapeutically equivalent to the drug product identified in the prescription;
- (2) "Established name" has the meaning given in section 502(e)(3) of the Federal Food, Drug and Cosmetic Act, 21 U.S.C. 352(e)(3);
- (3) "Good manufacturing practice" has the meaning given it in Part 211 of Chapter 1 of Title 21 of the Code of Federal Regulations;
- (4) "Manufacturer" means the actual manufacturer of the finished dosage form of the drug;
- (4a) "Narrow therapeutic index drugs" means those pharmaceuticals having a narrowly defined range between risk and benefit. Such drugs have less than a twofold difference in the minimum toxic concentration and minimum effective concentration in the blood or are those drug product formulations that exhibit limited or erratic absorption, formulation-dependent bioavailability, and wide inpatient pharmacokinetic variability that requires blood-level monitoring. Drugs identified as having narrow therapeutic indices shall be designated by the North Carolina Secretary of Health and Human Services upon the advice of the State Health Director, North Carolina Board of Pharmacy, and North Carolina Medical Board, as narrow therapeutic index drugs and shall be subject to the provisions of G.S. 90-85.28(b1). The

§ 90-85.31. Prescriber and pharmacist liability not extended.

The selection of an equivalent drug product pursuant to this Article shall impose no greater liability upon the pharmacist for selecting the dispensed drug product or upon the prescriber of the same than would be incurred by either for dispensing the drug product specified in the prescription.

§ 90-85.32. Rules pertaining to filling, refilling, transfer, and mail or common-carrier delivery of prescription orders.

(a) Except as otherwise provided in this section, the Board may adopt rules governing the filling, refilling and transfer of prescription orders not inconsistent with other provisions of law regarding the distribution of drugs and devices. The rules shall assure the safe and secure distribution of drugs and devices. Prescriptions marked PRN shall not be refilled more than one year after the date issued by the prescriber unless otherwise specified.

(b) Notwithstanding G.S. 90-85.6, the Board shall not adopt rules pertaining to the shipment, mailing, or other manner of delivery of dispensed legend drugs that are more restrictive than federal statutes or regulations governing the delivery of prescription medications by mail or common carrier.

§ 90-85.33. Unit dose medication systems.

The Board may adopt regulations governing pharmacists providing unit dose medication systems. The regulations shall ensure the safe and proper distribution of drugs in the patient's best health interests.

§ 90-85.34. Unique pharmacy practice.

Consistent with the provisions of this Article, the Board may regulate unique pharmacy practices including, but not limited to, nuclear pharmacy and clinical pharmacy, to ensure the best interests of patient health and safety.

§ 90-85.34A. Public health pharmacy practice.

(a) A registered nurse in a local health department clinic may dispense prescription drugs and devices, other than controlled substances as defined in G.S. 90-87, under the following conditions:

- (1) The registered nurse has training acceptable to the Board in the labeling and packaging of prescription drugs and devices;
- (2) Dispensing by the registered nurse shall occur only at a local health department clinic;
- (3) Only prescription drugs and devices contained in a formulary recommended by the Department of Health and Human Services and approved by the Board shall be dispensed;
- (4) The local health department clinic shall obtain a pharmacy permit in accordance with G.S. 90-85.21;
- (5) Written procedures for the storage, packaging, labeling and delivery of prescription drugs and devices shall be approved by the Board; and
- (6) The pharmacist-manager, or another pharmacist at his direction, shall review dispensing records at least weekly, provide consultation where appropriate, and be responsible to the Board for all dispensing activity at the local health department clinic.

(b) This section is applicable only to prescriptions issued on behalf of persons receiving local health department clinic services and issued by an individual authorized by law to prescribe drugs and devices.

(c) This section does not affect the practice of nurse practitioners pursuant to G.S. 90-18.2 or of physician assistants pursuant to G.S. 90-18.1.

§ 90-85.35. Availability of patient records.

Pharmacists employed in health care facilities shall have access to patient records maintained by those facilities when necessary for the pharmacist to provide pharmaceutical services. The pharmacist shall make appropriate entries in patient records.

§ 90-85.36. Availability of pharmacy records.

(a) Except as provided in subsections (b) and (c) below, written or electronic prescription orders on file in a pharmacy or other place where prescriptions are dispensed are not public records and any person having custody of or access to the prescription orders may divulge the contents or provide a copy only to the following persons:

- (1) An adult patient for whom the prescription was issued or a person who is legally appointed guardian of that person;
- (2) An emancipated minor patient for whom the prescription order was issued or a person who is the legally appointed guardian of that patient;

- (3) An unemancipated minor patient for whom the prescription order was issued when the minor's consent is sufficient to authorize treatment of the condition for which the prescription was issued;
- (4) A parent or person in loco parentis of an unemancipated minor patient for whom the prescription order was issued when the minor's consent is not sufficient to authorize treatment for the condition for which the prescription is issued;
- (5) The licensed practitioner who issued the prescription;
- (6) The licensed practitioner who is treating the patient for whom the prescription was issued;
- (7) A pharmacist who is providing pharmacy services to the patient for whom the prescription was issued;
- (8) Anyone who presents a written authorization for the release of pharmacy information signed by the patient or his legal representative;
- (9) Any person authorized by subpoena, court order or statute;
- (10) Any firm, association, partnership, business trust, corporation or company charged by law or by contract with the responsibility of providing for or paying for medical care for the patient for whom the prescription order was issued;
- (11) A member or designated employee of the Board;
- (12) The executor, administrator or spouse of a deceased patient for whom the prescription order was issued;
- (13) Researchers and surveyors who have approval from the Board. The Board shall issue this approval when it determines that there are adequate safeguards to protect the confidentiality of the information contained in the prescription orders and that the researchers or surveyors will not publicly disclose any information that identifies any person;
- (14) The person owning the pharmacy or his authorized agent; or
- (15) A HIPAA covered entity, or business associate described in 45 C.F.R. § 160.103, or a health care provider who is not a covered entity, for purposes of treatment, payment, or health care operations to the extent that disclosure is permitted or required by applicable State or federal law.

(b) A pharmacist may disclose any information to any person only when he reasonably determines that the disclosure is necessary to protect the life or health of any person.

(c) Records required to be kept by G.S. 90-93(d) (Schedule V) are not public records and shall be disclosed at the pharmacist's discretion.

§ 90-85.37. Embargo.

Notwithstanding any other provisions of law, whenever an authorized representative of the Board has reasonable cause to believe that any drug or device presents a danger to the public health, he shall affix to the drug or device a notice that the article is suspected of being dangerous to the public health and warning all persons not to remove or dispose of the article. Whenever an authorized representative of the Board has reasonable cause to believe that any drug or device presents a danger to the public health and that there are reasonable grounds to believe that it might be disposed of pending a judicial resolution of the matter, he shall seize the article and take it to a safe and secure place. When an article has been embargoed under this section, the Board shall, as soon as practical, file a petition in Orange County District Court for a condemnation order for such article. If the judge determines after hearing, that the article is not dangerous to the public health, the Board shall direct the immediate removal of the tag or other marking, and where appropriate, shall direct that the article be returned to its owner. If the judge finds the article is dangerous to the public health, he shall order its destruction at the owner's expense and under the Board's supervision. If the judge determines that the article is dangerous to the public health, he shall order the owner of the article to pay all court costs, reasonable attorney's fees, storage fees, and all other costs incident to the proceeding.

§ 90-85.38. Disciplinary authority.

(a) The Board may, in accordance with Chapter 150B of the General Statutes, issue a letter of reprimand or suspend, restrict, revoke, or refuse to grant or renew a license to practice pharmacy, or require licensees to successfully complete remedial education if the licensee has done any of the following:

- (1) Made false representations or withheld material information in connection with securing a license or permit.
- (2) Been found guilty of or plead guilty or nolo contendere to any felony in connection with the practice of pharmacy or the distribution of drugs.
- (3) Indulged in the use of drugs to an extent that renders the pharmacist unfit to practice pharmacy.
- (4) Made false representations in connection with the practice of pharmacy that endanger or are likely to endanger the health or safety of the public, or that defraud any person.

- (5) Developed a physical or mental disability that renders the pharmacist unfit to practice pharmacy with reasonable skill, competence and safety to the public.
- (6) Failed to comply with the laws governing the practice of pharmacy and the distribution of drugs.
- (7) Failed to comply with any provision of this Article or rules adopted by the Board.
- (8) Engaged in, or aided and abetted an individual to engage in, the practice of pharmacy without a license.
- (9) Been negligent in the practice of pharmacy.

(b) The Board, in accordance with Chapter 150B of the General Statutes, may suspend, revoke, or refuse to grant or renew any permit for the same conduct as stated in subsection (a). The administration of required lethal substances or any assistance whatsoever rendered with an execution under Article 19 of Chapter 15 of the General Statutes does not constitute the practice of pharmacy under this Article, and any assistance rendered with an execution under Article 19 of Chapter 15 of the General Statutes shall not be the cause for disciplinary action under this Article.

(c) Any license or permit obtained through false representation or withholding of material information shall be void and of no effect.

§ 90-85.39. Injunctive authority.

The Board may apply to any court for an injunction to prevent violations of this Article or of any rules enacted pursuant to it. The court is empowered to grant the injunctions regardless of whether criminal prosecution or other action has been or may be instituted as a result of the violation.

§ 90-85.40. Violations.

(a) It shall be unlawful for any owner or manager of a pharmacy or other place to allow or cause anyone other than a pharmacist to dispense or compound any prescription drug unless that person is a pharmacy technician or a pharmacy student who is enrolled in a school of pharmacy approved by the Board and is working under the supervision of a pharmacist.

(b) Every person lawfully authorized to compound or dispense prescription drugs shall comply with all the laws and regulations governing the labeling and packaging of such drugs by pharmacists.

(c) It shall be unlawful for any person not licensed as a pharmacist to compound or dispense any prescription drug, unless that person is a pharmacy technician or a pharmacy student who is enrolled in a school of pharmacy approved by the Board and is working under the supervision of a pharmacist.

(d) It shall be unlawful for any person to manage any place of business where devices are dispensed or sold at retail without a permit as required by this Article.

(d1) It is unlawful for a person to own or manage a place of business from which medical equipment is delivered without a permit as required by this Article.

(e) It shall be unlawful for any person without legal authorization to dispose of an article that has been embargoed under this Article.

(f) It shall be unlawful to violate any provision of this Article or of any rules or regulations enacted pursuant to it.

(g) This Article shall not be construed to prohibit any person from performing an act that person is authorized to perform pursuant to North Carolina law. Health care providers who are authorized to prescribe drugs without supervision are authorized to dispense drugs without supervision.

(h) A violation of this Article shall be a Class 1 misdemeanor.

§ 90-85.41. Board agreements with special peer review organizations for impaired pharmacy personnel.

(a) The North Carolina Board of Pharmacy may, under rules adopted by the Board in compliance with Chapter 150B of the General Statutes, enter into agreements with special impaired pharmacy personnel peer review organizations. Peer review activities to be covered by such agreements shall include investigation, review and evaluation of records, reports, complaints, litigation, and other information about the practices and practice patterns of pharmacy personnel licensed or registered by the Board, as such matters may relate to impaired pharmacy personnel. Special impaired pharmacy personnel peer review organizations may include a statewide supervisory committee and various regional and local components or subgroups.

(b) Agreements authorized under this section shall include provisions for the impaired pharmacy personnel peer review organizations to receive relevant information from the Board and other sources, conduct any investigation, review, and evaluation in an expeditious manner, provide assurance of confidentiality of nonpublic information and of the peer review process, make reports of investigations and evaluations to the Board, and to do other related activities for operating and promoting a coordinated and effective peer review process. The agreements shall include provisions assuring basic due process for pharmacy personnel that become involved.

(c) The impaired pharmacy personnel peer review organizations that enter into agreements with the Board shall establish and maintain a program for impaired pharmacy personnel licensed or registered by the Board

for the purpose of identifying, reviewing, and evaluating the ability of those pharmacists to function as pharmacists, and pharmacy technicians to function as pharmacy technicians, and to provide programs for treatment and rehabilitation. The Board may provide funds for the administration of these impaired pharmacy personnel peer review programs. The Board shall adopt rules to apply to the operation of impaired pharmacy personnel peer review programs, with provisions for: (i) definitions of impairment; (ii) guidelines for program elements; (iii) procedures for receipt and use of information of suspected impairment; (iv) procedures for intervention and referral; (v) arrangements for monitoring treatment, rehabilitation, posttreatment support, and performance; (vi) reports of individual cases to the Board; (vii) periodic reporting of statistical information; and (viii) assurance of confidentiality of nonpublic information and of the peer review process.

(d) Upon investigation and review of a pharmacist licensed by the Board, or a pharmacy technician registered with the Board, or upon receipt of a complaint or other information, an impaired pharmacy personnel peer review organization that enters into a peer review agreement with the Board shall report immediately to the Board detailed information about any pharmacist licensed or pharmacy technician registered by the Board, if:

- (1) The pharmacist or pharmacy technician constitutes an imminent danger to the public or himself or herself.
- (2) The pharmacist or pharmacy technician refuses to cooperate with the program, refuses to submit to treatment, or is still impaired after treatment and exhibits professional incompetence.
- (3) It reasonably appears that there are other grounds for disciplinary action.

(e) Any confidential patient information and other nonpublic information acquired, created, or used in good faith by an impaired pharmacy personnel peer review organization pursuant to this section shall remain confidential and shall not be subject to discovery or subpoena in a civil case. No person participating in good faith in an impaired pharmacy personnel peer review program developed under this section shall be required in a civil case to disclose any information (including opinions, recommendations, or evaluations) acquired or developed solely in the course of participating in the program.

(f) Impaired pharmacy personnel peer review activities conducted in good faith pursuant to any program developed under this section shall not be grounds for civil action under the laws of this State, and the activities are deemed to be State directed and sanctioned and shall constitute "State action" for the purposes of application of antitrust laws.

§ 90-85.42. Reserved for future codification purposes.

§ 90-85.43. Reserved for future codification purposes.

Part 2. Drug, Supplies, and Medical Device Repository Program.

§ 90-85.44. Drug, Supplies, and Medical Device Repository Program established.

(a) Definitions. – As used in this section unless the context clearly requires otherwise, the following definitions apply:

- (1) Board. – As defined in G.S. 90-85.3.
- (2) Dispense. – As defined in G.S. 90-85.3.
- (3) Drug. – As defined in G.S. 90-85.3.
- (4) Eligible donor. – The following are eligible donors under the Program:
 - a. A patient or the patient's family member.
 - b. A manufacturer, wholesaler, or supplier of drugs, supplies, or medical devices.
 - c. A pharmacy, free clinic, hospital, or a hospice care program.
- (5) Eligible patient. – An uninsured or underinsured patient who meets the eligibility criteria established by the Board, free clinic, or pharmacy.
- (6) Free clinic. – A private, nonprofit, community-based organization that provides health care services at little or no charge to low-income, uninsured, and underinsured persons through the use of volunteer health care professionals.
- (7) Medical device. – A device as defined in G.S. 90-85.3(e).
- (8) Pharmacist. – As defined in G.S. 90-85.3.
- (9) Pharmacy. – As defined in G.S. 90-85.3.
- (10) Practitioner. – A physician or other provider of health services licensed or otherwise permitted to distribute, dispense, or administer drugs, supplies, or medical devices.
- (11) Program. – The Drug, Supplies, and Medical Device Repository Program established under this act.
- (12) Supplies. – Supplies associated with or necessary for the administration of a drug.

(b) Program Purpose. – The Board shall establish and administer the Program. The purpose of the Program is to allow an eligible donor to donate unused drugs, supplies, and medical devices to uninsured and underinsured patients in this State. The unused drugs, supplies, and medical devices shall be donated to a free

clinic or pharmacy that elects to participate in the Program. A free clinic that receives a donated unused drug, supplies, or medical device under the Program may distribute the drug, supplies, or medical device to another free clinic or pharmacy for use under the Program.

(c) Requirements of Participating Pharmacists or Free Clinics. – A pharmacist may accept and dispense drugs, supplies, and medical devices donated to the Program to eligible patients if all of the following requirements are met:

- (1) The drug, supplies, or medical device is in the original, unopened, sealed, and tamper-evident packaging or, if packaged in single-unit doses, the single-unit dose packaging is unopened.
- (2) The pharmacist has determined that the drug, supplies, or medical device is safe for redistribution.
- (3) The drug bears an expiration date that is later than six months after the date that the drug was donated.
- (4) The drug, supplies, or medical device is not adulterated or misbranded, as determined by a pharmacist.
- (5) The drug, supplies, or medical device is prescribed by a practitioner for use by an eligible patient and is dispensed by a pharmacist.

(d) Fee. – A participating pharmacist or free clinic shall not resell a drug, supplies, or a medical device donated to the Program. A pharmacist or free clinic may charge an eligible patient a handling fee to receive a donated drug, supplies, or medical device, which shall not exceed the amount specified in rules adopted by the Board.

(e) Program Participation Voluntary. – Nothing in this section requires a free clinic or pharmacy to participate in the Program.

(f) Eligible Patient. – The Board shall establish eligibility criteria for individuals to receive donated drugs, supplies, or medical devices. Board eligibility criteria shall provide that individuals meeting free clinic or pharmacy eligibility criteria are eligible patients. Dispensing shall be prioritized to patients who are uninsured or underinsured. Dispensing to other patients shall be permitted if an uninsured or underinsured patient is not available.

(g) Rules. – The Board shall adopt rules necessary for the implementation of the Program. Rules adopted by the Board shall provide for the following:

- (1) Requirements for free clinics and pharmacies to accept and dispense donated drugs, supplies, and medical devices pursuant to the Program, including eligibility criteria, confidentiality of donors, and standards and procedures for a free clinic or pharmacy to accept and safely store and dispense donated drugs, supplies, and medical devices.
- (2) The amount of the maximum handling fee that a free clinic or pharmacy may charge for distributing or dispensing donated drugs, supplies, or medical devices.
- (3) A list of drugs, supplies, and medical devices, arranged either by category or by individual drug, supply, or medical device, that the Program will accept for dispensing.

(h) Immunity. – The following limited immunities apply under the Program:

- (1) Unless a pharmaceutical manufacturer exercises bad faith, the manufacturer is not subject to criminal or civil liability for injury, death, or loss to a person or property for matters related to the donation, acceptance, or dispensing of a drug or medical device manufactured by the manufacturer that is donated by any person under the Program, including liability for failure to transfer or communicate product or consumer information or the expiration date of the donated drug or medical device.
- (2) The following individuals or entities are immune from civil liability for an act or omission that causes injury to or the death of an individual to whom the drug, supplies, or medical device is dispensed under the Program, and no disciplinary action may be taken against a pharmacist or practitioner as long as the drug, supplies, or medical device is donated in accordance with the requirements of this section:
 - a. A pharmacy or free clinic participating in the Program.
 - b. A pharmacist dispensing a drug, supplies, or medical device pursuant to the Program.
 - c. A practitioner administering a drug, supplies, or medical devices pursuant to the Program.
 - d. An eligible donor who has donated a drug, supplies, or a medical device pursuant to the Program.

CHAPTER 90
MEDICINE AND ALLIED OCCUPATIONS
OTHER SELECTED PROVISIONS

Article 1.
Practice of Medicine.
Selected Provisions

* * * * *

§ 90-1.1. Definitions.

The following definitions apply in this Article:

- (1) Board. – The North Carolina Medical Board.
...
- (4) License. – An authorization issued by the Board to a physician or physician assistant to practice medical acts, tasks, or functions.
...
- (5) The practice of medicine or surgery. – Except as otherwise provided by this subdivision, the practice of medicine or surgery, for purposes of this Article, includes any of the following acts:
 - a. Advertising, holding out to the public, or representing in any manner that the individual is authorized to practice medicine in this State.
 - b. Offering or undertaking to prescribe, order, give, or administer any drug or medicine for the use of any other individual.
 - c. Offering or undertaking to prevent or diagnose, correct, prescribe for, administer to, or treat in any manner or by any means, methods, or devices any disease, illness, pain, wound, fracture, infirmity, defect, or abnormal physical or mental condition of any individual, including the management of pregnancy or parturition.
 - d. Offering or undertaking to perform any surgical operation on any individual.
 - e. Using the designation "Doctor," "Doctor of Medicine," "Doctor of Osteopathy," "Doctor of Osteopathic Medicine," "Physician," "Surgeon," "Physician and Surgeon," "Dr.," "M.D.," "D.O.," or any combination thereof in the conduct of any occupation or profession pertaining to the prevention, diagnosis, or treatment of human disease or condition, unless the designation additionally contains the description of or reference to another branch of the healing arts for which the individual holds a valid license in this State or the use of the designation "Doctor" or "Physician" is otherwise specifically permitted by law.
 - f. The performance of any act, within or without this State, described in this subdivision by use of any electronic or other means, including the Internet or telephone.

The administration of required lethal substances or any assistance whatsoever rendered with an execution under Article 19 of Chapter 15 of the General Statutes does not constitute the practice of medicine or surgery.

* * * * *

§ 90-8.2. Appointment of subcommittees.

...

(b) The North Carolina Medical Board shall appoint and maintain a subcommittee of four licensed physicians to work jointly with a subcommittee of the North Carolina Board of Pharmacy to develop rules to govern the performance of medical acts by clinical pharmacist practitioners, including the determination of reasonable fees to accompany an application for approval not to exceed one hundred dollars (\$100.00) and for renewal of approval not to exceed fifty dollars (\$50.00). Rules recommended by the subcommittee shall be adopted in accordance with Chapter 150B of the General Statutes by both the North Carolina Medical Board and the North Carolina Board of Pharmacy and shall not become effective until adopted by both Boards. The North Carolina Medical Board shall have responsibility for ensuring compliance with these rules.

* * * * *

§ 90-18. Practicing without license; penalties.

(a) No person shall perform any act constituting the practice of medicine or surgery, as defined in this Article, or any of the branches thereof, unless the person shall have been first licensed and registered so to do in the manner provided in this Article. Any person who practices medicine or surgery without being duly licensed and registered, as provided in this Article, shall not be allowed to maintain any action to collect any fee for such services. Any person so practicing without being duly licensed and registered in this State shall be guilty of a Class 1 misdemeanor. Any person so practicing without being duly licensed and registered in this State and who is falsely representing himself or herself in a manner as being licensed or registered under this Article or any Article of this Chapter shall be guilty of a Class I felony. Any person so practicing without being duly licensed and registered in this State and who is an out-of-state practitioner shall be guilty of a Class I felony. Any person who has a license or approval under this Article that is inactive due solely to the failure to complete annual registration in a timely fashion as required by this Article or any person who is licensed, registered, and practicing under any other Article of this Chapter shall be guilty of a Class 1 misdemeanor.

(b) Repealed by Session Laws 2007-346, s. 23, effective October 1, 2007.

(c) The following shall not constitute practicing medicine or surgery as defined in this Article:

(3) The practice of pharmacy by any legally licensed pharmacist engaged in the practice of pharmacy.

(3a) The provision of drug therapy management by a licensed pharmacist engaged in the practice of pharmacy pursuant to an agreement that is physician, pharmacist, patient, and disease specific when performed in accordance with rules and rules developed by a joint subcommittee of the North Carolina Medical Board and the North Carolina Board of Pharmacy and approved by both Boards. Drug therapy management shall be defined as: (i) the implementation of predetermined drug therapy which includes diagnosis and product selection by the patient's physician; (ii) modification of prescribed drug dosages, dosage forms, and dosage schedules; and (iii) ordering tests; (i), (ii), and (iii) shall be pursuant to an agreement that is physician, pharmacist, patient, and disease specific.

§ 90-18.1. Limitations on physician assistants.

(a) Any person who is licensed under the provisions of G.S. 90-9.3 to perform medical acts, tasks, and functions as an assistant to a physician may use the title "physician assistant". Any other person who uses the title in any form or holds out to be a physician assistant or to be so licensed, shall be deemed to be in violation of this Article.

(b) Physician assistants are authorized to write prescriptions for drugs under the following conditions:

- (1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to write prescriptions with such limitations as the Board may determine to be in the best interest of patient health and safety.
- (2) The physician assistant holds a current license issued by the Board.
- (3) The North Carolina Medical Board has assigned an identification number to the physician assistant which is shown on the written prescription.
- (4) The supervising physician has provided to the physician assistant written instructions about indications and contraindications for prescribing drugs and a written policy for periodic review by the physician of the drugs prescribed.

(c) Physician assistants are authorized to compound and dispense drugs under the following conditions:

- (1) The function is performed under the supervision of a licensed pharmacist.
- (2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.
- (3) The physician assistant holds a current license issued by the Board.

(d) Physician assistants are authorized to order medications, tests and treatments in hospitals, clinics, nursing homes, and other health facilities under the following conditions:

- (1) The North Carolina Medical Board has adopted regulations governing the approval of individual physician assistants to order medications, tests, and treatments with such limitations as the Board may determine to be in the best interest of patient health and safety.
- (2) The physician assistant holds a current license issued by the Board.
- (3) The supervising physician has provided to the physician assistant written instructions about ordering medications, tests, and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, test, or treatment is ordered.
- (4) The hospital or other health facility has adopted a written policy, approved by the medical staff after consultation with the nursing administration, about ordering medications, tests,

and treatments, including procedures for verification of the physician assistants' orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.

(e) Any prescription written by a physician assistant or order given by a physician assistant for medications, tests, or treatments shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant and the supervising physician shall be responsible for authorizing the prescription or order.

(e1) Any medical certification completed by a physician assistant for a death certificate shall be deemed to have been authorized by the physician approved by the Board as the supervisor of the physician assistant, and the supervising physician shall be responsible for authorizing the completion of the medical certification.

(f) Any registered nurse or licensed practical nurse who receives an order from a physician assistant for medications, tests, or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician.

(g) Any person who is licensed under G.S. 90-9.3 to perform medical acts, tasks, and functions as an assistant to a physician shall comply with each of the following:

- (1) Maintain a current and active license to practice in this State.
- (2) Maintain an active registration with the Board.
- (3) Have a current Intent to Practice form filed with the Board.

(h) A physician assistant serving active duty in the Armed Forces of the United States is exempt from the requirements of subdivision (g)(3) of this section.

(i) A physician assistant's license shall become inactive any time the holder fails to comply with the requirements of subsection (g) of this section. A physician assistant with an inactive license shall not practice medical acts, tasks, or functions. The Board shall retain jurisdiction over the holder of the inactive license.

§ 90-18.2. Limitations on nurse practitioners.

(a) Any nurse approved under the provisions of G.S. 90-18(14) to perform medical acts, tasks or functions may use the title "nurse practitioner." Any other person who uses the title in any form or holds out to be a nurse practitioner or to be so approved, shall be deemed to be in violation of this Article.

(b) Nurse practitioners are authorized to write prescriptions for drugs under the following conditions:

- (1) The North Carolina Medical Board and Board of Nursing have adopted regulations developed by a joint subcommittee governing the approval of individual nurse practitioners to write prescriptions with such limitations as the boards may determine to be in the best interest of patient health and safety;
- (2) The nurse practitioner has current approval from the boards;
- (3) The North Carolina Medical Board has assigned an identification number to the nurse practitioner which is shown on the written prescription; and
- (4) The supervising physician has provided to the nurse practitioner written instructions about indications and contraindications for prescribing drugs and a written policy for periodic review by the physician of the drugs prescribed.

(c) Nurse practitioners are authorized to compound and dispense drugs under the following conditions:

- (1) The function is performed under the supervision of a licensed pharmacist; and
- (2) Rules and regulations of the North Carolina Board of Pharmacy governing this function are complied with.

(d) Nurse practitioners are authorized to order medications, tests and treatments in hospitals, clinics, nursing homes and other health facilities under the following conditions:

- (1) The North Carolina Medical Board and Board of Nursing have adopted regulations developed by a joint subcommittee governing the approval of individual nurse practitioners to order medications, tests and treatments with such limitations as the boards may determine to be in the best interest of patient health and safety;
- (2) The nurse practitioner has current approval from the boards;
- (3) The supervising physician has provided to the nurse practitioner written instructions about ordering medications, tests and treatments, and when appropriate, specific oral or written instructions for an individual patient, with provision for review by the physician of the order within a reasonable time, as determined by the Board, after the medication, test or treatment is ordered; and
- (4) The hospital or other health facility has adopted a written policy, approved by the medical staff after consultation with the nursing administration, about ordering medications, tests and treatments, including procedures for verification of the nurse practitioners' orders by nurses and other facility employees and such other procedures as are in the interest of patient health and safety.

(e) Any prescription written by a nurse practitioner or order given by a nurse practitioner for medications, tests or treatments shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner and such supervising physician shall be responsible for authorizing such prescription or order.

(e1) Any medical certification completed by a nurse practitioner for a death certificate shall be deemed to have been authorized by the physician approved by the boards as the supervisor of the nurse practitioner, and the supervising physician shall be responsible for authorizing the completion of the medical certification.

(f) Any registered nurse or licensed practical nurse who receives an order from a nurse practitioner for medications, tests or treatments is authorized to perform that order in the same manner as if it were received from a licensed physician.

§ 90-18.2A. Physician assistants receiving, prescribing, or dispensing prescription drugs without charge or fee.

The North Carolina Medical Board shall have sole jurisdiction to regulate and license physician assistants receiving, prescribing, or dispensing prescription drugs under the supervision of a licensed physician without charge or fee to the patient. The provisions of G.S. 90-18.1(c)(1), (c)(2), and G.S. 90-85.21(b), shall not apply to the receiving, prescribing, or dispensing of prescription drugs without charge or fee to the patient.

* * * * *

§ 90-18.4. Limitations on clinical pharmacist practitioners.

(a) Any pharmacist who is approved under the provisions of G.S. 90-18(c)(3a) to perform medical acts, tasks, and functions may use the title "clinical pharmacist practitioner". Any other person who uses the title in any form or holds himself or herself out to be a clinical pharmacist practitioner or to be so licensed shall be deemed to be in violation of this Article.

(b) Clinical pharmacist practitioners are authorized to implement predetermined drug therapy, which includes diagnosis and product selection by the patient's physician, modify prescribed drug dosages, dosage forms, and dosage schedules, and to order laboratory tests pursuant to a drug therapy management agreement that is physician, pharmacist, patient, and disease specific under the following conditions:

- (1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules developed by a joint subcommittee governing the approval of individual clinical pharmacist practitioners to practice drug therapy management with such limitations that the Boards determine to be in the best interest of patient health and safety.
- (2) The clinical pharmacist practitioner has current approval from both Boards.
- (3) The North Carolina Medical Board has assigned an identification number to the clinical pharmacist practitioner which is shown on written prescriptions written by the clinical pharmacist practitioner.
- (4) The drug therapy management agreement prohibits the substitution of a chemically dissimilar drug product by the pharmacist for the product prescribed by the physician without the explicit consent of the physician and includes a policy for periodic review by the physician of the drugs modified pursuant to the agreement or changed with the consent of the physician.

(c) Clinical pharmacist practitioners in hospitals and other health facilities that have an established pharmacy and therapeutics committee or similar group that determines the prescription drug formulary or other list of drugs to be utilized in the facility and determines procedures to be followed when considering a drug for inclusion on the formulary and procedures to acquire a nonformulary drug for a patient may order medications and tests under the following conditions:

- (1) The North Carolina Medical Board and the North Carolina Board of Pharmacy have adopted rules governing the approval of individual clinical pharmacist practitioners to order medications and tests with such limitations as the Boards determine to be in the best interest of patient health and safety.
- (2) The clinical pharmacist practitioner has current approval from both Boards.
- (3) The supervising physician has provided to the clinical pharmacist practitioner written instructions for ordering, changing, or substituting drugs, or ordering tests with provision for review of the order by the physician within a reasonable time, as determined by the Boards, after the medication or tests are ordered.
- (4) The hospital or health facility has adopted a written policy, approved by the medical staff after consultation with nursing administrators, concerning the ordering of medications and tests, including procedures for verification of the clinical pharmacist practitioner's orders by nurses and other facility employees and such other procedures that are in the best interest of patient health and safety.

- (5) Any drug therapy order written by a clinical pharmacist practitioner or order for medications or tests shall be deemed to have been authorized by the physician approved by the Boards as the supervisor of the clinical pharmacist practitioner and the supervising physician shall be responsible for authorizing the prescription order.
- (d) Any registered nurse or licensed practical nurse who receives a drug therapy order from a clinical pharmacist practitioner for medications or tests is authorized to perform that order in the same manner as if the order was received from a licensed physician.

**Article 1B.
Medical Malpractice Actions.**

Selected Provisions

§ 90-21.11. Definitions.

The following definitions apply in this Article:

- (1) Health care provider. – Without limitation, any of the following:
 - a. A person who pursuant to the provisions of Chapter 90 of the General Statutes is licensed, or is otherwise registered or certified to engage in the practice of or otherwise performs duties associated with any of the following: medicine, surgery, dentistry, pharmacy, optometry, midwifery, osteopathy, podiatry, chiropractic, radiology, nursing, physiotherapy, pathology, anesthesiology, anesthesia, laboratory analysis, rendering assistance to a physician, dental hygiene, psychiatry, or psychology.
 - b. A hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.
 - c. Any other person who is legally responsible for the negligence of a person described by sub-subdivision a. of this subdivision, a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.
 - d. Any other person acting at the direction or under the supervision of a person described by sub-subdivision a. of this subdivision, a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes.
- (2) Medical malpractice action. – Either of the following:
 - a. A civil action for damages for personal injury or death arising out of the furnishing or failure to furnish professional services in the performance of medical, dental, or other health care by a health care provider.
 - b. A civil action against a hospital, a nursing home licensed under Chapter 131E of the General Statutes, or an adult care home licensed under Chapter 131D of the General Statutes for damages for personal injury or death, when the civil action (i) alleges a breach of administrative or corporate duties to the patient, including, but not limited to, allegations of negligent credentialing or negligent monitoring and supervision and (ii) arises from the same facts or circumstances as a claim under sub-subdivision a. of this subdivision.

§ 90-21.12. Standard of health care.

(a) Except as provided in subsection (b) of this section, in any medical malpractice action as defined in G.S. 90-21.11(2)(a), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the care of such health care provider was not in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities under the same or similar circumstances at the time of the alleged act giving rise to the cause of action; or in the case of a medical malpractice action as defined in G.S. 90-21.11(2)(b), the defendant health care provider shall not be liable for the payment of damages unless the trier of fact finds by the greater weight of the evidence that the action or inaction of such health care provider was not in accordance with the standards of practice among similar health care providers situated in the same or similar communities under the same or similar circumstances at the time of the alleged act giving rise to the cause of action.

(b) In any medical malpractice action arising out of the furnishing or the failure to furnish professional services in the treatment of an emergency medical condition, as the term "emergency medical condition" is defined in 42 U.S.C. § 1395dd(e)(1)(A), the claimant must prove a violation of the standards of practice set forth in subsection (a) of this section by clear and convincing evidence.

§ 90-21.13. Informed consent to health care treatment or procedure.

(a) No recovery shall be allowed against any health care provider upon the grounds that the health care treatment was rendered without the informed consent of the patient or other person authorized to give consent for the patient where:

- (1) The action of the health care provider in obtaining the consent of the patient or other person authorized to give consent for the patient was in accordance with the standards of practice among members of the same health care profession with similar training and experience situated in the same or similar communities; and
- (2) A reasonable person, from the information provided by the health care provider under the circumstances, would have a general understanding of the procedures or treatments and of the usual and most frequent risks and hazards inherent in the proposed procedures or treatments which are recognized and followed by other health care providers engaged in the same field of practice in the same or similar communities; or
- (3) A reasonable person, under all the surrounding circumstances, would have undergone such treatment or procedure had he been advised by the health care provider in accordance with the provisions of subdivisions (1) and (2) of this subsection.

(b) A consent which is evidenced in writing and which meets the foregoing standards, and which is signed by the patient or other authorized person, shall be presumed to be a valid consent. This presumption, however, may be subject to rebuttal only upon proof that such consent was obtained by fraud, deception or misrepresentation of a material fact. A consent that meets the foregoing standards, that is given by a patient, or other authorized person, who under all the surrounding circumstances has capacity to make and communicate health care decisions, is a valid consent.

(c) The following persons, in the order indicated, are authorized to consent to medical treatment on behalf of a patient who is comatose or otherwise lacks capacity to make or communicate health care decisions:

- (1) A guardian of the patient's person, or a general guardian with powers over the patient's person, appointed by a court of competent jurisdiction pursuant to Article 5 of Chapter 35A of the General Statutes; provided that, if the patient has a health care agent appointed pursuant to a valid health care power of attorney, the health care agent shall have the right to exercise the authority to the extent granted in the health care power of attorney and to the extent provided in G.S. 32A-19(a) unless the Clerk has suspended the authority of that health care agent in accordance with G.S. 35A-1208(a);
- (2) A health care agent appointed pursuant to a valid health care power of attorney, to the extent of the authority granted;
- (3) An attorney-in-fact, with powers to make health care decisions for the patient, appointed by the patient pursuant to Article 1 or Article 2 of Chapter 32A of the General Statutes, to the extent of the authority granted;
- (4) The patient's spouse;
- (5) A majority of the patient's reasonably available parents and children who are at least 18 years of age;
- (6) A majority of the patient's reasonably available siblings who are at least 18 years of age; or
- (7) An individual who has an established relationship with the patient, who is acting in good faith on behalf of the patient, and who can reliably convey the patient's wishes.

(c1) If none of the persons listed under subsection (c) of this section is reasonably available, then the patient's attending physician, in the attending physician's discretion, may provide health care treatment without the consent of the patient or other person authorized to consent for the patient if there is confirmation by a physician other than the patient's attending physician of the patient's condition and the necessity for treatment; provided, however, that confirmation of the patient's condition and the necessity for treatment are not required if the delay in obtaining the confirmation would endanger the life or seriously worsen the condition of the patient.

(d) No action may be maintained against any health care provider upon any guarantee, warranty or assurance as to the result of any medical, surgical or diagnostic procedure or treatment unless the guarantee, warranty or assurance, or some note or memorandum thereof, shall be in writing and signed by the provider or by some other person authorized to act for or on behalf of such provider.

(e) In the event of any conflict between the provisions of this section and those of G.S. 35A-1245, 90-21.17, and 90-322, Articles 1A and 19 of Chapter 90, and Article 3 of Chapter 122C of the General Statutes, the provisions of those sections and Articles shall control and continue in full force and effect.

§ 90-21.14. First aid or emergency treatment; liability limitation.

(a) Any person, including a volunteer medical or health care provider at a facility of a local health department as defined in G.S. 130A-2 or at a nonprofit community health center or a volunteer member of a rescue squad, who receives no compensation for his services as an emergency medical care provider, who renders first aid or emergency health care treatment to a person who is unconscious, ill or injured,

- (1) When the reasonably apparent circumstances require prompt decisions and actions in medical or other health care, and
- (2) When the necessity of immediate health care treatment is so reasonably apparent that any delay in the rendering of the treatment would seriously worsen the physical condition or endanger the life of the person,

shall not be liable for damages for injuries alleged to have been sustained by the person or for damages for the death of the person alleged to have occurred by reason of an act or omission in the rendering of the treatment unless it is established that the injuries were or the death was caused by gross negligence, wanton conduct or intentional wrongdoing on the part of the person rendering the treatment. The immunity conferred in this section also applies to any person who uses an automated external defibrillator (AED) and otherwise meets the requirements of this section.

(a1) Recodified as G.S. 90-21.16 by Session Laws 2001-230, s. 1(a), effective October 1, 2001.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his business or profession. Services provided by a volunteer health care provider who receives no compensation for his services and who renders first aid or emergency treatment to members of athletic teams are deemed not to be in the normal and ordinary course of the volunteer health care provider's business or profession.

(c) In the event of any conflict between the provisions of this section and those of G.S. 20-166(d), the provisions of G.S. 20-166(d) shall control and continue in full force and effect.

§ 90-21.15. Emergency treatment using automated external defibrillator; immunity.

(a) It is the intent of the General Assembly that, when used in accordance with this section, an automated external defibrillator may be used during an emergency for the purpose of attempting to save the life of another person who is in or who appears to be in cardiac arrest.

(b) For purposes of this section:

- (1) "Automated external defibrillator" means a device, heart monitor, and defibrillator that meets all of the following requirements:
 - a. The device has received approval from the United States Food and Drug Administration of its premarket notification filed pursuant to 21 U.S.C. § 360(k), as amended.
 - b. The device is capable of recognizing the presence or absence of ventricular fibrillation or rapid ventricular tachycardia and is capable of determining, without intervention by an operator, whether defibrillation should be performed.
 - c. Upon determining that defibrillation should be performed, the device automatically charges and requests delivery of, or delivers, an electrical impulse to an individual's heart.
- (2) "Person" means an individual, corporation, limited liability company, partnership, association, unit of government, or other legal entity.
- (3) "Training" means a nationally recognized course or training program in cardiopulmonary resuscitation (CPR) and automated external defibrillator use including the programs approved and provided by the:
 - a. American Heart Association.
 - b. American Red Cross.

(c) The use of an automated external defibrillator when used to attempt to save or to save a life shall constitute "first-aid or emergency health care treatment" under G.S. 90-21.14(a).

(d) The person who provides the cardiopulmonary resuscitation and automated external defibrillator training to a person using an automated external defibrillator, the person responsible for the site where the automated external defibrillator is located when the person has provided for a program of training, and a North Carolina licensed physician writing a prescription without compensation for an automated external defibrillator whether or not required by any federal or state law, shall be immune from civil liability arising from the use of an automated external defibrillator used in accordance with subsection (c) of this section.

(e) The immunity from civil liability otherwise existing under law shall not be diminished by the provisions of this section.

(f) Nothing in this section requires the purchase, placement, or use of automated external defibrillators by any person, entity, or agency of State, county, or local government. Nothing in this section applies to a product's liability claim against a manufacturer or seller as defined in G.S. 99B-1.

(g) In order to enhance public health and safety, a seller of an automated external defibrillator shall notify the North Carolina Department of Health and Human Services, Division of Health Service Regulation, Office of Emergency Medical Services of the existence, location, and type of automated external defibrillator.

§ 90-21.16. Volunteer health care professionals; liability limitation.

(a) This section applies as follows:

- (1) Any volunteer medical or health care provider at a facility of a local health department or at a nonprofit community health center,
- (2) Any volunteer medical or health care provider rendering services to a patient referred by a local health department as defined in G.S. 130A-2(5), nonprofit community health center, or nonprofit community health referral service at the provider's place of employment,
- (3) Any volunteer medical or health care provider serving as medical director of an emergency medical services (EMS) agency, or
- (4) Repealed by Session Laws 2011-355, s. 7, effective June 27, 2011.
- (5) Any volunteer medical or health care provider licensed or certified in this State who provides services within the scope of the provider's license or certification at a free clinic facility,

who receives no compensation for medical services or other related services rendered at the facility, center, agency, or clinic, or who neither charges nor receives a fee for medical services rendered to the patient referred by a local health department, nonprofit community health center, or nonprofit community health referral service at the provider's place of employment shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the rendering of the services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the person rendering the services. The free clinic, local health department facility, nonprofit community health center, nonprofit community health referral service, or agency shall use due care in the selection of volunteer medical or health care providers, and this subsection shall not excuse the free clinic, health department facility, community health center, or agency for the failure of the volunteer medical or health care provider to use ordinary care in the provision of medical services to its patients.

(b) Nothing in this section shall be deemed or construed to relieve any person from liability for damages for injury or death caused by an act or omission on the part of such person while rendering health care services in the normal and ordinary course of his or her business or profession. Services provided by a medical or health care provider who receives no compensation for his or her services and who voluntarily renders such services at the provider's place of employment, facilities of free clinics, local health departments as defined in G.S. 130A-2, nonprofit community health centers, or as a volunteer medical director of an emergency medical services (EMS) agency, are deemed not to be in the normal and ordinary course of the volunteer medical or health care provider's business or profession.

(c) As used in this section, a "free clinic" is a nonprofit, 501(c)(3) tax-exempt organization organized for the purpose of providing health care services without charge or for a minimum fee to cover administrative costs.

(c1) For a volunteer medical or health care provider who provides services at a free clinic to receive the protection from liability provided in this section, the free clinic shall provide the following notice to the patient, or person authorized to give consent for treatment, for the patient's retention prior to the delivery of health care services:

"NOTICE

Under North Carolina law, a volunteer medical or health care provider shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the medical or health care provider's voluntary provision of health care services unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the volunteer medical or health care provider."

(d) A nonprofit community health referral service that refers low-income patients to medical or health care providers for free services is not liable for the acts or omissions of the medical or health care providers in rendering service to that patient if the nonprofit community health referral service maintains liability insurance covering the acts and omissions of the nonprofit health referral service and any liability pursuant to subsection (a) of this section.

(e) As used in this section, a "nonprofit community health referral service" is a nonprofit, 501(c)(3) tax-exempt organization organized to provide for no charge the referral of low-income, uninsured patients to volunteer health care providers who provide health care services without charge to patients.

§ 90-21.17. Portable do not resuscitate order and Medical Order for Scope of Treatment.

(a) It is the intent of this section to recognize a patient's desire and right to withhold cardiopulmonary resuscitation and other life-prolonging measures to avoid loss of dignity and unnecessary pain and suffering through the use of a portable do not resuscitate ("DNR") order or a Medical Order for Scope of Treatment (MOST).

This section establishes an optional and nonexclusive procedure by which a patient or the patient's representative may exercise this right.

(b) A physician may issue a portable DNR order or MOST for a patient:

- (1) With the consent of the patient;
- (2) If the patient is a minor, with the consent of the patient's parent or guardian; or
- (3) If the patient is not a minor but is incapable of making an informed decision regarding consent for the order, with the consent of the patient's representative.

The physician shall document the basis for the DNR order or MOST in the patient's medical record. When the order is a MOST, the patient or the patient's representative must sign the form, provided, however, that if it is not practicable for the patient's representative to sign the original MOST form, the patient's representative shall sign a copy of the completed form and return it to the health care professional completing the form. The copy of the form with the signature of the patient's representative, whether in paper or electronic form, shall be placed in the patient's medical record. When the signature of the patient's representative is on a separate copy of the MOST form, the original MOST form must indicate in the appropriate signature field that the signature is "on file".

(c) The Department of Health and Human Services shall develop a portable DNR order form and a MOST form. The official DNR form shall include fields for the name of the patient; the name, address, and telephone number of the physician; the signature of the physician; and other relevant information. At a minimum, the official MOST form shall include fields for: the name of the patient; an advisory that a patient is not required to have a MOST; the name, telephone number, and signature of the physician, physician assistant, or nurse practitioner authorizing the order; the name and contact information of the health care professional who prepared the form with the patient or the patient's representative; information on who agreed (i.e., the patient or the patient's representative) to the options selected on the MOST form; a range of options for cardiopulmonary resuscitation, medical interventions, antibiotics, medically administered fluids and nutrition; patient or patient representative's name, contact information, and signature; effective date of the form and review dates; a prominent advisory that directions in a MOST form may suspend, while those MOST directions are in effect, any conflicting directions in a patient's previously executed declaration of an advance directive for a natural death ("living will"), health care power of attorney, or other legally authorized instrument; and an advisory that the MOST may be revoked by the patient or the patient's representative. The official MOST form shall also include the following statement written in boldface type directly above the signature line: "You are not required to sign this form to receive treatment." The form may be approved by reference to a standard form that meets the requirements of this subsection. For purposes of this section, the "patient's representative" means an individual from the list of persons authorized to consent to the withholding of life-prolonging measures pursuant to G.S. 90-322.

(d) No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for withholding cardiopulmonary resuscitation or other life-prolonging measures from a patient in good faith reliance on an original DNR order or MOST form adopted pursuant to subsection (c) of this section, provided that (i) there are no reasonable grounds for doubting the validity of the order or the identity of the patient, and (ii) the provider does not have actual knowledge of the revocation of the portable DNR order or MOST. No physician, emergency medical professional, hospice provider, or other health care provider shall be subject to criminal prosecution, civil liability, or disciplinary action by any professional licensing or certification agency for failure to follow a DNR order or MOST form adopted pursuant to subsection (c) of this section if the provider had no actual knowledge of the existence of the DNR order or MOST.

(e) A health care facility may develop policies and procedures that authorize the facility's provider to accept a portable DNR order or MOST as if it were an order of the medical staff of that facility. This section does not prohibit a physician in a health care facility from issuing a written order, other than a portable DNR order or MOST not to resuscitate a patient in the event of cardiac or respiratory arrest, or to use, withhold, or withdraw additional medical interventions as provided in the MOST, in accordance with acceptable medical practice and the facility's policies.

(f) Nothing in this section shall affect the validity of portable DNR order or MOST forms in existence prior to the effective date of this section.

* * * * *

§ 90-21.19. Liability limit for noneconomic damages.

(a) Except as otherwise provided in subsection (b) of this section, in any medical malpractice action in which the plaintiff is entitled to an award of noneconomic damages, the total amount of noneconomic damages for

which judgment is entered against all defendants shall not exceed five hundred thousand dollars (\$500,000). Judgment shall not be entered against any defendant for noneconomic damages in excess of five hundred thousand dollars (\$500,000) for all claims brought by all parties arising out of the same professional services. On January 1 of every third year, beginning with January 1, 2014, the Administrative Office of the Courts shall reset the limitation on damages for noneconomic loss set forth in this subsection to be equal to five hundred thousand dollars (\$500,000) times the ratio of the Consumer Price Index for November of the prior year to the Consumer Price Index for November 2011. The Administrative Office of the Courts shall inform the Revisor of Statutes of the reset limitation. The Revisor of Statutes shall publish this reset limitation as an editor's note to this section. In the event that any verdict or award of noneconomic damages stated pursuant to G.S. 90-21.19B exceeds these limits, the court shall modify the judgment as necessary to conform to the requirements of this subsection.

(b) Notwithstanding subsection (a) of this section, there shall be no limit on the amount of noneconomic damages for which judgment may be entered against a defendant if the trier of fact finds both of the following:

- (1) The plaintiff suffered disfigurement, loss of use of part of the body, permanent injury or death.
- (2) The defendant's acts or failures, which are the proximate cause of the plaintiff's injuries, were committed in reckless disregard of the rights of others, grossly negligent, fraudulent, intentional or with malice.

(c) The following definitions apply in this section:

- (1) Consumer Price Index. – The Consumer Price Index – All Urban Consumers, for the South urban area, as published by the Bureau of Labor Statistics of the United States Department of Labor.
- (2) Noneconomic damages. – Damages to compensate for pain, suffering, emotional distress, loss of consortium, inconvenience, and any other nonpecuniary compensatory damage. "Noneconomic damages" does not include punitive damages as defined in G.S. 1D-5.
- (3) Same professional services. – The transactions, occurrences, or series of transactions or occurrences alleged to have caused injury to the health care provider's patient.

(d) Any award of damages in a medical malpractice action shall be stated in accordance with G.S. 90-21.19B. If a jury is determining the facts, the court shall not instruct the jury with respect to the limit of noneconomic damages under subsection (a) of this section, and neither the attorney for any party nor a witness shall inform the jury or potential members of the jury panel of that limit.

* * * * *

§ 90-21.19B. Verdicts and awards of damages in medical malpractice actions; form.

In any malpractice action, any verdict or award of damages, if supported by the evidence, shall indicate specifically what amount, if any, is awarded for noneconomic damages. If applicable, the court shall instruct the jury on the definition of noneconomic damages under G.S. 90-21.19(b).

Article 1J. Voluntary Health Care Services Act.

§ 90-21.100. Short title.

This Article shall be known and may be cited as the Volunteer Health Care Services Act.

§ 90-21.101. Findings.

(a) The General Assembly makes the following findings:

- (1) Access to high-quality health care services is a concern of all persons.
- (2) Access to high-quality health care services may be limited for some residents of this State, particularly those who reside in remote, rural areas or in the inner city.
- (3) Physicians and other health care providers have traditionally worked to ensure broad access to health care services.
- (4) Many health care providers from North Carolina and elsewhere are willing to volunteer their services to address the health care needs of North Carolinians who may otherwise not be able to obtain high-quality health care services.

(b) The General Assembly further finds that it is the public policy of this State to encourage and facilitate the voluntary provision of health care services.

§ 90-21.102. Definitions.

The following definitions apply in this Article:

- (1) Department. — The North Carolina Department of Health and Human Services.

- (2) Free clinic. — A nonprofit, 501(c)(3) tax-exempt organization organized for the purpose of providing health care services without charge or for a minimum fee to cover administrative costs.
- (3) Health care provider. — Any person who:
 - a. Is licensed to practice as a physician or a physician assistant under Article 1 of this Chapter.
 - b. Holds a limited volunteer license under G.S. 90-12.1A.
 - c. Holds a retired limited volunteer license under G.S. 90-12.1B.
 - d. Holds a physician assistant limited volunteer license under G.S. 90-12.4.
 - e. Holds a physician assistant retired limited volunteer license under 90-12.4B.
 - f. Is a volunteer health care professional to whom G.S. 90-21.16 applies.
 - g. Is licensed to practice dentistry under Article 2 of this Chapter.
 - h. Is licensed to practice pharmacy under Article 4A of this Chapter.
 - i. Is licensed to practice optometry under Article 6 of this Chapter.
 - j. Is licensed to practice as a registered nurse or licensed practical nurse under Article 9A of this Chapter.
 - k. Is licensed to practice as a dental hygienist under Article 16 of this Chapter.
 - l. Holds a license as a registered licensed optician under Article 17 of this Chapter.
 - m. Is licensed to practice as a physician, physician assistant, dentist, pharmacist, optometrist, registered nurse, licensed practical nurse, dental hygienist, or optician under provisions of law of another state of the United States comparable to the provisions referenced in sub-subdivisions a. through l. of this subdivision.
- (4) Sponsoring organization. — Any nonprofit organization that organizes or arranges for the voluntary provision of health care services pursuant to this Article.
- (5) Voluntary provision of health care services. — The provision of health care services by a health care provider in association with a sponsoring organization in which both of the following circumstances exist:
 - a. The health care services are provided without charge to the recipient of the services or to a third party on behalf of the recipient.
 - b. The health care provider receives no compensation or other consideration in exchange for the health care services provided.

For the purposes of this Article, the provision of health care services in nonprofit community health centers, local health department facilities, free clinic facilities, or at a provider's place of employment when the patient is referred by a nonprofit community health referral service shall not be considered the voluntary provision of health care.

§ 90-21.103. Limitation on duration of voluntary health care services.

A sponsoring organization duly registered in accordance with G.S. 90-21.104 may organize or arrange for the voluntary provision of health care services at a location in this State for a period not to exceed seven calendar days in any calendar year.

§ 90-21.104. Registration, reporting, and record-keeping requirements.

(a) A sponsoring organization shall not organize or arrange for the voluntary provision of health care services in this State without first registering with the Department on a form prescribed by the Department. The registration form shall contain all of the following information:

- (1) The name of the sponsoring organization.
- (2) The name of the principal individuals who are the officers or organizational officials responsible for the operation of the sponsoring organization.
- (3) The street address, city, zip code, and county of the sponsoring organization's principal office and each of the principal individuals described in subdivision (2) of this subsection.
- (4) Telephone numbers for the principal office of the sponsoring organization and for each of the principal individuals described in subdivision (2) of this subsection.
- (5) Any additional information requested by the Department.

(b) Each sponsoring organization that applies for registration under this Article shall pay a one-time registration fee in the amount of fifty dollars (\$50.00), which it shall submit to the Department along with the completed registration form required by subsection (a) of this section. Upon approval by the Department, a sponsoring organization's registration remains valid unless revoked by the Department pursuant to subsection (f) of this section.

(c) Upon any change in the information required under subsection (a) of this section, the sponsoring organization shall notify the Department of the change, in writing, within 30 days after the effective date of the change.

- (d) Each registered sponsoring organization has the duty and responsibility to do all of the following:
- (1) Except as provided in this subdivision, by no later than 14 days before a sponsoring organization initiates voluntary health care services in this State, the sponsoring organization shall submit to the Department a list containing the following information regarding each health care provider who is to provide voluntary health care services on behalf of the sponsoring organization during any part of the time period in which the sponsoring organization is authorized to provide voluntary health care services in the State:
 - a. Name.
 - b. Date of birth.
 - c. State of licensure.
 - d. License number.
 - e. Area of practice.
 - f. Practice address.

By no later than 3 days prior to voluntary health care services being rendered, a sponsoring organization may amend the list to add health care providers defined in G.S. 90-21.102(3)a. through G.S. 90-21.102(3)l.

- (2) Beginning April 1, 2013, submit quarterly reports to the Department identifying all health care providers who engaged in the provision of voluntary health care services in association with the sponsoring organization in this State during the preceding calendar quarter. The quarterly report must include the date, place, and type of voluntary health care services provided by each health care provider.
 - (3) Maintain a list of health care providers associated with its provision of voluntary health care services in this State. For each health care provider listed, the sponsoring organization shall maintain a copy of a current license or statement of exemption from licensure or certification. For health care providers currently licensed or certified under this Chapter, the sponsoring organization may maintain a copy of the health care provider's license or certification verification obtained from a State-sponsored Internet Web site.
 - (4) Maintain records of the quarterly reports and records required under this subsection for a period of five years from the date of voluntary service and make these records available upon request to any State licensing board established under this Chapter.
- (e) Compliance with subsections (a) through (d) of this section is prima facie evidence that the sponsoring organization has exercised due care in its selection of health care providers.
- (f) The Department may revoke the registration of any sponsoring organization that fails to comply with the requirements of this Article. A sponsoring organization may challenge the Department's decision to revoke its registration by filing a contested case under Article 3 of Chapter 150B of the General Statutes.
- (g) The Department may waive any of the requirements of this section during a natural disaster or other emergency circumstance.

§ 90-21.105. Department and licensure boards to review licensure status of volunteers.

The Department shall forward the information received from a sponsoring organization under G.S. 90-21.104(d)(1) to the appropriate licensure board within seven days after receipt. Upon receipt of any information or notice from a licensure board that a health care provider on the list submitted by the sponsoring organization pursuant to G.S. 90-21.104(d)(1) is not licensed, authorized, or in good standing, or is the subject of an investigation or pending disciplinary action, the Department shall immediately notify the sponsoring organization that the health care provider is not permitted to engage in the voluntary provision of health care services on behalf of the sponsoring organization.

§ 90-21.106. On-site requirements.

A sponsoring organization that organizes or arranges for the provision of voluntary health care services at a location in this State shall ensure that at least one health care provider licensed to practice in this State, with access to the controlled substances reporting system established under G.S. 90-113.73, is located on the premises where the provision of voluntary health care services is occurring. In addition, every sponsoring organization shall post in a clear and conspicuous manner the following notice in the premises where the provision of voluntary health care services is occurring:

"NOTICE

Under North Carolina law, there is no liability for damages for injuries or death alleged to have occurred by reason of an act or omission in the health care provider's voluntary provision of health care services, unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the health care provider."

§ 90-21.107. Additional licensure not required for certain volunteers.

(a) A health care provider who engages in the voluntary provision of health care services in association with a sponsoring organization for no more than seven days during any calendar year shall not be required to obtain additional licensure or authorization in connection therewith if the health care provider meets any of the following criteria:

- (1) The health care provider is duly licensed or authorized under the laws of this State to practice in the area in which the health care provider is providing voluntary health care services and is in good standing with the applicable licensing board.
- (2) The health care provider lawfully practices in another state or district in the area in which the health care provider is providing voluntary health care services and is in good standing with the applicable licensing board.

(b) This exemption from additional licensure or authorization requirements does not apply if any of the following circumstances exist:

- (1) The health care provider has been subjected to public disciplinary action or is the subject of a pending disciplinary proceeding in any state in which the health care provider is or ever has been licensed.
- (2) The health care provider's license has been suspended or revoked pursuant to disciplinary proceedings in any state in which the health care provider is or ever has been licensed.
- (3) The health care provider renders services outside the scope of practice authorized by the health care provider's license or authorization.

§ 90-21.108. Immunity from civil liability for acts or omissions.

(a) Subject to subsection (b) of this section, a health care provider who engages in the voluntary provision of health care services at any location in this State in association with a sponsoring organization shall not be liable for damages for injuries or death alleged to have occurred by reason of an act or omission in the health care provider's voluntary provision of health care services, unless it is established that the injuries or death were caused by gross negligence, wanton conduct, or intentional wrongdoing on the part of the health care provider.

(b) The immunity from civil liability provided by subsection (a) of this section does not apply if any of the following circumstances exist:

- (1) The health care provider receives, directly or indirectly, any type of compensation, benefits, or other consideration of any nature from any person for the health care services provided.
- (2) The health care services provided are not part of the health care provider's training or assignment.
- (3) The health care services provided are not within the scope of the health care provider's license or authority.
- (4) The health care services provided are not authorized by the appropriate authorities to be performed at the location.

Article 4B.

Pharmacy Quality Assurance Protection Act.

§ 90-85.45. Legislative intent.

It is the intent of the General Assembly to require pharmacy quality assurance programs to further contribute to and enhance the quality of health care and reduce medication errors in this State by facilitating a process for the continuous review of the practice of pharmacy.

§ 90-85.46. Definitions.

The following definitions shall apply in this Article:

- (1) Board. – The North Carolina Board of Pharmacy.
- (2) Pharmacy quality assurance program. – A program pertaining to one of the following:
 - a. A pharmacy association created under G.S. 90-85.4 or incorporated under Chapter 55A of the General Statutes that evaluates the quality of pharmacy services and alleged medication errors and incidents and makes recommendations to improve the quality of pharmacy services.
 - b. A program established by a person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A to evaluate the quality of pharmacy services and alleged medication errors and incidents and make recommendations to improve the quality of pharmacy services.
 - c. A quality assurance committee or medical or peer review committee established by a health care provider licensed under this Chapter or a health care facility licensed under Chapter 122C, 131D, or 131E of the General Statutes that includes

evaluation of the quality of pharmacy services and alleged medication errors and incidents and makes recommendations to improve the quality of pharmacy services.

§ 90-85.47. Pharmacy quality assurance program required; limited liability; discovery.

(a) Every person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A shall establish or participate in a pharmacy quality assurance program as defined under G.S. 90-85.46(2), to evaluate the following:

- (1) The quality of the practice of pharmacy.
- (2) The cause of alleged medication errors and incidents.
- (3) Pharmaceutical care outcomes.
- (4) Possible improvements for the practice of pharmacy.
- (5) Methods to reduce alleged medication errors and incidents.

(b) There shall be no monetary liability on the part of, or no cause of action for damages arising against, any member of a duly appointed pharmacy quality assurance program or any pharmacy or pharmacist furnishing information to a pharmacy quality assurance program or any person, including a person acting as a witness or incident reporter to or investigator for a pharmacy quality assurance program, for any act or proceeding undertaken or performed within the scope of the functions of the pharmacy quality assurance program.

(c) This section shall not be construed to confer immunity from liability on any professional association, pharmacy or pharmacist, or health care provider while performing services other than as a member of a pharmacy quality assurance program or upon any person, including a person acting as a witness or incident reporter to or investigator for a pharmacy quality assurance program, for any act or proceeding undertaken or performed outside the scope of the functions of the pharmacy quality assurance program. Except as provided in subsection (a) or (b) of this section, where a cause of action would arise against a pharmacy, pharmacist, or an individual health care provider, the cause of action shall remain in effect.

(d) The proceedings of a pharmacy quality assurance program, the records and materials it produces, and the materials it considers shall be confidential and not considered public records within the meaning of G.S. 132-1 or G.S. 58-2-100 and shall not be subject to discovery or introduction into evidence in any civil action, administrative hearing or Board investigation against a pharmacy, pharmacist, pharmacy technician, a pharmacist manager or a permittee or a hospital licensed under Chapter 122C or Chapter 131E of the General Statutes or that is owned or operated by the State, which civil action, administrative hearing or Board investigation results from matters that are the subject of evaluation and review by the pharmacy quality assurance program. No person who was in attendance at a meeting of the pharmacy quality assurance program shall be required to testify in any civil action, administrative hearing or Board investigation as to any evidence or other matters produced or presented during the proceedings of the pharmacy quality assurance program or as to any findings, recommendations, evaluations, opinions, or other actions of the pharmacy quality assurance program or its members. However, information, documents, or records otherwise available are not immune from discovery or use in a civil action merely because they were presented during proceedings of the pharmacy quality assurance program. Documents otherwise available as public records within the meaning of G.S. 132-1 do not lose their status as public records merely because they were presented or considered during proceedings of the pharmacy quality assurance program. A member of the pharmacy quality assurance program may testify in a civil or administrative action but cannot be asked about the person's testimony before the pharmacy quality assurance program or any opinions formed as a result of the pharmacy quality assurance program. Nothing in this subsection shall preclude:

- (1) A pharmacy, pharmacist, pharmacy technician, or other person or any agent or representative of a pharmacy, pharmacist, pharmacy technician or other person participating on a pharmacy quality assurance program may use otherwise privileged, confidential information for legitimate internal business or professional purposes of the pharmacy quality assurance program.
- (2) A pharmacy, pharmacist, pharmacy technician, other person participating on the committee, or any person or organization named as a defendant in a civil action, a respondent in an administrative proceeding, or a pharmacy, pharmacist, or pharmacy technician subject to a Board investigation as a result of participation in the pharmacy quality assurance program may use otherwise privileged, confidential information in the pharmacy quality assurance program or person's own defense. A plaintiff in the civil action or the agency in the administrative proceeding may disclose records or determinations of or communications to the pharmacy quality assurance program in rebuttal to information given by the defendant, respondent, or pharmacist subject to Board investigation.

(e) Upon the Board providing written notice to the pharmacy permittee's designated agent under G.S. 90-85.21(a) and pharmacist of an investigation against the pharmacist, including the specific reason for the Board investigation, the pharmacy permittee's designated agent shall compile and provide documentation within 10 days

of the receipt of the notice of any alleged medication error or incident committed by the pharmacist in the 12 months preceding the receipt of the notice, that the pharmacy permittee has knowledge of, when:

- (1) The alleged medication error or incident resulted in any of the following:
 - a. A visit to a physician or an emergency room attributed to the alleged medication incident or error.
 - b. Hospitalization requiring an overnight stay or longer.
 - c. A fatality.
- (2) The Board has initiated a disciplinary proceeding against the pharmacist as a result of the investigation. Unless the documentation relates to an alleged medication error or incident that was specifically the cause of the investigation, the Board may review the documentation only after the Board has made findings of fact and conclusions of law pursuant to G.S. 150B-42(a) and may use the documentation in determining the remedial action the pharmacist shall undergo as part of the disciplinary action imposed by the Board. The documentation shall be released only to the Board or its designated employees pursuant to this subsection and shall not otherwise be released except as required by law.

The documentation provided to the Board shall not include the proceedings and records of a pharmacy quality assurance program or information prepared by the pharmacy solely for consideration by or upon request of a pharmacy quality assurance program.

(f) Nothing in this section shall preclude the Board from obtaining information concerning a specific alleged medication error or incident that is the subject of a Board investigation resulting from a complaint to the Board.

Article 4C. Pharmacy Audit Rights.

§ 90-85.50. Declaration of pharmacy rights during audit.

- (a) The following definitions apply in this Article:
 - (1) "Pharmacy" means a person or entity holding a valid pharmacy permit pursuant to G.S. 90-85.21 or G.S. 90-85.21A.
 - (2) "Responsible party" means the entity responsible for payment of claims for health care services other than (i) the individual to whom the health care services were rendered or (ii) that individual's guardian or legal representative.
- (b) Notwithstanding any other provision of law, whenever a managed care company, insurance company, third-party payer, or any entity that represents a responsible party conducts an audit of the records of a pharmacy, the pharmacy has a right to all of the following:
 - (1) To have at least 14 days' advance notice of the initial on-site audit for each audit cycle.
 - (2) To have any audit that involves clinical judgment be done with a pharmacist who is licensed, and is employed or working under contract with the auditing entity.
 - (3) Not to have clerical or record-keeping errors, including typographical errors, scrivener's errors, and computer errors, on a required document or record, in the absence of any other evidence, deemed fraudulent. This subdivision does not prohibit recoupment of fraudulent payments.
 - (4) If required under the terms of the contract, to have the auditing entity provide a pharmacy, upon request, all records related to the audit in an electronic format or contained in digital media.
 - (5) To have the properly documented records of a hospital or any person authorized to prescribe controlled substances for the purpose of providing medical or pharmaceutical care for their patients transmitted by any means of communication in order to validate a pharmacy record with respect to a prescription or refill for a controlled substance or narcotic drug.
 - (6) To have a projection of an overpayment or underpayment based on either the number of patients served with a similar diagnosis or the number of similar prescription orders or refills for similar drugs. This subdivision does not prohibit recoupments of actual overpayments, unless the projection for overpayment or underpayment is part of a settlement by the pharmacy.
 - (7) Prior to the initiation of an audit, if the audit is conducted for an identified problem, the audit is limited to claims that are identified by prescription number.
 - (8) If an audit is conducted for a reason other than described in subdivision (6) of this subsection, the audit is limited to 100 selected prescriptions.
 - (9) If an audit reveals the necessity for a review of additional claims, to have the audit conducted on site.

- (10) Except for audits initiated for the reason described in subdivision (6) of this subsection, to be subject to no more than one audit in one calendar year, unless fraud or misrepresentation is reasonably suspected.
- (11) Except for cases of Food and Drug Administration regulation or drug manufacturer safety programs, to be free of recoupments based on any of the following unless defined within the billing requirements set forth in the pharmacy provider manual not inconsistent with current North Carolina Board of Pharmacy Regulations:
 - a. Documentation requirements in addition to or exceeding requirements for creating or maintaining documentation prescribed by the State Board of Pharmacy.
 - b. A requirement that a pharmacy or pharmacist perform a professional duty in addition to or exceeding professional duties prescribed by the State Board of Pharmacy.
- (12) To be subject to recoupment only following the correction of a claim and to have recoupment limited to amounts paid in excess of amounts payable under the corrected claim.
- (13) Except for Medicare claims, to be subject to reversals of approval for drug, prescriber, or patient eligibility upon adjudication of a claim only in cases in which the pharmacy obtained the adjudication by fraud or misrepresentation of claim elements.
- (14) To be audited under the same standards and parameters as other similarly situated pharmacies audited by the same entity.
- (15) To have at least 30 days following receipt of the preliminary audit report to produce documentation to address any discrepancy found during an audit.
- (16) To have the period covered by an audit limited to 24 months from the date a claim was submitted to, or adjudicated by, a managed care company, an insurance company, a third-party payer, or any entity that represents responsible parties, unless a longer period is permitted by a federal plan under federal law.
- (17) Not to be subject to the initiation or scheduling of audits during the first five calendar days of any month due to the high volume of prescriptions filled during that time, without the express consent of the pharmacy. The pharmacy shall cooperate with the auditor to establish an alternate date should the audit fall within the days excluded.
- (18) To have the preliminary audit report delivered to the pharmacy within 120 days after conclusion of the audit.
- (19) To have a final audit report delivered to the pharmacy within 90 days after the end of the appeals period, as provided for in G.S. 90-85.51.
- (20) Not to have the accounting practice of extrapolation used in calculating recoupments or penalties for audits, unless otherwise required by federal requirements or federal plans.
- (21) Not to be subject to recoupment on any portion of the reimbursement for the dispensed product of a prescription, unless otherwise provided in this subdivision.
 - a. Recoupment of reimbursement, or a portion of reimbursement, for the dispensed product of a prescription may be had in the following cases:
 1. Fraud or other intentional and willful misrepresentation evidenced by a review of the claims data, statements, physical review, or other investigative methods.
 2. Dispensing in excess of the benefit design, as established by the plan sponsor.
 3. Prescriptions not filled in accordance with the prescriber's order.
 4. Actual overpayment to the pharmacy.
 - b. Recoupment of claims in cases set out in sub-subdivision a. of this subdivision shall be based on the actual financial harm to the entity or the actual underpayment or overpayment. Calculations of overpayments shall not include dispensing fees unless one of the following conditions is present:
 1. A prescription was not actually dispensed.
 2. The prescriber denied authorization.
 3. The prescription dispensed was a medication error by the pharmacy. For purposes of this subdivision, a medication error is a dispensing of the wrong drug or dispensing to the wrong patient or dispensing with the wrong directions.
 4. The identified overpayment is based solely on an extra dispensing fee.
 5. The pharmacy was noncompliant with Risk Evaluation and Mitigation Strategies (REMS) program guidelines.

6. There was insufficient documentation, including electronically stored information, as described in this subsection.
 7. Fraud or other intentional and willful misrepresentation by the pharmacy.
- (22) To have an audit based only on information obtained by the entity conducting the audit and not based on any audit report or other information gained from an audit conducted by a different auditing entity. This subdivision does not prohibit an auditing entity from using an earlier audit report prepared by that auditing entity for the same pharmacy. Except as required by State or federal law, an entity conducting an audit may have access to a pharmacy's previous audit report only if the previous report was prepared by that entity.
- (23) If the audit is conducted by a vendor or subcontractor, that entity is required to identify the responsible party on whose behalf the audit is being conducted without having this information being requested.
- (24) To use any prescription that complies with federal or State laws and regulations at the time of dispensing to validate a claim in connection with a prescription, prescription refill, or a change in a prescription.

§ 90-85.51. Mandatory appeals process.

- (a) Each entity that conducts an audit of a pharmacy shall establish an appeals process under which a pharmacy may appeal an unfavorable preliminary audit report to the entity.
- (b) If, following the appeal, the entity finds that an unfavorable audit report or any portion of the unfavorable audit report is unsubstantiated, the entity shall dismiss the unsubstantiated portion of the audit report without any further proceedings.
- (c) Each entity conducting an audit shall provide a copy, if required under contractual terms, of the audit findings to the plan sponsor after completion of any appeals process.

§ 90-85.52. Pharmacy audit recoupments.

- (a) The entity conducting an audit shall not recoup any disputed funds, charges, or other penalties from a pharmacy until (i) the deadline for initiating the appeals process established pursuant to G.S. 90-85.51 has elapsed or (ii) after the final internal disposition of an audit, including the appeals process as set forth in G.S. 90-85.51, whichever is later, unless fraud or misrepresentation is reasonably suspected.
- (b) Recoupment on an audit shall be refunded to the responsible party as contractually agreed upon by the parties.
- (c) The entity conducting the audit may charge or assess the responsible party, directly or indirectly, based on amounts recouped if both of the following conditions are met:
 - (1) The responsible party and the entity conducting the audit have entered into a contract that explicitly states the percentage charge or assessment to the responsible party.
 - (2) A commission or other payment to an agent or employee of the entity conducting the audit is not based, directly or indirectly, on amounts recouped.

§ 90-85.53. Applicability.

This Article does not apply to any audit, review, or investigation that involves alleged Medicaid fraud, Medicaid abuse, insurance fraud, or other criminal fraud or misrepresentation.

**Article 5.
North Carolina Controlled Substances Act.**

Selected Provisions

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§ 90-87. Definitions.

As used in this Article:

- (1) "Administer" means the direct application of a controlled substance, whether by injection, inhalation, ingestion, or any other means to the body of a patient or research subject by:
 - a. A practitioner (or, in his presence, by his authorized agent), or
 - b. The patient or research subject at the direction and in the presence of the practitioner.
- (2) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser but does not include a common or contract carrier, public warehouseman, or employee thereof.

- (3) "Bureau" means the Bureau of Narcotics and Dangerous Drugs, United States Department of Justice or its successor agency.
- (3a) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (4) "Control" means to add, remove, or change the placement of a drug, substance, or immediate precursor included in Schedules I through VI of this Article.
- (5) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through VI of this Article.
- (5a) "Controlled substance analogue" means a substance (i) the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II; (ii) which has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; or (iii) with respect to a particular person, which such person represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system that is substantially similar to or greater than the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance in Schedule I or II; and does not include (i) a controlled substance; (ii) any substance for which there is an approved new drug application; (iii) with respect to a particular person any substance, if an exemption is in effect for investigational use, for that person, under § 355 of Title 21 of the United States Code to the extent conduct with respect to such substance is pursuant to such exemption; or (iv) any substance to the extent not intended for human consumption before such an exemption takes effect with respect to that substance. The designation of gamma butyrolactone or any other chemical as a listed chemical pursuant to subdivision 802(34) or 802(35) of Title 21 of the United States Code does not preclude a finding pursuant to this subdivision that the chemical is a controlled substance analogue.
- (6) "Counterfeit controlled substance" means:
 - a. A controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser other than the person or persons who in fact manufactured, distributed, or dispensed such substance and which thereby falsely purports, or is represented to be the product of, or to have been distributed by, such other manufacturer, distributor, or dispenser; or
 - b. Any substance which is by any means intentionally represented as a controlled substance. It is evidence that the substance has been intentionally misrepresented as a controlled substance if the following factors are established:
 - 1. The substance was packaged or delivered in a manner normally used for the illegal delivery of controlled substances.
 - 2. Money or other valuable property has been exchanged or requested for the substance, and the amount of that consideration was substantially in excess of the reasonable value of the substance.
 - 3. The physical appearance of the tablets, capsules or other finished product containing the substance is substantially identical to a specified controlled substance.
- (7) "Deliver" or "delivery" means the actual constructive, or attempted transfer from one person to another of a controlled substance, whether or not there is an agency relationship.
- (8) "Dispense" means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.
- (9) "Dispenser" means a practitioner who dispenses.
- (10) "Distribute" means to deliver other than by administering or dispensing a controlled substance.
- (11) "Distributor" means a person who distributes.
- (12) "Drug" means a. substances recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; b. substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; c. substances (other than food) intended to affect the structure or any function of the body of man or other animals; and d.

- substances intended for use as a component of any article specified in a, b, or c of this subdivision; but does not include devices or their components, parts, or accessories.
- (13) "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from use of that controlled substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuous basis in order to experience its psychic effects, or to avoid the discomfort of its absence.
- (14) "Immediate precursor" means a substance which the Commission has found to be and by regulation designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail, or limit such manufacture.
- (14a) The term "isomer" means, except as used in G.S. 90-87(17)(d), G.S. 90-89(c), G.S. 90-90(1)d., and G.S. 90-95(h)(3), the optical isomer. As used in G.S. 90-89(c) the term "isomer" means the optical, position, or geometric isomer. As used in G.S. 90-87(17)(d), G.S. 90-90(1)d., and G.S. 90-95(h)(3) the term "isomer" means the optical isomer or diastereoisomer.
- (15) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance by any means, whether directly or indirectly, artificially or naturally, or by extraction from substances of a natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis; and "manufacture" further includes any packaging or repackaging of the substance or labeling or relabeling of its container except that this term does not include the preparation or compounding of a controlled substance by an individual for his own use or the preparation, compounding, packaging, or labeling of a controlled substance:
- a. By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice, or
 - b. By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to research, teaching, or chemical analysis and not for sale.
- (16) "Marijuana" means all parts of the plant of the genus *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil, or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination.
- (17) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:
- a. Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
 - b. Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause a, but not including the isoquinoline alkaloids of opium.
 - c. Opium poppy and poppy straw.
 - d. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
- (18) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under G.S. 90-88, the dextrorotatory isomer of 3-methoxy-n-methyl-morphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.
- (19) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.
- (20) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- (21) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

- (22) "Practitioner" means:
- a. A physician, dentist, optometrist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.
 - b. A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance so long as such activity is within the normal course of professional practice or research in this State.
- (23) "Prescription" means:
- a. A written order or other order which is promptly reduced to writing for a controlled substance as defined in this Article, or for a preparation, combination, or mixture thereof, issued by a practitioner who is licensed in this State to administer or prescribe drugs in the course of his professional practice; or issued by a practitioner serving on active duty with the Armed Forces of the United States or the United States Veterans Administration who is licensed in this or another state or Puerto Rico, provided the order is written for the benefit of eligible beneficiaries of armed services medical care; a prescription does not include an order entered in a chart or other medical record of a patient by a practitioner for the administration of a drug; or
 - b. A drug or preparation, or combination, or mixture thereof furnished pursuant to a prescription order.
- (24) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
- (25) "Registrant" means a person registered by the Commission to manufacture, distribute, or dispense any controlled substance as required by this Article.
- (26) "State" means the State of North Carolina.
- (27) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use, or for the use of a member of his household, or for administration to an animal owned by him or by a member of his household.

§ 90-88. Authority to control.

(a) The Commission may add, delete, or reschedule substances within Schedules I through VI of this Article on the petition of any interested party, or its own motion. In every case the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding, deleting or rescheduling a controlled substance within Schedules I through VI of this Article, except as provided in subsection (d) of this section. A petition by the Commission, the North Carolina Department of Justice, or the North Carolina Board of Pharmacy to add, delete, or reschedule a controlled substance within Schedules I through VI of this Article shall be placed on the agenda, for consideration, at the next regularly scheduled meeting of the Commission, as a matter of right.

(a1) In making a determination regarding a substance, the Commission shall consider the following:

- (1) The actual or relative potential for abuse;
- (2) The scientific evidence of its pharmacological effect, if known;
- (3) The state of current scientific knowledge regarding the substance;
- (4) The history and current pattern of abuse;
- (5) The scope, duration, and significance of abuse;
- (6) The risk to the public health;
- (7) The potential of the substance to produce psychic or physiological dependence liability; and
- (8) Whether the substance is an immediate precursor of a substance already controlled under this Article.

(b) After considering the required factors, the Commission shall make findings with respect thereto and shall issue an order adding, deleting or rescheduling the substance within Schedules I through VI of this Article.

(c) If the Commission designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal law, the Commission shall similarly control or cease control of, the substance under this Article unless the Commission objects to such inclusion. The Commission, at its next regularly scheduled meeting that takes place 30 days after publication in the Federal Register of a final order scheduling a substance, shall determine either to adopt a rule to similarly control the substance under this Article or to object to such action. No rule-making notice or hearing as

specified by Chapter 150B of the General Statutes is required if the Commission makes a decision to similarly control a substance. However, if the Commission makes a decision to object to adoption of the federal action, it shall initiate rule-making procedures pursuant to Chapter 150B of the General Statutes within 180 days of its decision to object.

(e) The Commission shall exclude any nonnarcotic substance from the provisions of this Article if such substance may, under the federal Food, Drug and Cosmetic Act, lawfully be sold over-the-counter without prescription.

(f) Authority to control under this Article does not include distilled spirits, wine, malt beverages, or tobacco.

(g) The Commission shall similarly exempt from the provisions of this Article any chemical agents and diagnostic reagents not intended for administration to humans or other animals, containing controlled substances which either (i) contain additional adulterant or denaturing agents so that the resulting mixture has no significant abuse potential, or (ii) are packaged in such a form or concentration that the particular form as packaged has no significant abuse potential, where such substance was exempted by the Federal Bureau of Narcotics and Dangerous Drugs.

(h) Repealed by Session Laws 1987, c. 413, s. 4.

(i) The North Carolina Department of Health and Human Services shall maintain a list of all preparations, compounds, or mixtures which are excluded, exempted and excepted from control under any schedule of this Article by the United States Drug Enforcement Administration and/or the Commission. This list and any changes to this list shall be mailed to the North Carolina Board of Pharmacy, the State Bureau of Investigation and each district attorney of this State.

§ 90-89. Schedule I controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse, no currently accepted medical use in the United States, or a lack of accepted safety for use in treatment under medical supervision. The following controlled substances are included in this schedule:

- (1) Any of the following opiates, including the isomers, esters, ethers, salts and salts of isomers, esters, and ethers, unless specifically excepted, or listed in another schedule, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation:
 - a. Acetyl-alpha-methylfentanyl
(N[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide).
 - b. Acetylmethadol.
 - c. Repealed by Session Laws 1987, c. 412, s. 2.
 - d. Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
 - e. Allylprodine.
 - f. Alphacetylmethadol.
 - g. Alphameprodine.
 - h. Alphamethadol.
 - i. Alpha-methylfentanyl (N-(1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl) propionalilide; 1(1-methyl-2-phenyl-ethyl)-4-(N-propanilido) piperidine).
 - j. Benzethidine.
 - k. Betacetylmethadol.
 - l. Beta-hydroxfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide).
 - m. Beta-hydroxy-3-methylfentanyl
(N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide).
 - n. Betameprodine.
 - o. Betamethadol.
 - p. Betaprodine.
 - q. Clonitazene.
 - r. Dextromoramide.
 - s. Diampromide.
 - t. Diethylthiambutene.
 - u. Difenoxin.
 - v. Dimenoxadol.
 - w. Dimepheptanol.

- x. Dimethylthiambutene.
 - y. Dioxaphetyl butyrate.
 - z. Dipipanone.
 - aa. Ethylmethylthiambutene.
 - bb. Etonitazene.
 - cc. Etoxadine.
 - dd. Furethidine.
 - ee. Hydroxypethidine.
 - ff. Ketobemidone.
 - gg. Levomoramide.
 - hh. Levophenacymorphan.
 - ii. 1-methyl-4-phenyl-4-propionoxypiperidine (MPPP).
 - jj. 3-Methylfentanyl (N-[3-methyl-1-(2-Phenylethyl)-4-Piperidyl]-N-Phenylpropanamide).
 - kk. 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide).
 - ll. Morpheridine.
 - mm. Noracymethadol.
 - nn. Norlevorphanol.
 - oo. Normethadone.
 - pp. Norpipanone.
 - qq. Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phen-ethyl)-4-piperidinyl]-propanamide).
 - rr. Phenadoxone.
 - ss. Phenampromide.
 - tt. 1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine (PEPAP).
 - uu. Phenomorphan.
 - vv. Phenoperidine.
 - ww. Piritramide.
 - xx. Proheptazine.
 - yy. Properidine.
 - zz. Propiram.
 - aaa. Racemoramide.
 - bbb. Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide).
 - ccc. Tilidine.
 - ddd. Trimeperidine.
- (2) Any of the following opium derivatives, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Acetorphine.
 - b. Acetyldihydrocodeine.
 - c. Benzylmorphine.
 - d. Codeine methylbromide.
 - e. Codeine-N-Oxide.
 - f. Cyprenorphine.
 - g. Desomorphine.
 - h. Dihydromorphine.
 - i. Etorphine (except hydrochloride salt).
 - j. Heroin.
 - k. Hydromorphanol.
 - l. Methyldesorphine.
 - m. Methyldihydromorphine.
 - n. Morphine methylbromide.
 - o. Morphine methylsulfonate.
 - p. Morphine-N-Oxide.
 - q. Myorphine.
 - r. Nicocodeine.
 - s. Nicomorphine.
 - t. Normorphine.
 - u. Pholcodine.
 - v. Thebacon.

- w. Drotebanol.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. 3, 4-methylenedioxyamphetamine.
 - b. 5-methoxy-3, 4-methylenedioxyamphetamine.
 - c. 3, 4-Methylenedioxymethamphetamine (MDMA).
 - d. 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4-(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, and MDEA).
 - e. N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4-(methylenedioxy)phenethylamine, and N-hydroxy MDA).
 - f. 3, 4, 5-trimethoxyamphetamine.
 - g. Alpha-ethyltryptamine. Some trade or other names: etryptamine, Monase, alpha-ethyl-1H-indole-3-ethanamine, 3-(2-aminobutyl) indole, alpha-ET, and AET.
 - h. Bufotenine.
 - i. Diethyltryptamine.
 - j. Dimethyltryptamine.
 - k. 4-methyl-2, 5-dimethoxyamphetamine.
 - l. Ibogaine.
 - m. Lysergic acid diethylamide.
 - n. Mescaline.
 - o. Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not; the seeds thereof; any extract from any part of such plant; and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seed or extracts.
 - p. N-ethyl-3-piperidyl benzilate.
 - q. N-methyl-3-piperidyl benzilate.
 - r. Psilocybin.
 - s. Psilocin.
 - t. 2, 5-dimethoxyamphetamine.
 - u. 2, 5-dimethoxy-4-ethylamphetamine. Some trade or other names: DOET.
 - v. 4-bromo-2, 5-dimethoxyamphetamine.
 - w. 4-methoxyamphetamine.
 - x. Ethylamine analog of phencyclidine. Some trade or other names: N-ethyl-1-phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine, N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE.
 - y. Pyrrolidine analog of phencyclidine. Some trade or other names: 1-(1-phenylcyclohexyl)-pyrrolidine, PCPy, PHP.
 - z. Thiophene analog of phencyclidine. Some trade or other names: 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienyl analog of phencyclidine, TCP, TCP.
 - aa. 1-[1-(2-thienyl)cyclohexyl]pyrrolidine; Some other names: TCPy.
 - bb. Parahexyl.
 - cc. 4-Bromo-2, 5-Dimethoxyphenethylamine.
 - dd. Alpha-Methyltryptamine.
 - ee. 5-Methoxy-n-diisopropyltryptamine.
- (4) Any material compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excepted or unless listed in another schedule:
- a. Mecloqualone.
 - b. Methaqualone.
 - c. Gamma hydroxybutyric acid; Some other names: GHB, gamma-hydroxybutyrate, 4-hydroxybutyrate, 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate.
- (5) Stimulants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation that contains any quantity of the following substances

having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

- a. Aminorex. Some trade or other names: aminoxaphen; 2-amino-5-phenyl-2-oxazoline; or 4,5-dihydro-5-phenyl-2-oxazolamine.
- b. Cathinone. Some trade or other names: 2-amino-1-phenyl-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone, and norephedrone.
- c. Fenethylamine.
- d. Methcathinone. Some trade or other names: 2-(methylamino)- propiophenone, alpha-(methylamino)propiophenone, 2-(methylamino)-1-phenylpropan-1-one, alpha-N-methylamino- propiophenone, monomethylpropion, ephedrone, N-methylcathinone, methylcathinone, AL-464, AL-422, AL-463, and UR1432.
- e. (+-)-cis-4-methylaminorex [(+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine] (also known as 2-amino-4-methyl-5-phenyl-2-oxazoline).
- f. N,N-dimethylamphetamine. Some other names: N,N,alpha-trimethylbenzeneethanamine; N,N,alpha-trimethylphenethylamine.
- g. N-ethylamphetamine.
- h. 4-methylmethcathinone (also known as mephedrone).
- i. 3,4-Methylenedioxypropylamphetamine (also known as MDPV).
- j. A compound, other than bupropion, that is structurally derived from 2-amino-1-phenyl-1-propanone by modification in any of the following ways: (i) by substitution in the phenyl ring to any extent with alkyl, alkoxy, alkylendioxy, haloalkyl, or halide substituents, whether or not further substituted in the phenyl ring by one or more other univalent substituents; (ii) by substitution at the 3-position with an alkyl substituent; or (iii) by substitution at the nitrogen atom with alkyl or dialkyl groups or by inclusion of the nitrogen atom in a cyclic structure.
- k. N-Benzylpiperazine.
- l. 2,5-Dimethoxy-4-(n)-propylthiophenethylamine.

§ 90-89.1. Treatment of controlled substance analogues.

A controlled substance analogue shall, to the extent intended for human consumption, be treated for the purposes of any State law as a controlled substance in Schedule I.

§ 90-90. Schedule II controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a high potential for abuse; currently accepted medical use in the United States, or currently accepted medical use with severe restrictions; and the abuse of the substance may lead to severe psychic or physical dependence. The following controlled substances are included in this schedule:

- (1) Any of the following substances whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, unless specifically excepted or unless listed in another schedule:
 - a. Opium and opiate, and any salt, compound, derivative, or preparation of opium and opiate, excluding apomorphine, nalbuphine, dextrorphan, naloxone, naltrexone and nalmefene, and their respective salts, but including the following:
 1. Raw opium.
 2. Opium extracts.
 3. Opium fluid extracts.
 4. Powdered opium.
 5. Granulated opium.
 6. Tincture of opium.
 7. Codeine.
 8. Ethylmorphine.
 9. Etorphine hydrochloride.
 10. Hydrocodone.
 11. Hydromorphone.
 12. Metopon.
 13. Morphine.
 14. Oxycodone.
 15. Oxymorphone.

- 16. Thebaine.
 - 17. Dihydroetorphine.
 - b. Any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in paragraph 1 of this subdivision, except that these substances shall not include the isoquinoline alkaloids of opium.
 - c. Opium poppy and poppy straw.
 - d. Cocaine and any salt, isomer, salts of isomers, compound, derivative, or preparation thereof, or coca leaves and any salt, isomer, salts of isomers, compound, derivative, or preparation of coca leaves, or any salt, isomer, salts of isomers, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, except that the substances shall not include decocanized coca leaves or extraction of coca leaves, which extractions do not contain cocaine or ecgonine.
 - e. Concentrate of poppy straw (the crude extract of poppy straw in either liquid, solid or powder form which contains the phenanthrine alkaloids of the opium poppy).
- (2) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation unless specifically exempted or listed in other schedules:
- a. Alfentanil.
 - b. Alphaprodine.
 - c. Anileridine.
 - d. Bezitramide.
 - e. Carfentanil.
 - f. Dihydrocodeine.
 - g. Diphenoxylate.
 - h. Fentanyl.
 - i. Isomethadone.
 - j. Levo-alpha-acetylmethadol. Some trade or other names: levo-alpha-acetylmethadol, levomethadyl acetate, or LAAM.
 - k. Levomethorphan.
 - l. Levorphanol.
 - m. Metazocine.
 - n. Methadone.
 - o. Methadone – Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane.
 - p. Moramide – Intermediate, 2-methyl-3-morpholino-1, 1-diphenyl-propane-carboxylic acid.
 - q. Pethidine.
 - r. Pethidine – Intermediate – A, 4-cyano-1-methyl-4-phenylpiperidine.
 - s. Pethidine – Intermediate – B, ethyl-4-phenylpiperidine-4-carboxylate.
 - t. Pethidine – Intermediate – C, 1-methyl-4-phenylpiperidine-4-carboxylic acid.
 - u. Phenazocine.
 - v. Piminodine.
 - w. Racemethorphan.
 - x. Racemorphan.
 - y. Remifentanil.
 - z. Sufentanil.
 - aa. Tapentadol.
- (3) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a potential for abuse associated with a stimulant effect on the central nervous system unless specifically exempted or listed in another schedule:
- a. Amphetamine, its salts, optical isomers, and salts of its optical isomers.
 - b. Phenmetrazine and its salts.
 - c. Methamphetamine, including its salts, isomers, and salts of isomers.
 - d. Methylphenidate.
 - e. Phenylacetone. Some trade or other names: Phenyl-2-propanone; P2P; benzyl methyl ketone; methyl benzyl ketone.
 - f. Lisdexamfetamine, including its salts, isomers, and salts of isomers.
- (4) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts

of isomers is possible within the specific chemical designation, unless specifically exempted by the Commission or listed in another schedule:

- a. Amobarbital
 - b. Glutethimide
 - c. Repealed by Session Laws 1983, c. 695, s. 2.
 - d. Pentobarbital
 - e. Phencyclidine
 - f. Phencyclidine immediate precursors:
 1. 1-Phencyclidine
 2. 1-Piperidinocyclohexanecarbonitrile (PCC)
 - g. Secobarbital.
- (5) Any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers, unless specifically excepted, or listed in another schedule, whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Repealed by Session Laws 2001-233, s. 2(a), effective June 21, 2001.
 - b. Nabilone [Another name for nabilone: (+/-)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzo[b,d]pyran-9-one].

§ 90-91. Schedule III controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a potential for abuse less than the substances listed in Schedules I and II; currently accepted medical use in the United States; and abuse may lead to moderate or low physical dependence or high psychological dependence. The following controlled substances are included in this schedule:

(a) Repealed by Session Laws 1973, c. 540, s. 5.

(b) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system unless specifically exempted or listed in another schedule:

1. Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid.
 2. Chlorhexadol.
 3. Repealed by Session Laws 1993, c. 319, s. 5.
 4. Lysergic acid.
 5. Lysergic acid amide.
 6. Methyprylon.
 7. Sulfondiethylmethane.
 8. Sulfonethylmethane.
 9. Sulfonmethane.
 - 9a. Tiletamine and zolazepam or any salt thereof. Some trade or other names for tiletamine-zolazepam combination product: Telazol. Some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl)-cyclohexanone. Some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]y-diazepin-7(1H)-one. flupyrazapon.
 10. Any compound, mixture or preparation containing
 - (i) Amobarbital.
 - (ii) Secobarbital.
 - (iii) Pentobarbital.or any salt thereof and one or more active ingredients which are not included in any other schedule.
 11. Any suppository dosage form containing
 - (i) Amobarbital.
 - (ii) Secobarbital.
 - (iii) Pentobarbital.or any salt of any of these drugs and approved by the federal Food and Drug Administration for marketing as a suppository.
 12. Ketamine.
- (c) Nalorphine.

(d) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof unless specifically exempted or listed in another schedule:

1. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit with an equal or greater quantity of an isoquinoline alkaloid of opium.
2. Not more than 1.80 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
3. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit with a four-fold or greater quantity of an isoquinoline alkaloid of opium.
4. Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
5. Not more than 1.80 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
6. Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
7. Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.
8. Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

(e) Any compound, mixture or preparation containing limited quantities of the following narcotic drugs, which shall include one or more active, nonnarcotic, medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

1. Paregoric, U.S.P.; provided, that no person shall purchase or receive by any means whatsoever more than one fluid ounce of paregoric within a consecutive 24-hour period, except on prescription issued by a duly licensed physician.

(f) Paregoric, U.S.P., may be dispensed at retail as permitted by federal law or administrative regulation without a prescription only by a registered pharmacist and no other person, agency or employee may dispense paregoric, U.S.P., even if under the direct supervision of a pharmacist.

(g) Notwithstanding the provisions of G.S. 90-91(f), after the pharmacist has fulfilled his professional responsibilities and legal responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of paregoric, U.S.P., may be completed by a nonpharmacist. A pharmacist may refuse to dispense a paregoric, U.S.P., substance until he is satisfied that the product is being obtained for medicinal purposes only.

(h) Paregoric, U.S.P., may only be sold at retail without a prescription to a person at least 18 years of age. A pharmacist must require every retail purchaser of a paregoric, U.S.P., substance to furnish suitable identification, including proof of age when appropriate, in order to purchase paregoric, U.S.P. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

(i) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in paragraphs (a)1 and (a)2 of this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system; and if the ingredients are included therein in such combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

(j) Any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of said isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation, unless specifically excluded or listed in some other schedule.

1. Benzphetamine.
2. Chlorphentermine.
3. Clortermine.
4. Repealed by Session Laws 1987, c. 412, s. 10.
5. Phendimetrazine.

(k) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins, and corticosteroids) that promotes muscle growth, including, but not limited to, the following:

1. Methandrostenolone,
2. Stanozolol,
3. Ethylestrenol,
4. Nandrolone phenpropionate,
5. Nandrolone decanoate,
6. Testosterone propionate,
7. Chorionic gonadotropin,
8. Boldenone,
9. Chlorotestosterone (4-chlorotestosterone),
10. Clostebol,
11. Dehydrochlormethyltestosterone,
12. Dibydrotestosterone (4-dihydrotestosterone),
13. Drostanolone,
14. Fluoxymesterone,
15. Formebolone (formebolone),
16. Mesterolene,
17. Methandienone,
18. Methandranone,
19. Methandriol,
20. Methenolene,
21. Methyltestosterone,
22. Mibolerone,
23. Nandrolene,
24. Norethandrolene,
25. Oxandrolone,
26. Oxymesterone,
27. Oxymetholone,
28. Stanolone,
29. Testolactone,
30. Testosterone,
31. Trenbolone, and
32. Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the Secretary of Health and Human Services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use, such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(l) Repealed by Session Laws 2001-233, s. 3(a), effective June 21, 2001.

(m) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the Federal Food, Drug, and Cosmetic Act.

(n) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a U.S. Food and Drug Administration approved drug product. [Some other names: (6aR-trans), -6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol].

§ 90-92. Schedule IV controlled substances.

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule III of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule III of this Article. The following controlled substances are included in this schedule:

- (1) Depressants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
 - a. Alprazolam.

- b. Barbital.
 - c. Bromazepam.
 - d. Camazepam.
 - e. Chloral betaine.
 - f. Chloral hydrate.
 - g. Chlordiazepoxide.
 - h. Clobazam.
 - i. Clonazepam.
 - j. Clorazepate.
 - k. Clotiazepam.
 - l. Cloxazolam.
 - m. Delorazepam.
 - n. Diazepam.
 - o. Estazolam.
 - p. Ethchlorvynol.
 - q. Ethinamate.
 - r. Ethyl loflazepate.
 - s. Fludiazepam.
 - t. Flunitrazepam.
 - u. Flurazepam.
 - v. Repealed by Session Laws 2000, c. 140, s. 92.2(c).
 - w. Halazepam.
 - x. Haloxazolam.
 - y. Ketazolam.
 - z. Loprazolam.
 - aa. Lorazepam.
 - bb. Lormetazepam.
 - cc. Mebutamate.
 - dd. Medazepam.
 - ee. Meprobamate.
 - ff. Methohexital.
 - gg. Methylphenobarbital (mephobarbital).
 - hh. Midazolam.
 - ii. Nimetazepam.
 - jj. Nitrazepam.
 - kk. Nordiazepam.
 - ll. Oxazepam.
 - mm. Oxazolam.
 - nn. Paraldehyde.
 - oo. Petrichloral.
 - pp. Phenobarbital.
 - qq. Pinazepam.
 - rr. Prazepam.
 - ss. Quazepam.
 - tt. Temazepam.
 - uu. Tetrazepam.
 - vv. Triazolam.
 - ww. Zolpidem.
 - xx. Zaleplon.
- (2) Any material, compound, mixture, or preparation which contains any of the following substances, including its salts, or isomers and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:
- a. Fenfluramine.
 - b. Pentazocine.
- (3) Stimulants. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:
- a. Diethylpropion.
 - b. Mazindol.

- c. Pemoline (including organometallic complexes and chelates thereof).
 - d. Phentermine.
 - e. Cathine.
 - f. Fencamfamin.
 - g. Fenproporex.
 - h. Mefenorex.
 - i. Sibutramine.
 - j. Modafinil.
- (4) Other Substances. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:
- a. Dextropropoxyphene (Alpha-(plus)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).
 - b. Pipradrol.
 - c. SPA ((-)-1-dimethylamino-1, 2-diphenylethane).
 - d. Butorphanol.
- (5) Narcotic Drugs. – Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
- a. Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
 - b. Buprenorphine.

(b) The Commission may by regulation except any compound, mixture, or preparation containing any stimulant or depressant substance listed in this schedule from the application of all or any part of this Article if the compound, mixture, or preparation contains one or more active, nonnarcotic, medicinal ingredients not having a stimulant or depressant effect on the central nervous system; provided, that such admixtures shall be included therein in such combinations, quantity, proportion, or concentration as to vitiate the potential for abuse of the substances which do have a stimulant or depressant effect on the central nervous system.

§ 90-93. Schedule V controlled substances.

(a) This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that a substance comes within this schedule, the Commission shall find: a low potential for abuse relative to the substances listed in Schedule IV of this Article; currently accepted medical use in the United States; and limited physical or psychological dependence relative to the substances listed in Schedule IV of this Article. The following controlled substances are included in this schedule:

- (1) Any compound, mixture or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation valuable medicinal qualities other than those possessed by the narcotic alone:
 - a. Not more than 200 milligrams of codeine or any of its salts per 100 milliliters or per 100 grams.
 - b. Not more than 100 milligrams of dihydrocodeine or any of its salts per 100 milliliters or per 100 grams.
 - c. Not more than 100 milligrams of ethylmorphine or any of its salts per 100 milliliters or per 100 grams.
 - d. Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit.
 - e. Not more than 100 milligrams of opium per 100 milliliters or per 100 grams.
 - f. Not more than 0.5 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.
- (2) Repealed by Session Laws 1985, c. 172, s. 9.
- (3) Stimulants. – Unless specifically exempted or excluded or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers and salts of isomers:
 - a. Repealed by Session Laws 1993, c. 319, s. 7.
 - b. Pyrovalerone.

(b) A Schedule V substance may be sold at retail without a prescription only by a registered pharmacist and no other person, agent or employee may sell a Schedule V substance even if under the direct supervision of a pharmacist.

(c) Notwithstanding the provisions of G.S. 90-93(b), after the pharmacist has fulfilled the responsibilities required of him in this Article, the actual cash transaction, credit transaction, or delivery of a Schedule V substance, may be completed by a nonpharmacist. A pharmacist may refuse to sell a Schedule V substance until he is satisfied that the product is being obtained for medicinal purposes only.

(d) A Schedule V substance may be sold at retail without a prescription only to a person at least 18 years of age. The pharmacist must require every retail purchaser of a Schedule V substance to furnish suitable identification, including proof of age when appropriate, in order to purchase a Schedule V substance. The name and address obtained from such identification shall be entered in the record of disposition to consumers.

§ 90-94. Schedule VI controlled substances.

This schedule includes the controlled substances listed or to be listed by whatever official name, common or usual name, chemical name, or trade name designated. In determining that such substance comes within this schedule, the Commission shall find: no currently accepted medical use in the United States, or a relatively low potential for abuse in terms of risk to public health and potential to produce psychic or physiological dependence liability based upon present medical knowledge, or a need for further and continuing study to develop scientific evidence of its pharmacological effects.

The following controlled substances are included in this schedule:

- (1) Marijuana.
- (2) Tetrahydrocannabinols.
- (3) Synthetic cannabinoids. -- Any quantity of any synthetic chemical compound that (i) is a cannabinoid receptor agonist and mimics the pharmacological effect of naturally occurring substances or (ii) has a stimulant, depressant, or hallucinogenic effect on the central nervous system that is not listed as a controlled substance in Schedule I through V, and is not an FDA-approved drug. Synthetic cannabinoids include, but are not limited to, the substances listed in sub-subdivisions a. through j. of this subdivision and any substance that contains any quantity of their salts, isomers (whether optical, positional, or geometric), homologues, and salts of isomers and homologues, unless specifically excepted, whenever the existence of these salts, isomers, homologues, and salts of isomers and homologues is possible within the specific chemical designation. The following substances are examples of synthetic cannabinoids and are not intended to be inclusive of the substances included in this Schedule:
 - a. Naphthoylindoles. Any compound containing a 3-(1-naphthoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Some trade or other names: JWH-015, JWH-018, JWH-019, JWH-073, JWH-081, JWH-122, JWH-200, JWH-210, JWH-398, AM-2201, WIN 55-212.
 - b. Naphthylmethylindoles. Any compound containing a 1H-indol-3-yl-(1-naphthyl)methane structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the naphthyl ring to any extent.
 - c. Naphthoylpyrroles. Any compound containing a 3-(1-naphthoyl)pyrrole structure with substitution at the nitrogen atom of the pyrrole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the pyrrole ring to any extent and whether or not substituted in the naphthyl ring to any extent. Another name: JWH-307.
 - d. Naphthylmethylindenenes. Any compound containing a naphthylideneindene structure with substitution at the 3-position of the indene ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indene ring to any extent and whether or not substituted in the naphthyl ring to any extent.
 - e. Phenylacetylindoles. Any compound containing a 3-phenylacetylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring

- to any extent and whether or not substituted in the phenyl ring to any extent. Some trade or other names: SR-18, RCS-8, JWH-250, JWH-203.
- f. Cyclohexylphenols. Any compound containing a 2-(3-hydroxycyclohexyl)phenol structure with substitution at the 5-position of the phenolic ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not substituted in the cyclohexyl ring to any extent. Some trade or other names: CP 47,497 (and homologues), cannabicyclohexanol.
 - g. Benzoylindoles. Any compound containing a 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, or 2-(4-morpholinyl)ethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent. Some trade or other names: AM-694, Pravadoline (WIN 48,098), RCS-4.
 - h. 2,3-Dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone. Some trade or other names: WIN 55,212-2.
 - i. (6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2-methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol 7370. Some trade or other names: HU-210.
 - j. Tetramethylcyclopropanoylindoles. Any compound containing a 3-tetramethylcyclopropanoylindole structure with substitution at the nitrogen atom of the indole ring by an alkyl, haloalkyl, cyanoalkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl, 1-(N-methyl-2-piperidinyl)methyl, 2-(4-morpholinyl)ethyl, 1-(N-methyl-2-pyrrolidinyl)methyl, 1-(N-methyl-3-morpholinyl)methyl, or tetrahydropyranylmethyl group, whether or not further substituted in the indole ring to any extent and whether or not substituted in the tetramethylcyclopropyl ring to any extent. Some trade name or other names: "XLR-11."

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§ 90-95.2. Cooperation between law-enforcement agencies.

(a) The head of any law-enforcement agency may temporarily provide assistance to another agency in enforcing the provisions of this Article if so requested in writing by the head of the other agency. The assistance may comprise allowing officers of the agency to work temporarily with officers of the other agency (including in an undercover capacity) and lending equipment and supplies. While working with another agency under the authority of this section, an officer shall have the same jurisdiction, powers, rights, privileges, and immunities (including those relating to the defense of civil actions and payment of judgments) as the officers of the requesting agency in addition to those he normally possesses. While on duty with the other agency, he shall be subject to the lawful operational commands of his superior officers in the other agency, but he shall for personnel and administrative purposes remain under the control of his own agency, including for purposes of pay. He shall furthermore be entitled to workers' compensation when acting pursuant to this section to the same extent as though he were functioning within the normal scope of his duties.

(b) As used in this section:

- (1) "Head" means any director or chief officer of a law-enforcement agency, including the chief of police of a local police department and the sheriff of a county, or an officer of the agency to whom the head of the agency has delegated authority to make or grant requests under this section, but only one officer in the agency shall have this delegated authority at any time.
- (2) "Law-enforcement agency" means any State or local agency, force, department, or unit responsible for enforcing criminal laws in this State, including any local police department or sheriff's department.

(c) This section in no way reduces the jurisdiction or authority of State law-enforcement officers.

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§ 90-99. Republishing of schedules.

The North Carolina Department of Health and Human Services shall update and republish the schedules established by this Article on a semiannual basis for two years from January 1, 1972, and thereafter on an annual basis.

§ 90-100. Rules.

The Commission may adopt rules relating to the registration and control of the manufacture, distribution, security, and dispensing of controlled substances within this State.

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§ 90-104. Records of registrants or practitioners.

Each registrant or practitioner manufacturing, distributing, or dispensing controlled substances under this Article shall keep records and maintain inventories in conformance with the record-keeping and the inventory requirements of the federal law and shall conform to such rules and regulations as may be promulgated by the Commission.

§ 90-105. Order forms.

Controlled substances included in Schedules I and II of this Article shall be distributed only by a registrant or practitioner, pursuant to an order form. Compliance with the provisions of the Federal Controlled Substances Act or its successor respecting order forms shall be deemed compliance with this section.

§ 90-106. Prescriptions and labeling.

(a) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedule II of this Article may be dispensed without the written prescription of a practitioner. No Schedule II substance shall be dispensed pursuant to a written prescription more than six months after the date it was prescribed.

(b) In emergency situations, as defined by rule of the Commission, Schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the dispensing agent. Prescriptions shall be retained in conformity with the requirements of G.S. 90-104. No prescription for a Schedule II substance may be refilled.

(c) Except when dispensed directly by a practitioner, other than a pharmacist, to an ultimate user, no controlled substance included in Schedules III or IV, except paregoric, U.S.P., as provided in G.S. 90-91(e) 1, may be dispensed without a prescription, and oral prescriptions shall be promptly reduced to writing and filed with the dispensing agent. Such prescription may not be filled or refilled more than six months after the date thereof or be refilled more than five times after the date of the prescription.

(d) No controlled substance included in Schedule V of this Article or paregoric, U.S.P., may be distributed or dispensed other than for a medical purpose.

(e) No controlled substance included in Schedule VI of this Article may be distributed or dispensed other than for scientific or research purposes by persons registered under, or permitted by, this Article to engage in scientific or research projects.

(f) No controlled substance shall be dispensed or distributed in this State unless such substance shall be in a container clearly labeled in accord with regulations lawfully adopted and published by the federal government or the Commission.

(g) When a copy of a prescription for a controlled substance under this Article is given as required by G.S. 90-70, such copy shall be plainly marked: "Copy--for information only." Copies of prescriptions for controlled substances shall not be filled or refilled.

(h) A pharmacist dispensing a controlled substance under this Article shall enter the date of dispensing on the prescription order pursuant to which such controlled substance was dispensed.

(i) A manufacturer's sales representative may distribute a controlled substance as a complimentary sample only upon the written request of a practitioner. Such request must be made on each distribution and must contain the names and addresses of the supplier and the requester and the name and quantity of the specific controlled substance requested. The manufacturer shall maintain a record of each such request for a period of two years.

§ 90-106.1. Photo ID requirement for Schedule II controlled substances.

(a) Immediately prior to dispensing a Schedule II controlled substance, or any of the Schedule III controlled substances listed in subdivisions 1. through 8. of G.S. 90-91(d), each pharmacy holding a valid permit pursuant to G.S. 90-85.21 shall require the person seeking the dispensation to present one of the following valid, unexpired forms of government-issued photographic identification: (i) a drivers license, (ii) a special identification card issued under G.S. 20-37.7, (iii) a military identification card, or (iv) a passport. Upon presentation of the required photographic identification, the pharmacy shall document the name of the person seeking the dispensation, the type of photographic identification presented by the person seeking the dispensation, and the photographic identification number. The pharmacy shall retain this identifying information on the premises or at a central location apart from the premises as part of its business records for a period of three years following dispensation.

(b) The pharmacy shall make the identifying information available to any person authorized under G.S. 90-113.74 to receive prescription information data in the controlled substances reporting system within 72 hours after a request for the identifying information. A pharmacy that submits the identifying information required under this section to the controlled substances reporting system established and maintained pursuant to G.S. 90-113.73 is deemed in compliance with this subsection.

(c) Nothing in this section shall be deemed to require that the person seeking the dispensation and the person to whom the prescription is issued be the same person, and nothing in this section shall apply to the dispensation of controlled substances to employees of "health care facilities", as that term is defined in G.S. 131E-256(b), when the controlled substances are delivered to the health care facilities for the benefit of residents or patients of such health care facilities.

§ 90-106.2. Treatment of overdose with opioid antagonist; immunity.

(a) As used in this section, "opioid antagonist" means naloxone hydrochloride that is approved by the federal Food and Drug Administration for the treatment of a drug overdose.

(b) A practitioner acting in good faith and exercising reasonable care may directly or by standing order prescribe an opioid antagonist to (i) a person at risk of experiencing an opiate-related overdose or (ii) a family member, friend, or other person in a position to assist a person at risk of experiencing an opiate-related overdose. As an indicator of good faith, the practitioner, prior to prescribing an opioid under this subsection, may require receipt of a written communication that provides a factual basis for a reasonable conclusion as to either of the following:

- (1) The person seeking the opioid antagonist is at risk of experiencing an opiate-related overdose.
- (2) The person other than the person who is at risk of experiencing an opiate-related overdose, and who is seeking the opioid antagonist, is in relation to the person at risk of experiencing an opiate-related overdose:
 - a. A family member, friend, or other person.
 - b. In the position to assist a person at risk of experiencing an opiate-related overdose.

(c) A person who receives an opioid antagonist that was prescribed pursuant to subsection (b) of this section may administer an opioid antagonist to another person if (i) the person has a good faith belief that the other person is experiencing a drug-related overdose and (ii) the person exercises reasonable care in administering the drug to the other person. Evidence of the use of reasonable care in administering the drug shall include the receipt of basic instruction and information on how to administer the opioid antagonist.

(d) All of the following individuals are immune from any civil or criminal liability for actions authorized by this section:

- (1) Any practitioner who prescribes an opioid antagonist pursuant to subsection (b) of this section.
- (2) Any person who administers an opioid antagonist pursuant to subsection (c) of this section.

§ 90-107. Prescriptions, stocks, etc., open to inspection by officials.

Prescriptions, order forms and records, required by this Article, and stocks of controlled substances included in Schedules I through VI of this Article shall be open for inspection only to federal and State officers, whose duty it is to enforce the laws of this State or of the United States relating to controlled substances included in Schedules I through VI of this Article, and to authorized employees of the North Carolina Department of Health and Human Services. No officer having knowledge by virtue of his office of any such prescription, order, or record shall divulge such knowledge other than to other law-enforcement officials or agencies, except in connection with a prosecution or proceeding in court or before a licensing board or officer to which prosecution or proceeding the person to whom such prescriptions, orders, or records relate is a party.

§ 90-108. Prohibited acts; penalties.

(a) It shall be unlawful for any person:

- (1) Other than practitioners licensed under Articles 1, 2, 4, 6, 11, 12A of this Chapter to represent to any registrant or practitioner who manufactures, distributes, or dispenses a controlled substance under the provision of this Article that he is a licensed practitioner in order to secure or attempt to secure any controlled substance as defined in this Article or to in any way impersonate a practitioner for the purpose of securing or attempting to secure any drug requiring a prescription from a practitioner as listed above and who is licensed by this State;
- (2) Who is subject to the requirements of G.S. 90-101 or a practitioner to distribute or dispense a controlled substance in violation of G.S. 90-105 or 90-106;
- (3) Who is a registrant to manufacture, distribute, or dispense a controlled substance not authorized by his registration to another registrant or other authorized person;

- (4) To omit, remove, alter, or obliterate a symbol required by the Federal Controlled Substances Act or its successor;
- (5) To refuse or fail to make, keep, or furnish any record, notification, order form, statement, invoice or information required under this Article;
- (6) To refuse any entry into any premises or inspection authorized by this Article;
- (7) To knowingly keep or maintain any store, shop, warehouse, dwelling house, building, vehicle, boat, aircraft, or any place whatever, which is resorted to by persons using controlled substances in violation of this Article for the purpose of using such substances, or which is used for the keeping or selling of the same in violation of this Article;
- (8) Who is a registrant or a practitioner to distribute a controlled substance included in Schedule I or II of this Article in the course of his legitimate business, except pursuant to an order form as required by G.S. 90-105;
- (9) To use in the course of the manufacture or distribution of a controlled substance a registration number which is fictitious, revoked, suspended, or issued to another person;
- (10) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception, or subterfuge;
- (11) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this Article, or any record required to be kept by this Article;
- (12) To make, distribute, or possess any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit controlled substance;
- (13) To obtain controlled substances through the use of legal prescriptions which have been obtained by the knowing and willful misrepresentation to or by the intentional withholding of information from one or more practitioners;
- (14) Who is an employee of a registrant or practitioner and who is authorized to possess controlled substances or has access to controlled substances by virtue of his employment, to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use or to take, make away with or secrete, with intent to embezzle or fraudulently or knowingly and willfully misapply or divert to his own use or other unauthorized or illegal use any controlled substance which shall have come into his possession or under his care.

(b) Any person who violates this section shall be guilty of a Class I misdemeanor. Provided, that if the criminal pleading alleges that the violation was committed intentionally, and upon trial it is specifically found that the violation was committed intentionally, such violations shall be a Class I felony unless one of the following applies:

- (1) A person who violates subdivision (7) of subsection (a) of this section and also fortifies the structure, with the intent to impede law enforcement entry, (by barricading windows and doors) shall be punished as a Class I felon.
- (2) A person who violates subdivision (14) of subsection (a) of this section shall be punished as a Class G felon.

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§ 90-110. Injunctions.

(a) The superior court of North Carolina shall have jurisdiction in proceedings in accordance with the rules of those courts to enjoin violations of this Article.

(b) In case of an alleged violation of an injunction or restraining order issued under this section, trial shall, upon demand of the accused, be by a jury in accordance with the rules of the superior courts of North Carolina.

§ 90-111. Cooperative arrangements.

The North Carolina Department of Health and Human Services and the Attorney General of North Carolina shall cooperate with federal and other State agencies in discharging their responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. To this end, they are authorized to:

- (1) Arrange for the exchange of information between governmental officials concerning the use and abuse of controlled substances;
- (2) Coordinate and cooperate in training programs on controlled substances for law enforcement at the local and State levels;

- (3) Cooperate with the Bureau by establishing a centralized unit which will accept, catalogue, file, and collect statistics, including records of drug-dependent persons and other controlled substance law offenders within the State, and make such information available for federal, State, and local law-enforcement purposes. Provided that neither the Attorney General of North Carolina, the North Carolina Department of Health and Human Services nor any other State officer or agency shall be authorized to accept or file, or give out the names or other form of personal identification of drug-dependent persons who voluntarily seek treatment or assistance related to their drug dependency.

* * * * *

§ 90-113.1. Burden of proof; liabilities.

(a) It shall not be necessary for the State to negate any exemption or exception set forth in this Article in any complaint, information, indictment, or other pleading or in any trial, hearing, or other proceeding under this Article, and the burden of proof of any such exemption or exception shall be upon the person claiming its benefit.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this Article, he shall be presumed not to be the holder of such registration or form, and the burden of proof shall be upon him to rebut such presumption.

(c) No liability shall be imposed by virtue of this Article upon any duly authorized officer, engaged in the lawful enforcement of this Article.

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§ 90-113.5. State Board of Pharmacy, North Carolina Department of Justice and peace officers to enforce Article.

It is hereby made the duty of the State Board of Pharmacy, its officers, agents, inspectors, and representatives, and all peace officers within the State, including agents of the North Carolina Department of Justice, and all State's attorneys, to enforce all provisions of this Article, except those specifically delegated, and to cooperate with all agencies charged with the enforcement of the laws of the United States, of this State, and of all other states, relating to controlled substances. The North Carolina Department of Justice is hereby authorized to make initial investigation of all violations of this Article, and is given original but not exclusive jurisdiction in respect thereto with all other law-enforcement officers of the State.

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**Article 5D.
Control of Methamphetamine Precursors.**

§ 90-113.50. Title.

This Article shall be known and may be cited as the "Methamphetamine Lab Prevention Act of 2005."

§ 90-113.51. Definitions.

(a) For purposes of this Article, "pseudoephedrine product" means a product containing any detectable quantity of pseudoephedrine or ephedrine base, their salts or isomers, or salts of their isomers.

(b) For purposes of this Article, a "retailer" means an individual or entity that is the general owner of an establishment where pseudoephedrine products are available for sale.

(c) For purposes of this Article, the "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services.

§ 90-113.52. Pseudoephedrine: restrictions on sales.

(a) A pseudoephedrine product in the form of a tablet, caplet, or gel cap shall not be offered for retail sale loose in bottles but shall be sold only in blister packages.

(b) Pseudoephedrine products shall not be offered for retail sale by self-service, but shall be stored and sold in the following manner: Any pseudoephedrine product in the form of a tablet or caplet containing pseudoephedrine as the sole active ingredient or in combination with other active ingredients shall be stored and sold behind a pharmacy counter.

(c) A pseudoephedrine product may be sold at retail without a prescription only to a person at least 18 years of age. The retailer shall require every retail purchaser of a pseudoephedrine product to furnish a valid, unexpired, government-issued photo identification and to provide, in print or orally, a current valid personal residential address. If the retailer has reasonable grounds to believe that the prospective purchaser is under 18 years of age, the retailer shall require the prospective purchaser to furnish photo identification showing the date of

birth of the person. The name and address of every purchaser shall be entered in a record of disposition of pseudoephedrine products to the consumer on a form approved by the Commission. The record of disposition shall also identify each pseudoephedrine product purchased, including the number of grams the product contains and the purchase date of the transaction. The retailer shall require that every purchaser sign the form attesting to the validity of the information. The form approved by the Commission shall be constructed so that it allows for entry of information in electronic format, including electronic signature. The form shall also be constructed and maintained so as to minimize disclosure of personal information to unauthorized persons.

(d) A retailer shall maintain a record of disposition of pseudoephedrine products to the consumer for a period of two years from the date of each transaction. A record shall be readily available within 48 hours of the time of the transaction for inspection by an authorized official of a federal, State, or local law enforcement agency. The records maintained by a retailer are privileged information and are not public records but are for the exclusive use of the retailer and law enforcement. The retailer may destroy the information after two years from the date of the transactions.

(e) This section does not apply to any pseudoephedrine product that is in the form of a liquid, liquid capsule, gel capsule, or pediatric product labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article.

§ 90-113.52A. Electronic record keeping.

(a) A retailer shall, before completing a sale of a product containing a pseudoephedrine product, electronically submit the required information to the National Precursor Log Exchange (NPLEx) administered by the National Association of Drug Diversion Investigators (NADDI), provided that the NPLEx system is available to retailers in the State without a charge for accessing the system and the retailer has Internet access. The seller shall not complete the sale if the system generates a stop alert. Absent negligence, wantonness, recklessness, or deliberate misconduct, any retailer utilizing the electronic sales tracking system in accordance with this subsection shall not be civilly liable as a result of any act or omission in carrying out the duties required by this subsection and shall be immune from liability to any third party unless the retailer has violated any provision of this subsection in relation to a claim brought for such violation.

(b) If a pharmacy selling a product containing a pseudoephedrine product experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, the pharmacy or retail establishment shall record that the sale was made without submission to the NPLEx system in the record of disposition required under G.S. 90-113.52.

(c) The NADDI shall forward North Carolina transaction records in NPLEx to the State Bureau of Investigation weekly and provide real-time access to NPLEx information through the NPLEx online portal to law enforcement in the State as authorized by the SBI, provided that the SBI executes a memorandum of understanding with NADDI governing access.

(d) This system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits set forth in G.S. 90-113.52. The system shall contain an override function that may be used by a dispenser of a pseudoephedrine product who has a reasonable fear of imminent bodily harm if the dispenser does not complete a sale. Each instance in which the override function is utilized shall be logged by the system.

§ 90-113.53. Pseudoephedrine transaction limits.

(a) No person shall deliver to any one person, attempt to deliver to any one person, purchase, or attempt to purchase at retail more than 3.6 grams of any pseudoephedrine products per calendar day. This limit does not apply if the product is dispensed under a valid prescription.

(b) No person shall purchase at retail more than 9 grams of pseudoephedrine products within any 30-day period. This limit does not apply if the product is dispensed under a valid prescription.

(c) This section does not apply to any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article.

§ 90-113.54. Posting of signs.

(a) A retailer shall post a sign or placard in a clear and conspicuous manner in the area of the premises where the pseudoephedrine products are offered for sale substantially similar to the following: "North Carolina law strictly prohibits the purchase of more than 3.6 grams total of certain products containing pseudoephedrine per day, and more than 9 grams total of certain products containing pseudoephedrine within a 30-day period. This store will maintain a record of all sales of these products which may be accessible to law enforcement officers."

(b) This section does not apply to any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction, except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article.

§ 90-113.55. Training of employees.

A retailer shall require that employees of the establishment involved in the sale of pseudoephedrine products in the form of tablets or caplets, and any other pseudoephedrine product for which the Commission issues an order pursuant to G.S. 90-113.58 to subject the product to requirements under this Article, be trained in a program conducted by or approved by the Commission pursuant to G.S. 90-113.59.

§ 90-113.56. Penalties.

(a) If a retailer willfully and knowingly violates the provisions of G.S. 90-113.52, 90-113.52A, 90-113.53, or 90-113.54, the retailer shall be guilty of a Class A1 misdemeanor for the first offense and a Class I felony for a second or subsequent offense. A retailer convicted of a third offense occurring on the premises of a single establishment shall be prohibited from making pseudoephedrine products available for sale at that establishment.

(b) Any purchaser or employee who willfully and knowingly violates G.S. 90-113.52A, G.S. 90-113.52(c) or G.S. 90-113.53 shall be guilty of a Class 1 misdemeanor for the first offense, a Class A1 misdemeanor for a second offense, and a Class I felony for a third or subsequent offense. This subsection shall not be construed to apply to bona fide innocent purchasers.

(c) A retailer who fails to train employees in accordance with G.S. 90-113.55, adequately supervise employees in transactions involving pseudoephedrine products, or reasonably discipline employees for violations of this Article shall be fined up to five hundred dollars (\$500.00) for the first violation, up to seven hundred fifty dollars (\$750.00) for the second violation, and up to one thousand dollars (\$1,000) for a third or subsequent violation of this section.

§ 90-113.57. Immunity.

A retailer or an employee of the retailer who, reasonably and in good faith, reports to any law enforcement agency any alleged criminal activity related to the sale or purchase of pseudoephedrine products, or who refuses to sell a pseudoephedrine product to a person reasonably believed to be ineligible to purchase a pseudoephedrine product pursuant to this Article, is immune from civil liability for that conduct except in cases of willful misconduct. No retailer shall retaliate in any manner against any employee of the establishment for a report made in good faith to any law enforcement agency concerning alleged criminal activity related to the sale or purchase of pseudoephedrine products.

§ 90-113.58. Commission authority to control pseudoephedrine products.

(a) The Commission may add or delete a specific pseudoephedrine product from requirements of this Article on the petition of any interested party, or its own motion. In addition, the Commission may modify the specific storage, security, transaction limit, and record-keeping requirements applicable to a particular product upon such terms and conditions as they deem appropriate. In every case, the Commission shall give notice of and hold a public hearing pursuant to Chapter 150B of the General Statutes prior to adding or deleting a product. A petition by the Commission or the North Carolina Department of Justice to add or delete a specific product from requirements of this Article shall be placed on the agenda for consideration at the next regularly scheduled meeting of the Commission, as a matter of right. In making a determination regarding a specific product, the Commission shall consider whether or not there is substantial evidence that the specific product would be used to manufacture methamphetamine in the State.

(b) In making a determination, the Commission shall make findings with respect thereto and shall issue an order adding or deleting the specific product from requirements of this Article. The order shall be published in the North Carolina Register at least 60 days prior to the time that the addition or deletion of a specific product from the requirements of this Article becomes effective.

(c) The Commission may adopt temporary and permanent rules in accordance with this section.

§ 90-113.59. Commission development of employee training programs.

The Commission shall develop training and education programs targeted for employees of establishments where pseudoephedrine products are available for sale and shall approve such programs for implementation by retailers. The Commission may also conduct employee training programs for retail establishments. The Commission may adopt temporary and permanent rules in this regard.

§ 90-113.60. Preemption.

This Article shall preempt all local ordinances or regulations governing the sale by a retailer of over-the-counter products containing pseudoephedrine.

§ 90-113.61. Regulation of pseudoephedrine products in the form of liquids, liquid capsules, gel capsules, and pediatric products.

Except as to those specific products for which the Commission issues an order pursuant to G.S. 90-113.58 subjecting the product to requirements under this Article, any pseudoephedrine products that are in the form of liquids, liquid capsules, gel capsules, or pediatric products labeled pursuant to federal regulation primarily intended for administration to children under 12 years of age according to label instruction shall not be subject to requirements under this Article, but such products shall be subject to the requirements of the Combat Methamphetamine Act of 2005, Title VII of the USA PATRIOT Improvement and Reauthorization Act of 2005, P.L. 109-177.

§§ 90-113.62 through 90-113.69: Reserved for future codification purposes.

§ 90-113.64. SBI annual report.

Beginning with the 2011 calendar year, the State Bureau of Investigation shall determine the number of methamphetamine laboratories discovered in the State each calendar year and report its findings to the Legislative Commission on Methamphetamine Abuse by March 1, 2012, for the 2011 calendar year and each March 1 thereafter for the preceding calendar year. The State Bureau of Investigation shall participate in the High Intensity Drug Trafficking Areas (HIDTA) program, assist in coordinating the drug control efforts between local and State law enforcement agencies, and monitor the implementation and effectiveness of the electronic record-keeping requirements included in G.S. 90-113.52A and G.S. 90-113.56. The SBI shall include its findings in the report to the Commission required by this section.

Article 5E.

North Carolina Controlled Substances Reporting System Act.

§ 90-113.70. Short title.

This Article shall be known and may be cited as the "North Carolina Controlled Substances Reporting System Act."

§ 90-113.71. Legislative findings and purpose.

- (a) The General Assembly makes the following findings:
- (1) North Carolina is experiencing an epidemic of poisoning deaths from unintentional drug overdoses.
 - (2) Since 1997, the number of deaths from unintentional drug overdoses has increased threefold, from 228 deaths in 1997 to 690 deaths in 2003.
 - (3) The number of unintentional deaths from illicit drugs in North Carolina has decreased since 1992 while unintentional deaths from licit drugs, primarily prescriptions, have increased.
 - (4) Licit drugs are now responsible for over half of the fatal unintentional poisonings in North Carolina.
 - (5) Over half of the prescription drugs associated with unintentional deaths are narcotics (opioids).
 - (6) Of these licit drugs, deaths from methadone, usually prescribed as an analgesic for severe pain, have increased sevenfold since 1997.
 - (7) Methadone from opioid treatment program clinics is a negligible source of the methadone that has contributed to the dramatic increase in unintentional methadone-related deaths in North Carolina.
 - (8) Review of the experience of the 19 states that have active controlled substances reporting systems clearly documents that implementation of these reporting systems do not create a "chilling" effect on prescribing.
 - (9) Review of data from controlled substances reporting systems help:
 - a. Support the legitimate medical use of controlled substances.
 - b. Identify and prevent diversion of prescribed controlled substances.
 - c. Reduce morbidity and mortality from unintentional drug overdoses.
 - d. Reduce the costs associated with the misuse and abuse of controlled substances.
 - e. Assist clinicians in identifying and referring for treatment patients misusing controlled substances.

- f. Reduce the cost for law enforcement of investigating cases of diversion and misuse.
- g. Inform the public, including health care professionals, of the use and abuse trends related to prescription drugs.

(b) This Article is intended to improve the State's ability to identify controlled substance abusers or misusers and refer them for treatment, and to identify and stop diversion of prescription drugs in an efficient and cost-effective manner that will not impede the appropriate medical utilization of licit controlled substances.

§ 90-113.72. Definitions.

The following definitions apply in this Article:

- (1) "Commission" means the Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services established under Part 4 of Article 3 of Chapter 143B of the General Statutes.
- (2) "Controlled substance" means a controlled substance as defined in G.S. 90-87(5).
- (3) "Department" means the Department of Health and Human Services.
- (4) "Dispenser" means a person who delivers a Schedule II through V controlled substance to an ultimate user in North Carolina, but does not include any of the following:
 - a. A licensed hospital or long-term care pharmacy that dispenses such substances for the purpose of inpatient administration.
 - b. A wholesale distributor of a Schedule II through V controlled substance.
 - c. A person licensed to practice veterinary medicine pursuant to Article 11 of Chapter 90 of the General Statutes.
- (5) "Ultimate user" means a person who has lawfully obtained, and who possesses, a Schedule II through V controlled substance for the person's own use, for the use of a member of the person's household, or for the use of an animal owned or controlled by the person or by a member of the person's household.

§ 90-113.73. Requirements for controlled substances reporting system.

(a) The Department shall establish and maintain a reporting system of prescriptions for all Schedule II through V controlled substances. Each dispenser shall submit the information in accordance with transmission methods and frequency established by rule by the Commission. The Department may issue a waiver to a dispenser who is unable to submit prescription information by electronic means. The waiver may permit the dispenser to submit prescription information by paper form or other means, provided all information required of electronically submitted data is submitted. The dispenser shall report the information required under this section no later than the close of business three business days after the day when the prescription was delivered, beginning the next day after the delivery date; however, dispensers are encouraged to report the information no later than 24 hours after the prescription was delivered. The information shall be submitted in a format as determined annually by the Department based on the format used in the majority of the states operating a controlled substance reporting system.

(b) The Commission shall adopt rules requiring dispensers to report the following information. The Commission may modify these requirements as necessary to carry out the purposes of this Article. The dispenser shall report:

- (1) The dispenser's DEA number.
- (2) The name of the patient for whom the controlled substance is being dispensed, and the patient's:
 - a. Full address, including city, state, and zip code,
 - b. Telephone number, and
 - c. Date of birth.
- (3) The date the prescription was written.
- (4) The date the prescription was filled.
- (5) The prescription number.
- (6) Whether the prescription is new or a refill.
- (7) Metric quantity of the dispensed drug.
- (8) Estimated days of supply of dispensed drug, if provided to the dispenser.
- (9) National Drug Code of dispensed drug.
- (10) Prescriber's DEA number.
- (11) Method of payment for the prescription.

(c) A dispenser shall not be required to report instances in which a controlled substance is provided directly to the ultimate user and the quantity provided does not exceed a 48-hour supply.

§ 90-113.74. Confidentiality.

(a) Prescription information submitted to the Department is privileged and confidential, is not a public record pursuant to G.S. 132-1, is not subject to subpoena or discovery or any other use in civil proceedings, and except as otherwise provided below may only be used for investigative or evidentiary purposes related to violations of State or federal law and regulatory activities. Except as otherwise provided by this section, prescription information shall not be disclosed or disseminated to any person or entity by any person or entity authorized to review prescription information.

(b) The Department may use prescription information data in the controlled substances reporting system only for purposes of implementing this Article in accordance with its provisions.

(b1) The Department may review the prescription information data in the controlled substances reporting system and upon review may:

- (1) Notify practitioners that a patient may have obtained prescriptions for controlled substances in a manner that may represent abuse, diversion of controlled substances, or an increased risk of harm to the patient.
- (2) Report information regarding the prescribing practices of a practitioner to the agency responsible for licensing, registering, or certifying the practitioner pursuant to rules adopted by the agency as set forth below in subsection (b2) of this section.

(b2) In order to receive a report pursuant to subdivision (2) of subsection (b1) of this section, an agency responsible for licensing, registering, or certifying a practitioner with prescriptive or dispensing authority shall adopt rules setting the criteria by which the Department may report the information to the agency. The criteria for reporting established by rule shall not establish the standard of care for prescribing or dispensing, and it shall not be a basis for disciplinary action by an agency that the Department reported a practitioner to an agency based on the criteria.

(c) The Department shall release data in the controlled substances reporting system to the following persons only:

- (1) Persons authorized to prescribe or dispense controlled substances for the purpose of providing medical or pharmaceutical care for their patients. A person authorized to receive data pursuant to this paragraph may delegate the authority to receive the data to other persons working under his or her direction and supervision, provided the Department approves the delegation.
- (2) An individual who requests the individual's own controlled substances reporting system information.
- (3) Special agents of the North Carolina State Bureau of Investigation who are assigned to the Diversion & Environmental Crimes Unit and whose primary duties involve the investigation of diversion and illegal use of prescription medication. SBI agents assigned to the Diversion & Environmental Crimes Unit may then provide this information to other SBI agents who are engaged in a bona fide specific investigation related to enforcement of laws governing licit drugs. The SBI shall notify the Office of the Attorney General of North Carolina of each request for inspection of records maintained by the Department.
- (4) Primary monitoring authorities for other states pursuant to a specific ongoing investigation involving a designated person, if information concerns the dispensing of a Schedule II through V controlled substance to an ultimate user who resides in the other state or the dispensing of a Schedule II through V controlled substance prescribed by a licensed health care practitioner whose principal place of business is located in the other state.
- (5) To a sheriff or designated deputy sheriff or a police chief or a designated police investigator who is assigned to investigate the diversion and illegal use of prescription medication or pharmaceutical products identified in Article 5 of this Chapter of the General Statutes as Schedule II through V controlled substances and who is engaged in a bona fide specific investigation related to the enforcement of laws governing licit drugs pursuant to a lawful court order specifically issued for that purpose.
- (6) The Division of Medical Assistance for purposes of administering the State Medical Assistance Plan.
- (7) Licensing boards with jurisdiction over health care disciplines pursuant to an ongoing investigation by the licensing board of a specific individual licensed by the board.
- (8) Any county medical examiner appointed by the Chief Medical Examiner pursuant to G.S. 130A-382 and the Chief Medical Examiner, for the purpose of investigating the death of an individual.

(d) The Department may provide data to public or private entities for statistical, research, or educational purposes only after removing information that could be used to identify individual patients who received prescription medications from dispensers.

(e) In the event that the Department finds patterns of prescribing medications that are unusual, the Department shall inform the Attorney General's Office of its findings. The Office of the Attorney General shall review the Department's findings to determine if the findings should be reported to the SBI and the appropriate sheriff for investigation of possible violations of State or federal law relating to controlled substances.

(f) The Department shall purge from the controlled substances reporting system database all information more than six years old.

(g) Nothing in this Article shall prohibit a person authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes from disclosing or disseminating data regarding a particular patient obtained under subsection (c) of this section to another person (i) authorized to prescribe or dispense controlled substances pursuant to Article 1 of Chapter 90 of the General Statutes and (ii) authorized to receive the same data from the Department under subsection (c) of this section..

(h) Nothing in this Article shall prevent persons licensed or approved to practice medicine or perform medical acts, tasks, and functions pursuant to Article 1 of Chapter 90 of the General Statutes from retaining data received pursuant to subsection (c) of this section in a patient's confidential health care record.

§ 90-113.75. Civil penalties; other remedies; immunity from liability.

(a) A person who intentionally, knowingly, or negligently releases, obtains, or attempts to obtain information from the system in violation of a provision of this Article or a rule adopted pursuant to this Article shall be assessed a civil penalty by the Department not to exceed ten thousand dollars (\$10,000) per violation. The clear proceeds of penalties assessed under this section shall be deposited to the Civil Penalty and Forfeiture Fund in accordance with Article 31A of Chapter 115C of the General Statutes. The Commission shall adopt rules establishing the factors to be considered in determining the amount of the penalty to be assessed.

(b) In addition to any other remedies available at law, an individual whose prescription information has been disclosed in violation of this Article or a rule adopted pursuant to this Article may bring an action against any person or entity who has intentionally, knowingly, or negligently released confidential information or records concerning the individual for either or both of the following:

(1) Nominal damages of one thousand dollars (\$1,000). In order to recover damages under this subdivision, it shall not be necessary that the plaintiff suffered or was threatened with actual damages.

(2) The amount of actual damages, if any, sustained by the individual.

(c) A person or entity permitted access to data under this Article that, in good faith, makes a report or transmits data required or allowed by this Article is immune from civil or criminal liability that might otherwise be incurred or imposed as a result of making the report or transmitting the data.

§ 90-113.76. Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services to adopt rules.

The Commission for Mental Health, Developmental Disabilities, and Substance Abuse Services shall adopt rules necessary to implement this Article.

**Article 29.
Medical Records.**

§ 90-410. Definitions.

As used in this Article:

(1) "Health care provider" means any person who is licensed or certified to practice a health profession or occupation under this Chapter or Chapters 90B or 90C of the General Statutes, a health care facility licensed under Chapters 131E or 122C of the General Statutes, and a representative or agent of a health care provider.

(2) "Medical records" means personal information that relates to an individual's physical or mental condition, medical history, or medical treatment, excluding X rays and fetal monitor records.

§ 90-411. Record copy fee.

A health care provider may charge a reasonable fee to cover the costs incurred in searching, handling, copying, and mailing medical records to the patient or the patient's designated representative. The maximum fee for each request shall be seventy-five cents (75¢) per page for the first 25 pages, fifty cents (50¢) per page for pages 26 through 100, and twenty-five cents (25¢) for each page in excess of 100 pages, provided that the health care provider may impose a minimum fee of up to ten dollars (\$10.00), inclusive of copying costs. If requested by the patient or the patient's designated representative, nothing herein shall limit a reasonable professional fee charged by a physician for the review and preparation of a narrative summary of the patient's medical record. This section shall only apply with respect to liability claims for personal injury, and claims for social security disability,

except that charges for medical records and reports related to claims under Article 1 of Chapter 97 of the General Statutes shall be governed by the fees established by the North Carolina Industrial Commission pursuant to G.S. 97-26.1. This section shall not apply to Department of Health and Human Services Disability Determination Services requests for copies of medical records made on behalf of an applicant for Social Security or Supplemental Security Income disability.

§ 90-412. Electronic medical records.

(a) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this State or any unit of State or local government may create and maintain medical records in an electronic format. The health care provider, facility, or governmental unit shall not be required to maintain a separate paper copy of the electronic medical record. A health care provider, facility, or governmental unit shall maintain electronic medical records in a legible and retrievable form, including adequate data backup.

(b) Notwithstanding any other provision of law, any health care provider or facility licensed, certified, or registered under the laws of this State or any unit of State or local government may permit authorized individuals to authenticate orders and other medical record entries by written signature, or by electronic or digital signature in lieu of a signature in ink. Medical record entries shall be authenticated by the individual who made or authorized the entry. For purposes of this section, "authentication" means identification of the author of an entry by that author and confirmation that the contents of the entry are what the author intended.

(c) The legal rights and responsibilities of patients, health care providers, facilities, and governmental units shall apply to records created or maintained in electronic form to the same extent as those rights and responsibilities apply to medical records embodied in paper or other media. This subsection applies with respect to the security, confidentiality, accuracy, integrity, access to, and disclosure of medical records.

Article 37.

Health Care Practitioner Identification.

§ 90-640. Identification badges required.

(a) For purposes of this section, "health care practitioner" means an individual who is licensed, certified, or registered to engage in the practice of medicine, nursing, dentistry, pharmacy, or any related occupation involving the direct provision of health care to patients.

(b) When providing health care to a patient, a health care practitioner shall wear a badge or other form of identification displaying in readily visible type the individual's name and the license, certification, or registration held by the practitioner. If the identity of the individual's license, certification, or registration is commonly expressed by an abbreviation rather than by full title, that abbreviation may be used on the badge or other identification.

(c) The badge or other form of identification is not required to be worn if the patient is being seen in the health care practitioner's office and, the name and license of the practitioner can be readily determined by the patient from a posted license, a sign in the office, a brochure provided to patients, or otherwise.

(d) Each licensing board or other regulatory authority for health care practitioners may adopt rules for exemptions from wearing a badge or other form of identification, or for allowing use of the practitioner's first name only, when necessary for the health care practitioner's safety or for therapeutic concerns.

(e) Violation of this section is a ground for disciplinary action against the health care practitioner by the practitioner's licensing board or other regulatory authority.

**CHAPTER 14
CRIMINAL LAW**

**Article 31.
Misconduct in Public Office.**

Selected Provisions

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§ 14-234. Public officers or employees benefiting from public contracts; exceptions.

- (a) (1) No public officer or employee who is involved in making or administering a contract on behalf of a public agency may derive a direct benefit from the contract except as provided in this section, or as otherwise allowed by law.
- (2) A public officer or employee who will derive a direct benefit from a contract with the public agency he or she serves, but who is not involved in making or administering the contract, shall not attempt to influence any other person who is involved in making or administering the contract.
- (3) No public officer or employee may solicit or receive any gift, favor, reward, service, or promise of reward, including a promise of future employment, in exchange for recommending, influencing, or attempting to influence the award of a contract by the public agency he or she serves.
- (a1) For purposes of this section:
 - (1) As used in this section, the term "public officer" means an individual who is elected or appointed to serve or represent a public agency, other than an employee or independent contractor of a public agency.
 - (2) A public officer or employee is involved in administering a contract if he or she oversees the performance of the contract or has authority to make decisions regarding the contract or to interpret the contract.
 - (3) A public officer or employee is involved in making a contract if he or she participates in the development of specifications or terms or in the preparation or award of the contract. A public officer is also involved in making a contract if the board, commission, or other body of which he or she is a member takes action on the contract, whether or not the public officer actually participates in that action, unless the contract is approved under an exception to this section under which the public officer is allowed to benefit and is prohibited from voting.
 - (4) A public officer or employee derives a direct benefit from a contract if the person or his or her spouse: (i) has more than a ten percent (10%) ownership or other interest in an entity that is a party to the contract; (ii) derives any income or commission directly from the contract; or (iii) acquires property under the contract.
 - (5) A public officer or employee is not involved in making or administering a contract solely because of the performance of ministerial duties related to the contract.
- (b) Subdivision (a)(1) of this section does not apply to any of the following:
 - (1) Any contract between a public agency and a bank, banking institution, savings and loan association, or with a public utility regulated under the provisions of Chapter 62 of the General Statutes.
 - (2) An interest in property conveyed by an officer or employee of a public agency under a judgment, including a consent judgment, entered by a superior court judge in a condemnation proceeding initiated by the public agency.
 - (3) Any employment relationship between a public agency and the spouse of a public officer of the agency.
 - (4) Remuneration from a public agency for services, facilities, or supplies furnished directly to needy individuals by a public officer or employee of the agency under any program of direct public assistance being rendered under the laws of this State or the United States to needy persons administered in whole or in part by the agency if: (i) the programs of public assistance to needy persons are open to general participation on a nondiscriminatory basis to the practitioners of any given profession, professions or occupation; (ii) neither the agency nor any of its employees or agents, have control over who, among licensed or qualified providers, shall be selected by the beneficiaries of the assistance; (iii) the remuneration for the services, facilities or supplies are in the same amount as would be paid to any other provider; and (iv) although the public officer or employee may participate in making

determinations of eligibility of needy persons to receive the assistance, he or she takes no part in approving his or her own bill or claim for remuneration.

(b1) No public officer who will derive a direct benefit from a contract entered into under subsection (b) of this section may deliberate or vote on the contract or attempt to influence any other person who is involved in making or administering the contract.

(c) through (d) Repealed by Session Laws 2001-409, s. 1, effective July 1, 2002.

(d1) Subdivision (a)(1) of this section does not apply to . . . (v) any physician, pharmacist, dentist, optometrist, veterinarian, or nurse appointed to a county social services board, local health board, or area mental health, developmental disabilities, and substance abuse board serving one or more counties within which there is located no village, town, or city with a population of more than 15,000 according to the most recent official federal census . . .

(e) Anyone violating this section shall be guilty of a Class 1 misdemeanor.

(f) A contract entered into in violation of this section is void. A contract that is void under this section may continue in effect until an alternative can be arranged when: (i) immediate termination would result in harm to the public health or welfare, and (ii) the continuation is approved as provided in this subsection. A public agency that is a party to the contract may request approval to continue contracts under this subsection as follows:

(1) Local governments, as defined in G.S. 159-7(15), public authorities, as defined in G.S. 159-7(10), local school administrative units, and community colleges may request approval from the chair of the Local Government Commission.

(2) All other public agencies may request approval from the State Director of the Budget.

Approval of continuation of contracts under this subsection shall be given for the minimum period necessary to protect the public health or welfare.

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**CHAPTER 58
INSURANCE**

SELECTED PROVISIONS

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§ 58-1-5. Definitions.

In this Chapter, unless the context clearly requires otherwise:

- (2) "Commissioner" means the Commissioner of Insurance of North Carolina or an authorized designee of the Commissioner.
- (3) "Company" or "insurance company" or "insurer" includes any corporation, association, partnership, society, order, individual or aggregation of individuals engaging or proposing or attempting to engage as principals in any kind of insurance business, including the exchanging of reciprocal or interinsurance contracts between individuals, partnerships and corporations. "Company" or "insurance company" or "insurer" does not mean the State of North Carolina or any county, city, or other political subdivision of the State of North Carolina.
- (4) "Department" means the Department of Insurance of North Carolina.
- (9) "Person" means an individual, partnership, firm, association, corporation, joint-stock company, trust, any similar entity, or any combination of the foregoing acting in concert.
- (10) The singular form includes the plural, and the masculine form includes the feminine wherever appropriate.

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**Article 2.
Commissioner of Insurance.**

Selected Provisions

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§ 58-2-161. False statement to procure or deny benefit of insurance policy or certificate.

(a) For the purposes of this section:

- (1) "Insurer" has the same meaning as in G.S. 58-1-5(3) and also includes:
 - a. Any hull insurance and protection and indemnity club operating under Article 20 of this Chapter.
 - b. Any surplus lines insurer operating under Article 21 of this Chapter.
 - c. Any risk retention group or purchasing group operating under Article 22 of this Chapter.
 - d. Any local government risk pool operating under Article 23 of this Chapter.
 - e. Any risk-sharing plan operating under Article 42 of this Chapter.
 - f. The North Carolina Insurance Underwriting Association operating under Article 45 of this Chapter.
 - g. The North Carolina Joint Insurance Underwriting Association operating under Article 46 of this Chapter.
 - h. The North Carolina Insurance Guaranty Association operating under Article 48 of this Chapter.
 - i. Any multiple employer welfare arrangement operating under Article 49 of this Chapter.
 - j. The North Carolina Life and Health Insurance Guaranty Association operating under Article 62 of this Chapter.
 - k. Any service corporation operating under Article 65 of this Chapter.
 - l. Any health maintenance organization operating under Article 67 of this Chapter.
 - m. The State Health Plan for Teachers and State Employees and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes.

- n. A group of employers self-insuring their workers' compensation liabilities under Article 47 of this Chapter.
 - o. An employer self-insuring its workers' compensation liabilities under Article 5 of Chapter 97 of the General Statutes.
 - p. The North Carolina Self-Insurance Security Association under Article 4 of Chapter 97 of the General Statutes.
 - q. Any reinsurer licensed or accredited under this Chapter.
- (2) "Statement" includes any application, notice, statement, proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, bill for services, diagnosis, prescription, hospital or doctor records, X rays, test result, or other evidence of loss, injury, or expense.
- (b) Any person who, with the intent to injure, defraud, or deceive an insurer or insurance claimant:
- (1) Presents or causes to be presented a written or oral statement, including computer-generated documents as part of, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning any fact or matter material to the claim, or
 - (2) Assists, abets, solicits, or conspires with another person to prepare or make any written or oral statement that is intended to be presented to an insurer or insurance claimant in connection with, in support of, or in opposition to, a claim for payment or other benefit pursuant to an insurance policy, knowing that the statement contains false or misleading information concerning a fact or matter material to the claim is guilty of a Class H felony. Each claim shall be considered a separate count. Upon conviction, if the court imposes probation, the court may order the defendant to pay restitution as a condition of probation. In determination of the amount of restitution pursuant to G.S. 15A-1343(d), the reasonable costs and attorneys' fees incurred by the victim in the investigation of, and efforts to recover damages arising from, the claim, may be considered part of the damage caused by the defendant arising out of the offense.

In a civil cause of action for recovery based upon a claim for which a defendant has been convicted under this section, the conviction may be entered into evidence against the defendant. The court may award the prevailing party compensatory damages, attorneys' fees, costs, and reasonable investigative costs. If the prevailing party can demonstrate that the defendant has engaged in a pattern of violations of this section, the court may award treble damages.

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**Article 3.
General Regulations for Insurance.**

Selected Provisions

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§ 58-3-177. Uniform prescription drug identification cards.

(a) Every health benefit plan that provides coverage for prescription drugs or devices and that issues a prescription drug card, shall issue to its insureds a uniform prescription drug identification card. The uniform prescription drug identification card shall contain the information listed in subdivisions (1) through (7) of this subsection in the following order beginning at the top left margin of the card:

- (1) The health benefit plan's name and/or logo.
- (2) The American National Standards Institute assigned Issuer Identification Number.
- (3) The processor control number.
- (4) The insured's group number.
- (5) The health benefit plan's card issuer identifier.
- (6) The insured's identification number.
- (7) The insured's name.

(b) In addition to the information required under subsection (a), the uniform prescription drug card shall contain, in one of the lower-most elements on the back side of the card, the following information:

- (1) The health benefit plan's claims submission name and address.
- (2) The health benefit plan's help desk telephone number and name.

Nothing in this section shall require a health benefit plan to violate a contractual agreement, service mark agreement, or trademark agreement.

(c) A new uniform prescription drug identification card as required under subsection (a) of this section shall be issued annually by a health benefit plan if there has been any change in the insured's coverage in the previous 12 months. A change in the insured's coverage shall include, but is not limited to, the addition or deletion of a dependent of the insured covered by a health benefit plan.

(d) Not later than January 1, 2003, the uniform prescription drug identification card provided under subsection (a) of this section shall contain one of the following mediums capable of the processing or adjudicating of a claim through electronic verification:

- (1) A magnetic strip.
- (2) A bar code.
- (3) Any new technology available that is capable of processing or adjudicating a claim by electronic verification.

(e) As used in this section, "health benefit plan" means an accident and health insurance policy or certificate; a nonprofit hospital or medical service corporation contract; a health maintenance organization subscriber contract; a plan provided by a multiple employer welfare arrangement; or a plan provided by another benefit arrangement, to the extent permitted by the Employee Retirement Income Security Act of 1974, as amended, or by any waiver of or other exception to that Act provided under federal law or regulation. "Health benefit plan" does not mean any of the following kinds of insurance:

- (1) Accident.
- (2) Credit.
- (3) Disability income.
- (4) Long-term or nursing home care.
- (5) Medicare supplement.
- (6) Specified disease.
- (7) Dental or vision.
- (8) Coverage issued as a supplement to liability insurance.
- (9) Workers' compensation.
- (10) Medical payments under automobile or homeowners.
- (11) Insurance under which benefits are payable with or without regard to fault and that is statutorily required to be contained in any liability policy or equivalent self-insurance.
- (12) Hospital income or indemnity.

(f) This section shall not apply to an entity that has its own facility and employs or contracts with physicians, pharmacists, nurses, and other health care personnel, to the extent that the entity dispenses prescription drugs or devices from its own pharmacies to its employees and to enrollees of its health benefit plan. This section does not apply to a health benefit plan that issues a single identification card to its insureds for all services covered under the plan.

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§ 58-3-228. Coverage for extra prescriptions during a state of emergency or disaster.

(a) All health benefit plans as defined in G.S. 58-3-167, the State Health Plan for Teachers and State Employees, and any optional plans or programs operating under Part 2 of Article 3 of Chapter 135 of the General Statutes, and other stand-alone prescription medication plans issued by entities that are licensed by the Department shall have, when an event described in subdivision (b)(1) of this section occurs and the requirements of subdivisions (b)(2) and (b)(3) of this section are satisfied, a procedure in place to waive time restrictions on filling or refilling prescriptions for medication if requested by the covered person or subscriber. The procedure shall include waiver or override of electronic "refill too soon" edits to pharmacies and shall include provision for payment to the pharmacy in accordance with the prescription benefit plan and applicable pharmacy provider agreement. The procedure shall enable covered persons or subscribers to:

- (1) Obtain one refill on a prescription if there are authorized refills remaining, or
- (2) Fill one replacement prescription for one that was recently filled, as prescribed or approved by the prescriber of the prescription that is being replaced and not contrary to the dispensing authority of the dispensing pharmacy.

(b) All entities subject to this section shall authorize payment to pharmacies for any prescription dispensed in accordance with subsection (a) of this section regardless of the date upon which the prescription had most recently been filled by a pharmacist, if all of the following conditions apply:

- (1) The Commissioner issues a Bulletin Advisory notifying all insurance carriers licensed in this State of a declared state of disaster or state of emergency in North Carolina. The Department shall provide a copy of the Bulletin to the North Carolina Board of Pharmacy.
- (2) The covered person requesting coverage of the refill or replacement prescription resides in a county that:

- a. Is covered under a state of emergency issued by the Governor or General Assembly under G.S. 166A-19.20, or a declaration of major disaster issued by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. § 5121, et seq., as amended; or
 - b. Repealed by Session Laws 2012-12, s. 2(k), effective October 1, 2012.
- (3) The prescription medication is requested within 29 days after the origination date of the conditions stated in subdivision (b)(1) of this section.
- (c) The time period for the waiver of prescription medication refills may be extended in 30-day increments by an order issued by the Commissioner. Additional refills still remaining on a prescription shall be covered by the insurer as long as consistent with the orders of the prescriber or authority of the dispensing pharmacy.
- (d) This section does not excuse or exempt an insured or subscriber from any other terms of the policy or certificate providing coverage for prescription medications.
- (e) Quantity limitations shall be consistent with the original prescription and the extra or replacement fill may recognize proportionate dosage use prior to the disaster.
- (f) No requirements additional to those under the pharmacy provider agreement or the prescription benefit plan may be placed upon the provider for coverage of the replacement fill or extra fill.
- (g) Nothing in this section is intended to affect the respective authority or scope of practice of prescribers or pharmacies.

Article 50.
General Accident and Health Insurance Regulations.

Selected Provisions

Part 1. Miscellaneous Provisions
Selected Provisions

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§ 58-50-30. Right to choose services of certain providers.

- (a) Repealed by Session Laws 2001-297, s. 1, effective January 1, 2001.
- (a1) Whenever any health benefit plan, subscriber contract, or policy of insurance issued by a health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter provides for coverage for, payment of, or reimbursement for any service rendered in connection with a condition or complaint that is within the scope of practice of a provider listed in subsection (b) of this section, the insured or other persons entitled to benefits under the policy shall be entitled to coverage of, payment of, or reimbursement for the services, whether the services be performed by a duly licensed physician, or a provider listed in subsection (b) of this section, notwithstanding any provision contained in the plan or policy limiting access to the providers. The policyholder, insured, or beneficiary shall have the right to choose the provider of services notwithstanding any provision to the contrary in any other statute, subject to the utilization review, referral, and prior approval requirements of the plan that apply to all providers for that service; provided that:
- (1) In the case of plans that require the use of network providers as a condition of obtaining benefits under the plan or policy, the policyholder, insured, or beneficiary must choose a provider of the services within the network; and
 - (2) In the case of plans that require the use of network providers as a condition of obtaining a higher level of benefits under the plan or policy, the policyholder, insured, or beneficiary must choose a provider of the services within the network in order to obtain the higher level of benefits.
- (a2) Whenever any policy of insurance governed by Articles 1 through 64 of this Chapter provides for certification of disability that is within the scope of practice of a provider listed in subsection (b) of this section, the insured or other persons entitled to benefits under the policy shall be entitled to payment of or reimbursement for the disability whether the disability be certified by a duly licensed physician, or a provider listed subsection (b) of this section, notwithstanding any provisions contained in the policy. The policyholder, insured, or beneficiary shall have the right to choose the provider of the services notwithstanding any provision to the contrary in any other statute; provided that for plans that require the use of network providers either as a condition of obtaining benefits under the plan or policy or to access a higher level of benefits under the plan or policy, the policyholder, insured, or beneficiary must choose a provider of the services within the network, subject to the requirements of the plan or policy.
- (a3) Whenever any health benefit plan, subscriber contract, or policy of insurance issued by a health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of

this Chapter provides coverage for medically necessary treatment, the insurer shall not impose any limitation on treatment or levels of coverage if performed by a duly licensed chiropractor acting within the scope of the chiropractor's practice as defined in G.S. 90-151 unless a comparable limitation is imposed on the medically necessary treatment if performed or authorized by any other duly licensed physician.

(b) This section applies to the following provider types:

- (1) A duly licensed optometrist.
- (2) A duly licensed dentist.
- (3) A duly licensed podiatrist.
- (4) A duly licensed chiropractor.
- (5) An advanced practice registered nurse, subject to subsection (d) of this section. For purposes of this section, an "advanced practice registered nurse" means only a registered nurse who is duly licensed or certified as a nurse practitioner, clinical specialist in psychiatric and mental health nursing, or nurse midwife.
- (6) A psychologist who is one of the following:
 - a. A licensed psychologist who holds permanent licensure and certification as a health services provider psychologist issued by the North Carolina Psychology Board.
 - b. A licensed psychological associate who holds permanent licensure.
- (7) A licensed clinical social worker, as defined in G.S. 90B-3(2) who is licensed by the North Carolina Social Work Certification and Licensure Board pursuant to Chapter 90B of the General Statutes.
- (8) A duly licensed pharmacist, subject to the provisions of subsection (e) of this section.
- (9) A fee-based practicing pastoral counselor certified by the North Carolina State Board of Examiners of Fee-Based Practicing Pastoral Counselors pursuant to Article 26 of Chapter 90 of the General Statutes.
- (10) A substance abuse professional certified by the North Carolina Substance Abuse Professional Certification Board pursuant to Article 5C of Chapter 90 of the General Statutes.
- (11) A physician assistant, as defined by G.S. 90-18.1 and subject to subsection (f) of this section.
- (12) A professional counselor licensed by the North Carolina Board of Licensed Professional Counselors pursuant to Article 24 of Chapter 90 of the General Statutes.
- (13) A marriage and family therapist licensed by the North Carolina Marriage and Family Therapy Licensure Board pursuant to Article 18C of Chapter 90 of the General Statutes.
- (14) A physical therapist licensed by the North Carolina Board of Physical Therapy Examiners pursuant to Article 18B of Chapter 90 of the General Statutes.
- (15) A hearing aid specialist licensed by the North Carolina State Hearing Aid Dealers and Fitters Board under Chapter 93D of the General Statutes to engage in fitting or selling hearing aids. For purposes of this subdivision, the term "fitting and selling hearing aids" has the same meaning as defined in G.S. 93D-1.

(d) Payment or reimbursement is required by this section for a service performed by an advanced practice registered nurse only when:

- (1) The service performed is within the nurse's lawful scope of practice;
- (2) The policy currently provides benefits for identical services performed by other licensed health care providers;
- (3) The service is not performed while the nurse is a regular employee in an office of a licensed physician;
- (4) The service is not performed while the registered nurse is employed by a nursing facility (including a hospital, skilled nursing facility, intermediate care facility, or home care agency); and
- (5) Nothing in this section is intended to authorize payment to more than one provider for the same service.

No lack of signature, referral, or employment by any other health care provider may be asserted to deny benefits under this provision, unless these plan requirements apply to all providers for that service.

(e) Payment or reimbursement is required by this section for a service performed by a duly licensed pharmacist only when:

- (1) The service performed is within the lawful scope of practice of the pharmacist;
- (2) The service performed is not initial counseling services required under State or federal law or regulation of the North Carolina Board of Pharmacy;
- (3) The policy currently provides reimbursement for identical services performed by other licensed health care providers; and

- (4) The service is identified as a separate service that is performed by other licensed health care providers and is reimbursed by identical payment methods.

Nothing in this subsection authorizes payment to more than one provider for the same service.

(f) Payment or reimbursement is required by this section for a service performed by a duly licensed physician assistant only when:

- (1) The service performed is within the lawful scope of practice of the physician assistant in accordance with rules adopted by the North Carolina Medical Board pursuant to G.S. 90-18.1;
- (2) The policy currently provides reimbursement for identical services performed by other licensed health care providers; and
- (3) The reimbursement is made to the physician, clinic, agency, or institution employing the physician assistant.

Nothing in this subsection is intended to authorize payment to more than one provider for the same service.

(g) A health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter shall not exclude from participation in its provider network or from eligibility to provide particular covered services under the plan or policy any duly licensed physician or provider listed in subsection (b) of this section, acting within the scope of the provider's license or certification under North Carolina law, solely on the basis of the provider's license or certification. Any health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter that offers coverage through a network plan may condition participation in the network on satisfying written participation criteria, including credentialing, quality, and accessibility criteria. The participation criteria shall be developed and applied in a like manner consistent with the licensure and scope of practice for each type of provider. Any health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter that excludes a provider listed in subsection (b) of this section from participation in its network or from eligibility to provide particular covered services under the plan or policy shall provide the affected listed provider with a written explanation of the basis for its decision. A health maintenance organization, hospital or medical service corporation, or insurer governed by Articles 1 through 67 of this Chapter shall not exclude from participation in its provider network a provider listed in subsection (b) of this section acting within the scope of the provider's license or certification under North Carolina law solely on the basis that the provider lacks hospital privileges, unless use of hospital services by the provider on behalf of a policy holder, insured, or beneficiary reasonably could be expected.

(h) Nothing in this section shall be construed as expanding the scope of practice of any duly licensed physician or provider listed in subsection (b) of this section.

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Article 51. Nature of Policies.

Selected Provisions

§ 58-51-37. Pharmacy of choice.

(a) This section shall apply to all health benefit plans providing pharmaceutical services benefits, including prescription drugs, to any resident of North Carolina. This section shall also apply to insurance companies and health maintenance organizations that provide or administer coverages and benefits for prescription drugs. This section shall not apply to any entity that has its own facility, employs or contracts with physicians, pharmacists, nurses, and other health care personnel, and that dispenses prescription drugs from its own pharmacy to its employees and to enrollees of its health benefit plan; provided, however, this section shall apply to an entity otherwise excluded that contracts with an outside pharmacy or group of pharmacies to provide prescription drugs and services. This section shall not apply to any federal program, clinical trial program, hospital or other health care facility licensed pursuant to Chapter 131E or Chapter 122C of the General Statutes, when dispensing prescription drugs to its patients.

(b) As used in this section:

- (1) "Copayment" means a type of cost sharing whereby insured or covered persons pay a specified predetermined amount per unit of service with their insurer paying the remainder of the charge. The copayment is incurred at the time the service is used. The copayment may be a fixed or variable amount.
- (2) "Contract provider" means a pharmacy granted the right to provide prescription drugs and pharmacy services according to the terms of the insurer.
- (3) "Health benefit plan" is as that term is defined in G.S. 58-50-110(11).
- (4) "Insurer" means any entity that provides or offers a health benefit plan.

- (5) "Pharmacy" means a pharmacy registered with the North Carolina Board of Pharmacy.
- (c) The terms of a health benefit plan shall not:
- (1) Prohibit or limit a resident of this State, who is eligible for reimbursement for pharmacy services as a participant or beneficiary of a health benefit plan, from selecting a pharmacy of his or her choice when the pharmacy has agreed to participate in the health benefit plan according to the terms offered by the insurer;
 - (2) Deny a pharmacy the opportunity to participate as a contract provider under a health benefit plan if the pharmacy agrees to provide pharmacy services that meet the terms and requirements, including terms of reimbursement, of the insurer under a health benefit plan, provided that if the pharmacy is offered the opportunity to participate, it must participate or no provisions of G.S. 58-51-37 shall apply;
 - (3) Impose upon a beneficiary of pharmacy services under a health benefit plan any copayment, fee, or condition that is not equally imposed upon all beneficiaries in the same benefit category, class, or copayment level under the health benefit plan when receiving services from a contract provider;
 - (4) Impose a monetary advantage or penalty under a health benefit plan that would affect a beneficiary's choice of pharmacy. Monetary advantage or penalty includes higher copayment, a reduction in reimbursement for services, or promotion of one participating pharmacy over another by these methods.
 - (5) Reduce allowable reimbursement for pharmacy services to a beneficiary under a health benefit plan because the beneficiary selects a pharmacy of his or her choice, so long as that pharmacy has enrolled with the health benefit plan under the terms offered to all pharmacies in the plan coverage area; or
 - (6) Require a beneficiary, as a condition of payment or reimbursement, to purchase pharmacy services, including prescription drugs, exclusively through a mail-order pharmacy.
- (d) A pharmacy, by or through a pharmacist acting on its behalf as its employee, agent, or owner, may not waive, discount, rebate, or distort a copayment of any insurer, policy, or plan, or a beneficiary's coinsurance portion of a prescription drug coverage or reimbursement and if a pharmacy, by or through a pharmacist's acting on its behalf as its employee, agent or owner, provides a pharmacy service to an enrollee of a health benefit plan that meets the terms and requirements of the insurer under a health benefit plan, the pharmacy shall provide its pharmacy services to all enrollees of that health benefit plan on the same terms and requirements of the insurer. A violation of this subsection shall be a violation of the Pharmacy Practice Act subjecting the pharmacist as a licensee to disciplinary authority of the North Carolina Board of Pharmacy pursuant to G.S. 90-85.38.
- (e) At least 60 days before the effective date of any health benefit plan providing reimbursement to North Carolina residents for prescription drugs, which restricts pharmacy participation, the entity providing the health benefit plan shall notify, in writing, all pharmacies within the geographical coverage area of the health benefit plan, and offer to the pharmacies the opportunity to participate in the health benefit plan. All pharmacies in the geographical coverage area of the plan shall be eligible to participate under identical reimbursement terms for providing pharmacy services, including prescription drugs. The entity providing the health benefit plan shall, through reasonable means, on a timely basis, and on regular intervals in order to effectuate the purposes of this section, inform the beneficiaries of the plan of the names and locations of pharmacies that are participating in the plan as providers of pharmacy services and prescription drugs. Additionally, participating pharmacies shall be entitled to announce their participation to their customers through a means acceptable to the pharmacy and the entity providing the health benefit plans. The pharmacy notification provisions of this section shall not apply when an individual or group is enrolled, but when the plan enters a particular county of the State.
- (f) If rebates or marketing incentives are allowed to pharmacies or other dispensing entities providing services or benefits under a health benefit plan, these rebates or marketing incentives shall be offered on an equal basis to all pharmacies and other dispensing entities providing services or benefits under a health benefit plan when pharmacy services, including prescription drugs, are purchased in the same volume and under the same terms of payment. Nothing in this section shall prevent a pharmaceutical manufacturer or wholesale distributor of pharmaceutical products from providing special prices, marketing incentives, rebates, or discounts to different purchasers not prohibited by federal and State antitrust laws.
- (g) Any entity or insurer providing a health benefit plan is subject to G.S. 58-2-70. A violation of this section shall subject the entity providing a health benefit plan to the sanctions of revocation, suspension, or refusal to renew license in the discretion of the Commissioner pursuant to G.S. 58-3-100.
- (h) A violation of this section creates a civil cause of action for damages or injunctive relief in favor of any person or pharmacy aggrieved by the violation.
- (i) The Commissioner shall not approve any health benefit plan providing pharmaceutical services which does not conform to this section.

- (j) Any provision in a health benefit plan which is executed, delivered, or renewed, or otherwise contracted for in this State that is contrary to any provision of this section shall, to the extent of the conflict, be void.
- (k) It shall be a violation of this section for any insurer or any person to provide any health benefit plan providing for pharmaceutical services to residents of this State that does not conform to the provisions of this section.

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CHAPTER 75
MONOPOLIES, TRUSTS AND CONSUMER PROTECTION

SELECTED PROVISIONS

Article 4.
Telephone Solicitations.

Selected Provisions

* * * * *

§ 75-101. Definitions.

The following definitions apply in this Article:

- ...
- (2) Automatic dialing and recorded message player. – Any automatic equipment that incorporates a storage capability of telephone numbers to be called or a random or a sequential number generator capable of producing numbers to be called that, working alone or in conjunction with other equipment, disseminates a prerecorded message to the telephone number called.
- ...
- (4) Doing business in this State. – To make or cause to be made any telephone solicitation to North Carolina telephone subscribers, whether the telephone solicitations are made from a location inside North Carolina or outside North Carolina.
- ...
- (6) Express invitation or permission. – Any invitation or permission that is registered by the telephone subscriber on an independent form and that contains the telephone number to which calls can be placed and the signature of the telephone subscriber. The form may be completed and signed electronically.
- (7) Person. – Any individual, business establishment, business, or other legal entity.
- (8) Telemarketing Sales Rule. – The federal regulation promulgated by the Federal Trade Commission, 16 C.F.R. Part 310 (January 29, 2003 Edition), as amended, to implement the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 U.S.C. §§ 6101-6108, as amended.
- (9) Telephone solicitation. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a telephone solicitor to a telephone subscriber for the purpose of soliciting or encouraging the purchase or rental of, or investment in, property, goods, or services; obtaining or providing information that will or may be used for that purpose; soliciting or encouraging a telephone subscriber's participation in any contest, sweepstakes, raffle, or lottery, whether legal or illegal; or obtaining a charitable donation. "Telephone solicitation" also includes those transactions that are defined as "telemarketing" under the Telemarketing Sales Rule.
- (10) Telephone solicitor. – Any individual, business establishment, business, or other legal entity doing business in this State that, directly or through salespersons or agents, makes or attempts to make telephone solicitations or causes telephone solicitations to be made. "Telephone solicitor" also includes any party defined as a "telemarketer" under the Telemarketing Sales Rule.
- (11) Telephone subscriber. – An individual who subscribes to a residential telephone service from a local exchange company, a competing local provider certified to do business in North Carolina, or a wireless telephone company; or the individuals living or residing with that individual.
- (12) Unsolicited telephone call. – A voice communication, whether prerecorded, live, or a facsimile, over a telephone line or wireless telephone network or via a commercial mobile radio service that is made by a person to a telephone subscriber without prior express invitation or permission. (2003-411, s. 3.)

* * * * *

§ 75-104. Restrictions on use of automatic dialing and recorded message players.

(a) Except as provided in this section, no person may use an automatic dialing and recorded message player to make an unsolicited telephone call.

(b) Notwithstanding subsection (a) of this section, a person may use an automatic dialing and recorded message player to make an unsolicited telephone call only under one or more of the following circumstances:

- (1) All of the following are satisfied:
 - a. The person making the call is any of the following:
 1. A tax-exempt charitable or civic organization.
 2. A political party or political candidate.
 3. A governmental official.
 4. An opinion polling organization, radio station, television station, cable television company, or broadcast rating service conducting a public opinion poll.
 - b. No part of the call is used to make a telephone solicitation.
 - c. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (2) Prior to the playing of the recorded message, a live operator complies with G.S. 75-102(c), states the nature and length in minutes of the recorded message, and asks for and receives prior approval to play the recorded message from the person receiving the call.
- (3) The unsolicited telephone call is in connection with an existing debt or contract for which payment or performance has not been completed at the time of the unsolicited telephone call, and both of the following are satisfied:
 - a. No part of the call is used to make a telephone solicitation.
 - b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (4) The unsolicited telephone call is placed by a person with whom the telephone subscriber has made an appointment, provided that the call is conveying information only about the appointment, or by a utility, telephone company, cable television company, satellite television company, or similar entity for the sole purpose of conveying information or news about network outages, repairs or service interruptions, and confirmation calls related to restoration of service, and both of the following are satisfied:
 - a. No part of the call is used to make a telephone solicitation.
 - b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (5) The person plays the recorded message in order to comply with section 16 C.F.R. Part 310.4(b)(4) of the Telemarketing Sales Rule.
- (6) The unsolicited telephone call is placed by, or on behalf of, a health insurer as defined in G.S. 58-51-115(a)(2) from whom the telephone subscriber or other covered family member of the health insurer receives health care coverage or the administration of such coverage, provided that the call is conveying information related to the telephone subscriber or family member's health care, preventive services, medication or other covered benefits, and both of the following are satisfied:
 - a. No part of the call is used to make a telephone solicitation.
 - b. The person making the call clearly identifies the person's name and contact information and the nature of the unsolicited telephone call.
- (7) No part of the call is used to make a telephone solicitation, the person making the call clearly identifies the person's contact information and the nature of the unsolicited telephone call, and the sole purpose of the unsolicited telephone call is to protect the public health, safety, or welfare, by informing the telephone subscriber of any of the following:
 - a. That the telephone subscriber has purchased a product that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Consumer Product Safety Commission or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) there is a reasonable basis to believe that the telephone subscriber has purchased the product, and (ii) the message complies with any requirements imposed by any government agency instituting the recall.
 - b. That the telephone subscriber may have received a prescription or over-the-counter medication that is subject to a recall by the product's manufacturer, distributor or retailer, or by the federal Food and Drug Administration or another government agency or department with legal authority to recall the product which is the subject of the call, due to safety or health concerns, provided that (i) the call and its

message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy, (ii) there is a reasonable basis to believe that the telephone subscriber has purchased or received the medication, and (iii) the message complies with any requirements imposed by the government agency or product manufacturer, distributor, or retailer instituting the recall.

- c. That the telephone subscriber has not picked up a filled prescription drug for which a valid prescription is on file with a pharmacy licensed pursuant to G.S. 90-85.21 and the telephone subscriber requested that the prescription be filled, provided that the call and its message comply with the requirements of the Health Insurance Portability and Accountability Act (P.L. 104-191) (HIPAA) and any corresponding regulations pertaining to privacy.

* * * * *

CHAPTER 93B
OCCUPATIONAL LICENSING BOARDS

§ 93B-1. Definitions.

As used in this Chapter:

"License" means any license (other than a privilege license), certificate, or other evidence of qualification which an individual is required to obtain before he may engage in or represent himself to be a member of a particular profession or occupation.

"Occupational licensing board" means any board, committee, commission, or other agency in North Carolina which is established for the primary purpose of regulating the entry of persons into, and/or the conduct of persons within, a particular profession or occupation, and which is authorized to issue licenses; "occupational licensing board" does not include State agencies, staffed by full-time State employees, which as a part of their regular functions may issue licenses.

§ 93B-2. Annual reports required; contents; open to inspection; sanction for failure to report.

(a) No later than October 31 of each year, each occupational licensing board shall file with the Secretary of State, the Attorney General, and the Joint Regulatory Reform Committee an annual report containing all of the following information:

- (1) The address of the board, and the names of its members and officers.
- (2) The number of persons who applied to the board for examination.
- (3) The number who were refused examination.
- (4) The number who took the examination.
- (5) The number to whom initial licenses were issued.
- (6) The number who applied for license by reciprocity or comity.
- (7) The number who were granted licenses by reciprocity or comity.
- (7a) The number of official complaints received involving licensed and unlicensed activities.
- (7b) The number of disciplinary actions taken against licensees, or other actions taken against nonlicensees, including injunctive relief.
- (8) The number of licenses suspended or revoked.
- (9) The number of licenses terminated for any reason other than failure to pay the required renewal fee.
- (10) The substance of any anticipated request by the occupational licensing board to the General Assembly to amend statutes related to the occupational licensing board.
- (11) The substance of any anticipated change in rules adopted by the occupational licensing board or the substance of any anticipated adoption of new rules by the occupational licensing board.

(b) No later than October 31 of each year, each occupational licensing board shall file with the Secretary of State, the Attorney General, the Office of State Budget and Management, and the Joint Regulatory Reform Committee a financial report that includes the source and amount of all funds credited to the occupational licensing board and the purpose and amount of all funds disbursed by the occupational licensing board during the previous fiscal year.

(c) The reports required by this section shall be open to public inspection.

(d) Failure of a board to comply with the reporting requirements of this section by October 31 of each year shall result in a suspension of the board's authority to expend any funds until such time as the board files the required reports. Suspension of a board's authority to expend funds under this subsection shall not affect the board's duty to issue and renew licenses or the validity of any application or license for which fees have been tendered in accordance with law. Each board shall adopt rules establishing a procedure for implementing this subsection and shall maintain an escrow account into which any fees tendered during a board's period of suspension under this subsection shall be deposited.

§ 93B-3. Register of persons licensed; information as to licensed status of individuals.

Each occupational licensing board shall prepare a register of all persons currently licensed by the board and shall supplement said register annually by listing the changes made in it by reason of new licenses issued, licenses revoked or suspended, death, or any other cause. The board shall, upon request of any citizen of the State, inform the requesting person as to the licensed status of any individual.

§ 93B-4. Audit of Occupational Licensing Boards; payment of costs.

(a) The State Auditor shall audit occupational licensing boards from time to time to ensure their proper operation. The books, records, and operations of each occupational licensing board shall be subject to the oversight of the State Auditor pursuant to Article 5A of Chapter 147 of the General Statutes. In accordance with G.S.

147-64.7(b), the State Auditor may contract with independent professionals to meet the requirements of this section.

(b) Each occupational licensing board with a budget of at least fifty thousand dollars (\$50,000) shall conduct an annual financial audit of its operations and provide a copy to the State Auditor.

§ 93B-5. Compensation, employment, and training of board members.

(a) Board members shall receive as compensation for their services per diem not to exceed one hundred dollars (\$100.00) for each day during which they are engaged in the official business of the board.

(b) Board members shall be reimbursed for all necessary travel expenses in an amount not to exceed that authorized under G.S. 138-6(a) for officers and employees of State departments. Actual expenditures of board members in excess of the maximum amounts set forth in G.S. 138-6(a) for travel and subsistence may be reimbursed if the prior approval of the State Director of Budget is obtained and such approved expenditures are within the established and published uniform standards and criteria of the State Director of Budget authorized under G.S. 138-7 for extraordinary charges for hotels, meals, and convention registration for State officers and employees, whenever such charges are the result of required official business of the Board.

(c) Repealed by Session Laws 1981, c. 757, s. 2.

(d) Except as provided herein board members shall not be paid a salary or receive any additional compensation for services rendered as members of the board.

(e) Board members shall not be permanent, salaried employees of said board.

(f) Repealed by Session Laws 1975, c. 765, s. 1.

(g) Within six months of a board member's initial appointment to the board, and at least once within every two calendar years thereafter, a board member shall receive training, either from the board's staff, including its legal advisor, or from an outside educational institution such as the School of Government of the University of North Carolina, on the statutes governing the board and rules adopted by the board, as well as the following State laws, in order to better understand the obligations and limitations of a State agency:

(1) Chapter 150B, The Administrative Procedure Act.

(2) Chapter 132, The Public Records Law.

(3) Article 33C of Chapter 143, The Open Meetings Act.

(4) Articles 31 and 31A of Chapter 143, The State Tort Claims Act and The Defense of State Employees Law.

(5) Chapter 138A, The State Government Ethics Act.

(6) Chapter 120C, Lobbying.

Completion of the training requirements contained in Chapter 138A and Chapter 120C of the General Statutes satisfies the requirements of subdivisions (5) and (6) of this subsection.

§ 93B-6. Use of funds for lobbying prohibited.

Occupational licensing boards shall not use any funds to promote or oppose in any manner the passage by the General Assembly of any legislation.

§ 93B-7. Rental of state-owned office space.

Any occupational licensing board, which financially operates on the licensing fees charged and also occupies state-owned office space, shall pay rent, in a reasonable amount to be determined by the Governor, to the State for the occupancy of such space.

§ 93B-8. Examination procedures.

(a) Each applicant for an examination given by any occupational licensing board shall be informed in writing or print of the required grade for passing the examination prior to the taking of such examination.

(b) Each applicant for an examination given by any occupational licensing board shall be identified, for purposes of the examination, only by number rather than by name.

(c) Each applicant who takes an examination given by any occupational licensing board, and does not pass such examination, shall have the privilege to review his examination in the presence of the board or a representative of the board. Except as provided in this subsection, an occupational licensing board shall not be required to disclose the contents of any examination or of any questions which have appeared thereon, or which may appear thereon in the future.

(d) Notwithstanding the provisions of this section, under no circumstances shall an occupational licensing board be required to disclose to an applicant questions or answers to tests provided by recognized testing organizations pursuant to contracts which prohibit such disclosures.

§ 93B-8.1. Use of criminal history records.

(a) The following definitions apply in this section:

- (1) Applicant. – A person who makes application for licensure from an occupational licensing board.
- (2) Board. – An occupational licensing board as defined in G.S. 93B-1.
- (3) Criminal history record. – A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon an applicant's or a licensee's fitness to be licensed or disciplined.
- (4) Licensee. – A person who has obtained a license to engage in or represent himself or herself to be a member of a particular profession or occupation.

(b) Unless the law governing a particular occupational licensing board provides otherwise, a board shall not automatically deny licensure on the basis of an applicant's criminal history. If the board is authorized to deny a license to an applicant on the basis of conviction of any crime or for commission of a crime involving fraud or moral turpitude, and the applicant's verified criminal history record reveals one or more convictions of any crime, the board may deny the license if it finds that denial is warranted after consideration of the following factors:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the crime.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
- (7) The subsequent commission of a crime by the applicant.
- (8) Any affidavits or other written documents, including character references.

(c) The board may deny licensure to an applicant who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories.

(d) This section does not apply to The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission.

§ 93B-9. Age requirements.

Except certifications issued by the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission pursuant to Chapters 17C, 17E, 74E, and 74G of the General Statutes, no occupational licensing board may require that an individual be more than 18 years of age as a requirement for receiving a license with the following exceptions: the North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission may establish a higher age as a requirement for holding certification through either Commission.

§ 93B-10. Expiration of term of appointment of board member.

A board member serving on an occupational and professional licensing board whose term of appointment has expired shall continue to serve until a successor is appointed and qualified.

§ 93B-11. Interest from State Treasurer's Investment Program.

Any interest earned by an occupational licensing board under G.S. 147-69.3(d) may be used only for the following purposes:

- (1) To reduce fees;
- (2) Improve services offered to licensees and the public; or
- (3) For educational purposes to benefit licensees or the public.

§ 93B-12. Information from licensing boards having authority over health care providers.

(a) Every occupational licensing board having authority to license physicians, physician assistants, nurse practitioners, and nurse midwives in this State shall modify procedures for license renewal to include the collection of information specified in this section for each board's regular renewal cycle. The purpose of this requirement is to assist the State in tracking the availability of health care providers to determine which areas in the State suffer from inequitable access to specific types of health services and to anticipate future health care shortages which might adversely affect the citizens of this State. Occupational licensing boards shall collect, report, and update the following information:

- (1) Area of health care specialty practice;
- (2) Address of all locations where the licensee practices; and

- (3) Other information the occupational licensing board deems relevant to assisting the State in achieving the purpose set out in this section, including social security numbers for research purposes only in matching other data sources.

(b) Every occupational licensing board required to collect information pursuant to subsection (a) of this section shall report and update the information on an annual basis to the Department of Health and Human Services. The Department shall provide this information to programs preparing primary care physicians, physicians assistants, and nurse practitioners upon request by the program and by the Board of Governors of The University of North Carolina. Information provided by the occupational licensing board pursuant to this subsection may be provided in such form as to omit the identity of the health care licensee.

§ 93B-13. Revocation when licensing privilege forfeited for nonpayment of child support or for failure to comply with subpoena.

(a) Upon receipt of a court order, pursuant to G.S. 50-13.12 and G.S. 110-142.1, revoking the occupational license of a licensee under its jurisdiction, an occupational licensing board shall note the revocation in its records, report the action within 30 days to the Department of Health and Human Services, and follow the normal postrevocation rules and procedures of the board as if the revocation had been ordered by the board. The revocation shall remain in effect until the board receives certification by the clerk of superior court or the Department of Health and Human Services in an IV-D case that the licensee is no longer delinquent in child support payments, or, as applicable, that the licensee is in compliance with or is no longer subject to the subpoena that was the basis for the revocation.

(b) Upon receipt of notification from the Department of Health and Human Services that a licensee under an occupational licensing board's jurisdiction has forfeited the licensee's occupational license pursuant to G.S. 110-142.1, then the occupational licensing board shall send a notice of intent to revoke or suspend the occupational license of that licensee as provided by G.S. 110-142.1(d). If the license is revoked as provided by the provisions of G.S. 110-142.1, the revocation shall remain in effect until the board receives certification by the designated representative or the child support enforcement agency that the licensee is no longer delinquent in child support payments, or, as applicable, that the licensee is in compliance with or no longer subject to a subpoena that was the basis for the revocation.

(c) If at the time the court revokes a license pursuant to subsection (a) of this section, or if at the time the occupational licensing board revokes a license pursuant to subsection (b) of this section, the occupational licensing board has revoked the same license under the licensing board's disciplinary authority over licensees under its jurisdiction, and that revocation period is greater than the revocation period resulting from forfeiture pursuant to G.S. 50-13.12 or G.S. 110-142.1 then the revocation period imposed by the occupational licensing board applies.

(d) Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked pursuant to subsection (a) or (b) of this section is no longer delinquent in child support payments, the occupational licensing board shall reinstate the license. Immediately upon certification by the clerk of superior court or the child support enforcement agency that the licensee whose license was revoked because of failure to comply with a subpoena is in compliance with or no longer subject to the subpoena, the occupational licensing board shall reinstate the license. Reinstatement of a license pursuant to this section shall be made at no additional cost to the licensee.

§ 93B-14. Information on applicants for licensure.

Every occupational licensing board shall require applicants for licensure to provide to the Board the applicant's social security number. This information shall be treated as confidential and may be released only as follows:

- (1) To the State Child Support Enforcement Program of the Department of Health and Human Services upon its request and for the purpose of enforcing a child support order.
- (2) To the Department of Revenue for the purpose of administering the State's tax laws.

§ 93B-15. Payment of license fees by members of the Armed Forces; board waiver rules.

(a) An individual who is serving in the Armed Forces of the United States and to whom G.S. 105-249.2 grants an extension of time to file a tax return is granted an extension of time to pay any license fee charged by an occupational licensing board as a condition of retaining a license granted by the board. The extension is for the same period that would apply if the license fee were a tax.

(b) Occupational licensing boards shall adopt rules to postpone or waive continuing education, payment of renewal and other fees, and any other requirements or conditions relating to the maintenance of licensure by an individual who is currently licensed by and in good standing with the board, is serving in the Armed Forces of the United States, and to whom G.S. 105-249.2 grants an extension of time to file a tax return.

§ 93B-15.1. Licensure for individuals with military training and experience; licensure by endorsement for military spouses; temporary license.

(a) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military-trained applicant to allow the applicant to lawfully practice the applicant's occupation in this State if, upon application to an occupational licensing board, the applicant satisfies the following conditions:

- (1) Has been awarded a military occupational specialty and has done all of the following at a level that is substantially equivalent to or exceeds the requirements for licensure, certification, or registration of the occupational licensing board from which the applicant is seeking licensure, certification, or registration in this State: completed a military program of training, completed testing or equivalent training and experience as determined by the board, and performed in the occupational specialty.
- (2) Has engaged in the active practice of the occupation for which the person is seeking a license, certification, or permit from the occupational licensing board in this State for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(b) Notwithstanding any other provision of law, an occupational licensing board, as defined in G.S. 93B-1, shall issue a license, certification, or registration to a military spouse to allow the military spouse to lawfully practice the military spouse's occupation in this State if, upon application to an occupational licensing board, the military spouse satisfies the following conditions:

- (1) Holds a current license, certification, or registration from another jurisdiction, and that jurisdiction's requirements for licensure, certification, or registration are substantially equivalent to or exceed the requirements for licensure, certification, or registration of the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.
- (2) Can demonstrate competency in the occupation through methods as determined by the Board, such as having completed continuing education units or having had recent experience for at least two of the five years preceding the date of the application under this section.
- (3) Has not committed any act in any jurisdiction that would have constituted grounds for refusal, suspension, or revocation of a license to practice that occupation in this State at the time the act was committed.
- (4) Is in good standing and has not been disciplined by the agency that had jurisdiction to issue the license, certification, or permit.
- (5) Pays any fees required by the occupational licensing board for which the applicant is seeking licensure, certification, or registration in this State.

(c) All relevant experience of a military service member in the discharge of official duties or, for a military spouse, all relevant experience, including full-time and part-time experience, regardless of whether in a paid or volunteer capacity, shall be credited in the calculation of years of practice in an occupation as required under subsection (a) or (b) of this section.

(d) A nonresident licensed, certified, or registered under this section shall be entitled to the same rights and subject to the same obligations as required of a resident licensed, certified, or registered by an occupational licensing board in this State.

(e) Nothing in this section shall be construed to apply to the practice of law as regulated under Chapter 84 of the General Statutes.

(f) An occupational licensing board may issue a temporary practice permit to a military-trained applicant or military spouse licensed, certified, or registered in another jurisdiction while the military-trained applicant or military spouse is satisfying the requirements for licensure under subsection (a) or (b) of this section if that jurisdiction has licensure, certification, or registration standards substantially equivalent to the standards for licensure, certification, or registration of an occupational licensing board in this State. The military-trained applicant or military spouse may practice under the temporary permit until a license, certification, or registration is granted or until a notice to deny a license, certification, or registration is issued in accordance with rules adopted by the occupational licensing board.

(g) An occupational licensing board may adopt rules necessary to implement this section.

(h) Nothing in this section shall be construed to prohibit a military-trained applicant or military spouse from proceeding under the existing licensure, certification, or registration requirements established by an occupational licensing board in this State.

(i) For the purposes of this section, the State Board of Education shall be considered an occupational licensing board when issuing teacher licenses under G.S. 115C-296.

(j) For the purposes of this section, the North Carolina Medical Board shall not be considered an occupational licensing board.

§ 93B-16. Occupational board liability for negligent acts.

(a) An occupational licensing board may purchase commercial insurance of any kind to cover all risks or potential liability of the board, its members, officers, employees, and agents, including the board's liability under Articles 31 and 31A of Chapter 143 of the General Statutes.

(b) Occupational licensing boards shall be deemed State agencies for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes, and board members and employees of occupational licensing boards shall be considered State employees for purposes of Articles 31 and 31A of Chapter 143 of the General Statutes. To the extent an occupational licensing board purchases commercial liability insurance coverage in excess of one hundred fifty thousand dollars (\$150,000) per claim for liability arising under Article 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-299.4 shall not apply. To the extent that an occupational licensing board purchases commercial insurance coverage for liability arising under Article 31 or 31A of Chapter 143 of the General Statutes, the provisions of G.S. 143-300.6(c) shall not apply.

(c) The purchase of insurance by an occupational licensing board under this section shall not be construed to waive sovereign immunity or any other defense available to the board, its members, officers, employees, or agents in an action or contested matter in any court, agency, or tribunal. The purchase of insurance by an occupational licensing board shall not be construed to alter or expand the limitations on claims or payments established in G.S. 143-299.2 or limit the right of board members, officers, employees, or agents to defense by the State as provided by G.S. 143-300.3.

**CHAPTER 99B
PRODUCTS LIABILITY**

SELECTED PROVISIONS

§ 99B-1. Definitions.

When used in this Chapter, unless the context otherwise requires:

- (1) "Claimant" means a person or other entity asserting a claim and, if said claim is asserted on behalf of an estate, an incompetent or a minor, "claimant" includes plaintiff's decedent, guardian, or guardian ad litem.
- (2) "Manufacturer" means a person or entity who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or component part of a product prior to its sale to a user or consumer, including a seller owned in whole or significant part by the manufacturer or a seller owning the manufacturer in whole or significant part.
- (3) "Product liability action" includes any action brought for or on account of personal injury, death or property damage caused by or resulting from the manufacture, construction, design, formulation, development of standards, preparation, processing, assembly, testing, listing, certifying, warning, instructing, marketing, selling, advertising, packaging, or labeling of any product.
- (4) "Seller" includes a retailer, wholesaler, or distributor, and means any individual or entity engaged in the business of selling a product, whether such sale is for resale or for use or consumption. "Seller" also includes a lessor or bailor engaged in the business of leasing or bailment of a product.

§ 99B-1.1. Strict liability.

There shall be no strict liability in tort in product liability actions.

§ 99B-1.2. Breach of warranty.

Nothing in this act shall preclude a product liability action that otherwise exists against a manufacturer or seller for breach of warranty. The defenses provided for in this Chapter shall apply to claims for breach of warranty unless expressly excluded under this Chapter.

§ 99B-2. Seller's opportunity to inspect; privity requirements for warranty claims.

(a) No product liability action, except an action for breach of express warranty, shall be commenced or maintained against any seller when the product was acquired and sold by the seller in a sealed container or when the product was acquired and sold by the seller under circumstances in which the seller was afforded no reasonable opportunity to inspect the product in such a manner that would have or should have, in the exercise of reasonable care, revealed the existence of the condition complained of, unless the seller damaged or mishandled the product while in his possession; provided, that the provisions of this section shall not apply if the manufacturer of the product is not subject to the jurisdiction of the courts of this State or if such manufacturer has been judicially declared insolvent.

(b) A claimant who is a buyer, as defined in the Uniform Commercial Code, of the product involved, or who is a member or a guest of a member of the family of the buyer, a guest of the buyer, or an employee of the buyer may bring a product liability action directly against the manufacturer of the product involved for breach of implied warranty; and the lack of privity of contract shall not be grounds for the dismissal of such action.

§ 99B-3. Alteration or modification of product.

(a) No manufacturer or seller of a product shall be held liable in any product liability action where a proximate cause of the personal injury, death, or damage to property was either an alteration or modification of the product by a party other than the manufacturer or seller, which alteration or modification occurred after the product left the control of such manufacturer or such seller unless:

- (1) The alteration or modification was in accordance with the instructions or specifications of such manufacturer or such seller; or
- (2) The alteration or modification was made with the express consent of such manufacturer or such seller.

(b) For the purposes of this section, alteration or modification includes changes in the design, formula, function, or use of the product from that originally designed, tested, or intended by the manufacturer. It includes failure to observe routine care and maintenance, but does not include ordinary wear and tear.

§ 99B-4. Knowledge or reasonable care.

No manufacturer or seller shall be held liable in any product liability action if:

- (1) The use of the product giving rise to the product liability action was contrary to any express and adequate instructions or warnings delivered with, appearing on, or attached to the product or on its original container or wrapping, if the user knew or with the exercise of reasonable and diligent care should have known of such instructions or warnings; or
- (2) The user knew of or discovered a defect or dangerous condition of the product that was inconsistent with the safe use of the product, and then unreasonably and voluntarily exposed himself or herself to the danger, and was injured by or caused injury with that product; or
- (3) The claimant failed to exercise reasonable care under the circumstances in the use of the product, and such failure was a proximate cause of the occurrence that caused the injury or damage complained of.

§ 99B-5. Claims based on inadequate warning or instruction.

(a) No manufacturer or seller of a product shall be held liable in any product liability action for a claim based upon inadequate warning or instruction unless the claimant proves that the manufacturer or seller acted unreasonably in failing to provide such warning or instruction, that the failure to provide adequate warning or instruction was a proximate cause of the harm for which damages are sought, and also proves one of the following:

- (1) At the time the product left the control of the manufacturer or seller, the product, without an adequate warning or instruction, created an unreasonably dangerous condition that the manufacturer or seller knew, or in the exercise of ordinary care should have known, posed a substantial risk of harm to a reasonably foreseeable claimant.
- (2) After the product left the control of the manufacturer or seller, the manufacturer or seller became aware of or in the exercise of ordinary care should have known that the product posed a substantial risk of harm to a reasonably foreseeable user or consumer and failed to take reasonable steps to give adequate warning or instruction or to take other reasonable action under the circumstances.

(b) Notwithstanding subsection (a) of this section, no manufacturer or seller of a product shall be held liable in any product liability action for failing to warn about an open and obvious risk or a risk that is a matter of common knowledge.

(c) Notwithstanding subsection (a) of this section, no manufacturer or seller of a prescription drug shall be liable in a products liability action for failing to provide a warning or instruction directly to a consumer if an adequate warning or instruction has been provided to the physician or other legally authorized person who prescribes or dispenses that prescription drug for the claimant unless the United States Food and Drug Administration requires such direct consumer warning or instruction to accompany the product.

§ 99B-6. Claims based on inadequate design or formulation.

(a) No manufacturer of a product shall be held liable in any product liability action for the inadequate design or formulation of the product unless the claimant proves that at the time of its manufacture the manufacturer acted unreasonably in designing or formulating the product, that this conduct was a proximate cause of the harm for which damages are sought, and also proves one of the following:

- (1) At the time the product left the control of the manufacturer, the manufacturer unreasonably failed to adopt a safer, practical, feasible, and otherwise reasonable alternative design or formulation that could then have been reasonably adopted and that would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.
- (2) At the time the product left the control of the manufacturer, the design or formulation of the product was so unreasonable that a reasonable person, aware of the relevant facts, would not use or consume a product of this design.

(b) In determining whether the manufacturer acted unreasonably under subsection (a) of this section, the factors to be considered shall include, but are not limited to, the following:

- (1) The nature and magnitude of the risks of harm associated with the design or formulation in light of the intended and reasonably foreseeable uses, modifications, or alterations of the product.
- (2) The likely awareness of product users, whether based on warnings, general knowledge, or otherwise, of those risks of harm.
- (3) The extent to which the design or formulation conformed to any applicable government standard that was in effect when the product left the control of its manufacturer.
- (4) The extent to which the labeling for a prescription or nonprescription drug approved by the United States Food and Drug Administration conformed to any applicable government or private standard that was in effect when the product left the control of its manufacturer.

- (5) The utility of the product, including the performance, safety, and other advantages associated with that design or formulation.
- (6) The technical, economic, and practical feasibility of using an alternative design or formulation at the time of manufacture.
- (7) The nature and magnitude of any foreseeable risks associated with the alternative design or formulation.

(c) No manufacturer of a product shall be held liable in any product liability action for a claim under this section to the extent that it is based upon an inherent characteristic of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and that is recognized by the ordinary person with the ordinary knowledge common to the community.

(d) No manufacturer of a prescription drug shall be liable in a product liability action on account of some aspect of the prescription drug that is unavoidably unsafe, if an adequate warning and instruction has been provided pursuant to G.S. 99B-5(c). As used in this subsection, "unavoidably unsafe" means that, in the state of technical, scientific, and medical knowledge generally prevailing at the time the product left the control of its manufacturer, an aspect of that product that caused the claimant's harm was not reasonably capable of being made safe.

(e) Nothing in this section precludes an action against a manufacturer in accordance with the provisions of G.S. 99B-5.

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**CHAPTER 106
AGRICULTURE**

SELECTED PROVISIONS

**Article 12.
Food, Drugs and Cosmetics.**

Selected Provisions

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§ 106-121. Definitions and general consideration.

For the purpose of this Article:

- (1) The term "advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purposes of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices or cosmetics.
- (1a) The term "color" includes black, white, and intermediate grays.
- (1b) The term "color additive" means a material which:
 - a. Is a dye, pigment, or other substance made by a process of synthesis or similar artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source; or
 - b. When added or applied to a food, drug, or cosmetic, or to the human body or any part thereof, is capable (alone or through reaction with other substance) of imparting color thereto;Provided, that such term does not apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological process of produce of the soil and thereby affecting its color, whether before or after harvest.
- (2) The term "Commissioner" means the Commissioner of Agriculture; the term "Department" means the Department of Agriculture and Consumer Services, and the term "Board" means the Board of Agriculture.
- (2a) The term "consumer commodity" except as otherwise specifically provided by this subdivision means any food, drug, device, or cosmetic as those terms are defined by this Article. Such term does not include:
 - a. Any tobacco or tobacco product; or
 - b. Any commodity subject to packaging or labeling requirements imposed under the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the act of March 4, 1913 (37 Stat. 832-833; 21 U.S.C. 151-157) commonly known as the Virus-Serum Toxin Act; or
 - c. Any drug subject to the provisions of G.S. 106-134(13) or 106-134.1 of this Article or section 503(b)(1) or 506 of the federal act; or
 - d. Any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C., et seq.); or
 - e. Any commodity subject to the provisions of the North Carolina Seed Law, Article 31, Chapter 106 of the General Statutes of North Carolina.
- (3) The term "contaminated with filth" applies to any food, drug, device or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations.
- (4) The term "cosmetic" means
 - a. Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and
 - b. Articles intended for use as a component of any such articles, except that such terms shall not include soap.
- (4a) The term "counterfeit drug" means a drug which, or the container or labeling of which, without authorization, bears the trademark, trade name or other identifying mark, imprint, or device, or any likeness thereof, of a drug manufacturer, processor, packer or distributor other than the person or persons who in fact manufactured, processed, packed or distributed such drug and which thereby falsely purports or is represented to be the product of, or to

- have been packed or distributed by, such other drug manufacturer, processor, packer or distributor.
- (5) The term "device," except when used in subdivision (15) of this section and in G.S. 106-122, subdivision (10), 106-130, subdivision (6), 106-134, subdivision (3) and 106-137, subdivision (3) means instruments, apparatus and contrivances, including their components, parts and accessories, intended
- a. For use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or
 - b. To affect the structure or any function of the body of man or other animals.
- (6) The term "drug" means
- a. Articles recognized in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; and
 - b. Articles intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or other animals; and
 - c. Articles (other than food) intended to affect the structure or any function of the body of man or other animals; and
 - d. Articles intended for use as a component of any article specified in paragraphs a, b or c; but does not include devices or their components, parts, or accessories.
- (7) The term "federal act" means the Federal Food, Drug and Cosmetic Act (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.).
- (8) The term "food" means
- a. Articles used for food or drink for man or other animals,
 - b. Chewing gum, and
 - c. Articles used for components of any such article.
- (8a) The term "food additive" means any substance, the intended use of which results or may be reasonably expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting or holding food; and including any source of radiation intended for any such use) if such substance is not generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in a food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use; except that such term does not include:
- a. A pesticide chemical in or on a raw agricultural commodity; or
 - b. A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or
 - c. A color additive; or
 - d. Any substance used in accordance with a sanction or approval granted prior to the enactment of the Food Additives Amendment of 1958, pursuant to the federal act; the Poultry Products Inspection Act (21 U.S.C. 451 et seq.) or the Meat Inspection Act of March 4, 1907 (34 Stat. 1260), as amended and extended (21 U.S.C. 71 et seq.).
- (9) The term "immediate container" does not include package liners.
- (10) The term "label" means a display of written, printed or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this Article that any word, statement, or other information appearing on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper.
- (11) The term "labeling" means all labels and other written, printed, or graphic matter
- a. Upon an article or any of its containers or wrappers, or
 - b. Accompanying such article.
- (11a) Repealed by Session Laws 1989, c. 226, s. 1.
- (12) The term "new drug" means
- a. Any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety and effectiveness of drugs, as safe and effective for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or

- b. Any drug the composition of which is such that such drug, as a result of investigations to determine its safety and effectiveness for use under such conditions, has become so recognized, but which has not, otherwise than in such investigation, been used to a material extent or for a material time under such conditions.
- (12a) Repealed by Session Laws 1989, c. 226, s. 1.
- (13) The term "official compendium" means the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, official National Formulary, or any supplement to any of them.
- (13a) The term "package" means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that consumer commodity to retail purchasers, but does not include:
 - a. Shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or
 - b. Shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity.
- (14) The term "person" includes individual, partnership, corporation, and association.
- (14a) The term "pesticide chemical" means any substance which, alone, in chemical combination, or in formulation with one or more other substances is a "pesticide" within the meaning of the North Carolina Pesticide Law of 1971, Article 52, Chapter 143, of the General Statutes of North Carolina, or the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. 135 et seq.), and which is used in the production, storage, or transportation of raw agricultural commodities.
- (14b) The term "practitioner" means a physician, dentist, veterinarian or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a drug so long as such activity is within the normal course of professional practice or research.
- (14c) The term "principal display panel" means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale.
- (14d) The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored, or otherwise treated in their unpeeled natural form prior to marketing.
- (14e), (14f) Repealed by Session Laws 1989, c. 226, s. 1.
- (15) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.
- (16) The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body.
- (17) The provisions of this Article regarding the selling of food, drugs, devices, or cosmetics, shall be considered to include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article; and the supplying or applying of any such article in the conduct of any food, drug or cosmetic establishment.

§ 106-122. Certain acts prohibited.

The following acts and the causing thereof within the State of North Carolina are hereby prohibited:

- (1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded.
- (2) The adulteration or misbranding of any food, drug, device, or cosmetic.

- (3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise.
- (4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of G.S. 106-131 or 106-135.
- (5) The dissemination of any false advertisement.
- (6) The refusal to permit entry or inspection, or to permit the taking of a sample, or to permit access to or copying of any record as authorized by G.S. 106-140.
- (7) The giving of a guaranty or undertaking which guaranty or undertaking is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in the State of North Carolina from whom he received in good faith the food, drug, device or cosmetic.
- (8) The removal or disposal of a detained or embargoed article in violation of G.S. 106-125.
- (9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded or adulterated.
- (10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label or other identification device authorized or required by regulations promulgated under the provisions of this Article.
- (11) The using, on the labeling of any drug or in any advertisement relating to such drug, of any representation or suggestion that an application with respect to such drug is effective under G.S. 106-135, or that such drug complies with the provisions of such section.
- (12) The sale at retail of any food for which a definition and standard of identity for enrichment with vitamins, minerals or other nutrients has been promulgated by the Board, unless such food conforms to such definition and standard, or has been specifically exempted from same by the Board.
- (13) The distribution in commerce of a consumer commodity, as defined in this Article, if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of this Article and regulations promulgated under authority of this Article; provided, however, that this prohibition shall not apply to persons engaged in business as wholesale or retail distributors of consumer commodities except to the extent that such persons:
 - a. Are engaged in the packaging or labeling of such commodities; or
 - b. Prescribe or specify by any means the manner in which such commodities are packaged or labeled.
- (14) The using by any person to his own advantage, or revealing, other than to the Commissioner or authorized officers or employees of the Department, or to the courts when relevant in any judicial proceeding under this Article, any information acquired under authority of this Article concerning any method or process which as a trade secret is entitled to protection.
- (15) In the case of a prescription drug distributed or offered for sale in this State, the failure of the manufacturer, packer, or distributor thereof to maintain for transmittal, or to transmit, to any practitioner licensed by applicable law to administer such drug within the normal course of professional practice, who makes written request for information as to such drug, true and correct copies of all printed matter which is required to be included in any package in which that drug is distributed or sold, or such other printed matter as is approved under the federal act. Nothing in this paragraph shall be construed to exempt any person from any labeling requirement imposed by or under other provisions of this Article.
- (16)
 - a. Placing or causing to be placed upon any drug or device or container thereof, with intent to defraud, the trade name or other identifying mark, or imprint of another or any likeness of any of the foregoing; or
 - b. Selling, dispensing, disposing of or causing to be sold, dispensed or disposed of, or concealing or keeping in possession, control or custody, with intent to sell, dispense or dispose of, any drug, device or any container thereof, with knowledge that the trade name or other identifying mark or imprint of another or any likeness of any of the foregoing has been placed thereon in a manner prohibited by subsection (a) of this section; or
 - c. Making, selling, or disposing of; causing to be made, sold or disposed of; keeping in possession, control or custody; or concealing any punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the

foregoing upon any drug or container or labeling thereof so as to render such drug a counterfeit drug.

- (17) The doing of any act which causes a drug to be a counterfeit drug, or the sale or dispensing, or the holding for sale or dispensing of a counterfeit drug.
- (18) Dispensing or causing to be dispensed a different drug in place of the drug ordered or prescribed without the express permission of the person ordering or prescribing.
- (19) The acquiring or obtaining or attempting to acquire or obtain any drug subject to the provisions of G.S. 106-134.1(a)(3) or (4) by fraud, deceit, misrepresentation, or subterfuge, or by forgery or alteration of a prescription, or by the use of a false name, or the giving of a false address.

§ 106-123. Injunctions restraining violations.

In addition to the remedies hereinafter provided, the Commissioner of Agriculture is hereby authorized to apply to the superior court for, and such court shall have jurisdiction upon hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of G.S. 106-122, irrespective of whether or not there exists an adequate remedy at law.

§ 106-124. Violations made misdemeanor.

(a) Any person, firm or corporation violating any provision of this Article, or any regulation of the Board adopted pursuant to this Article, shall be guilty of a Class 2 misdemeanor. In addition, if any person continues to violate or further violates any provision of this Article after written notice from the Commissioner, or his duly designated agent, the court may determine that each day during which the violation continued or is repeated constitutes a separate violation subject to the foregoing penalties.

(b) No person shall be subject to the penalties of subsection (a) of this section, for having violated G.S. 106-122, subdivision (1) or (3) if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person residing in the State of North Carolina from whom he received in good faith the article, to the effect that such article is not adulterated or misbranded within the meaning of this Article, designating this article.

(c) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination by him of such false advertisement, unless he has refused on the request of the Commissioner of Agriculture to furnish the Commissioner the name and post-office address of the manufacturer, packer, distributor, seller or advertising agency residing in the State of North Carolina who caused him to disseminate such advertisement.

§ 106-124.1. Civil penalties.

(a) The Commissioner may assess a civil penalty of not more than two thousand dollars (\$2,000) against any person who violates a provision of this Article or any rule adopted pursuant to this Article. In determining the amount of the penalty, the Commissioner shall consider the degree and extent of harm caused by the violation.

(b) Prior to assessing a civil penalty, the Commissioner shall give the person written notice of the violation and a reasonable period of time in which to correct the violation. However, the Commissioner shall not be required to give a person time to correct a violation before assessing a penalty if the Commissioner determines the violation is likely to cause future physical injury or illness.

(c) The Commissioner shall consider the training and management practices implemented by the person for the purpose of complying with this Article as a mitigating factor when determining the amount of the civil penalty.

(d) The Commissioner shall remit the clear proceeds of civil penalties assessed pursuant to this section to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

§ 106-125. Detention of product or article suspected of being adulterated or misbranded.

(a) Whenever a duly authorized agent of the Department of Agriculture and Consumer Services finds or has probable cause to believe, that any food, drug, device, cosmetic or consumer commodity is adulterated, or so misbranded as to be dangerous or fraudulent within the meaning of this Article or is in violation of G.S. 106-131 or 106-135 of this Article, he shall affix to such article a tag or other appropriate marking giving notice that such article is, or is suspected of being, adulterated or misbranded and has been detained or embargoed, and warning all persons not to remove or dispose of such article by sale or otherwise until permission for removal or disposal is given by such agent or the court. It shall be unlawful for any person to remove or dispose of such detained or embargoed article by sale or otherwise without such permission.

(b) When an article detained or embargoed under subsection (a) has been found by such agent to be adulterated, or misbranded or to be in violation of G.S. 106-131 or 106-135 of this Article, he shall petition a judge of the district, or superior court in whose jurisdiction the article is detained or embargoed for an order for

condemnation of such article. When such agent has found that an article so detained or embargoed is not adulterated or misbranded, he shall remove the tag or other marking.

(c) If the court finds that a detained or embargoed article is adulterated or misbranded, such article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of such agent; and all court costs and fees, and storage and other proper expenses, shall be taxed against the claimant of such article or his agent: Provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that such article shall be so labeled or processed, has been executed, may by order direct that such article be delivered to the claimant thereof for such labeling or processing under the supervision of an agent of the Department of Agriculture and Consumer Services. The expense of such supervision shall be paid by the claimant. Such bond shall be returned to the claimant of the article on representation to the court by the Department of Agriculture and Consumer Services that the article is no longer in violation of this Article, and that the expenses of such supervision have been paid.

(d) Whenever any duly authorized agent of the Department of Agriculture and Consumer Services shall find in any room, building, vehicle of transportation or other structure, any meat, seafood, poultry, vegetable, fruit or other perishable articles which are unsound, or contain any filthy, decomposed or putrid substance, or that may be poisonous or deleterious to health or otherwise unsafe, the same being hereby declared to be a nuisance, the agent shall forthwith condemn or destroy the same, or in any other manner render the same unsalable as human food.

§ 106-126. Prosecutions of violations.

It shall be the duty of the solicitors and district attorneys of this State to promptly prosecute all violations of this Article.

§ 106-127. Report of minor violations in discretion of Commissioner.

Nothing in this Article shall be construed as requiring the Commissioner of Agriculture to report for the institution of proceedings under this Article, minor violations of this Article, whenever the Commissioner believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

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§ 106-132. Additives, etc., deemed unsafe.

Any added poisonous or added deleterious substance, any food additive, any pesticide chemical in or on a raw agricultural commodity or any color additive, shall with respect to any particular use or intended use be deemed unsafe for the purpose of application of G.S. 106-129(1), paragraphs b and g and 106-129(4) with respect to any food, 106-133(1) with respect to any drug or device, or 106-136(1) and (5) with respect to any cosmetic, unless there is in effect a regulation pursuant to G.S. 106-139 of this Article limiting the quantity of substance, and the use or intended use of such substance conforms to the terms prescribed by such regulation. While such regulations relating to such substance are in effect, a food, drug, or cosmetic shall not, by reason of bearing or containing such substance in accordance with the regulations be considered adulterated within the meaning of G.S. 106-129(1)a, 106-133(1) and 106-136(1).

§ 106-133. Drugs deemed to be adulterated.

A drug or device shall be deemed to be adulterated:

- (1) a. If it consists in whole or in part of any filthy, putrid or decomposed substance; or
- b. If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or
- c. If it is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health; or
- d. If
 1. It is a drug and it bears or contains, for purposes of coloring only, a color additive which is unsafe within the meaning of G.S. 106-132, or
 2. If it is a color additive, the intended use of which in or on drugs is for purposes of coloring only, and is unsafe within the meaning of G.S. 106-132;
- e. If it is a drug and the methods used in, or the facilities or controls used for, its manufacture, processing, packing, or holding do not conform to or are not operated or administered in conformity with current good manufacturing practice to assure that such drug meets the requirements of this Article as to safety and has the

- identity and strength, and meets the quality and purity characteristics, which it purports or is represented to possess.
- (2) If it purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium. Such determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in such compendium, or in the absence of or inadequacy of such tests or methods of assay, those so prescribed under authority of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this subdivision because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States it shall be subject to the requirements of the United States Pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.
 - (3) If it is not subject to the provisions of subdivision (2) of this section and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess.
 - (4) If it is a drug and any substance has been
 - a. Mixed or packed therewith so as to reduce its quality or strength; or
 - b. Substituted wholly or in part therefor.

§ 106-134. Drugs deemed misbranded.

A drug or device shall be deemed to be misbranded:

- (1) If its labeling is false or misleading in any particular, or if its labeling or packaging fails to conform with the requirements of G.S. 106-139 or 106-139.1 of this Article.
- (2) If in package form unless it bears a label containing
 - a. The name and place of business of the manufacturer, packer, or distributor; and
 - b. An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count, which statement shall be separately and accurately stated in a uniform location upon the principal display panel of the label, except as exempted with respect to this clause by G.S. 106-121(2a)c of this Article; provided, that under paragraph b of this subdivision reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the Board of Agriculture.
- (3) If any word, statement, or other information required by or under authority of this Article to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.
- (4) If it is for use by man and contains any quantity of the narcotic or hypnotic substance alphaeucaine, barbituric acid, betaeucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substances, which derivative has been by the Board after investigation, found to be, and by regulations under this Article, designated as, habit forming; unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning – May be habit forming."
- (5) a. If it is a drug, unless:
 1. Its label bears, to the exclusion of any other nonproprietary name (except the applicable systematic chemical name or the chemical formula),
 - I. The established name (as defined in paragraph b of this subdivision) of the drug, if such there be, and
 - II. In case it is fabricated from two or more ingredients the established name and quantity of each active ingredient, including the kind and quantity or proportion of any alcohol and also including, whether active or not, the established name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any

derivative or preparation of any such substances, contained therein: Provided, that the requirement for stating the quantity of the active ingredients, other than the quantity of those specifically named in this subdivision, shall apply only to prescription drugs; and

2. For any prescription drug the established name of such drug or ingredient, as the case may be, on such label (and on any labeling on which a name for such drug or ingredient is used) is printed prominently and in type at least half as large as that used thereon for any proprietary name or designation for such drug or ingredient; and provided, that to the extent that compliance with the requirements of 1 II or 2 of this subdivision is impracticable, exemptions shall be allowed under regulations promulgated by the Board.
- b. As used in this subdivision (5), the term "established name," with respect to a drug or ingredient thereof, means:
1. The applicable official name designated pursuant to section 508 of the federal act, or
 2. If there is no such name and such drug, or such ingredient, is an article recognized in an official compendium, then the official title thereof, in such compendium, or
 3. If neither 1 nor 2 of this paragraph applies, then the common or usual name, if any, of such drug or of such ingredient:
- Provided further, that where 2 of this sub-subdivision applies to an article recognized in the United States Pharmacopoeia and in the Homeopathic Pharmacopoeia under different official titles, the official title used in the United States Pharmacopoeia shall apply unless it is labeled and offered for sale as a homeopathic drug, in which case the official title used in the Homeopathic Pharmacopoeia shall apply.
- (6) Unless its labeling bears
- a. Adequate directions for use; and
 - b. Such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: Provided, that where any requirement of paragraph a of this subdivision, as applied to any drug or device, is not necessary for the protection of the public health, the Board of Agriculture shall promulgate regulations exempting such drug or device from such requirements.
- (7) If it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: Provided, that the method of packing may be modified with the consent of the Board of Agriculture. Whenever a drug is recognized in both the United States Pharmacopoeia and the Homeopathic Pharmacopoeia of the United States, it shall be subject to the requirements of the United States Pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the Homeopathic Pharmacopoeia of the United States and not to those of the United States Pharmacopoeia.
- (8) If it has been found by the Department of Agriculture and Consumer Services to be a drug liable to deterioration, unless it is packaged in such form and manner, and its label bears a statement of such precautions, as the Board of Agriculture shall by regulations require as necessary for the protection of public health. No such regulation shall be established for any drug recognized in an official compendium until the Commissioner of Agriculture shall have informed the appropriate body charged with the revision of such compendium of the need for such packaging or labeling requirements and such body shall have failed within a reasonable time to prescribe such requirements.
- (9)
- a. If it is a drug and its container is so made, formed, or filled as to be misleading; or
 - b. If it is an imitation of another drug; or
 - c. If it is offered for sale under the name of another drug.
- (10) If it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof.
- (11), (12) Repealed by Session Laws 1975, c. 614, s. 28.

- (13) If it is, or purports to be, or is represented as a drug composed wholly or partly of insulin, unless:
 - a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 506 of the federal act, and
 - b. Such certificate or release is in effect with respect to such drug.
- (14) If it is, or purports to be, or is represented as a drug composed wholly or partly of any kind of penicillin, streptomycin, chlortetracycline, chloramphenicol, bacitracin, or any other antibiotic drug, or any derivative thereof, unless
 - a. It is from a batch with respect to which a certificate or release has been issued pursuant to section 507 of the federal act, and
 - b. Such certificate or release is in effect with respect to such drug:

Provided, that this subsection shall not apply to any drug or class of drugs exempted by regulations promulgated under section 507(c) or (d) of the federal act. For the purpose of this subsection the term "antibiotic drug" means any drug intended for use by man containing any quantity of any chemical substance which is produced by microorganisms and which has the capacity to inhibit or destroy microorganisms in dilute solution (including the chemically synthesized equivalent of any such substance).
- (15) If it is a color additive, the intended use of which in or on drugs is for the purpose of coloring only, unless its packaging and labeling are in conformity with such packaging and labeling requirements applicable to such color additive, prescribed under the provisions of G.S. 106-132 of this Article.
- (16) In the case of any prescription drug distributed or offered for sale in this State, unless the manufacturer, packer, or distributor thereof includes in all advertisements and other descriptive printed matter issued or caused to be issued by the manufacturer, packer, or distributor with respect to that drug a true statement of
 - a. The established name, as defined in G.S. 106-134(5)b of this Article, printed prominently and in type at least half as large as that used for any trade or brand name thereof,
 - b. The formula showing quantitatively each ingredient of such drug to the extent required for labels under section 502(e) of the federal act, and
 - c. Such other information in brief summary relating to side effects, contraindications, and effectiveness as shall be required in regulations issued under the federal act.
- (17) If a trademark, trade name or other identifying mark, imprint or device of another or any likeness of the foregoing has been placed thereon or upon its container with intent to defraud.
- (18) If it is a drug and its packaging or labeling is in violation of an applicable regulation issued pursuant to section 3 or 4 of the Federal Poison Prevention Packaging Act of 1970.

§ 106-134.1. Prescriptions required; label requirements; removal of certain drugs from requirements of this section.

- (a) A drug intended for use by man which:
 - (1) Is a habit-forming drug to which G.S. 106-134(4) applies; or
 - (2) Because of its toxicity or other potentiality for harmful effect, or the method of its use, or the collateral measures necessary to its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug in the course of his normal practice; or
 - (3) Is limited by an approved application under section 505 of the federal act to use under the professional supervision of a practitioner licensed by law to administer such drug; or
 - (4) Is a drug the label of which bears the statement "Caution: Federal law prohibits dispensing without a prescription," shall be dispensed only
 - a. Upon a written prescription of a practitioner licensed by law to administer such drug, or authorized to issue orders pursuant to G.S. 90-87(23)(a), provided that the written prescription must bear the printed or stamped name, address, telephone number and DEA number of the prescriber in addition to his legal signature, or
 - b. Upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or
 - c. By refilling any such written or oral prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. If any prescription for such drug does not indicate the times it may be refilled, if any, such prescription may not be

refilled unless the pharmacist is subsequently authorized to do so by the practitioner.

The act of dispensing a drug contrary to the provisions of this subdivision shall be deemed to be an act which results in a drug being misbranded while held for sale.

(b) Any drug dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be exempt from the requirements of G.S. 106-134, except subsections (1), (9)b and c, (13) and (14), and the packaging requirements of subsections (7) and (8), if the drug bears an affixed label containing the name of the patient, the name and address of the pharmacy, the phrase "Filled by _____" or "Dispensed by _____," with the name of the practitioner who dispenses the prescription appearing in the blank, the serial number and date of the prescription or of its filling, the name of the prescriber, the directions for use, and unless otherwise directed by the prescriber of such drug, the name and strength of such drug. This exemption shall not apply to any drugs dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail, or to a drug dispensed in violation of subsection (a) of this section.

Any tranquilizer or sedative dispensed by filling or refilling a written or oral prescription of a practitioner licensed by law to administer such drug shall be labelled by the pharmacist, if the prescriber so directs on the prescription, with a warning that: "The consumption of alcoholic beverages while on this medication can be harmful to your health."

(c) The Board may, by regulation, remove drugs subject to G.S. 106-134(4) and G.S. 106-135 from the requirements of subsection (a) of this section when such requirements are not necessary for the protection of the public health. Drugs removed from the prescription requirements of the federal act by regulations issued thereunder shall also, by regulations issued by the Board, be removed from the requirement of subsection (a).

(d) A drug which is subject to subsection (a) of this section shall be deemed to be misbranded if at any time prior to dispensing its label fails to bear the statement "Caution: Federal Law Prohibits Dispensing Without Prescription." A drug to which subsection (a) of this section does not apply shall be deemed to be misbranded if at any time prior to dispensing its label bears the caution statement quoted in the preceding sentence.

(e) Nothing in this section shall be construed to relieve any person from any requirement prescribed by or under authority of law with respect to drugs now included or which may hereafter be included within the classification of "controlled substances" as this term is defined in applicable federal and State controlled substance acts.

§ 106-135. Regulations for sale of new drugs.

(a) No person shall sell, deliver, offer for sale, hold for sale or give away any new drug unless:

- (1) An application with respect thereto has been approved and said approval has not been withdrawn under section 505 of the federal act, or
- (2) When not subject to the federal act, by virtue of not being a drug in interstate commerce, unless such drug has been tested and has been found to be safe for use and effective in use under the conditions prescribed, recommended, or suggested in the labeling thereof, and prior to selling or offering for sale such drug, there has been filed with the Commissioner an application setting forth
 - a. Full reports of investigations which have been made to show whether or not such drug is safe for use and whether such drug is effective in use;
 - b. A full list of the articles used as components of such drug;
 - c. A full statement of the composition of such drug;
 - d. A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug;
 - e. Such samples of such drug and of the articles used as components thereof as the Commissioner may require; and
 - f. Specimens of the labeling proposed to be used for such drug.

(b) An application provided for in subdivision (a)(2) of this section shall become effective on the one hundred eightieth day after the filing thereof, except that if the Commissioner finds, after due notice to the applicant and giving him an opportunity for hearing,

- (1) That the drug is not safe or not effective for use under the conditions prescribed, recommended or suggested in the proposed labeling thereof; or
- (2) The methods used in, and the facilities and controls used for, the manufacture, processing and packing of such drug is inadequate to preserve its identity, strength, quality, and purity; or
- (3) Based on a fair evaluation of all material facts, such labeling is false or misleading in any particular; he shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective.

(c) An order refusing to permit an application under this section to become effective may be revoked by the Commissioner.

(d) The Commissioner shall promulgate regulations for exempting from the operation of the foregoing subsections and subdivisions of this section drugs intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety and effectiveness of drugs. Such regulations may, within the discretion of the Commissioner among other conditions relating to the protection of the public health, provide for conditioning such exemption upon

- (1) The submission to the Commissioner, before any clinical testing of a new drug is undertaken, of reports, by the manufacturer or the sponsor of the investigation of such drug, of preclinical tests (including tests on animals) of such drug adequate to justify the proposed clinical testing;
- (2) The manufacturer or the sponsor of the investigation of a new drug proposed to be distributed to investigators for clinical testing obtaining a signed agreement from each of such investigators that patients to whom the drug is administered will be under his personal supervision, or under the supervision of investigators responsible to him, and that he will not supply such drug to any other investigator, or to clinics, for administration to human beings; and
- (3) The establishment and maintenance of such records, and the making of such reports to the Commissioner, by the manufacturer or the sponsor of the investigation of such drug, of data (including but not limited to analytical reports by investigators) obtained as the result of such investigational use of such drug, as the Commissioner finds will enable him to evaluate the safety and effectiveness of such drug in the event of the filing of an application pursuant to subsection (b).

Such regulations shall provide that such exemption shall be conditioned upon the manufacturer, or the sponsor of the investigation, requiring that experts using such drugs for investigational purposes certify to such manufacturer or sponsor that they will inform any human beings to whom such drugs, or any controls used in connection therewith, are being administered, or their representatives, that such drugs are being used for investigational purposes and will obtain the consent of such human beings or their representatives, except where they deem it not feasible, or, in their professional judgment, contrary to the best interests of such human beings. Nothing in this subsection shall be construed to require any clinical investigator to submit directly to the Commissioner reports on the investigational use of drugs; provided, that regulations adopted under section 505(i) of the federal act may be adopted by the Commissioner as the regulations in this State.

- (e) (1) In the case of any drug for which an approval of an application filed pursuant to this section is in effect, the applicant shall establish and maintain such records, and make such reports to the Commissioner, of data relating to clinical experience and other data or information, received or otherwise obtained by such applicant with respect to such drug, as the Commissioner may by general regulation, or by order with respect to such application, prescribe: Provided, however, that regulations and orders issued under this subsection and under subsection (d) shall have due regard for the professional ethics of the medical profession and the interests of patients and shall provide, where the Commissioner deems it to be appropriate, for the examination, upon request, by the persons to whom such regulations or orders are applicable, of similar information received or otherwise obtained by the Commissioner.
- (2) Every person required under this section to maintain records, and every person in charge or custody thereof, shall, upon request of an officer or employee designated by the Commissioner, permit such officer or employee at all reasonable times to have access to and copy and certify such records.

(f) The Commissioner may, after affording an opportunity for public hearing, revoke an application approved pursuant to this section if he finds that the drug, based on evidence acquired after such approval, may not be safe or effective for its intended use, or that the facilities or controls used in the manufacture, processing, or labeling of such drug may present a hazard to the public health.

(g) This section shall not apply:

- (1) To a drug sold in this State or introduced into interstate commerce at any time prior to the enactment of the federal act, if its labeling contained the same representations concerning the conditions of its use; or
- (2) To any drug which is licensed under the Public Health Service Act of July 1, 1944 (58 Stat. 682, as amended; 42 U.S.C. 201 et seq.) or under the Animal Virus-Serum-Toxin Act of March 4, 1913 (13 Stat. 832; 21 U.S.C. 151 et seq.); or
- (3) To any drug which is subject to G.S. 106-134 (14) of this Article.

* * * * *

§ 106-138. False advertising.

(a) An advertisement of a food, drug, device or cosmetic shall be deemed to be false if it is false or misleading in any particular.

(b) For the purpose of this Article the advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis, media, paralysis, pneumonia, poliomyelitis, (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, or venereal diseases, shall also be deemed to be false; except that no advertisement not in violation of subsection (a) shall be deemed to be false under this subsection if it is disseminated only to members of the medical, dental, pharmaceutical, or veterinary professions, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: Provided, that whenever the Department of Agriculture and Consumer Services determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the Board shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the Board may deem necessary in the interest of public health: Provided, that this subsection shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious.

§ 106-139. Regulations by Board of Agriculture.

(a) The authority to promulgate regulations for the efficient enforcement of this Article is hereby vested in the Board of Agriculture, except the Commissioner of Agriculture is hereby authorized to promulgate regulations under G.S. 106-131 and 106-135. The Board and Commissioner are hereby authorized to make the regulations promulgated under this Article conform, insofar as practicable, with those promulgated for foods, drugs, devices, cosmetics and consumer commodities under the federal act, including but not limited to pesticide chemical residues on or in foods, food additives, color additives, special dietary foods, labeling of margarine for retail sale or distribution, nutritional labeling of foods, the fair packaging and labeling of consumer commodities and new drug clearance. Notwithstanding the provisions of subsection (e) of this section, a federal regulation adopted by the Board or Commissioner pursuant to this Article shall take effect in this State on the date it becomes effective as a federal regulation.

(b) The Board may promulgate regulations exempting from any affirmative labeling requirement of this Article consumer commodities which are, in accordance with the practice of the trade, to be processed, labeled or repacked in substantial quantities at establishments other than those where originally processed or packed, on condition that such consumer commodities are not adulterated or misbranded under the provisions of this Article upon removal from such processing, labeling or repacking establishment. The Board may additionally promulgate regulations exempting from any labeling requirement of this Article foods packaged or dispensed at the direction of the retail purchaser at the time of sale, whether or not for immediate consumption by the purchaser on the premises of the seller.

(c) Whenever the Board determines that regulations containing prohibitions or requirements other than those prescribed by G.S. 106-139.1(a) are necessary to prevent the deception of consumers or to facilitate value comparisons as to any consumer commodity, the Board shall promulgate with respect to that commodity regulations effective to:

- (1) Establish and define standards for the characterization of the size of a package enclosing any consumer commodity, which may be used to supplement the label statement of net quantity of contents of packages containing such commodity, but this paragraph shall not be construed as authorizing any limitation of the size, shape, weight, dimensions, or number of packages which may be used to enclose any commodity;
- (2) Regulate the placement upon any package containing any commodity or upon any label affixed to such commodity, of any printed matter stating or representing by implication that such commodity is offered for retail sale at a price lower than the ordinary and customary retail sale price or that a retail sale price advantage is accorded to purchasers thereof by reason of the size of that package or the quantity of its contents;
- (3) Require that the label on each package of a consumer commodity bear
 - a. The common or usual name of such consumer commodity, if any, and
 - b. In case such consumer commodity consists of two or more ingredients, the common or usual name of each such ingredient listed in order of decreasing predominance, but nothing in this paragraph shall be deemed to require that any trade secret be divulged; or
- (4) Prevent the nonfunctional slack-fill of packages containing consumer commodities.

For the purposes of subdivision (4) of this subsection, a package shall be deemed to be nonfunctionally slack-filled if it is filled of substantially less than its capacity for reasons other than

- a. Protection of the contents of such package, or
 - b. The requirements of machines used for enclosing the contents in such package; provided, the Board may adopt any regulations promulgated pursuant to the Federal Fair Packaging and Labeling Act which shall have the force and effect of law in this State.
- (d) Hearings authorized or required by G.S. 106-131 or G.S. 106-135 shall be conducted in accordance with Chapter 150B of the General Statutes.
- (e) Repealed by Session Laws 1987, c. 827, s. 30.

§ 106-139.1. Declaration of net quantity of contents.

(a) All labels of consumer commodities, as defined by this Article, shall conform with the requirement for the declaration of net quantity of contents of section 4 of the Federal Fair Packaging and Labeling Act (15 U.S.C. 1451, et seq.) and the regulations promulgated pursuant thereto: Provided, that consumer commodities exempted from such requirements of section 4 of the Federal Fair Packaging and Labeling Act shall also be exempt from this subsection.

(b) The label of any package of a consumer commodity which bears a representation as to the number of servings of such commodity contained in such package shall bear a statement of the net quantity (in terms of weight, measure, or numerical count) of each such serving.

(c) No person shall distribute or cause to be distributed in commerce any packaged consumer commodity if any qualifying words or phrases appear in conjunction with the separate statement of the net quantity of contents required by subsection (a) of this section, but nothing in this section shall prohibit supplemental statements, at other places on the package, describing in nondeceptive terms the net quantity of contents: Provided, that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight, measure, or count that tends to exaggerate the amount of the commodity contained in the package.

§ 106-140. Further powers of Commissioner of Agriculture for enforcement of Article; report by inspector to owner of establishment.

(a) For purposes of enforcement of this Article, the Commissioner or any of his authorized agents, are authorized upon presenting appropriate credentials and a written notice to the owner, operator or agent in charge,

- (1) To enter at reasonable times any factory, warehouse or establishment in which food, drugs, devices or cosmetics are manufactured, processed, or packed or held for introduction into commerce or after such introduction or to enter any vehicle being used to transport or hold such food, drugs, devices or cosmetics in commerce; and
- (2) To inspect at reasonable times and in a reasonable manner such factory, warehouse, establishment or vehicle and all pertinent equipment, finished or unfinished materials, containers and labeling therein, and to obtain samples necessary to the endorsement of this Article. In the case of any factory, warehouse, establishment, or consulting laboratory in which any food, drug, device or cosmetic is manufactured, processed, analyzed, packed or held, the inspection shall extend to all things therein (including records, files, papers, processes, controls and facilities) bearing on whether any food, drug, device or cosmetic which is adulterated or misbranded within the meaning of this Article or which may not be manufactured, introduced into commerce or sold or offered for sale by reason of any provision of this Article, has been or is being manufactured, processed, packed, transported or held in any such place or otherwise bearing on violation of this Article. No inspection authorized by the preceding sentence shall extend to
 - a. Financial data,
 - b. Sales data other than shipment data,
 - c. Personnel data (other than data as to qualifications of technical and professional personnel performing functions subject to this Article),
 - d. Pricing data, and
 - e. Research data (other than data relating to new drugs and antibiotic drugs, subject to reporting and inspection under lawful regulations issued pursuant to section 505(i) or (j) or section 507 (d) or (g) of the federal act, and data, relating to other drugs, which in the case of a new drug would be subject to reporting or inspection under lawful regulations issued pursuant to section 505(j) of the federal act).

Such inspection shall be commenced and completed with reasonable promptness. The provisions of the second sentence of this subsection shall not apply to such classes of persons as the Board may by regulation exempt from the application of this section upon a

finding that inspection as applied to such classes of persons in accordance with this section is not necessary for the protection of the public health.

- (3) To have access to and to copy all records of carriers in commerce showing the movement in commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper and consignee thereof: Provided, that evidence obtained under this subsection shall not be used in a criminal prosecution of the person from whom obtained; and provided further, that carriers shall not be subject to the other provisions of this Article by reason of their receipt, carriage, holding, or delivery of food, drugs, devices or cosmetics in the usual course of business as carriers.

(b) Upon completion of any such inspection of a factory, warehouse, consulting laboratory or other establishment and prior to leaving the premises, the authorized agent making the inspection shall give to the owner, operator, or agent-in-charge a report in writing setting forth any conditions or practices observed by him which in his judgment indicate that any food, drug, device or cosmetic in such establishment:

- (1) Consists in whole or in part of any filthy, putrid, or decomposed substance; or
- (2) Has been prepared, packed or held under insanitary conditions whereby it may have become contaminated with filth or whereby it may have been rendered injurious to health.

(c) If the authorized agent making any such inspection of a factory, warehouse or other establishment has obtained any salable product samples in the course of the inspection, upon completion of the inspection and prior to leaving the premises he shall offer reasonable payment for any such product samples.

(d) It shall be the duty of the Commissioner of Agriculture to make or cause to be made examination of samples secured under the provisions of this section to determine whether or not any provision of this Article is being violated.

§ 106-140.1. Registration of producers of prescription drugs and devices.

(a) On or before December 31 of each year, every person doing business in North Carolina and operating as a wholesaler, manufacturer, or repackager, as those terms are defined in subsection (j) of this section, shall register with the Commissioner his name and business location(s) in North Carolina. If said person has no business locations in North Carolina, he shall register his name and location of his corporate offices.

(b) Every person, upon first operating as a wholesaler, manufacturer or repackager in North Carolina shall immediately register with the Commissioner his name, place of business, and such establishment. If said person has no business locations in North Carolina, he shall register his name and location of his corporate offices.

(c) Every person duly registered in accordance with subsections (a) and (b) of this section shall register with the Commissioner any additional establishment that he owns or operates in the State of North Carolina prior to doing business as a manufacturer, wholesaler or repackager.

(d) The Commissioner may assign a registration number to any person or any establishment registered in accordance with this section.

(e) The Commissioner shall make available for inspection to any person so requesting any registration filed pursuant to this section.

(f) The following classes of people are exempt from the registration requirements of this section:

- (1) Pharmacists as defined in G.S. 90-85.3(q) holding a valid permit as defined in G.S. 90-85.3(m);
- (2) Practitioners licensed or registered by law to prescribe or administer drugs and who manufacture, prepare, compound, or process drugs or devices solely for use in the course of their professional practice.
- (3) Persons who manufacture, prepare, compound, or process drugs solely for use in research, teaching, or chemical analysis and not for sale.
- (4) Other classes of persons the Commissioner may by rule exempt from the application of this section upon a finding that registration by these classes of persons in accordance with this section is not necessary for the protection of the public health.
- (5) Wholesale distributors of prescription drugs licensed under G.S. 106-145.3.

(g) Every establishment in the State of North Carolina registered with the Commissioner pursuant to this section shall be subject to inspection pursuant to G.S. 106-140.

(h) The Commissioner shall adopt rules to implement the registration requirements of this section. These rules may provide for an annual registration fee of up to five hundred dollars (\$500.00) for companies operating as manufacturers, wholesalers, or repackagers. The Department of Agriculture and Consumer Services shall use these funds for the implementation of the North Carolina Food, Drug and Cosmetic Act.

(i) For the purposes of this act, name means the name of the partnership if a partnership and the name of the corporation if a corporation.

(j) As used in this section:

- (1) The term "manufacturer" means a person who prepares, derives, or produces a prescription drug. Pharmacists are specifically excluded from this definition if they are acting in the

course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it.

- (2) The term "prescription drug" means a drug that under federal law is required, prior to being dispensed or delivered, to be labeled with the following statement: "Caution: Federal law prohibits dispensing without a prescription."
- (3) The term "repackager" means a person who repacks, relabels, or manipulates a prescription drug which was in a unit packaged and sealed by a manufacturer. Pharmacists are specifically exempted from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it.
- (4) The term "wholesaler" means a person acting as a jobber, wholesale merchant, salvager, or broker, or agent thereof, who sells or distributes for resale a prescription drug. Pharmacists are specifically exempted from this definition if they are acting in the course of their professional practice as defined in Chapter 90 and rules adopted pursuant to it.

§ 106-141. Examinations and investigations.

- (a) Repealed by Session Laws 1975, c. 614, s. 39.
- (b) The Commissioner of Agriculture is authorized to conduct the examinations and investigations for the purposes of this Article through officers and employees of the Department or through any health, food or drug officer or employee of the State, or any political subdivision thereof: Provided, that when examinations and investigations are to be conducted through any officer or employee of any agency other than the Department of Agriculture and Consumer Services the arrangements for such examinations and investigations shall be approved by the directing head of such agency.
- (c) The Commissioner of Agriculture is authorized to delegate embargo authority concerning food and drink pursuant to G.S. 106-125 to the Secretary of Health and Human Services and to local health directors.

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§ 106-142. Publication of reports of judgments, decrees, etc.

- (a) The Commissioner of Agriculture may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this Article, including the nature of the charge and the disposition thereof.
- (b) The Commissioner of Agriculture may also cause to be disseminated such information regarding food, drugs, devices, and cosmetics as he deems necessary in the interest of public health and the protection of the consumer against fraud. Nothing in this section shall be construed to prohibit the Commissioner of Agriculture from collecting, reporting, and illustrating the results of the investigations of the Department.

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**Article 12A.
Wholesale Prescription Drug Distributors.**

§ 106-145.1. Purpose and interpretation of Article.

This Article establishes a State licensing program for wholesale distributors to enable wholesale distributors to comply with federal law. This Article shall be construed to do only that required for compliance with 21 U.S.C. § 353(e) and 21 C.F.R. Part 205. This Article shall be interpreted to be consistent with 21 C.F.R. Part 205, Guidelines for State Licensing of Wholesale Prescription Drug Distributors. In the event of a conflict, the federal law controls.

§ 106-145.2. Definitions.

The following definitions apply in this Article:

- (1) Blood. – Whole blood collected from a single donor and processed either for transfusion or further manufacturing.
- (2) Blood component. – That part of blood separated by physical or mechanical means.
- (3) Commissioner. – The Commissioner of Agriculture.
- (4) Common control. – The power to direct or cause the direction of the management and policies of a person, whether by ownership of stock, by voting rights, by contract, or otherwise.
- (5) Department. – The Department of Agriculture and Consumer Services.
- (6) Drug sample. – A unit of a prescription drug that is not intended to be sold and is intended to promote the sale of the drug.

- (7) Manufacturer. – A person who is engaged in manufacturing, preparing, propagating, compounding, processing, packaging, repackaging, or labeling a prescription drug.
- (8) Person. – An individual, a corporation, a partnership, or any other entity.
- (9) Prescription drug. – A human drug required by federal law or regulation to be dispensed only by a prescription, including finished dosage forms and active ingredients subject to 21 U.S.C. § 353(b). Only for the purposes of the provisions of this Article, the term "prescription drug" shall include pseudoephedrine products as defined in G.S. 90-113.51 that may be dispensed without a prescription.
- (10) Wholesale distribution. – Distribution of a prescription drug to a person who is not a consumer or patient, other than any of the following types of distributions:
 - a. Intracompany sales. An intracompany sale is a transaction or transfer between any divisions, subsidiary and parent companies, or affiliated companies under common control of the same corporate entity.
 - b. The purchase or other acquisition of a prescription drug by a hospital or other health care entity that is a member of a group purchasing organization for its own use from the group purchasing organization or from other hospitals or other health care entities that are members of these organizations.
 - c. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug by a charitable organization described in section 501(c)(3) of the Internal Revenue Code to a nonprofit affiliate of the organization to the extent otherwise permitted by law.
 - d. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug among hospitals or other health care entities that are under common control.
 - e. The sale, purchase, or trade of a prescription drug or an offer to sell, purchase, or trade a prescription drug for emergency medical reasons. Emergency medical reasons include transfers of prescription drugs by a retail pharmacy to another retail pharmacy to alleviate a temporary shortage when the gross dollar value of the transfers does not exceed five percent (5%) of the total prescription drug sales revenue of either the transferor or transferee pharmacy during any 12-consecutive-month period.
 - f. The sale, purchase, or trade of a prescription drug; an offer to sell, purchase, or trade a prescription drug; or the dispensing of a prescription drug pursuant to a prescription.
 - g. The distribution of drug samples by a representative of a manufacturer or a wholesale distributor.
 - h. The sale, purchase, or trade of blood and blood components intended for transfusion.
- (11) Wholesale distributor. – A person who is engaged in the wholesale distribution of prescription drugs. The term includes manufacturers, repackers, own-label distributors, private-label distributors, jobbers, brokers, warehouses, independent wholesale drug traders, and retail pharmacies that conduct wholesale distributions. The term does not include a person who acquires prescription drugs commingled with other goods as part of a recovery operation and who disposes of such drugs under the supervision of the Department. A warehouse includes a warehouse of a manufacturer or wholesale distributor, a chain drug warehouse, and a wholesale drug warehouse.

§ 106-145.3. Wholesale distributor must have license.

(a) Requirement. – Every wholesale distributor engaged in the wholesale distribution of prescription drugs in interstate commerce in this State shall obtain a license from the Commissioner for each location from which prescription drugs are distributed and shall renew each license annually. A license may cover multiple buildings and multiple operations at a single location, at the wholesale distributor's discretion. A license expires on December 31 of the year in which it is issued. A wholesale distributor licensed under this section is not required to register under G.S. 106-140.1. In lieu of licensing under this section, a wholesale distributor who has no facilities in this State may register under G.S. 106-140.1 if the wholesale distributor possesses a valid license granted by another state that has requirements substantially similar to this Article.

(b) Reciprocity. – The Commissioner may license an out-of-State wholesale distributor on the basis of reciprocity with another state when the following conditions apply:

- (1) The out-of-State wholesale distributor possesses a valid license granted by another state pursuant to requirements substantially equivalent to the license requirements of this State.

- (2) The other state extends reciprocal treatment under its own laws to wholesale distributors licensed in this State.

§ 106-145.4. Application and fee for license.

(a) Application. – An application for a wholesale distributor license or for renewal of a wholesale distributor license shall be on a form prescribed by the Commissioner and shall include the following information:

- (1) The name, full business address, and telephone number of the applicant.
- (2) All trade or business names used by the applicant.
- (3) Addresses, telephone numbers, and names of contact persons for all facilities used by the applicant for the storage, handling, and distribution of prescription drugs.
- (4) The type of ownership or operation of the applicant, such as a partnership, a corporation, or a sole proprietorship.
- (5) The name of each owner and operator of the applicant, including:
 - a. If the applicant is an individual, the individual's name.
 - b. If the applicant is a partnership, the name of each partner and the name of the partnership.
 - c. If the applicant is a corporation, the name and title of each corporate officer and director, the corporate name of the corporation, and the state of incorporation.
 - d. If the applicant is a sole proprietorship, the full name of the sole proprietor and the name of the business entity.
- (6) Any other information required by the Commissioner to determine if the applicant is qualified to receive a license.

When a change occurs in any information listed in this subsection after a license is issued, the license holder shall report the change to the Commissioner within 90 days after the change.

(b) Fee. – An application for an initial license or a renewed license as a wholesale distributor shall be accompanied by a nonrefundable fee of five hundred dollars (\$500.00) for a manufacturer or three hundred fifty dollars (\$350.00) for any other person.

§ 106-145.5. Review of application and qualifications of applicant.

The Commissioner shall determine whether to issue or deny a wholesale distributor license within 90 days after an applicant files an application for a license with the Commissioner. In reviewing an application, the Commissioner shall consider the factors listed in this subsection. In the case of a partnership or corporation, the Commissioner shall consider the factors as applied to each individual whose name is required to be included in the license application.

The factors to be considered are:

- (1) Any convictions of the applicant under any federal, state, or local law relating to drug samples, wholesale or retail drug distribution, or distribution of controlled substances.
- (2) Any felony convictions of the applicant under federal, state, or local law.
- (3) The applicant's past experience in the manufacture or distribution of controlled substances and other prescription drugs.
- (4) Whether the applicant has previously given any false or fraudulent information in an application made in connection with drug manufacturing or distribution.
- (5) Suspension or revocation by the federal government or a state or local government of any license currently or previously held by the applicant for the manufacture or distribution of any controlled substances or other prescription drugs.
- (6) Compliance with the licensing requirements under any previously granted license.
- (7) Compliance with the requirements to maintain or make available to the Commissioner or to a federal, state, or local law enforcement official those records required under G.S. 106-145.8.
- (8) Whether the applicant requires employees of the applicant who are involved in any prescription drug wholesale distribution activity to have education, training, experience, or any combination of these factors sufficient to enable the employee to perform assigned functions in a manner that ensures that prescription drug quality, safety, and security will be maintained at all times as required by law.
- (9) Any other factors or qualifications the Commissioner considers relevant to and consistent with the public health and safety.

The Commissioner shall inspect the facility of an applicant at which prescription drugs will be stored, handled, or distributed before issuing the applicant a license.

§ 106-145.6. Denial, revocation, and suspension of license; penalties for violations.

(a) Adverse Action. – The Commissioner may deny a license to an applicant if the Commissioner determines that granting the applicant a license would not be in the public interest. Public interest considerations shall be limited to factors and qualifications that are directly related to the protection of public health and safety. The Commissioner may deny, suspend, or revoke a license for substantial or repeated violations of this Article or for conviction of a violation of any other federal, state, or local prescription drug law or regulation. Chapter 150B of the General Statutes governs the denial, suspension, or revocation of a license under this Article.

(b) Criminal Sanctions. – It is unlawful to engage in wholesale distribution in this State without a wholesale distributor license or to violate any other provision of this Article. A person who violates this Article commits a Class H felony. A fine imposed for a violation of this Article may not exceed two hundred fifty thousand dollars (\$250,000).

(c) Civil Penalty. – The Commissioner may assess a civil penalty of not more than ten thousand dollars (\$10,000) against a person who violates any provision of this Article. In determining the amount of a civil penalty, the Commissioner shall consider the degree and extent of harm caused by the violation. Chapter 150B of the General Statutes governs the assessment of a civil penalty under this subsection. If a civil penalty is not paid within 30 days after the completion of judicial review of a final agency decision by the Commissioner, the penalty may be collected in any manner by which a debt may be collected. The clear proceeds of civil penalties assessed pursuant to this section shall be remitted to the Civil Penalty and Forfeiture Fund in accordance with G.S. 115C-457.2.

§ 106-145.7. Storage, handling, and records of prescription drugs.

(a) Facilities. – All facilities at which prescription drugs are stored, warehoused, handled, held, offered, marketed, or displayed for wholesale distribution shall meet the following requirements:

- (1) Be of suitable size and construction to facilitate cleaning, maintenance, and proper operations.
- (2) Have storage areas designed to provide adequate lighting, ventilation, temperature, sanitation, humidity, space, equipment, and security conditions.
- (3) Have a quarantine area for the storage of prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated, or that are in immediate or sealed secondary containers that have been opened.
- (4) Be maintained in a clean and orderly condition.
- (5) Be free from infestation by insects, rodents, birds, or vermin of any kind.

(b) Security. – All facilities used for wholesale distribution shall be secure from unauthorized entry. Access from outside the premises shall be kept to a minimum and be well-controlled. The outside perimeter of the premises shall be well-lighted. Entry into areas where prescription drugs are held shall be limited to authorized personnel. The facilities shall be equipped with the following:

- (1) An alarm system to detect entry after hours.
- (2) A security system that will provide suitable protection against theft and diversion. When appropriate, the security system shall provide protection against theft or diversion that is facilitated or hidden by tampering with computers or electronic records.

(c) Storage. – All prescription drugs for wholesale distribution shall be stored at appropriate temperatures and under appropriate conditions in accordance with any requirements stated in the labeling of the prescription drugs or with requirements in the current edition of an official compendium, such as the United States Pharmacopeia/National Formulary (USP/NF). If the labeling of a prescription drug or a compendium do not establish storage requirements for a prescription drug, the drug may be held at "controlled" room temperature, as defined in an official compendium, to help ensure that its identity, strength, quality, and purity are not adversely affected.

(d) Examination of Materials. – A wholesale distributor shall visually examine each outside shipping container upon receipt for identity and to prevent the acceptance of contaminated prescription drugs or prescription drugs that are otherwise unfit for distribution. The examination shall be adequate to reveal container damage that would suggest possible contamination or other damage to the contents. A wholesale distributor shall carefully inspect each outgoing shipment for identity of the prescription drugs and to ensure that no prescription drugs that have been damaged in storage or held under improper conditions are delivered.

(e) Returned, Damaged, and Outdated Prescription Drugs. – A wholesale distributor shall quarantine and physically separate prescription drugs that are outdated, damaged, deteriorated, misbranded, or adulterated from other prescription drugs until their destruction or their return to their supplier. A prescription drug whose immediate or sealed outer or sealed secondary container has been opened or used shall be identified as having been opened or used and shall be treated in the same manner as outdated prescription drugs.

If the conditions under which a prescription drug has been returned to a wholesale distributor cast doubt on the drug's safety, identity, strength, quality, or purity, then the drug shall be destroyed or returned to its supplier unless examination, testing, or other investigation proves that the drug meets appropriate standards of safety,

identity, strength, quality, and purity. In determining whether the conditions under which a prescription drug has been returned cast doubt on the drug's safety, identity, strength, quality, or purity, the wholesale distributor shall consider, among other things, the conditions under which the drug has been held, stored, or shipped before or during its return and the condition of the drug and its container, carton, or labeling as a result of storage or shipping.

§ 106-145.8. Records of prescription drugs.

(a) Records. – A wholesale distributor shall establish and maintain inventories and records of all transactions regarding the receipt and distribution or other disposition of prescription drugs, including all stored prescription drugs, all incoming and outgoing prescription drugs, and all outdated, damaged, deteriorated, misbranded, or adulterated prescription drugs. A wholesale distributor is not required, however, to keep a record of the lot number or expiration date of a prescription drug disposed of or distributed by the distributor.

A record of a prescription drug shall include all of the following information:

- (1) The source of the prescription drug, including the name and principal address of the seller or transferor and the address of the location from which the drug was shipped.
- (2) The identity and quantity of the prescription drug received and distributed or disposed of through another method.
- (3) The date the wholesale distributor received the prescription drug and the date the wholesale distributor distributed or otherwise disposed of the drug.
- (4) Documentation of the proper storage of prescription drugs. Documentation may be by manual, electromechanical, or electronic temperature and humidity recording equipment, devices, or logs.

A wholesale distributor shall keep a record of a prescription drug for two years after its disposition.

(b) Inspection. – A wholesale distributor shall make inventories and records of prescription drugs available for inspection and photocopying by representatives of the Department or authorized federal, State, or local law enforcement officials. A wholesale drug distributor shall permit the Department or an authorized federal, State, or local law enforcement official to enter and inspect the distributor's premises and delivery vehicles and to audit the distributor's records and written operating procedures at reasonable times and in a reasonable manner.

A record that is kept at the inspection site or is immediately retrievable by computer or other electronic means shall be readily available for authorized inspection during the two-year retention period. A record kept at a central location apart from the inspection site and not electronically retrievable shall be made available for inspection within two working days of a request by an authorized official of a federal, State, or local law enforcement agency.

§ 106-145.9. Written procedures concerning prescription drugs and lists of responsible persons.

(a) Procedures. – A wholesale distributor shall establish, maintain, and adhere to written procedures for the receipt, security, storage, inventory, and distribution of prescription drugs. These shall include all of the following:

- (1) A procedure for identifying, recording, and reporting a loss or theft of a prescription drug.
- (2) A procedure for correcting all errors and inaccuracies in inventories of prescription drugs.
- (3) A procedure whereby the oldest approved stock of a prescription drug is distributed first. The procedure may permit deviation from this requirement, if the deviation is temporary and appropriate.
- (4) A procedure for handling recalls and withdrawals of prescription drugs that adequately addresses recalls and withdrawals due to any of the following:
 - a. An action initiated at the request of the Food and Drug Administration or other federal, State, or local law enforcement or other governmental agency, including the Department.
 - b. Any voluntary action by the manufacturer to remove defective or potentially defective prescription drugs from the market.
 - c. Any action undertaken to promote public health and safety by replacing existing prescription drugs with an improved product or new package design.
- (5) A procedure to ensure that the wholesale distributor prepares for, protects against, and handles any crisis that affects security or operation of any facility in the event of a strike, a fire, flood, or other natural disaster, or another emergency.
- (6) A procedure to ensure that any outdated prescription drugs are segregated from other prescription drugs and either returned to the manufacturer or destroyed.

(b) Responsible Persons. – A wholesale distributor shall establish and maintain lists of officers, directors, managers, and other persons in charge of the distribution, storage, or handling of prescription drugs. The lists shall include a description of the duties of those on the list and a summary of their qualifications.

§ 106-145.10. Application of other laws.

A wholesale drug distributor shall comply with applicable federal, State, and local laws and regulations. A wholesale distributor that deals in controlled substances shall register with the federal Drug Enforcement Administration (DEA) and shall comply with all applicable federal, State, and local laws and regulations. A wholesale drug distributor is subject to any applicable federal, State, or local laws or regulations that relate to prescription drug salvaging or reprocessing.

§ 106-145.11. Wholesale Distributor Advisory Committee.

(a) Organization. – The Wholesale Distributor Advisory Committee is created in the Department. The Committee shall consist of five members appointed by the Commissioner as follows:

- (1) Two members shall be representatives of wholesale distributors.
- (2) One member shall be a representative of a manufacturer.
- (3) One member shall be a representative of practicing pharmacists.
- (4) One member shall be a representative of the consuming public not included in the three categories above.

The Committee shall elect a chair and other officers it finds necessary. The committee shall meet at the call of the chair or upon written notice to all Committee members signed by at least three members. A majority of the Committee is a quorum for the purpose of conducting business. The Department shall provide administrative and clerical support services to the Committee. Members shall be entitled to per diem and reimbursement of expenses as provided in Chapter 138 of the General Statutes.

(b) Duties. – The Committee shall do the following:

- (1) Review all rules to implement this Article that are proposed for adoption by the Commissioner.
- (2) Advise the Commissioner on the implementation and enforcement of this Article.

§ 106-145.12. Enforcement and implementation of Article.

The Commissioner shall enforce this Article by using employees of the Department. The Commissioner may enter into agreements with federal, State, or local agencies to facilitate enforcement of this Article. The Commissioner may adopt rules to implement this Article.

§ 106-145.13. Submittal of reports by wholesale distributors of transactions involving pseudoephedrine products.

Every 30 calendar days, a wholesale distributor of pseudoephedrine products licensed as provided in this Article shall submit a report electronically to the State Bureau of Investigation that accounts for all transactions involving pseudoephedrine products with persons or firms located within this State for the preceding month. The report shall be submitted on a form and in a manner approved by the State Bureau of Investigation. A wholesale distributor shall maintain each monthly report for a period of two years from the date of submittal to the State Bureau of Investigation. The records shall be readily available for inspection by an authorized official of a federal, State, or local law enforcement agency or the Department of Agriculture and Consumer Services.

**CHAPTER 130A
PUBLIC HEALTH**

SELECTED PROVISIONS

**Article 1.
Definitions, General Provisions and Remedies.**

Selected Provisions

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§ 130A-2. Definitions.

The following definitions shall apply throughout this Chapter unless otherwise specified:

- ...
(1a) "Commission" means the Commission for Public Health.
- ...
(5) "Local health department" means a district health department or a public health authority or a county health department.
- (6) "Local health director" means the administrative head of a local health department appointed pursuant to this Chapter.
- ...
(7) "Person" means an individual, corporation, company, association, partnership, unit of local government or other legal entity.

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**Article 1A.
Commission for Public Health.**

Selected Provisions

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§ 130A-30. Commission for Public Health – Members; selection; quorum; compensation.

- (a) The Commission for Public Health shall consist of 13 members, four of whom shall be elected by the North Carolina Medical Society and nine of whom shall be appointed by the Governor.
- (b) One of the members appointed by the Governor shall be a licensed pharmacist, one a registered engineer experienced in sanitary engineering or a soil scientist, one a licensed veterinarian, one a licensed optometrist, one a licensed dentist, and one a registered nurse. The initial members of the Commission shall be the members of the State Board of Health who shall serve for a period equal to the remainder of their current terms on the State Board of Health, three of whose appointments expire May 1, 1973, and two of whose appointments expire May 1, 1975. At the end of the respective terms of office of initial members of the Commission, their successors shall be appointed for terms of four years and until their successors are appointed and qualify. Any appointment to fill a vacancy on the Commission created by the resignation, dismissal, death, or disability of a member shall be for the balance of the unexpired term.
- (c) The North Carolina Medical Society shall have the right to remove any member elected by it for misfeasance, malfeasance, or nonfeasance, and the Governor shall have the right to remove any member appointed by him for misfeasance, malfeasance, or nonfeasance in accordance with the provisions of G.S. 143B-13. Vacancies on said Commission among the membership elected by the North Carolina Medical Society shall be filled by the executive committee of the Medical Society until the next meeting of the Medical Society, when the Medical Society shall fill the vacancy for the unexpired term. Vacancies on said Commission among the membership appointed by the Governor shall be filled by the Governor for the unexpired term.
- (d) A majority of the members of the Commission shall constitute a quorum for the transaction of business.
- (e) The members of the Commission shall receive per diem and necessary traveling and subsistence expenses in accordance with the provisions of G.S. 138-5.

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Article 2.
Local Administration.

Selected Provisions

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§ 130A-35. County board of health; appointment; terms.

(a) A county board of health shall be the policy-making, rule-making and adjudicatory body for a county health department.

(b) The members of a county board of health shall be appointed by the county board of commissioners. The board shall be composed of 11 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include: one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, one county commissioner, one professional engineer, and three representatives of the general public. Except as otherwise provided in this section, all members shall be residents of the county. If there is not a licensed physician, a licensed dentist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer available for appointment, an additional representative of the general public shall be appointed. If however, one of the designated professions has only one person residing in the county, the county commissioners shall have the option of appointing that person or a member of the general public. In the event a licensed optometrist who is a resident of the county is not available for appointment, then the county commissioners shall have the option of appointing either a licensed optometrist who is a resident of another county or a member of the general public.

(c) Except as provided in this subsection, members of a county board of health shall serve three-year terms. No member may serve more than three consecutive three-year terms unless the member is the only person residing in the county who represents one of the professions designated in subsection (b) of this section. The county commissioner member shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a resident licensed optometrist or a nonresident licensed optometrist as authorized by subsection (b) of this section, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer, that member shall serve only until a licensed physician, a licensed dentist, a licensed resident or nonresident optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer becomes available for appointment. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a three-year term.

(d) Vacancies shall be filled for any unexpired portion of a term.

(e) A chairperson shall be elected annually by a county board of health. The local health director shall serve as secretary to the board.

(f) A majority of the members shall constitute a quorum.

(g) A member may be removed from office by the county board of commissioners for:

- (1) Commission of a felony or other crime involving moral turpitude;
- (2) Violation of a State law governing conflict of interest;
- (3) Violation of a written policy adopted by the county board of commissioners;
- (4) Habitual failure to attend meetings;
- (5) Conduct that tends to bring the office into disrepute; or
- (6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

(h) A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners.

(i) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

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§ 130A-37. District board of health.

(a) A district board of health shall be the policy-making, rule-making and adjudicatory body for a district health department and shall be composed of 15 members; provided, a district board of health may be increased up to a maximum number of 18 members by agreement of the boards of county commissioners in all counties that comprise the district. The agreement shall be evidenced by concurrent resolutions adopted by the affected boards of county commissioners.

(b) The county board of commissioners of each county in the district shall appoint one county commissioner to the district board of health. The county commissioner members of the district board of health shall appoint the other members of the board, including at least one physician licensed to practice medicine in this State, one licensed dentist, one licensed optometrist, one licensed veterinarian, one registered nurse, one licensed pharmacist, and one professional engineer. The composition of the board shall reasonably reflect the population makeup of the entire district and provide equitable district-wide representation. All members shall be residents of the district. If there is not a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer available for appointment, an additional representative of the general public shall be appointed. If however, one of the designated professions has only one person residing in the district, the county commissioner members shall have the option of appointing that person or a member of the general public.

(c) Except as provided in this subsection, members of a district board of health shall serve terms of three years. Two of the original members shall serve terms of one year and two of the original members shall serve terms of two years. No member shall serve more than three consecutive three-year terms unless the member is the only person residing in the district who represents one of the professions designated in subsection (b) of this section. County commissioner members shall serve only as long as the member is a county commissioner. When a representative of the general public is appointed due to the unavailability of a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer that member shall serve only until a licensed physician, a licensed dentist, a licensed optometrist, a licensed veterinarian, a registered nurse, a licensed pharmacist, or a professional engineer becomes available for appointment. The county commissioner members may appoint a member for less than a three-year term to achieve a staggered term structure.

(d) Whenever a county shall join or withdraw from an existing district health department, the district board of health shall be dissolved and a new board shall be appointed as provided in subsection (c).

(e) Vacancies shall be filled for any unexpired portion of a term.

(f) A chairperson shall be elected annually by a district board of health. The local health director shall serve as secretary to the board.

(g) A majority of the members shall constitute a quorum.

(h) A member may be removed from office by the district board of health for:

- (1) Commission of a felony or other crime involving moral turpitude;
- (2) Violation of a State law governing conflict of interest;
- (3) Violation of a written policy adopted by the county board of commissioners of each county in the district;
- (4) Habitual failure to attend meetings;
- (5) Conduct that tends to bring the office into disrepute; or
- (6) Failure to maintain qualifications for appointment required under subsection (b) of this section.

A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

(i) A member may receive a per diem in an amount established by the county commissioner members of the district board of health. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county commissioner members of the district board of health.

(j) The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

(k) A district board of health is authorized to provide liability insurance for the members of the board and the employees of the district health department. A district board of health is also authorized to contract for the services of an attorney to represent the board, the district health department and its employees, as appropriate. The purchase of liability insurance pursuant to this subsection waives both the district board of health's and the district health department's governmental immunity, to the extent of insurance coverage, for any act or omission occurring in the exercise of a governmental function. By entering into a liability insurance contract with the district board of health, an insurer waives any defense based upon the governmental immunity of the district board of health or the district health department.

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Article 6.
Communicable Diseases.

Part 2. Immunization.

Selected Provisions

§ 130A-152. Immunization required.

(a) Every child present in this State shall be immunized against diphtheria, tetanus, whooping cough, poliomyelitis, red measles (rubeola) and rubella. In addition, every child present in this State shall be immunized against any other disease upon a determination by the Commission that the immunization is in the interest of the public health. Every parent, guardian, person in loco parentis and person or agency, whether governmental or private, with legal custody of a child shall have the responsibility to ensure that the child has received the required immunization at the age required by the Commission. If a child has not received the required immunizations by the specified age, the responsible person shall obtain the required immunization for the child as soon as possible after the lack of the required immunization is determined.

(b) Repealed by Session Laws 2002-179, s. 10, effective October 1, 2002.

(c) The Commission shall adopt and the Department shall enforce rules concerning the implementation of the immunization program. The rules shall provide for:

- (1) The child's age at administration of each vaccine;
- (2) The number of doses of each vaccine;
- (3) Exemptions from the immunization requirements where medical practice suggests that immunization would not be in the best health interests of a specific category of children;
- (4) The procedures and practices for administering the vaccine; and
- (5) Redistribution of vaccines provided to local health departments.

(c1) The Commission for Public Health shall, pursuant to G.S. 130A-152 and G.S. 130A-433, adopt rules establishing reasonable fees for the administration of vaccines and rules limiting the requirements that can be placed on children, their parents, guardians, or custodians as a condition for receiving vaccines provided by the State. These rules shall become effective January 1, 1994.

(d) Only vaccine preparations which meet the standards of the United States Food and Drug Administration or its successor in licensing vaccines and are approved for use by the Commission may be used.

(e) When the Commission requires immunization against a disease not listed in paragraph (a) of this section, or requires an additional dose of a vaccine, the Commission is authorized to exempt from the new requirement children who are or who have been enrolled in school (K-12) on or before the effective date of the new requirement.

§ 130A-153. Obtaining immunization; reporting by local health departments; access to immunization information in patient records; immunization of minors.

(a) The required immunization may be obtained from a physician licensed to practice medicine, from a local health department, or in the case of a person at least 18 years of age, from an immunizing pharmacist. Local health departments shall administer required and State-supplied immunizations at no cost to uninsured or underinsured patients with family incomes below two hundred percent (200%) of the federal poverty level. A local health department may redistribute these vaccines only in accordance with the rules of the Commission.

(b) Local health departments shall file monthly immunization reports with the Department. The report shall be filed on forms prepared by the Department and shall state, at a minimum, each patient's age and the number of doses of each type of vaccine administered.

(c) Immunization certificates and information concerning immunizations contained in medical or other records shall, upon request, be shared with the Department, local health departments, an immunizing pharmacist, and the patient's attending physician. In addition, an insurance institution, agent, or insurance support organization, as those terms are defined in G.S. 58-39-15, may share immunization information with the Department. The Commission may, for the purpose of assisting the Department in enforcing this Part, provide by rule that other persons may have access to immunization information, in whole or in part.

(d) A physician or local health department may immunize a minor with the consent of a parent, guardian, or person standing in loco parentis to the minor. A physician or local health department may also immunize a minor who is presented for immunization by an adult who signs a statement that he or she is authorized by a parent, guardian, or person standing in loco parentis to the minor to obtain the immunization for the minor.

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§ 130A-156. Medical exemption.

The Commission for Public Health shall adopt by rule medical contraindications to immunizations required by G.S. 130A-152. If a physician licensed to practice medicine in this State certifies that a required immunization is or may be detrimental to a person's health due to the presence of one of the contraindications adopted by the Commission, the person is not required to receive the specified immunization as long as the contraindication persists. The State Health Director may, upon request by a physician licensed to practice medicine in this State, grant a medical exemption to a required immunization for a contraindication not on the list adopted by the Commission.

§ 130A-157. Religious exemption.

If the bona fide religious beliefs of an adult or the parent, guardian or person in loco parentis of a child are contrary to the immunization requirements contained in this Chapter, the adult or the child shall be exempt from the requirements. Upon submission of a written statement of the bona fide religious beliefs and opposition to the immunization requirements, the person may attend the college, university, school or facility without presenting a certificate of immunization.

§ 130A-158. Restitution required when vaccine spoiled due to provider negligence.

Immunization program providers shall be liable for restitution to the State for the cost of replacement vaccine when vaccine in the provider's inventory has become spoiled or unstable due to the provider's negligence and unreasonable failure to properly handle or store the vaccine.

**CHAPTER 131D
INSPECTION AND LICENSING OF FACILITIES**

SELECTED PROVISIONS

**Article 3.
Adult Care Home Residents' Bill of Rights.**

Selected Provisions

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§ 131D-20. Definitions.

As used in this Article, the following terms have the meanings specified:

- ...
- (2a) "Adult care home" is an assisted living residence in which the housing management provides 24-hour scheduled and unscheduled personal care services to two or more residents, either directly or, for scheduled needs, through formal written agreement with licensed home care or hospice agencies. Some licensed adult care homes provide supervision to persons with cognitive impairments whose decisions, if made independently, may jeopardize the safety or well-being of themselves or others and therefore require supervision. Medication in an adult care home may be administered by designated, trained staff. Adult care homes that provide care to two to six unrelated residents are commonly called family care homes. Adult care homes and family care homes are subject to licensure by the Division of Health Service Regulation.
- (2b) "Assisted living residence" means any group housing and services program for two or more unrelated adults, by whatever name it is called, that makes available, at a minimum, one meal a day and housekeeping services and provides personal care services directly or through a formal written agreement with one or more licensed home care or hospice agencies. The Department may allow nursing service exceptions on a case-by-case basis. Settings in which services are delivered may include self-contained apartment units or single or shared room units with private or area baths. Assisted living residences are to be distinguished from nursing homes subject to provisions of G.S. 131E-102.
- ...
- (4) "Facility" means an adult care home licensed under G.S. 131D-2.4.
- (5) "Family care home" means an adult care home having two to six residents. The structure of a family care home may be no more than two stories high and none of the aged or physically disabled persons being served there may be housed in the upper story without provision for two direct exterior ground-level accesses to the upper story.
- ...
- (9) "Resident" means an aged or disabled person who has been admitted to a facility.

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§ 131D-34. Penalties; remedies.

...

(h) The Secretary shall establish a penalty review committee within the Department, which shall meet as often as needed, but no less frequently than once each quarter of the year, to review administrative penalties assessed pursuant to this section and pursuant to G.S. 131E-129 as follows:

- (1) The Secretary shall administer the work of the Committee and provide public notice of its meetings via Web site, and provide direct notice to the following parties involved in the penalties the Committee will be reviewing:
- a. The licensed provider, who upon receipt of the notice, shall post the notice of the scheduled Penalty Review Committee meeting in a conspicuous place available to residents, family members, and the public;
 - b. The local department of social services that is responsible for oversight of the facility involved;
 - c. The residents affected; and
 - d. Those individuals lawfully designated by the affected resident to make health care decisions for the resident.

- (2) The Secretary shall ensure that the Nursing Home/Adult Care Home Penalty Review Committee established by this subsection is comprised of nine members. At least one member shall be appointed from each of the following categories:
 - a. A licensed pharmacist;
 - b. A registered nurse experienced in long term care;
 - c. A representative of a nursing home;
 - d. A representative of an adult care home; and
 - e. Two public members. One shall be a "near" relative of a nursing home patient, chosen from a list prepared by the Office of State Long Term Care Ombudsman, Division of Aging, Department of Health and Human Services. One shall be a "near" relative of a rest home patient, chosen from a list prepared by the Office of State Long Term Care Ombudsman, Division of Aging, Department of Health and Human Services. For purposes of this subdivision, a "near" relative is a spouse, sibling, parent, child, grandparent, or grandchild.
- (3) Neither the pharmacist, nurse, nor public members appointed under this subsection nor any member of their immediate families shall be employed by or own any interest in a nursing home or adult care home.
- (4) Repealed by Session Laws 2005-276, s. 10.40A(1), effective July 1, 2005.
- (4a) Repealed by Session Laws 2007-544, s. 1, effective October 1, 2007.
- (4b) Prior to serving on the Committee, each member shall complete a training program provided by the Department of Health and Human Services that covers standards of care and applicable State and federal laws and regulations governing facilities licensed under Chapter 131D and Chapter 131E of the General Statutes.
- (5) Each member of the Committee shall serve a term of two years. The initial terms of the members shall commence on August 3, 1989. The Secretary shall fill all vacancies. Unexcused absences from three consecutive meetings constitute resignation from the Committee.
- (6) The Committee shall be cochaired by:
 - a. One member of the Department outside of the Division of Health Service Regulation; and
 - b. One member who is not affiliated with the Department.

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**CHAPTER 131E
HEALTH CARE FACILITIES AND SERVICES**

SELECTED PROVISIONS

**Article 5.
Hospital Licensure Act.**

Selected Provisions

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§ 131E-76. Definitions.

As used in this article, unless otherwise specified:

- ...
- (3) "Hospital" means any facility which has an organized medical staff and which is designed, used, and operated to provide health care, diagnostic and therapeutic services, and continuous nursing care primarily to inpatients where such care and services are rendered under the supervision and direction of physicians licensed under Chapter 90 of the General Statutes, Article 1, to two or more persons over a period in excess of 24 hours. The term includes facilities for the diagnosis and treatment of disorders within the scope of specific health specialties. The term does not include private mental facilities licensed under Article 2 of Chapter 122C of the General Statutes, nursing homes licensed under G.S. 131E-102, adult care homes licensed under Part 1 of Article 1 of Chapter 131D of the General Statutes, and any outpatient department including a portion of a hospital operated as an outpatient department, on or off of the hospital's main campus, that is operated under the hospital's control or ownership and is classified as Business Occupancy by the Life Safety Code of the National Fire Protection Association as referenced under 42 C.F.R. § 482.41. Provided, however, if the Business Occupancy outpatient location is to be operated within 30 feet of any hospital facility, or any portion thereof, which is classified as Health Care Occupancy or Ambulatory Health Care Occupancy under the Life Safety Code of the National Fire Protection Association, the hospital shall provide plans and specifications to the Department for review and approval as required for hospital construction or renovations in a manner described by the Department.

* * * * *

§ 131E-79.1. Counseling patients regarding prescriptions.

(a) Any hospital or other health care facility licensed pursuant to this Chapter or Chapter 122C of the General Statutes, health maintenance organization, local health department, community health center, medical office, or facility operated by a health care provider licensed under Chapter 90 of the General Statutes, providing patient counseling by a physician, a registered nurse, or any other appropriately trained health care professional shall be deemed in compliance with the rules adopted by the North Carolina Board of Pharmacy regarding patient counseling.

(b) As used in this section, "patient counseling" means the effective communication of information to the patient or representative in order to improve therapeutic outcomes by maximizing proper use of prescription medications and devices.

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**Article 6.
Health Care Facility Licensure Act.
Part 2. Nursing Home Patients' Bill of Rights.**

Selected Provisions

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§ 131E-116. Definitions.

As used in this Part, unless otherwise specified:

- (1) "Administrator" means an administrator of a facility.

- (1a) "Commission" means the North Carolina Medical Care Commission.
- (2) "Facility" means a nursing home and a home for the aged or disabled licensed pursuant to G.S. 131E-102, and also means a nursing home operated by a hospital which is licensed under Article 5 of G.S. Chapter 131E.
- (3) "Patient" means a person who has been admitted to a facility.
- (4) "Representative payee" means a person certified by the federal government to receive and disburse benefits for a recipient of governmental assistance.

* * * * *

§ 131E-128.1. Nursing home medication management advisory committee.

- (a) Definitions. – As used in this section, unless the context requires otherwise, the term:
 - (1) "Advisory committee" means a medication management committee established under this section to advise the quality assurance committee.
 - (2) "Medication-related error" means any preventable medication-related event that adversely affects a patient in a nursing home and that is related to professional practice, or health care products, procedures, and systems, including prescribing, prescription order communications, product labeling, packaging and nomenclature, compounding, dispensing, distribution, administration, education, monitoring, and use.
 - (3) "Nursing home" means a nursing home licensed under this Chapter and includes an adult care home operated as part of a nursing home.
 - (4) "Potential medication-related error" means a medication-related error that has not yet adversely affected a patient in a nursing home, but that has the potential to if not anticipated or prevented or if left unnoticed.
 - (5) "Quality assurance committee" means a committee established in a nursing home in accordance with federal and State regulations to identify circumstances requiring quality assessment and assurance activities and to develop and implement appropriate plans of action to correct deficiencies in quality of care.
- (b) Purpose. – It is the purpose of the General Assembly to enhance compliance with this Part through the establishment of medication management advisory committees in nursing homes. The purpose of these committees is to assist nursing homes to identify medication-related errors, evaluate the causes of those errors, and take appropriate actions to ensure the safe prescribing, dispensing, and administration of medications to nursing home patients.
- (c) Advisory Committee Established; Membership. – Every nursing home shall establish a medication management advisory committee to advise the quality assurance committee on quality of care issues related to pharmaceutical and medication management and use in the nursing home. The nursing home shall maintain the advisory committee as part of its administrative duties. The advisory committee shall be interdisciplinary and consist of the nursing home administrator and at least the following members appointed by the nursing home administrator:
 - (1) The director of nursing.
 - (2) The consultant pharmacist.
 - (3) A physician designated by the nursing home administrator.
 - (4) At least three other members of the nursing home staff.
- (d) Meetings. – The advisory committee shall meet as needed but not less frequently than quarterly. The Director of Nursing or Staff Development Coordinator shall chair the advisory committee. The nursing home administrator shall ensure that a record is maintained of each meeting.
- (e) Confidentiality. – The meetings or proceedings of the advisory committee, the records and materials it produces, and the materials it considers, including analyses and reports pertaining to medication-related error reporting under G.S. 131E-128.2 and pharmacy reports on drug defects and adverse reactions under G.S. 131E-128.4, shall be confidential and not be considered public records within the meaning of G.S. 132-1. The meetings or proceedings and records and materials also shall not be subject to discovery or introduction into evidence in any civil action against a nursing home or a provider of professional health services resulting from matters that are the subject of evaluation and review by the committee. No person who was in attendance at a meeting of the committee shall testify in any civil action as to any evidence or other matters produced or presented during the meetings or proceedings of the committee or as to any findings, recommendations, evaluations, opinions, or other actions of the committee or its members. Notwithstanding the foregoing:
 - (1) Information, documents, or records otherwise available, including any deficiencies found in the course of an inspection conducted under G.S. 131E-105, shall not be immune from discovery or use in a civil action merely because they were presented during meetings or proceedings of the advisory committee. A member of the advisory committee or a person who testifies before the committee may testify in a civil action but cannot be asked about

that person's testimony before the committee or any opinion formed as a result of the committee meetings or proceedings.

- (2) Information that is confidential and not subject to discovery or use in civil actions under this subsection may be released to a professional standards review organization that performs any accreditation or certification function. Information released to the professional standards review organization shall be limited to information reasonably necessary and relevant to the standards review organization's determination to grant or continue accreditation or certification. Information released to the standards review organization retains its confidentiality and is not subject to discovery or use in any civil action as provided under this subsection. The standards review organization shall keep the information confidential subject to this subsection.
 - (3) Information that is confidential and not subject to discovery or use in civil actions under this subsection may be released to the Department of Health and Human Services pursuant to its investigative authority under G.S. 131E-105. Information released to the Department shall be limited to information reasonably necessary and relevant to the Department's investigation of compliance with Part 1 of Article 6 of this Chapter. Information released to the Department retains its confidentiality and is not subject to discovery or use in any civil action as provided in this subsection. The Department shall keep the information confidential subject to this subsection.
 - (4) Information that is confidential and is not subject to discovery or use in civil actions under this subsection may be released to an occupational licensing board having jurisdiction over the license of an individual involved in an incident that is under review or investigation by the advisory committee. Information released to the occupational licensing board shall be limited to information reasonably necessary and relevant to an investigation being conducted by the licensing board pertaining to the individual's involvement in the incident under review by the advisory committee. Information released to an occupational licensing board retains its confidentiality and is not subject to discovery or use in any civil action as provided in this subsection. The occupational licensing board shall keep the information confidential subject to this subsection.
- (f) Duties. – The advisory committee shall do the following:
- (1) Assess the nursing home's pharmaceutical management system, including its prescribing, distribution, administration policies, procedures, and practices and identify areas at high risk for medication-related errors.
 - (2) Review the nursing home's pharmaceutical management goals and respond accordingly to ensure that these goals are being met.
 - (3) Review, investigate, and respond to nursing home incident reports, deficiencies cited by licensing or credentialing agencies, and resident grievances that involve actual or potential medication-related errors.
 - (4) Identify goals and recommendations to implement best practices and procedures, including risk reduction technology, to improve patient safety by reducing the risk of medication-related errors.
 - (5) Develop recommendations to establish a mandatory, nonpunitive, confidential reporting system within the nursing home of actual and potential medication-related errors.
 - (6) Develop specifications for drug dispensing and administration documentation procedures to ensure compliance with federal and State law, including the North Carolina Nursing Practice Act.
 - (7) Develop specifications for self-administration of drugs by qualified patients in accordance with law, including recommendations for assessment procedures that identify patients who may be qualified to self-administer their medications.
- (g) Penalty. – The Department may take adverse action against the license of a nursing home upon a finding that the nursing home has failed to comply with this section, G.S. 131E-128.2, 131E-128.3, or 131E-128.4.

§ 131E-128.2. Nursing home quality assurance committee; duties related to medication error prevention.

Every nursing home administrator shall ensure that the nursing home quality assurance committee develops and implements appropriate measures to minimize the risk of actual and potential medication-related errors, including the measures listed in this section. The design and implementation of the measures shall be based upon recommendations of the medication management advisory committee and shall:

- (1) Increase awareness and education of the patient and family members about all medications that the patient is using, both prescription and over-the-counter, including dietary supplements.
- (2) Increase prescription legibility.

- (3) Minimize confusion in prescription drug labeling and packaging, including unit dose packaging.
- (4) Develop a confidential and nonpunitive process for internal reporting of actual and potential medication-related errors.
- (5) To the extent practicable, implement proven medication safety practices, including the use of automated drug ordering and dispensing systems.
- (6) Educate facility staff engaged in medication administration activities on similar-sounding drug names.
- (7) Implement a system to accurately identify recipients before any drug is administered.
- (8) Implement policies and procedures designed to improve accuracy in medication administration and in documentation by properly authorized individuals, in accordance with prescribed orders and stop order policies.
- (9) Implement policies and procedures for patient self-administration of medication.
- (10) Investigate and analyze the frequency and root causes of general categories and specific types of actual or potential medication-related errors.
- (11) Develop recommendations for plans of action to correct identified deficiencies in the facility's pharmaceutical management practices.

§ 131E-128.3. Staff orientation on medication error prevention.

The nursing home administrator shall ensure that the nursing home provide a minimum of one hour of education and training in the prevention of actual or potential medication-related errors. This training shall be provided upon orientation and annually thereafter to all nonphysician personnel involved in direct patient care. The content of the training shall include at least the following:

- (1) General information relevant to the administration of medications including terminology, procedures, routes of medication administration, potential side effects, and adverse reactions.
- (2) Additional instruction on categories of medication pertaining to the specific needs of the patient receiving the medication.
- (3) The facility's policy and procedures regarding its medication administration system.
- (4) How to assist patients with safe and accurate self-administration of medication, where appropriate.
- (5) Identifying and reporting actual and potential medication-related errors.

§ 131E-128.4. Nursing home pharmacy reports; duties of consultant pharmacist.

(a) The consultant pharmacist for a nursing home shall conduct a drug regimen review for actual and potential drug therapy problems in the nursing home and make remedial or preventive clinical recommendations into the medical record of every patient receiving medication. The consultant pharmacist shall conduct the review at least monthly in accordance with the nursing home's policies and procedures.

(b) The consultant pharmacist shall report and document any drug irregularities and clinical recommendations promptly to the attending physician or nurse-in-charge and the nursing home administrator. The reports shall include problems identified and recommendations concerning:

- (1) Drug therapy that may be affected by biological agents, laboratory tests, special dietary requirements, and foods used or administered concomitantly with other medication to the same recipient.
- (2) Monitoring for potential adverse effects.
- (3) Allergies.
- (4) Drug interactions, including interactions between prescription drugs and over-the-counter drugs, drugs and disease, and interactions between drugs and nutrients.
- (5) Contraindications and precautions.
- (6) Potential therapeutic duplication.
- (7) Overextended length of treatment of certain drugs typically prescribed for a short period of time.
- (8) Beer's listed drugs that are potentially inappropriate for use by elderly persons.
- (9) Undertreatment or medical conditions that are suboptimally treated or not treated at all that warrant additional drug therapy to ensure quality of care.
- (10) Other identified problems and recommendations.

(c) The consultant pharmacist shall report drug product defects and adverse drug reactions in accordance with the ASHSP-USP-FDA Drug Product Defect Reporting System and the USP Adverse Drug Reaction Reporting System. The term "ASHSP-USP-FDA" means American Society of Health System Pharmacists-United States Pharmacopoeia-Food and Drug Administration. Information released to the ASHSP-USP-FDA retains its confidentiality and is not subject to discovery or use in any civil action as provided under G.S. 131E-128.1.

(d) The consultant pharmacist shall ensure that all known allergies and adverse effects are documented in plain view in the patient's medical record, including the medication administration records, and communicated to the dispensing pharmacy. The specific medications and the type of allergy or adverse reaction shall be specified in the documentation.

(e) The consultant pharmacist shall ensure that drugs that are not specifically limited as to duration of use or number of doses shall be controlled by automatic stop orders. The consultant pharmacist shall further ensure that the prescribing provider is notified of the automatic stop order prior to the dispensing of the last dose so that the provider may decide whether to continue to use the drug.

(f) The consultant pharmacist shall, on a quarterly basis, submit a summary of the reports submitted under subsections (a) and (b) of this section to the medication management advisory committee established under G.S. 131E-128.1. The summary shall not include any information that would identify a patient, a family member, or an employee of the nursing home. The purpose of the summary shall be to facilitate the identification and analysis of weaknesses in the nursing home's pharmaceutical care system that have an adverse impact on patient safety.

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CHAPTER 143B
EXECUTIVE ORGANIZATION ACT OF 1973

SELECTED PROVISIONS

Article 3.

Department of Health and Human Services.

Part 32. Health Disease and Stroke Prevention Task Force.

§ 143B-216.60. The Justus-Warren Heart Disease and Stroke Prevention Task Force.

(a) The Justus-Warren Heart Disease and Stroke Prevention Task Force is created in the Department of Health and Human Services.

(b) The Task Force shall have 27 members. The Governor shall appoint the Chair, and the Vice-Chair shall be elected by the Task Force. The Director of the Department of Health and Human Services, the Director of the Division of Medical Assistance in the Department of Health and Human Services, and the Director of the Division of Aging in the Department of Health and Human Services, or their designees, shall be members of the Task Force. Appointments to the Task Force shall be made as follows:

- (1) By the General Assembly upon the recommendation of the President Pro Tempore of the Senate, as follows:
 - a. Three members of the Senate;
 - b. A heart attack survivor;
 - c. A local health director;
 - d. A certified health educator;
 - e. A hospital administrator; and
 - f. A representative of the North Carolina Association of Area Agencies on Aging.
- (2) By the General Assembly upon the recommendation of the Speaker of the House of Representatives, as follows:
 - a. Three members of the House of Representatives;
 - b. A stroke survivor;
 - c. A county commissioner;
 - d. A licensed dietitian/nutritionist;
 - e. A pharmacist; and
 - f. A registered nurse.
- (3) By the Governor, as follows:
 - a. A practicing family physician, pediatrician, or internist;
 - b. A president or chief executive officer of a business upon recommendation of a North Carolina wellness council which is a member of the Wellness Councils of America;
 - c. A news director of a newspaper or television or radio station;
 - d. A volunteer of the North Carolina Affiliate of the American Heart Association;
 - e. A representative from the North Carolina Cooperative Extension Service;
 - f. A representative of the Governor's Council on Physical Fitness and Health; and
 - g. Two members at large.

(c) Each appointing authority shall assure insofar as possible that its appointees to the Task Force reflect the composition of the North Carolina population with regard to ethnic, racial, age, gender, and religious composition.

(d) The General Assembly and the Governor shall make their appointments to the Task Force not later than 30 days after the adjournment of the 1995 General Assembly, Regular Session 1995. A vacancy on the Task Force shall be filled by the original appointing authority, using the criteria set out in this section for the original appointment.

(e) The Task Force shall meet not more than twice annually at the call of the Chair.

(f) Members of the Task Force shall receive per diem and necessary travel and subsistence expenses in accordance with G.S. 120-3.1, 138-5 and 138-6, as applicable.

(g) A majority of the Task Force shall constitute a quorum for the transaction of its business.

(h) The Task Force may use funds allocated to it to establish two positions and for other expenditures needed to assist the Task Force in carrying out its duties.

(i) The Task Force has the following duties:

- (1) To undertake a statistical and qualitative examination of the incidence of and causes of heart disease and stroke deaths and risks, including identification of subpopulations at highest risk for developing heart disease and stroke, and establish a profile of the heart disease and stroke burden in North Carolina.

- (2) To publicize the profile of the heart disease and stroke burden and its preventability in North Carolina.
 - (3) To identify priority strategies which are effective in preventing and controlling risks for heart disease and stroke.
 - (4) To identify, examine limitations of, and recommend to the Governor and the General Assembly changes to existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.
 - (5) To determine and recommend to the Governor and the General Assembly the funding and strategies needed to enact new or to modify existing laws, regulations, programs, services, and policies to enhance heart disease and stroke prevention by and for the people of North Carolina.
 - (6) To adopt and promote a statewide comprehensive Heart Disease and Stroke Prevention Plan to the general public, State and local elected officials, various public and private organizations and associations, businesses and industries, agencies, potential funders, and other community resources.
 - (7) To identify and facilitate specific commitments to help implement the Plan from the entities listed in subdivision (6) above.
 - (8) To facilitate coordination of and communication among State and local agencies and organizations regarding current or future involvement in achieving the aims of the Heart Disease and Stroke Prevention Plan.
 - (9) To receive and consider reports and testimony from individuals, local health departments, community-based organizations, voluntary health organizations, and other public and private organizations statewide, to learn more about their contributions to heart disease and stroke prevention, and their ideas for improving heart disease and stroke prevention in North Carolina.
 - (10) Establish and maintain a Stroke Advisory Council, which shall advise the Task Force regarding the development of a statewide system of stroke care that shall include, among other items, a system for identifying and disseminating information about the location of primary stroke centers.
- (j) Notwithstanding Section 11.57 of S.L. 1999-237, the Task Force shall submit a final report to the Governor and the General Assembly by June 30, 2003, and a report to each subsequent regular legislative session within one week of its convening.

**CHAPTER 153A
COUNTIES**

SELECTED PROVISIONS

**Article 5.
Administration.**

Selected Provisions

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§ 153A-77. Authority of boards of commissioners in certain counties over commissions, boards, agencies, etc.

(a) In the exercise of its jurisdiction over commissions, boards and agencies, the board of county commissioners may assume direct control of any activities theretofore conducted by or through any commission, board or agency by the adoption of a resolution assuming and conferring upon the board of county commissioners all powers, responsibilities and duties of any such commission, board or agency. This section shall apply to the board of health, the social services board, area mental health, developmental disabilities, and substance abuse area board or any other commission, board or agency appointed by the board of county commissioners or acting under and pursuant to authority of the board of county commissioners of said county except as provided in G.S. 153A-76. A board of county commissioners exercising the power and authority under this subsection may, notwithstanding G.S. 130A-25, enforce public health rules adopted by the board through the imposition of civil penalties. If a public health rule adopted by a board of county commissioners imposes a civil penalty, the provisions of G.S. 130A-25 making its violation a misdemeanor shall not be applicable to that public health rule unless the rule states that a violation of the rule is a misdemeanor. The board of county commissioners may exercise the power and authority herein conferred only after a public hearing held by said board pursuant to 30 days' notice of said public hearing given in a newspaper having general circulation in said county.

The board of county commissioners may also appoint advisory boards, committees, councils and agencies composed of qualified and interested county residents to study, interpret and develop community support and cooperation in activities conducted by or under the authority of the board of county commissioners of said county.

A board of county commissioners that has assumed direct control of a local health board after January 1, 2012, and that does not delegate the powers and duties of that board to a consolidated health service board shall appoint an advisory committee consistent with the membership described in G.S. 130A-35.

(b) In the exercise of its jurisdiction over commissions, boards, and agencies, the board of county commissioners of a county having a county manager pursuant to G.S. 153A-81 may:

- (1) Consolidate certain provisions of human services in the county under the direct control of a human services director appointed and supervised by the county manager in accordance with subsection (e) of this section;
- (2) Create a consolidated human services board having the powers conferred by subsection (c) of this section;
- (3) Create a consolidated county human services agency having the authority to carry out the functions of any combination of commissions, boards, or agencies appointed by the board of county commissioners or acting under and pursuant to authority of the board of county commissioners, including the local health department, the county department of social services, or the area mental health, developmental disabilities, and substance abuse services authority; and
- (4) Assign other county human services functions to be performed by the consolidated human services agency under the direction of the human services director, with policy-making authority granted to the consolidated human services board as determined by the board of county commissioners.

(c) A consolidated human services board appointed by the board of county commissioners shall serve as the policy-making, rule-making, and administrative board of the consolidated human services agency. The consolidated human services board shall be composed of no more than 25 members. The composition of the board shall reasonably reflect the population makeup of the county and shall include:

- (1) Eight persons who are consumers of human services, public advocates, or family members of clients of the consolidated human services agency, including: one person with mental illness, one person with a developmental disability, one person in recovery from substance abuse, one family member of a person with mental illness, one family member of a person with a developmental disability, one family member of a person with a substance abuse problem, and two consumers of other human services.

- (1a) Notwithstanding subdivision (1) of this subsection, a consolidated human services board not exercising powers and duties of an area mental health, developmental disabilities, and substance abuse services board shall include four persons who are consumers of human services.
- (2) Eight persons who are professionals, each with qualifications in one of these categories: one psychologist, one pharmacist, one engineer, one dentist, one optometrist, one veterinarian, one social worker, and one registered nurse.
- (3) Two physicians licensed to practice medicine in this State, one of whom shall be a psychiatrist.
- (4) One member of the board of county commissioners.
- (5) Other persons, including members of the general public representing various occupations.

The board of county commissioners may elect to appoint a member of the consolidated human services board to fill concurrently more than one category of membership if the member has the qualifications or attributes of more than one category of membership.

All members of the consolidated human services board shall be residents of the county. The members of the board shall serve four-year terms. No member may serve more than two consecutive four-year terms. The county commissioner member shall serve only as long as the member is a county commissioner.

The initial board shall be appointed by the board of county commissioners upon the recommendation of a nominating committee comprised of members of the preconsolidation board of health, social services board, and area mental health, developmental disabilities, and substance abuse services board. In order to establish a uniform staggered term structure for the board, a member may be appointed for less than a four-year term. After the subsequent establishment of the board, its board shall be appointed by the board of county commissioners from nominees presented by the human services board. Vacancies shall be filled for any unexpired portion of a term.

A chairperson shall be elected annually by the members of the consolidated human services board. A majority of the members shall constitute a quorum. A member may be removed from office by the county board of commissioners for (i) commission of a felony or other crime involving moral turpitude; (ii) violation of a State law governing conflict of interest; (iii) violation of a written policy adopted by the county board of commissioners; (iv) habitual failure to attend meetings; (v) conduct that tends to bring the office into disrepute; or (vi) failure to maintain qualifications for appointment required under this subsection. A board member may be removed only after the member has been given written notice of the basis for removal and has had the opportunity to respond.

A member may receive a per diem in an amount established by the county board of commissioners. Reimbursement for subsistence and travel shall be in accordance with a policy set by the county board of commissioners. The board shall meet at least quarterly. The chairperson or three of the members may call a special meeting.

(d) The consolidated human services board shall have authority to:

- (1) Set fees for departmental services based upon recommendations of the human services director. Fees set under this subdivision are subject to the same restrictions on amount and scope that would apply if the fees were set by a county board of health, a county board of social services, or a mental health, developmental disabilities, and substance abuse area authority.
- (2) Assure compliance with laws related to State and federal programs.
- (3) Recommend creation of local human services programs.
- (4) Adopt local health regulations and participate in enforcement appeals of local regulations.
- (5) Perform regulatory health functions required by State law.
- (6) Act as coordinator or agent of the State to the extent required by State or federal law.
- (7) Plan and recommend a consolidated human services budget.
- (8) Conduct audits and reviews of human services programs, including quality assurance activities, as required by State and federal law or as may otherwise be necessary periodically.
- (9) Advise local officials through the county manager.
- (10) Perform public relations and advocacy functions.
- (11) Protect the public health to the extent required by law.
- (12) Perform comprehensive mental health services planning if the county is exercising the powers and duties of an area mental health, developmental disabilities, and substance abuse services board under the consolidated human services board.
- (13) Develop dispute resolution procedures for human services contractors and clients and public advocates, subject to applicable State and federal dispute resolution procedures for human services programs, when applicable.

Except as otherwise provided, the consolidated human services board shall have the powers and duties conferred by law upon a board of health, a social services board, and an area mental health, developmental disabilities, and substance abuse services board.

Local employees who serve as staff of a consolidated county human services agency are subject to county personnel policies and ordinances only and are not subject to the provisions of the State Personnel Act, unless the county board of commissioners elects to subject the local employees to the provisions of that Act. All consolidated county human services agencies shall comply with all applicable federal laws, rules, and regulations requiring the establishment of merit personnel systems.

(e) The human services director of a consolidated county human services agency shall be appointed and dismissed by the county manager with the advice and consent of the consolidated human services board. The human services director shall report directly to the county manager. The human services director shall:

- (1) Appoint staff of the consolidated human services agency with the county manager's approval.
- (2) Administer State human services programs.
- (3) Administer human services programs of the local board of county commissioners.
- (4) Act as secretary and staff to the consolidated human services board under the direction of the county manager.
- (5) Plan the budget of the consolidated human services agency.
- (6) Advise the board of county commissioners through the county manager.
- (7) Perform regulatory functions of investigation and enforcement of State and local health regulations, as required by State law.
- (8) Act as an agent of and liaison to the State, to the extent required by law.
- (9) Appoint, with the county manager's approval, an individual that meets the requirements of G.S. 130A-40(a).

Except as otherwise provided by law, the human services director or the director's designee shall have the same powers and duties as a social services director, a local health director, or a director of an area mental health, developmental disabilities, and substance abuse services authority.

- (f) Repealed by Session Laws 2012-126, s. 1, effective June 29, 2012.

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