

PHARMACY ACT

CHAPTER P-12.1 AN ACT TO REGULATE THE PRACTICE OF PHARMACY 2004 c34 s1

(Assented to December 16, 1994)

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Be it enacted by the Lieutenant-Governor and House of Assembly in Legislative Session convened, as follows:

Short title

1. This Act may be cited as the *Pharmacy Act*.

Definitions

2. In this Act

- (a) "association" means the Pharmacists' Association of Newfoundland and Labrador Inc. referred to in section 4;
- (a.1) "board" means the Newfoundland and Labrador Pharmacy Board referred to in section 5;
- (b) "certificate" means a certificate of registration issued under section 18;
- (c) Repealed 2004
- (d) Repealed 2004
- (d.1) "department" means the department presided over by the minister;
- (e) "dispense" means to provide a substance or item ordered by prescription but does not include the administration of that substance or item to a person or animal;
- (f) "drug" means a substance or combination of substances used or intended to be used to diagnose, treat, mitigate or prevent disease, disorder or an abnormal physical or mental state or a symptom of them, or to restore, correct or modify organic functions in humans or animals, including those substances or combinations of substances listed or referred to in the regulations;
- (g) "former Act" means the *Pharmaceutical Association Act*;
- (h) "hospital" means hospital as defined in the *Hospitals Act*;
- (i) Repealed 2004
- (j) "licence" means a licence issued under section 25;
- (k) "member" means a person elected or appointed as a member of the board;
- (l) "minister" means the minister appointed under the *Executive Council Act* to administer this Act;
- (m) "pharmacist" means a person registered under section 21 of this Act;
- (n) "pharmacy" means that portion of a place of business, shop, store or other location including that portion of a hospital, institution or retail operation, compounding or re-packaging facility, where drugs are prepared, compounded, dispensed or sold or where the practice of pharmacy is carried out;
- (o) "practice of pharmacy" means
 - (i) having responsibility for preparing, distributing and controlling drugs in a pharmacy,
 - (ii) compounding a prescription,
 - (iii) dispensing a drug,
 - (iv) selling a drug by retail,
 - (v) disseminating information on the safe and effective use of a drug when dispensing or selling a drug, or
 - (vi) subdividing or breaking up a manufacturer's original package of a drug for the purpose of repackaging the drug in larger or smaller quantities for redistribution,and includes teaching, consulting or advising in the areas of pharmaceutical services, education, policy or research by a person registered under this Act;
- (p) "prescription" means an instruction given orally or in writing by
 - (i) a medical practitioner as defined in the *Medical Act* ,
 - (ii) a dentist, as defined in the *Dental Act* ,
 - (iii) a veterinarian as defined in the *Veterinary Medical Act, 2004* ,
 - (iii.1) an optometrist as defined in the *Optometry Act, 2004*,
 - (iv) a nurse practitioner as defined in the *Registered Nurses Act*, or
 - (v) a prescriber licensed to practice in a province or territory of Canada other than Newfoundland and Labrador, in accordance with section 24.1,directing that a drug be dispensed to or for a person or animal;

- (q) "secretary-registrar" means the person appointed as secretary-registrar by the board under section 5; and
- (r) "sell" means, directly or indirectly, upon a pretence or by any means, to barter, distribute, give or deliver, whether or not for consideration, including attempting to sell, barter, give or deliver and offering, advertising, exposing or keeping for sale.

Non-application of Act

3. (1) This Act does not apply to

- (a) a medical practitioner licensed and acting under the *Medical Act* ;
- (b) a dentist or dental surgeon licensed and acting under the *Dental Act* ;
- (c) a veterinarian licensed and acting under the *Veterinary Medical Act, 2004* ;
- (c.1) an optometrist licensed and acting under the *Optometry Act, 2004* ;
- (d) a nurse practitioner licensed and acting under the *Registered Nurses Act*; and
- (e) the sale of proprietary medicine, as defined in Division 10 of the regulations under the *Food and Drug Act* (Canada).

(2) This Act shall not extend to or interfere with the dispensing of necessary drugs or medicines by registered nurses in the course of duty when practising with the approval and under the general supervision of a hospital board.

PART I
ASSOCIATION

Association established

4. (1) The Pharmacists' Association of Newfoundland and Labrador Inc. is established as a corporation without share capital for the purposes of Part XXI of the *Corporations Act*.

- (2) The objects of the association shall include, notwithstanding anything in the by-laws of the association,
- (a) promoting and advancing pharmacy and related disciplines, increasing the knowledge, skill, standards and proficiency of its members in the practice of pharmacy and maintaining the honour and integrity of the profession of pharmacy;
 - (b) promoting liaison among the various branches of pharmacy; and
 - (c) negotiating with providers of prescription drug payment programs.

(3) A pharmacist who pays the membership fee set by the association is a member of the association notwithstanding anything in the by-laws of the association.

(4) Notwithstanding its incorporation under this Act, the association shall be governed by the *Corporations Act* for all purposes, including a change of the name of the association.

PART I.1
LICENSING BOARD

Licensing board

5. (1) The Newfoundland Pharmaceutical Association is continued under the name Newfoundland and Labrador Pharmacy Board as a corporation without share capital for the purposes of Part XXI of the *Corporations Act* .

(2) The board shall consist of:

- (a) 7 members elected from and by registered pharmacists in accordance with the by-laws;
- (b) 2 members appointed under section 5.1 who are not registered pharmacists; and
- (c) the secretary-registrar of the board appointed by the other members of the board in accordance with the by-laws, who shall not vote on a matter before the board, its executive or a committee of the board.

(3) A member of the board of the association is ineligible to be a member of the board.

(4) A member may be elected for a term set by the by-laws which shall not exceed 3 years and is eligible to be re-elected, but shall not be a member for more than 9 consecutive years.

- (5) An elected member may resign by written notice to the board.
- (6) Where an elected member resigns, dies or becomes incapable of performing his or her duties, the remaining members shall appoint a replacement to serve until the next annual general meeting.
- (7) Elected members shall serve without payment for their services, but their travel and other expenses associated with their duties as members shall be paid by the board, in accordance with the by-laws.
- (8) The board may pay the secretary-registrar for performing his or her duties under this Act, in accordance with the by-laws.
- (9) The board shall elect an executive from the members including a chairperson who chairs meetings of the board, a vice-chairperson who shall preside over meetings in the absence of the chairperson and other officers as provided for in the by-laws.

Appointed members

- 5.1** (1) The minister shall appoint 2 members of the board who are not registered pharmacists who are suitable to represent the public interest.
- (2) A person appointed under subsection (1) holds office for a term of 3 years and is eligible to be re-appointed.
 - (3) Where a person appointed under subsection (1) holds office for a period of 9 consecutive years the person is not eligible for appointment as a member of the board until the expiration of 12 months from the end of the year in which he or she was last a member.
 - (4) Where the term of office of a person appointed under this section expires, he or she continues to be a member of the board until re-appointed or replaced.
 - (5) The board shall pay the expenses of a person appointed to the board under this section in accordance with guidelines established by the Lieutenant-Governor in Council.
 - (6) A person appointed under subsection (1) may be removed from office by the minister before the expiration of his or her term of office and no compensation shall be paid to him or her other than an amount owing under subsection (5).
 - (7) A person appointed under subsection (1) may resign from the board by written notice to the minister.

Objects

6. The objects of the board are

- (a) to establish and maintain standards of professional conduct, knowledge, education, qualification, skill and ethics among registered pharmacists;
- (b) to assure to the general public, proficiency and competency in the practice of pharmacy;
- (c) to regulate and govern registered pharmacists and the practice of pharmacy;
- (d) to establish, maintain and develop standards for the operation of pharmacies;
- (e) to administer this Act and perform duties and exercise powers that are imposed or conferred on the board; and
- (f) to serve and protect the public interest in all matters relating to the sale of drugs and the practice of pharmacy.

Powers

7. The board may

- (a) acquire and hold real and personal property by way of purchase, lease, grant, hire, exchange or otherwise and dispose of that property by any means;
- (b) borrow money and give security by way of mortgage, pledge, charge or otherwise for borrowed money in order to carry out the objects of the board;
- (c) invest money of the board in investments that trustees are authorized to invest in the province for the benefit of the board;

- (d) apply money or income of the board to carry out the objects and powers of the board;
- (e) Repealed 2004
- (f) Repealed 2004
- (g) Repealed 2004
- (h) in accordance with Part IV of this Act provide for the governing and discipline of persons practising pharmacy in the province;
- (i) establish and maintain a register of persons entitled to practise pharmacy under this Act;
- (j) assess existing and develop new education standards and specify the education, training and experience required to obtain and continue registration under this Act;
- (k) enter into agreements, negotiate or meet with a person, board, agency or group where it considers it is necessary for the carrying out of the objects of the board; and
- (l) subject to Part IV, inquire into the practice of pharmacy by a pharmacist or student and inquire into other matters that the board considers necessary in connection with the exercise of its powers and the performance of its duties in relation to competence in the practice of pharmacy under this Act.

Meetings of the board

8. (1) A quorum of the board is 5 members, one of whom shall be an appointed member and a majority vote of those present at a meeting decides a question.

(2) Where there is an equality of votes the chairperson of the board shall cast a second deciding vote.

(3) The board shall hold an annual general meeting, to which all registered pharmacists shall be invited, to elect the members of the board.

(4) At the annual general meeting the board shall appoint an auditor to audit the accounts of the board and report on the financial statement prepared by the board.

(5) Except where prohibited in the by-laws, a member of the board may, where all the members consent, participate in a meeting of the board by means of the telephone or other telecommunication device that permits all persons participating in the meeting to communicate with each other.

(6) The board may in its by-laws provide for voting by registered pharmacists at the annual general meeting to be held by mail or electronic means.

Annual report

8.1 (1) The board shall prepare and submit to the minister before July 1 in a year

- (a) a report on the activities of the board; and
- (b) the board's audited financial statements.

(2) Where the board fails to comply with subsection (1), the board is guilty of an offence and on summary conviction may be fined \$1,000.

By-laws

9. (1) The board may make by-laws not inconsistent with this Act respecting

- (a) the holding of its meetings and the procedure at those meetings;
- (b) the appointment, remuneration and duties of the secretary-registrar;
- (c) the election of members under subsection 5(2) and setting the terms of office;
- (d) the payment of travel and other expenses of elected members;
- (e) the election of an executive under subsection 5(9);
- (f) a code of ethics which may include a definition of "professional misconduct" and "conduct unbecoming" for the purposes of Part IV and methods of advertising considered advisable for pharmacists and pharmacies;
- (g) the remuneration and payment of travel expenses of members of adjudication panels;
- (h) Repealed 2005

- (i) limiting the participation of members at a meeting of the board by telephone or other telecommunications device under section 8;
- (j) providing for voting at the annual general meeting of the board by mail or electronic means;
- (k) the types of registers to be kept by the secretary-register and the information to be maintained on those registers;
- (l) the appointment and definition of duties of examiners;
- (m) the issuance and term of certificates and licences; and
- (n) information required from applicants for registration or licensing.

(2) A by-law may be made, amended or repealed at a meeting of the board provided that 30 days notice, in writing, of the making, amendment or repeal of the by-law and of the meeting are given to members.

(3) The by-laws of the Newfoundland Pharmaceutical Association in operation at the coming into force of this Act shall be the by-laws governing the board until revoked or amended by the board in accordance with this section.

(4) The board shall have its by-laws available for inspection by the public on reasonable notice and at reasonable hours.

10. Repealed 2004

11. Repealed 2004

12. Repealed 2004

Committees

13. The board may appoint committees to carry out duties and functions directed by the board.

Regulations

14. (1) The board may, with the approval of the minister, make regulations

- (a) respecting the registration of pharmacy students;
- (b) respecting the educational, internship, practical training or other requirements for registration and for the standard of the practice of pharmacy, including provisions for mandatory continuing education of registered pharmacists;
- (c) respecting all aspects of the dispensing, selling, handling and destruction of drugs;
- (d) prescribing courses of study, practical training requirements and examinations;
- (e) prescribing, with respect to drugs, drug products and substances
 - (i) schedules,
 - (ii) conditions for dispensing and sale,
 - (iii) concentrations and manner of preparation, and
 - (iv) control to be exercised by a person;
- (f) respecting the adoption of schedules enacted under the *Food and Drugs Act* (Canada) and the *Controlled Drugs and Substances Act* (Canada);
- (g) respecting the maintenance of prescriptions, prescription copies, records, the use of computers or other technology and the information to be collected and retained by computer or other technology;
- (h) respecting the transfer of records, prescriptions or other information by facsimile or other technology;
- (i) prescribing
 - (i) the tasks within the practice of pharmacy that may be delegated by a registered pharmacist to a pharmacy student or person within a specified class,
 - (ii) the characteristics and qualifications of the specified class of persons referred to in subparagraph (i),
 - (iii) the level of supervision required where delegation is permitted under subparagraph (i), and
 - (iv) other conditions on the delegation of tasks;
- (j) respecting alternative dispute resolution for the purposes of Part IV and the procedure for that resolution;
- (k) prescribing time limits for events in the disciplinary process under Part IV, including time limits for:
 - (i) the filing of an allegation,

- (ii) the resolving of an allegation by the secretary-registrar,
- (iii) the conduct of an investigation under section 39,
- (iv) consideration of an allegation by the complaints authorization committee following completion of an investigation,
- (v) responding to a complainant and respondent at each stage of the process,
- (vi) the conduct of a practice investigation under subparagraph 39(3)(c)(ii),
- (vii) the appointment of an adjudication tribunal under section 40, and
- (viii) the conduct of a hearing and the filing of a decision or order by an adjudication tribunal following completion of the hearing;
- (l) prescribing the duties of a pharmacist in charge of a pharmacy; and
- (m) generally, to give effect to the purpose of this Act.

(2) Notwithstanding subsection (1), the minister may make regulations to prescribe time limits for events in the disciplinary process under Part IV where the board does not do so within a time the minister considers reasonable.

Fees and forms

14.1 The board may set fees and prescribe forms for the purpose and administration of this Act.

PART II REGISTRATION, ADMISSION AND EXAMINATION

Registers

15. (1) The secretary-registrar shall maintain registers containing the names of those qualified and registered to practise pharmacy in the province and other registries and information required by the by-laws.

(2) The secretary-registrar shall, upon payment of the required fees, comply with a request for verification of information contained in a register established under subsection (1).

(3) The board shall have its registers available for inspection by the public on reasonable notice and at reasonable hours.

Entry on register

16. (1) An entry in a register under this Act which has been fraudulently or incorrectly made or omitted may be removed, corrected or added by the secretary-registrar upon the written direction of the board.

(2) A person who by fraudulent means obtains registration under this Act commits an offence and shall be considered to have conducted himself or herself in an unprofessional manner.

(3) A person or corporation may appeal a decision of the secretary-registrar regarding entry on a register of that person or corporation to the board by filing a notice of appeal with the chairperson at the offices of the board within 30 days of receiving notice of the decision.

Pharmacy information

17. (1) Not less than 30 days before opening a pharmacy for business or acquiring a pharmacy, a corporation, partnership or individual shall provide to the secretary-registrar the information required by the by-laws.

(2) The information provided under subsection (1) shall be confirmed and signed by the pharmacist in charge of that pharmacy.

Certificate of registration

18. (1) The secretary-registrar shall annually enter into the register the name of a pharmacist who has met the registration requirement of section 21 and the regulations and issue to that pharmacist an annual certificate of registration.

(2) A pharmacist who has not held an annual certificate of registration for 1 year immediately prior to the year in which that pharmacist seeks that certificate shall not be entitled to obtain registration and a certificate unless he or she meets additional requirements which may be prescribed by regulation.

(3) It is a condition of the issuing of a certificate of registration under this section that the person to whom the certificate is issued be a member of the association or within one month of the date of issuing the certificate become a member of the association, and the failure of that person to comply with this condition makes the certificate void from that date.

Proof of registration

19. The production in a court or proceeding of a register or a copy of or an extract from a register under this Act, certified by the secretary-registrar is evidence of the statements on that register without proof of the fact that the signature is that of the secretary-registrar.

Registration of students

20. A person registered as a student under the former Act on the coming into force of this Act and a person who is enrolled as a pharmacy student in a pharmacy program approved by the board is entitled to apply for registration as a pharmacy student under this Act.

Registration of pharmacists

21. (1) A person

- (a) registered and in good standing as a pharmaceutical chemist under the former Act;
- (b) who holds a Bachelor of Science degree in Pharmacy from the Memorial University of Newfoundland and has successfully completed a licensing examination based upon the professional competency requirements that the board may establish;
- (c) who has graduated from a Faculty of Pharmacy approved by the board and has successfully completed a licensing examination based upon the professional competency requirements that the board may establish; or
- (d) who, immediately before making an application for a licence under this Act, was registered, licensed, in good standing and practising as a pharmacist under the laws of another province or territory of Canada, may apply for registration under this Act.

(2) An application for registration under subsection (1) shall be approved where the applicant

- (a) applies in a manner and form prescribed by the by-laws;
- (b) pays those fees set by the board;
- (b.1) provides proof that he or she has obtained professional liability insurance coverage in a form and amount satisfactory to the board;
- (c) has not been suspended or restricted with respect to the practice of pharmacy by a board or equivalent body governing the practice of pharmacy in a jurisdiction outside the province;
- (d) is sufficiently proficient in an official language of Canada to competently discharge the duties and obligations of a pharmacist in the province;
- (e) has completed a practical training period under terms and conditions prescribed by the regulations; and
- (f) has paid outstanding fines, penalties or fees which are owed to the board.

PART III PRACTICE

Registration displayed

22. A pharmacist shall display his or her certificate in a conspicuous place in full public view in a pharmacy in which that pharmacist engages in the practice of pharmacy.

Prohibitions

23. (1) A person other than a pharmacist with a certificate shall not

- (a) represent or hold himself or herself out as or as being entitled to use the title or designation of pharmacist;
- (b) carry on the practice of pharmacy in the province;
- (c) conduct a business or operation for selling drugs except as expressly permitted under this Act; or
- (d) hold himself or herself out, conduct himself or herself in a manner or wear or use clothing or a sign, emblem, title or advertisement which may reasonably lead the public to infer that he or she is registered as a pharmacist and qualified to practise pharmacy under this Act.

(2) A pharmacist may, where enabling regulations are made under section 14, delegate tasks within the practice of pharmacy to a pharmacy student or a person within a prescribed class, under the prescribed level of supervision and in accordance with other conditions that may be imposed by the regulations.

Prohibitions

24. (1) A person, corporation or business shall not

- (a) display, use or permit to be displayed or used on premises owned or leased by that person, a sign, advertisement or symbol bearing the words "drugs", "medicines", "prescriptions", "pharmacy" or "pharmacist" or other words of similar meaning, unless those premises contain a pharmacy licensed under this Act and under the direct and continuous supervision and control of a pharmacist;
- (b) employ a person who is not a pharmacist or otherwise entitled under this Act to dispense a prescription or prepare or compound drugs;
- (c) sell or distribute drugs by means of mechanical vending machines;
- (d) sell or distribute a substance or drug referred to in the regulations unless in full compliance with this Act; and
- (e) operate a depot for the purpose of delivering to or picking up by the public, a drug, unless that place is a licensed pharmacy.

(2) A person or corporation shall not employ a person who acts in a manner which violates paragraph 23(1)(d).

Out of province prescriptions

24.1 A pharmacist may dispense a drug pursuant to a prescription authorized by a prescriber licensed to practice in a province or territory of Canada other than Newfoundland and Labrador if the pharmacist has taken reasonable steps to ensure that

- (a) the prescriber is licensed and practises in Canada; and
- (b) the prescriber belongs to a class of persons who, if licensed in Newfoundland and Labrador, would be entitled by law to prescribe that drug in Newfoundland and Labrador.

Pharmacy licence

25. (1) A person or corporation shall not operate a pharmacy business and a pharmacist or pharmacy student shall not dispense or sell a drug unless it is

- (a) from a pharmacy registered under this Act; and
- (b) in accordance with restrictions, terms or conditions in force respecting that pharmacy under this Act.

(2) The secretary-registrar shall annually register a pharmacy and issue a pharmacy licence to those pharmacies which comply with the requirements prescribed by this Act.

Display of licence

26. (1) A pharmacy licence issued under section 25 shall be displayed in a conspicuous part of a pharmacy in full public view.

(2) The word "pharmacy" shall be displayed in legible prominent letters over the door or principal entrance of a pharmacy for which a licence has been issued under section 25.

(3) A pharmacy shall not use the word "pharmacy" on that pharmacy or the premises on which the pharmacy is located unless that pharmacy has a current licence issued under section 25.

(4) A pharmacy shall display in a conspicuous place the actual name of the proprietor of that pharmacy in addition to another business name or style which is used by that pharmacy.

Responsibility

27. (1) The pharmacist in charge of a pharmacy operating under this Act shall ensure that that pharmacy is operated in compliance with this Act and failure to do so constitutes professional misconduct.

(2) A person other than a pharmacist in charge shall not direct, control or manage a pharmacy.

(3) The duties of the pharmacist in charge shall be as set out in the regulations.

(4) In this section, the pharmacist in charge of a pharmacy is the person designated on the licence issued under section 25.

Hospital pharmacy

28. (1) A hospital with a pharmacy licensed under section 25 shall not engage or employ a person other than a pharmacist or pharmacy student registered under this Act to practise pharmacy in or from that hospital pharmacy.

(2) This section is binding on the Crown.

Inspection

29. The secretary-registrar or a person authorized by him or her may inspect an existing or proposed pharmacy.

Cessation of operation

30. (1) Where a licensed pharmacy ceases to operate as a pharmacy, the pharmacist in charge shall immediately

- (a) notify the board of that cessation;
- (b) return to the board the existing pharmacy licence of that pharmacy;
- (c) ensure that all narcotic, controlled and other drugs are disposed of in accordance with this Act or other laws relating to that disposal;
- (d) provide in writing other information requested by the board;
- (e) ensure that he or she retains safe possession of files containing prescriptions for narcotic or controlled drugs;
- (f) deliver all other prescription files to another licensed pharmacy or to the board; and
- (g) upon request provide copies of prescriptions delivered under paragraph (f) to persons or agents of persons who presented the original prescription.

(2) Where the ownership of a pharmacy licensed under this Act changes, the pharmacist in charge shall deliver the pharmacy licence to the board by the effective date of that change and the licence of that pharmacy shall be cancelled immediately.

(3) Where a pharmacist in charge ceases his or her duties by reason of illness or death, the pharmacy formerly under his or her charge may continue to operate for not more than 60 days under the direction of another pharmacist in charge at which time a new licence shall be required for that pharmacy.

Prohibition

31. A person shall not dispense, sell, offer for sale or handle drugs or substances except in compliance with this Act.

Action prohibited

32. An action for damages shall not lie against the board, a committee established under this Act, the disciplinary panel, an adjudication tribunal or the individual members of those bodies, the secretary-registrar, or an officer or employee of the board for

- (a) an act or failure to act, or a proceeding initiated or carried out in good faith under this Act, or carrying out their duties or obligations as an officer, employee or member under this Act; or
- (b) for a decision or order made or enforced in good faith under this Act.

33. Repealed 2004

Notices

34. (1) Notices and documents or copies of notices and documents required for the purpose of this Act to be sent to a person may be sent by mailing them to that person by registered or certified mail at his or her last known address or by personal service upon that person.

(2) Proof of receipt of the notices, documents or copies by a person referred to in subsection (1) may be proved by production of the receipt from the Canada Post Office.

(3) A notice or demand sent by mail to a person is considered to be received by that person

- (a) when they actually receive the notice; or
- (b) except when postal services are not functioning, on the expiry of 10 days after the date it was sent, whichever is earlier.

Compliance with request for information

34.1 (1) For the purpose of the administration of the Newfoundland and Labrador Prescription Drug Program, including for the purpose of processing, monitoring, verifying or reimbursing claims for payment under the program and program development and evaluation, and upon the request of an employee of the department authorized by the minister, a pharmacist shall provide the information that the employee requests with respect to prescription drugs prescribed to a resident of the province and received by that resident with the assistance of the Newfoundland and Labrador Prescription Drug Program.

(2) An employee of the department authorized to do so by the minister may provide the information obtained under subsection (1) to an agent of the department approved by the minister for the purpose who may use it for the purposes for which it was obtained on behalf of the minister.

(3) The information requested under subsection (1) may include

- (a) prescriptions, patient records, notes and other documents held by the pharmacist; and
- (b) photocopies of the information referred to in paragraph (a).

(4) An action for damages does not lie against a pharmacist or a pharmacy solely because the pharmacist provides the information requested of him or her under subsection (1).

(5) A pharmacist is not guilty of professional misconduct solely because that pharmacist provided information requested of him or her under subsection (1).

PART IV DISCIPLINE

Definitions

35. In this Part,

- (a) "allegation" means a written document alleging that a person has engaged in conduct deserving of sanction;
- (b) "complainant" means a person making an allegation described in section 37;
- (c) "conduct deserving of sanction" includes
 - (i) professional misconduct,
 - (ii) professional incompetence,
 - (iii) conduct unbecoming a pharmacist, and
 - (iv) acting in breach of this Act, the regulations, or the code of ethics made under section 9;
- (d) "costs incurred by the board" includes
 - (i) out of pocket expenses incurred by or on behalf of the board,
 - (ii) amounts paid by the board to adjudication tribunal members as remuneration and for expenses, and
 - (iii) the actual cost of legal counsel for the board and the adjudication tribunal;
- (e) "disciplinary panel" means the panel of persons appointed under section 36 from which the members of an adjudication tribunal are chosen; and
- (f) "respondent" means a registered pharmacist or a former registered pharmacist against whom an allegation is made.

Committees

36. (1) The board shall appoint the chairperson, vice-chairperson and members of the complaints authorization committee, and the registered pharmacists to serve on the disciplinary panel, one of whom shall be appointed the chairperson.

(2) The complaints authorization committee shall consist of at least 3 persons, all of whom shall be members of the board, and at least one of whom shall be a member who was appointed by the minister.

- (3) The secretary-registrar is not eligible to be a member of the complaints authorization committee.
- (4) The disciplinary panel shall consist of not less than 10 registered pharmacists who are not members of the board and not less than 3 persons who are not registered pharmacists who shall be appointed by the minister to represent the public interest.
- (5) Of the members first appointed to the disciplinary panel, one half shall be appointed for a term of 2 years and the remainder for a term of 3 years and all subsequent appointments of members to the disciplinary panel shall be for a term of 3 years.
- (6) Notwithstanding the expiry of his or her term, a member of the disciplinary panel continues to be a member until he or she is re-appointed or his or her replacement is appointed.
- (7) Persons appointed to the disciplinary panel may be reappointed.
- (8) Members of the disciplinary panel shall serve as a member of the panel without payment for their services, but may be remunerated for service as a member of an adjudication tribunal and paid their travel and other expenses associated with the work of that tribunal by the board, in accordance with and at the rates set by the by-laws.
- (9) The complaints authorization committee and an adjudication tribunal appointed under section 40 and a person appointed by either of them may summon a pharmacist or another person and require that pharmacist or another person to give evidence, orally or in writing, upon oath or affirmation, and produce the documents and things that either of them considers necessary to the full investigation and hearing of an allegation or complaint and shall have the powers, privileges and immunities that are conferred on a commissioner appointed under the *Public Inquiries Act*.

Allegation

37. (1) An allegation shall be in writing and signed by the complainant or his or her solicitor, and filed with the secretary-registrar.

(2) The secretary-registrar may on his or her own motion make an allegation and file it, and the allegation shall have the same effect as an allegation referred to in subsection (1).

(3) Where the secretary-registrar has been informed that a respondent has been convicted of an offence under the provisions of the *Criminal Code* or a similar penal statute of another country or has been suspended by a governing body of pharmacists in another province or territory of Canada or another territory or country for reason of professional misconduct, conduct unbecoming a pharmacist or professional incompetence, the information shall be dealt with by the secretary-registrar as an allegation.

(4) For the purpose of subsection (3), a certified copy of the record of a conviction or findings made or the action taken by an external regulatory body constitutes proof, in the absence of evidence to the contrary, of the conviction or findings made or the action taken by that body, without proof of the signature of the convicting justice or person purporting to have signed on behalf of that body.

Effect of filing allegation

38. (1) Where it appears to the secretary-registrar after notifying the respondent of the allegation that the allegation may be resolved satisfactorily and where the complainant and the respondent consent, the secretary-registrar may attempt to resolve the matter.

(2) Where the allegation is not satisfactorily resolved by the secretary-registrar under subsection (1), the secretary-registrar shall refer the allegation and all other allegations to the complaints authorization committee.

(3) The secretary-registrar shall inform a complainant and a respondent of the referral of the allegation to the complaints authorization committee.

Complaints authorization committee

39. (1) After an allegation has been submitted to the complaints authorization committee, the committee may exercise one of more of the following powers:

- (a) refer the allegation back to the secretary-registrar for an investigation or alternative dispute resolution in accordance with the regulations;
- (b) conduct an investigation itself or appoint a person to conduct an investigation on its behalf; and
- (c) require the respondent to appear before it.

(2) Where the complaints authorization committee is of the opinion there are no reasonable grounds to believe the respondent has engaged in conduct deserving of sanction, the committee shall dismiss the allegation and give notice in writing of the dismissal to the complainant.

(3) Where the complaints authorization committee is of the opinion that there are reasonable grounds to believe that a respondent has engaged in conduct deserving of sanction, the allegation shall be considered as constituting a complaint, and the committee may

- (a) counsel or caution the respondent; or
- (b) instruct the secretary-registrar to file the complaint against the respondent and refer it to the disciplinary panel; and
- (c) recommend to the board that
 - (i) the respondent's practice be suspended or restricted, or
 - (ii) the secretary-registrar conduct an investigation of the respondent's practice, and where the board approves an investigation the secretary-registrar shall conduct it,at any time before a final determination by the adjudication tribunal.

(4) A person conducting an investigation under paragraph (1)(a) or (b) or subparagraph (3)(c)(ii) may require

- (a) the respondent to
 - (i) undergo practical and other examinations he or she considers necessary and as arranged by the secretary-registrar or the board, and
 - (ii) permit the secretary-registrar or a member of the board or another person appointed by the board to inspect and copy the records of the respondent and other documents relating to the subject matter of the investigation; and
 - (b) another person to permit the secretary-registrar or a member of the board or another person appointed by the board to inspect and copy records of the respondent and other documents relating to the subject matter of the investigation held by that person,
- and the respondent or other person shall comply.

(5) Where the secretary-registrar, a member of the board or another person appointed by the board requires that a respondent or other person provide information under subsection (4), that information shall be provided within 7 days of receipt of the request or a different period as specified in the request.

(6) An action for damages does not lie against a registered pharmacist or another person to whom a request is made solely because he or she provides information requested of him or her under subsection (4).

(7) Where the complaints authorization committee recommends to the board that a respondent's practice be suspended, restricted or investigated the board may

- (a) decide not to act on the recommendation; or
- (b) suspend, restrict or investigate the respondent's practice.

(8) A complainant whose allegation is dismissed by the complaints authorization committee under subsection (2) may within 30 days after receiving notice of the dismissal appeal the dismissal to the Trial Division by filing a notice of appeal with the Registrar of the Supreme Court.

(9) Subsections (4), (5), and (6) apply to the Crown.

Adjudication tribunal

40. (1) For the purpose of dealing with complaints referred to the disciplinary panel, the chairperson of the disciplinary panel shall appoint from it an adjudication tribunal consisting of 3 persons, of whom 2 shall be registered pharmacists and one shall be a member of the panel appointed to represent the public interest.

(2) The chairperson of the disciplinary panel shall appoint one of the registered pharmacists on an adjudication tribunal to be the chairperson.

Hearing

41. (1) Where a complaint has been referred under paragraph 39(3)(b), an adjudication tribunal shall hear the complaint.

(2) Repealed 2005

(3) The parties to a hearing are the board and the respondent and a party may be represented by his or her counsel at a hearing.

(4) A hearing shall be conducted in public but an adjudication tribunal may exclude the public from a hearing, or from part of it, where it considers the desirability of protecting a party to the complaint or another person against the consequences of possible disclosure of personal matters outweighs the desirability of holding the hearing in public.

Copies of books, etc. as evidence

41.1 A copy or extract of a book, record, document or thing certified by

(a) a member of the complaints authorization committee; or

(b) a person authorized under subsection 39(4) to conduct an inspection,

who made the copy or extract under subsection 39(4) is admissible in evidence in an action, proceeding or prosecution, in the absence of evidence to the contrary, as evidence of the original book, record, document or thing and its contents.

Guilty plea by respondent

42. (1) Where a respondent pleads guilty to one or more of the charges set out in a complaint, the adjudication tribunal shall, without calling evidence or hearing witnesses, unless the tribunal believes it is appropriate to do so, hear submissions from the parties.

- (2) Where a respondent pleads guilty, and following submissions under subsection (1), the adjudication tribunal may
- (a) reprimand the respondent;
 - (b) order that the respondent be suspended for a fixed period that it considers appropriate, until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal;
 - (c) allow or direct the respondent to surrender his or her certificate to the board upon those conditions that may be considered appropriate and, where the respondent's name appears on the register maintained under this Act, strike the respondent's name from the register;
 - (d) impose a fine not to exceed \$10,000 to be paid to the board;
 - (e) order that the respondent pay the costs or a part of the costs incurred by the board in the investigation and hearing of the complaint;
 - (f) order that the secretary-registrar publish a summary of the decision including the information set out in subsection 44(4) and other information that the tribunal may specify; and
 - (g) order that the respondent comply with one or more of the following:
 - (i) make restitution to the complainant or other person affected by the conduct of the respondent,
 - (ii) obtain medical treatment,
 - (iii) obtain counselling,
 - (iv) obtain substance abuse counselling or treatment, until the respondent can demonstrate to the board or other body or person designated by the adjudication tribunal that a condition related to substance abuse rendering the respondent incapable or unfit to practise has been overcome,
 - (v) engage in continuing education programs,
 - (vi) complete a course of studies or obtain supervised clinical experience, or both, to the satisfaction of the board or another body or person designated by the adjudication tribunal,
 - (vii) report on his or her compliance with an order made under this section and authorize others involved with his or her treatment or supervision to report on it,
 - (viii) restrict his or her professional practice or continue his or her practice under specified conditions,
 - (ix) permit periodic inspection of his or her practice,

- (x) permit periodic inspection of records relating to his or her practice, or
- (xi) impose other requirements that are just and reasonable in the circumstances.

(3) The costs incurred by the board to ensure the compliance of a respondent with an order or direction of an adjudication tribunal under this section shall be borne by the respondent.

Powers of adjudication tribunal

43. (1) Upon the hearing of a complaint, an adjudication tribunal shall decide whether or not a respondent is guilty of conduct deserving of sanction.

(2) Where an adjudication tribunal decides that a respondent is not guilty, it shall dismiss the complaint and may, where it believes that the submission of the complaint to the tribunal for a hearing was unreasonable,

- (a) order that those costs that the tribunal considers appropriate be paid by the board to the respondent; and
- (b) make another order that it considers appropriate.

(3) Where an adjudication tribunal decides that a respondent is guilty, it may,

- (a) reprimand the respondent,
- (b) order that the respondent be suspended for a fixed period that it considers appropriate, until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal;
- (c) allow or direct the respondent to surrender his or her certificate to the board upon those conditions that may be considered appropriate and, where the respondent's name appears on the register maintained under this Act, strike the respondent's name from the register;
- (d) impose a fine not to exceed \$10,000 to be paid to the board;
- (e) order that the respondent pay the costs or a part of the costs incurred by the board in the investigation and hearing of the complaint;
- (f) order that the secretary-registrar publish a summary of the decision including the information set out in subsection 44(4) and other information that the tribunal may specify; and
- (g) order that the respondent comply with one or more of the following:
 - (i) make restitution to the complainant or other person affected by the conduct of the respondent,
 - (ii) obtain medical treatment,
 - (iii) obtain counselling,
 - (iv) obtain substance abuse counselling or treatment, until the respondent can demonstrate to the board or other body or person designated by the adjudication tribunal that a condition related to substance abuse rendering the respondent incapable or unfit to practise has been overcome,
 - (v) engage in continuing education programs,
 - (vi) complete a course of studies or obtain supervised clinical experience, or both, to the satisfaction of the board or another body or person designated by the adjudication tribunal,
 - (vii) report on his or her compliance with an order made under this section and authorize others involved with his or her treatment or supervision to report on it,
 - (viii) restrict his or her professional practice or continue his or her practice under specified conditions,
 - (ix) permit periodic inspection of his or her practice,
 - (x) permit periodic inspection of records relating to his or her practice, or
 - (xi) impose other requirements that are just and reasonable in the circumstances.

(4) The costs incurred by the board to ensure the compliance of a respondent with an order or direction of an adjudication tribunal under this section shall be borne by the respondent.

Filing and publication of decisions

44. (1) An adjudication tribunal shall file a decision or order made under subsection 42(2) or 43(3) with the secretary-registrar and provide a copy to the complainant and the respondent and the respondent's employer.

(2) The secretary-registrar shall maintain a copy of a decision or order filed under subsection (1) for a minimum of 5 years after the day the decision is filed and shall upon receiving a request to view the disciplinary records in relation to a

registered pharmacist permit a person to view a summary of a decision where that registered pharmacist was the respondent, prepared in accordance with subsection (4).

(3) The secretary-registrar shall publish a summary of a decision or order of an adjudication tribunal in a newspaper of general circulation in or nearest to the community in which the respondent practises within 14 days of the filing of the decision or order, where the decision or order

- (a) suspends the respondent;
- (b) allows or directs the respondent to surrender his or her licence;
- (c) restricts the respondent's practice;
- (d) specifies conditions for the continuing practice of the respondent; or
- (e) requires that a summary of the decision or order be published.

(4) The summary of the decision published under subsection (3) shall include

- (a) the name of the respondent and the address where he or she practises;
- (b) the date, location and a brief description of the conduct of the respondent that was found to be deserving of sanction;
- (c) the name of the complainant, unless the complainant has requested that his or her name be withheld;
- (d) the contents of the order in relation to the actions referenced in paragraphs (3)(a) to (d); and
- (e) other information specified for publication in the decision or order.

(5) Where a decision published under this section is varied or set aside, the secretary-registrar shall within 14 days of the filing of the subsequent decision or order publish a summary of the decision or order and subsections (3) and (4) apply, with the necessary changes.

De-registration and suspension

45. (1) Where a respondent is struck off the register, his or her rights and privileges as a registered pharmacist cease.

(2) Where a respondent is suspended, his or her rights and privileges as a registered pharmacist cease for the period of suspension.

(3) Where conditions or restrictions have been imposed upon a respondent's ability to carry on his or her practice, his or her rights and privileges as a registered pharmacist shall be limited to the extent specified by the conditions or restrictions.

Failure to comply

46. (1) On application by the board to the disciplinary panel, an adjudication tribunal may make an order suspending the rights and privileges of a respondent where it determines that the respondent has failed to comply with a decision or an order under this Part.

(2) The parties to the application are the board and the respondent.

(3) An order of an adjudication tribunal under this section may suspend the rights and privileges of the respondent for a fixed period that the adjudication tribunal may consider appropriate, or until conditions which it may impose are fulfilled, or until further order of the adjudication tribunal.

Supplementary hearing

47. (1) Where a decision or order of the adjudication tribunal

- (a) suspends the respondent;
- (b) allows or directs the respondent to surrender his or her licence;
- (c) restricts the respondent's practice; or
- (d) specifies conditions for the continuing practice of the respondent,

and where the respondent alleges that new evidence has become available or a material change in circumstances has occurred since the making of the decision or order, the respondent may apply to the complaints authorization committee for a supplementary hearing to discharge or vary the decision or order based on the new evidence or material change in circumstances.

(2) An application under subsection (1) shall be made not more than 90 days after the new evidence becomes available or the material change in circumstances has occurred.

(3) Where an application is made to the complaints authorization committee under subsection (1), and the committee is of the opinion that new evidence has become available or that a material change in circumstances has occurred, as alleged by a respondent, the matter shall be referred to an adjudication tribunal as if it were a matter referred under paragraph 39(3)(b) and sections 41 to 45 apply, with the necessary changes, to the referred matter.

(4) The chairperson of the disciplinary panel shall, where it is possible and appropriate, appoint to the adjudication tribunal the same persons who constituted the adjudication tribunal that made the decision referred to in subsection (1).

(5) The parties to a supplementary hearing under this section are the respondent and the board.

(6) For the purpose of this section, in addition to an order that an adjudication tribunal may make under section 43, a tribunal may

- (a) vary the original decision or order made under section 43; or
- (b) discharge the original decision or order, with or without conditions.

Costs of the board

48. (1) Where a person who was ordered to pay the costs of the board under paragraph 42(2)(e) or 43(3)(e) fails to pay in the time required, the board may suspend the registration of that person until the costs are paid.

(2) Costs ordered to be paid under paragraph 42(2)(e) or 43(3)(e) are a debt due the board and may be recovered by the board by a civil action.

Collection of fine

49. (1) Where an order is made under section 42 or 43 imposing a fine on a respondent, the board may issue a certificate stating the amount of the fine due and remaining unpaid and the name of the person by whom it is payable, and file the certificate with the Registrar of the Supreme Court.

(2) Where a certificate is filed with the Registrar of the Supreme Court under subsection (1), it has the same effect and all proceedings may be taken on the certificate as if it were a judgment of the Trial Division for the recovery of the amount stated in the certificate against the person named in the certificate.

(3) A person named in a certificate filed under this section may, within 30 days after the certificate is filed, apply to a judge of the Trial Division for a review, on a question of law or jurisdiction, of the certificate.

(4) On an application under subsection (3), the judge may make any amendment to the certificate that is necessary to make the certificate accord with the judge's decision.

(5) There is no appeal from a decision of a judge made under this section.

(6) A certificate filed under this section may also be filed in the judgment enforcement registry on the expiration of the 30 day period referred to in subsection (3) in accordance with Part III of the *Judgment Enforcement Act* and be enforced in accordance with that Act.

Appeal to Trial Division

50. (1) The board or the respondent may, within 30 days after receiving notice of a decision or order of an adjudication tribunal under this Act, appeal the decision or order to the Trial Division by filing a notice of appeal with the Registrar of the Supreme Court.

(2) An appeal under this section does not stay the decision or order being appealed unless the Trial Division orders otherwise.

51. Repealed 2004

52. Repealed 2004

53. Repealed 2004

54. Repealed 2004

- 55. Repealed 2004
- 56. Repealed 2004
- 57. Repealed 2004

PART V
GENERIC DISPENSING OF PRESCRIPTION DRUGS

- 58. Repealed 2006
- 59. Repealed 2006
- 60. Repealed 2006
- 61. Repealed 2006
- 62. Repealed 2006
- 63. Repealed 2006
- 64. Repealed 2006

Contravention

65. A pharmacist who contravenes Part III of the *Pharmaceutical Services Act* is considered to have committed professional misconduct for the purposes of Part IV of this Act.

Actions

66. An action does not lie against a person by reason only of the prescribing or dispensing of a substitute drug in accordance with Part III of the *Pharmaceutical Services Act*.

PART VI
PENALTY

Penalties and fines

67. (1) A person, pharmacist, pharmacy student, firm, partnership, corporation or association of persons who contravenes this Act, the regulations or the by-laws commits an offence and is liable on summary conviction

- (a) for the 1st offence, to a fine of not more than \$2,000 or to imprisonment for a term of not more than 3 months or to both a fine and imprisonment; and
- (b) for a subsequent offence to a fine of not more than \$4,000 or to imprisonment for a term of not more than 6 months or to both a fine and imprisonment.

(2) A prosecution under this section shall be commenced within 2 years after the commission of the alleged offence, but not afterwards.

- 68. Repealed 2004

PART VII
TRANSITIONAL AND CONSEQUENTIAL

Registration continued

69. An application for registration or for a licence made but not concluded before the commencement of this Act shall be dealt with under the former Act.

Discipline continued

70. A complaint or discipline proceeding that was started but not concluded before the commencement of this Act shall be concluded under the former Act.

71. The *Generic Dispensing of Prescription Drugs Act* is repealed.

72. The *Pharmaceutical Association Act* is repealed.

Commencement

73. This Act comes into force on a day to be proclaimed by the Lieutenant-Governor in Council. (In force - Apr. 13/95)