

## CHAPTER 43-15 PHARMACISTS

### 43-15-01. Definitions.

In this chapter, unless the context or subject matter otherwise requires:

1. "Administration" means the direct application of a drug to the body of a patient. The term includes:
  - a. The emergency maintenance of a drug delivery device used in home infusion therapy by a qualified home pharmacist if nursing service is not available;
  - b. Immunization and vaccination by injection of an individual who is at least three years of age upon an order by a practitioner authorized to prescribe such a drug or by written protocol with a physician or nurse practitioner and subsequently reported as a childhood immunization and other information if required to the state's immunization information system pursuant to section 23-01-05.3;
  - c. Provision of other drugs to an individual who is at least three years of age upon the order of a practitioner authorized to prescribe such a drug; and
  - d. Provision of drugs to an individual receiving emergency services in a health care facility upon an order or by established written protocol.
2. "Automated dispensing system" means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, packaging, counting, labeling, and dispensing of medications and which collects, controls, and monitors all transaction information.
3. "Board" means the state board of pharmacy.
4. "Compounding" means the preparation, mixing, assembling, packaging, or labeling of a drug or device:
  - a. As the result of a practitioner's prescription drug order or initiative based on the practitioner, patient, and pharmacist relationship in the course of professional practice; or
  - b. For the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale or dispensing.Compounding also includes the preparation of drugs or devices in anticipation of prescription drug orders based on routine, regularly observed prescribing patterns.
5. "Confidential information" means individually identifiable health information maintained by the pharmacist in the patient's records or which is communicated to the patient as part of a patient counseling.
6. "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a drug or device from one person to another, whether or not for a consideration.
7. "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article, including any component part or accessory, which is required under federal or North Dakota law to be prescribed by a practitioner and dispensed by a pharmacist.
8. "Dispense" or "dispensing" means the preparation and delivery of a prescription drug, pursuant to a lawful order of a practitioner or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the order that has been reduced to writing in the patient's record, in a suitable container appropriately labeled for subsequent administration to or use by a patient or other individual entitled to receive the prescription drug.
9. "Distribute" means the delivery of a drug other than by dispensing or administering.
10. "Drug" or "drugs" means:
  - a. Articles recognized as drugs in the official United States pharmacopeia, official national formulary, official homeopathic pharmacopeia, other drug compendium, or any supplement to any of them;
  - b. Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animal;
  - 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 articles specified in subdivision a, b, or c.
- 11. "Drug regimen review" includes the following activities:
  - a. Evaluation of the prescription drug orders and patient records for:
    - (1) Known allergies;
    - (2) Rational therapy-contraindications;
    - (3) Reasonable dose and route of administration; and
    - (4) Reasonable directions for use.
  - b. Evaluation of the prescription drug orders and patient records for duplication of therapy.
  - c. Evaluation of the prescription drug orders and patient records for interactions:
    - (1) Drug-drug;
    - (2) Drug-food;
    - (3) Drug-disease; and
    - (4) Adverse drug reactions.
  - d. Evaluation of the prescription drug orders and patient records for proper utilization, including overutilization or underutilization, and optimum therapeutic outcomes.
- 12. "Emergency pharmacy practice" means in the event a pharmacist receives a request for a prescription refill and the pharmacist is unable to obtain refill authorization from the prescriber, the pharmacist may dispense and bill using a pharmacist national provider identifier a one-time emergency refill of up to a thirty-day supply of the prescribed medication, provided that:
  - a. The prescription is not for a controlled substance listed in schedule II;
  - b. The pharmaceutical is essential to the maintenance of life or to the continuation of therapy;
  - c. In the pharmacist's professional judgment, the interruption of therapy might reasonably produce undesirable health consequences or may cause physical or mental discomfort;
  - d. The pharmacist properly records the dispensing; and
  - e. The dispensing pharmacist notifies the prescriber of the emergency dispensing within a reasonable time after the one-time emergency refill dispensing.
- 13. "Labeling" means the process of preparing and affixing of a label to any drug container exclusive, however, of the labeling by a manufacturer, packer, or distributor of a nonprescription drug or commercially packaged legend drug or device. Any label shall include all information required by federal and North Dakota law or regulation.
- 14. "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a device or a drug, either directly or indirectly by extraction from substances of natural origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis and includes any packaging or repackaging of the substances or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a drug by an individual for the individual's own use or the preparation, compounding, packaging, or labeling of a drug:
  - a. By a pharmacist or practitioner as an incident to dispensing or administering of a drug in the course of the person's professional practice; or
  - b. By a practitioner or by the practitioner's authorization under supervision for the purpose of or as an incident to research, teaching, or chemical analysis and not for sale.
- 15. "Manufacturer" means a person engaged in the manufacture of drugs in facilities located within North Dakota.
- 16. "Medicine" means a drug or combination of drugs, used in treating disease in man or other animals.
- 17. "Nonprescription drugs" means medicines or drugs which may be sold without a prescription and which are prepackaged for use by the consumer and labeled in

- accordance with the requirements of the statutes and regulations of this state and the federal government.
18. "Original package" means the original carton, case, can, box, vial, bottle, or other receptacle, put up by the manufacturer or wholesaler or distributor, with label attached, making one complete package of the drug article.
  19. "Person" means an individual, corporation, limited liability company, partnership, association, or any other legal entity.
  20. "Pharmaceutical care" is the provision of drug therapy and other pharmaceutical patient care services intended to achieve outcomes related to the cure or prevention of a disease, elimination or reduction of a patient's symptoms, or arresting or slowing of a disease process as defined in the rules of the board.
  21. "Pharmacist" means a person to whom the board has issued a license to practice the profession of pharmacy whose license has not expired or been suspended.
  22. "Pharmacy" or "drugstore" means every store or shop where drugs, medicines, or chemicals are dispensed, displayed for sale, or sold, at retail for medicinal purposes, or where prescriptions are compounded, and which is duly registered by the board.
  23. "Pharmacy technician" means a person registered by the board who is employed by a pharmacy to assist licensed pharmacists in the practice of pharmacy by performing specific tasks delegated by and under the immediate personal supervision and control of a licensed pharmacist, as permitted by the board.
  24. "Practice of pharmacy" means the interpretation, evaluation, and monitoring of prescription orders and patient drug therapy; the compounding, dispensing, labeling of drugs and devices except labeling by a manufacturer, packer, or distributor of nonprescription drugs and commercially packaged legend drugs and devices; the participation in drug selection, drug monitoring, drug administration, drug regimen review, the provision of these acts or services necessary as a primary health care provider of pharmaceutical care, and drug utilization evaluations; the proper and safe storage of drugs and devices and the maintenance of proper records for this storage; the responsibility for advising, consulting, and educating if necessary or if regulated, patients, public, and other health care providers on the rational, safe, and cost-effective use of drugs including therapeutic values, content, hazards, and appropriate use of drugs and devices; the participation in interpreting and applying pharmacokinetic data and other pertinent laboratory data to design safe and effective drug dosage regimens; if appropriate and if regulated, the participation in drug research either scientific or clinical as investigator or in collaboration with other investigators for the purposes of studying the effects of drugs on animals or human subjects, with other drugs or chemicals, and with drug delivery devices; emergency pharmacy practice; prescriptive practices as limited under this chapter; the performance of laboratory tests to provide pharmaceutical care services which are waived under the Federal Clinical Laboratory Improvement Act of 1988 [Pub. L. 100-578, section 2; 102 Stat. 2903; 42 U.S.C. 263a et seq.], as amended; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of pharmacy.
  25. "Practitioner" means an individual licensed, registered, or otherwise authorized by the jurisdiction in which the individual is practicing to prescribe drugs in the course of professional practice.
  26. "Prescription" means any order for drugs or medical supplies, if such order is written or signed or transmitted by word of mouth, telephone, telegram, or other means of communication by a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner, licensed by law to prescribe and administer such drugs or medical supplies intended to be filled, compounded, or dispensed by a pharmacist or any order for drugs or medical supplies transmitted orally by a nurse licensed under chapter 43-12.1 as written and signed by such a duly licensed physician, optometrist, dentist, veterinarian, or other practitioner.
  27. "Prescription drug or legend drug" means a drug which, under federal law is required, prior to being dispensed or delivered, to be labeled with one of the following:

- a. "Caution: Federal law prohibits dispensing without prescription";
  - b. "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian"; or
  - c. Rx only;
- or a drug which is required by any applicable federal or North Dakota law or rule to be dispensed on prescription only or is restricted to use by practitioners only.
- 28. "Public health issues" include immunizations, tobacco cessation, and other issues deemed appropriate by the board.
  - 29. "Radiopharmaceutical service" means, but is not limited to, the compounding, dispensing, labeling, and delivery of radiopharmaceuticals; the participation in radiopharmaceutical selection and radiopharmaceutical utilization reviews; the proper and safe storage and distribution of radiopharmaceuticals; the maintenance of radiopharmaceutical quality assurance; the responsibility for advising, where necessary or where regulated, of therapeutic values, hazards, and use of radiopharmaceuticals; and the offering or performing of those acts, services, operations, or transactions necessary in the conduct, operation, management, and control of radiopharmaceuticals.
  - 30. "Wholesaler" means a person with facilities located in this state who buys for resale and distribution to persons other than consumers.

**43-15-02. Exemptions.**

The provisions of this chapter shall not apply to the following:

- 1. A duly licensed practitioner of medicine supplying the practitioner's own patients with such remedies as the practitioner may desire.
- 2. The exclusive wholesale business of any dealer.
- 3. The keeping for sale and sale by general dealers of proprietary medicines in original packages and such simple household remedies as from time to time may be approved for such sale by the board.
- 4. Registered or copyrighted proprietary medicines.
- 5. The manufacture of proprietary remedies or the sale of the same in original packages by other than pharmacists.
- 6. A veterinary dispensing technician operating within a veterinary retail facility.
- 7. An individual licensed as a registered nurse under chapter 43-12.1, in the course of dispensing oral contraceptive pills, transdermal contraceptive patches, and vaginal contraceptive rings, pursuant to an order of an authorized prescriber, in the course of working in a Title X clinic.

**43-15-03. Board of pharmacy - Appointment.**

The state board of pharmacy consists of seven members appointed by the governor. Five members of the board must be licensed pharmacists, one member must be a registered pharmacy technician, and one member must represent the public and may not be affiliated with any group or profession that provides or regulates any type of health care.

**43-15-04. State board of pharmacy - Term of office - Vacancies.**

The members of the board must be appointed for terms of five years each, with the terms of office so arranged that one term only expires on the eighth day of May of each year. Each member of the board shall qualify by taking the oath required of civil officers and shall hold office until a successor is appointed and qualified. The governor shall fill any vacancy by appointment for the unexpired term.

**43-15-05. Compensation of board - Disposition of fees.**

Each member of the board shall receive a per diem of two hundred dollars for attendance at board meetings, and all actual and necessary expenses incurred in attending such meetings and in performing other official duties. The mileage and travel expense allowed may not exceed

the amount provided for in section 54-06-09. All funds collected or received by the board must be deposited and disbursed in accordance with section 54-44-12.

#### **43-15-06. Organization of board.**

1. At the first regular meeting of the board after the appointment and qualification of a new member for a full term, the board shall elect a president, a secretary, and a treasurer. The president must be chosen from the membership of the board, but any suitable person, whether a member of the board or not, may be chosen for the other offices. In case of the death, removal, resignation, absence, or refusal or inability to act of the president of the board, the senior member present shall act as president. In case of the death, removal, resignation, absence, or refusal or inability to act of the secretary or treasurer, the board may choose another person to act temporarily or for the remainder of the year. The president of the board of pharmacy shall preside at all meetings of the board and is responsible for the performance of all of the duties and functions of the board required or permitted by this chapter. Each additional officer elected by the board shall perform those duties normally associated with the officer's position and such other duties assigned from time to time by the board.
2. The board shall employ a pharmacist to serve as a full-time employee of the board in the position of executive director. The executive director is responsible for the performance of the administrative functions of the board and such other duties as the board may direct. The executive director may also serve as secretary and treasurer of the board.
3. The executive director is authorized to sign on behalf of the board notices, complaints, statement of charges, stipulations, settlement agreements, findings of fact, conclusions of law, orders and decisions of the board without additional signatures of the president of the board or board members.

#### **43-15-07. Officers of board - Bond - Duties - Compensation.**

The secretary and treasurer of the board each must be bonded for the faithful discharge of their duties in the penal sum of not less than two thousand dollars. The president, secretary, and treasurer of the board shall perform such duties as the board may prescribe. Officers of the board may be allowed, in addition to their compensation as members of the board, such compensation as four-fifths of the members of the board agree upon.

#### **43-15-08. Oaths - President may administer.**

The president of the board may administer oaths to applicants for registration and to any witness in hearings, investigations, or proceedings pending before the board.

#### **43-15-09. Meetings - When held - Notice - Quorum.**

The board shall hold at least two and not more than four meetings in each calendar year for the examination of applicants for licensure. The board may hold such other meetings as may be necessary for the performance of its duties. A special meeting must be held at such time and place as a majority of the members agree upon, or may be called by the secretary, at the request of the president or any two members, by giving such notice to the members as the board may prescribe by its rules and regulations. A majority of the board constitutes a quorum for the transaction of business.

#### **43-15-10. Powers of board.**

In addition to other powers provided by law, the board shall have the following powers and duties, which shall be exercised in conformity with chapter 28-32 in order to protect the public health, welfare, and safety:

1. To place on probation, reprimand, or fine any pharmacy, pharmacist, or pharmacy intern or pharmacy technician; or refuse to issue or renew, or suspend, revoke, restrict, or cancel, the license, permit, or registration of any pharmacy, pharmacist, or

pharmacy intern or pharmacy technician, if any of the following grounds apply and the pharmacy, pharmacist, or pharmacy intern or pharmacy technician:

- a. Is addicted to any alcohol or drug habit.
  - b. Uses any advertising statements of a character tending to deceive or mislead the public.
  - c. Is subject to drug or alcohol dependency or abuse.
  - d. Permits or engages in the unauthorized sale of narcotic drugs or controlled substances.
  - e. Permits or engages an unauthorized person to practice pharmacy.
  - f. Is mentally or physically incompetent to handle pharmaceutical duties.
  - g. Is guilty of fraud, deception, or misrepresentation in passing the pharmacist examination.
  - h. Is found by the board in violation of any of the provisions of the laws regulating drugs, pharmacies, and pharmacists or interns and technicians or the rules and regulations established by the board.
  - i. Is found to have engaged in unprofessional conduct as that term is defined by the rules of the board.
  - j. Is subject to incapacity of a nature that prevents a pharmacist from engaging in the practice of pharmacy with reasonable skill, competence, and safety to the public.
  - k. Is found guilty by a court of competent jurisdiction of one or more of the following:
    - (1) A felony, as defined by the statutes of North Dakota.
    - (2) Any act involving moral turpitude or gross immorality.
    - (3) Violations of the pharmacy or the drug laws of North Dakota or rules and regulations pertaining thereto, or of statutes, rules or regulations of any other state, or of the federal government.
  - l. Commits fraud or intentional misrepresentation in securing the issuance or renewal of a license or pharmacy permit.
  - m. Sells, dispenses, or compounds any drug while on duty and while under the influence of alcohol or while under the influence of a controlled substance without a practitioner's prescription.
  - n. Discloses confidential information to any person, except as authorized by law.
2. To prescribe rules and regulations not inconsistent with this chapter governing the cancellation or suspension of a license.
  3. To examine and license as pharmacist any applicant found entitled to such license.
  4. To prescribe rules and regulations for the guidance of its members, officers, and employees, and to ensure the proper and orderly dispatch of its business.
  5. To employ and pay such persons as it may deem necessary to inspect pharmacies in this state, investigate pharmacies for the information of the board, procure evidence in any proceeding pending before the board, or procure evidence in aid of any prosecution or action in any court commenced or about to be commenced by or against the board in relation to any matter in which the board has any duty to perform.
  6. To employ and pay counsel to advise the board or to prosecute or defend any action or proceeding commenced by or against the board or pending before it.
  7. To grant permits and renewals thereof for the establishment and operation of pharmacies.
  8. Only for good cause to cancel, revoke, or suspend permits and renewals thereof for the establishment and operation of pharmacies.
  9. To prescribe reasonable and nondiscriminatory rules and regulations in regard to granting, renewing, canceling, revoking, or suspending permits and renewals for establishing and operating pharmacies.
  10. Action by the board canceling, revoking, suspending, or refusing to renew a permit to establish or operate a pharmacy shall not be enforced for thirty days after notice has been given an aggrieved party by the board, nor during the time that an appeal by such aggrieved party is pending and until such appeal is finally determined.

11. To prescribe reasonable rules and regulations relating to the physical design of space occupied by a pharmacy to ensure appropriate control of and safeguards over the contents of such pharmacy.
12. To regulate and control the practice of pharmacy in North Dakota.
13. To adopt, amend, and repeal rules for the regulation of pharmacies and pharmacists providing radiopharmaceutical services, including special training, education, and experience for pharmacists and physical design of space, safeguards, and equipment for pharmacies.
14. To adopt, amend, and repeal rules determined necessary by the board for the proper administration and enforcement of this chapter, chapter 19-02.1 as that chapter pertains to drugs, subject to approval of the commissioner of the department of health and human services or designee, and chapter 19-03.1.
15. The board or its authorized representatives may investigate and gather evidence concerning alleged violations of the provisions of chapter 43-15, chapter 19-02.1 that pertains to drugs, chapters 19-03.1, 19-03.2, and 19-04, or of the rules of the board. Board investigative files are confidential and may not be considered public records or open records for purposes of section 44-04-18, until a complaint is filed or a decision made by the board not to file a complaint.
16. In addition to other remedies, the board may apply to the district court in the jurisdiction of an alleged violation, and that court has jurisdiction upon hearing and for cause shown, to grant a temporary or permanent injunction restraining any person from violating any provision of chapter 43-15, chapter 19-02.1 pertaining to drugs, and chapter 19-03.1, whether or not there exists an adequate remedy at law. Whenever a duly authorized representative of the board finds or has probable cause to believe that any drug or device is adulterated, misbranded, mislabeled, or improperly identified, within the meaning of chapter 19-02.1, the representative shall affix to that drug or device a tag or other appropriate marking giving notice that the article is or is suspected of being adulterated, misbranded, mislabeled, or improperly identified, has been detained or embargoed and warning all persons not to remove or dispose of such article by sale or otherwise until provision for removal or disposal is given by the board or its agents or the court. No person may remove or dispose of such embargoed drug or device by sale or otherwise without the permission of the board or its agent, or, after summary proceedings have been instituted, without permission from the court.
17. When a drug or device detained or embargoed has been declared by such representative to be adulterated, misbranded, mislabeled, or improperly identified, the board shall, as soon as practical thereafter, petition the district court in whose jurisdiction the article is detained or embargoed for an order for condemnation of such article. If the judge determines that the drug or device so detained or embargoed is not adulterated, misbranded, mislabeled, or improperly identified, the board shall direct the immediate removal of the tag or other marking. If the court finds the detained or embargoed drug or device is adulterated, misbranded, mislabeled, or improperly identified, such drug or device, after entry of the decree, shall be destroyed at the expense of the owner under the supervision of a board representative and all court costs and fees, storage, and other proper expense shall be borne by the owner of such drug or device. When the adulteration, misbranding, mislabeling, or improper identification can be corrected by proper labeling or processing of the drug or device, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond has been posted, may direct that such drug or device be delivered to the owner for labeling or processing under the supervision of a board representative. Expense of supervision shall be paid by the owner. Bond posted shall be returned to the owner of the drug or device on representation to the court by the board that the drug or device is no longer in violation of the embargo and the expense of supervision has been paid. Nothing in this section shall be construed to require the board to report violations whenever the board believes the public's interest will be adequately served in the circumstances by a suitable written notice or warning.

18. The board shall establish a bill of rights for patients concerning the health care services a patient may expect in regard to pharmaceutical care.
19. To adopt, amend, and repeal rules as may be deemed necessary by the board to register pharmacy technicians pursuant to qualifications established by the board, to charge a pharmacy technician an annual registration fee not to exceed fifty dollars, to specify tasks associated with and included in the practice of pharmacy which may be delegated by a licensed pharmacist to a registered pharmacy technician, to provide for suspension or revocation of a pharmacy technician's registration, and to regulate and control pharmacy technicians. The board may allocate up to fifty percent of the amount of the registration fee to an appropriate pharmacy technician association for its general operating expenses, including pharmacy technician education and development standards.
20. To require the self-reporting by an applicant or a licensee of any information the board determines may indicate possible deficiencies in practice, performance, fitness, or qualifications.
21. To require information regarding an applicant's or licensee's fitness, qualifications, and previous professional record and performance from recognized data sources, including the national association of boards of pharmacy data bank, other data repositories, licensing and disciplinary authorities of other jurisdictions, professional education and training institutions, liability insurers, health care institutions, and law enforcement agencies be reported to the board. The board may require an applicant for licensure or a licensee who is the subject of a disciplinary investigation to submit to a statewide and nationwide criminal history record check. The nationwide criminal history record check must be conducted in the manner provided by section 12-60-24. All costs associated with obtaining a background check are the responsibility of the licensee or applicant.
22. To adopt, amend, and repeal rules as may be deemed necessary by the board to register veterinary dispensing technicians pursuant to qualifications established by the board, to charge a veterinary dispensing technician an annual registration fee not to exceed fifty dollars, to provide for suspension or revocation of a veterinary dispensing technician's registration, to provide for suspension or revocation of a veterinary retail facility's license, to regulate and control veterinary retail facilities, and to regulate and control veterinary dispensing technicians.
23. To establish limited prescriptive authority for individuals to distribute opioid antagonist kits, also known as "Naloxone rescue kits". If the board establishes limited prescriptive authority under this subsection, the board shall adopt rules to establish standards that may include training, certification, and continuing education requirements.
24. To establish limited prescriptive authority through a statewide protocol for public health issues within the scope of practice for a pharmacist. The board shall adopt rules to establish standards of care.

**43-15-11. Fees deposited with state treasurer - Separate fund - Vouchers.**

Repealed by S.L. 1971, ch. 510, § 15.

**43-15-12. State board of pharmacy - Report.**

The board may submit a biennial report to the governor and the secretary of state in accordance with section 54-06-04.

**43-15-13. State board of pharmacy - When members may teach pharmacy.**

Repealed by S.L. 1995, ch. 407, § 1.

**43-15-13.1. North Dakota pharmaceutical association - How governed.**

Repealed by S.L. 2009, ch. 365, § 5.

**43-15-13.2. Membership of North Dakota pharmaceutical association.**

Repealed by S.L. 2009, ch. 365, § 5.

**43-15-13.3. Rights of members of pharmaceutical association.**

Repealed by S.L. 2009, ch. 365, § 5.

**43-15-13.4. Moneys payable from board of pharmacy to North Dakota pharmaceutical association.**

Repealed by S.L. 2009, ch. 365, § 5.

**43-15-13.5. Method of expenditure of association's funds - Annual report of receipts and disbursements.**

Repealed by S.L. 2009, ch. 365, § 5.

**43-15-13.6. No liability upon state created by provisions of chapter.**

Repealed by S.L. 2009, ch. 365, § 5.

**43-15-14. Unlawful practice of pharmacy.**

1. Applicability. No person may engage in the practice of pharmacy unless licensed to practice pharmacy under this chapter, except that a registered pharmacy technician may perform specific tasks delegated by and under the immediate personal supervision and control of a licensed pharmacist, as permitted under rules adopted by the board. Physicians or other practitioners as defined in this chapter who are licensed under the laws of this state may dispense and administer prescription drugs to their patients in the practice of their respective professions if specifically authorized to do so by state law.
2. Penalties. Any person who is found by the board to have unlawfully engaged in the practice of pharmacy is subject to a fine to be imposed by the board not to exceed one thousand dollars for each offense. Each violation of this chapter or the rules adopted under this chapter pertaining to unlawfully engaging in the practice of pharmacy also constitutes a class B misdemeanor.
3. A pharmacy or licensed pharmacist that utilizes the services of a registered pharmacy technician as permitted by the board, may not be considered as aiding and abetting an unauthorized person to practice pharmacy; provided, however, that the pharmacy or licensed pharmacist must retain responsibility for any act performed by a registered pharmacy technician in the course of the registered pharmacy technician's employment.

**43-15-15. Qualifications of licensed pharmacist.**

Every applicant for license as a pharmacist in this state shall have the following qualifications:

1. Be at least eighteen years of age.
2. Be of good moral character.
3. Be a graduate of a school or college of pharmacy recognized by the board as an approved school.

Any applicant who is a graduate of a school or college of pharmacy located outside the United States, whose school or college of pharmacy has not been recognized by the board as an approved school but who is otherwise qualified to apply for licensure to practice pharmacy in this state, may be deemed to have satisfied the requirements of subsection 3 by verification to the board of applicant's academic record and applicant's graduation and by meeting such other requirements as the board may establish from time to time. The board may require such applicant to successfully pass an examination or examinations given or approved by the board to establish proficiency in English and equivalency of education of such applicant with qualified graduates of a school or college recognized by the board as a prerequisite of taking the licensure examination provided for in section 43-15-19.

Before a license will be granted by the North Dakota board of pharmacy, the applicant must have practical experience for a term to be determined by the board in accordance with the requirements of the national association of boards of pharmacy in a retail pharmacy under the supervision of a licensed pharmacist, which experience must be predominantly work directly relating to selling drugs and poisons, compounding of pharmaceutical preparations and physicians' prescriptions, keeping records, and making reports required under the state and federal statutes. Any employment of the applicant prior to the applicant's completion of the first year of study in a college of pharmacy or its equivalent may not be applied in computing the fulfillment of this requirement.

**43-15-16. Exception to qualificational requirements.**

Any person qualified to take the examination for licensure as a pharmacist in this state under the law in effect prior to July 1, 1927, who failed to apply for the examination, upon due proof to the board that the person was so qualified and that the person is a bona fide resident of this state, may take the examination. Upon passing the examination in a manner satisfactory to the majority of the board, such person shall be given a license as a licensed pharmacist.

**43-15-17. Qualifications for assistant registered pharmacist.**

Repealed by S.L. 1979, ch. 467, § 16.

**43-15-18. License of pharmacy intern.**

To register in this state a pharmacy intern must have completed one year of college, be registered in a prepharmacy program, and must be employed by a licensed pharmacist. At the date of entering into internship, an intern shall file with the executive director of the board the following certificates accompanied by a fee set by the board:

1. An application stating the applicant has entered into an internship giving the intern's name, residence, and educational qualifications.
2. A statement from the intern's employer stating that the applicant will be employed by the pharmacist, as a pharmacy intern, that to the employer's knowledge the applicant possesses the required education and qualifications.

The executive director of the board shall file the application and license the applicant as a pharmacy intern.

**43-15-18.1. Conviction not bar to license - Exceptions.**

Conviction of an offense does not disqualify a person from licensure under this chapter unless the board determines that the offense has a direct bearing upon a person's ability to serve the public as a pharmacist or that, following conviction of any offense, the person is not sufficiently rehabilitated under section 12.1-33-02.1.

**43-15-19. Examination for license.**

Except as otherwise provided in this chapter, every applicant for licensure as a pharmacist, before receiving a license from the board, shall pass such an examination as to the applicant's education and professional qualifications as the board shall prescribe.

**43-15-20. Fees for examination.**

Each applicant for licensure as a pharmacist in this state shall pay to the secretary of the board before examination a fee to be set by the board not to exceed three hundred dollars. If the applicant fails to pass a satisfactory examination, the applicant may be re-examined at any regular meeting of the board, upon the payment of a further fee to be set by the board not to exceed three hundred dollars.

**43-15-21. License - Issuance.**

The board shall cause to be issued to each pharmacist in this state whom it finds entitled thereto, a license showing:

1. The date of issue.

2. The fact that the person to whom it was issued is a licensed pharmacist.
  3. The residence of the person to whom the license was issued.
- The license must be signed by a majority of the members of the board.

#### **43-15-22. Licensing without examination.**

The board, without examination, may register and issue a license as a pharmacist to any person of good moral character who presents to the board satisfactory evidence that before coming to this state the applicant legally had been licensed as a pharmacist in another state or foreign country, in which the requirements for such license with respect to qualifications are equivalent to the requirements of this state, but the board need not recognize or accept such license, certificate, or registration as evidence of the applicant's qualifications unless it is satisfied that the applicant is in fact qualified to be a pharmacist in this state. The board may deny recognition or acceptance of the license, certificate, or registration of any state or foreign country which does not accord similar recognition to licentiates of this state. A fee to be set by the board not to exceed three hundred dollars must be paid prior to licensing without examination as provided for herein.

#### **43-15-23. Temporary certificate - How obtained.**

The secretary of the board, or any member thereof, on request by the secretary in writing, may examine an applicant orally or in writing and issue a temporary certificate to practice pharmacy in this state. The certificate must authorize such practice and must be valid until the next meeting of the board. Only one temporary certificate may be issued to the same applicant, and no temporary certificate may be issued to any person whose application has been acted on by the board. The applicant for a temporary certificate shall pay to the person making the examination the same fee as is provided by this chapter for an examination by the board, and such fees when paid must be for the benefit of the said board and must be delivered to the secretary by the person making the examination.

#### **43-15-24. Register.**

The secretary of the board shall keep a record or register in which, in addition to such other matters as the board may require, the secretary shall register each certificate issued under the provisions of this chapter, the facts appearing in the certificate, and all cancellations or renewals of the certificate or changes therein.

#### **43-15-25. Term of license - Renewal - Fee - Where displayed.**

The license issued by the board to a pharmacist under this chapter, and the registration thereof, entitles the holder to act in the capacity therein stated for one year unless duly canceled, suspended, or revoked. Every licensee who desires to retain a license, on or before the first day of March in each year, shall pay to the secretary of the board a renewal fee in an amount to be fixed by the board not to exceed one hundred dollars. Upon payment of the fee, the board shall issue a renewal license. The license and renewal must be displayed in a conspicuous place in the pharmacy and drugstore where the holder is employed. After a licensee has held licenses duly issued over a period of fifty consecutive years, the secretary of the board may issue the licensee a lifetime license that entitles the licensee to act in the capacity of pharmacist thereafter without further payment unless the license is canceled, revoked, or suspended.

#### **43-15-25.1. Continuing pharmaceutical education.**

1. Each pharmacist shall complete at least fifteen hours of approved continuing pharmaceutical education every year as a condition of renewal of a certificate of licensure as a pharmacist in this state.
2. An annual renewal of a license may not be issued to a pharmacist until the pharmacist has satisfactorily completed an accredited program of continuing professional education, all of which may be home self-study, during the previous year to help assure the pharmacist's continued competence to engage in the practice of pharmacy.

The board from time to time shall determine the amount of continuing education to be required, not to exceed fifteen hours in each annual period. Upon request of the board, proof of compliance shall be furnished to the board.

3. The board shall adopt rules necessary to carry out the stated objectives and purposes and to enforce the provisions of this section, which shall include the methods of determining accredited programs, methods of determining compliancy, any fees, and such other rules consistent with this section as the board shall determine. This section and all rules adopted hereunder shall be uniformly applied by the board.

#### **43-15-25.2. Educational requirements - Rules.**

The board shall adopt rules establishing the educational requirements and quality control procedures for pharmacists who conduct laboratory tests provided in subsection 24 of section 43-15-01. These rules must include a requirement that pharmacists receive training for each specific test performed and a requirement that pharmacists demonstrate proficiency for each test performed following nationally recognized proficiency guidelines.

#### **43-15-25.3. Approved laboratory tests.**

Approved laboratory tests are the following waived screening tests: glucose monitoring devices (FDA cleared/home use) 9221, cholesterol 1020, HDL cholesterol 2550, triglyceride 6118, glycosylated hemoglobin (Hgb A1C) 2204, and SARS-CoV-2. Additional tests may be added to this list as jointly determined by the board and the North Dakota board of medicine.

#### **43-15-26. Failure to renew license - Renewal fee - Cancellation of license - Reinstatement.**

If a licensed pharmacist in this state fails to pay the fee for a renewal of a license within the time required, the secretary of the board shall mail the pharmacist a notice, addressed to the pharmacist's last-known place of residence, notifying the pharmacist of failure to obtain a renewal license. The delinquent licenseholder, within sixty days after the notice is mailed, may procure a renewal license upon the payment of a renewal fee to be set by the board not to exceed one hundred dollars. If the licenseholder fails to have a license renewed within sixty days after the notice is mailed, the original or renewal license, as the case may be, becomes void and the registry thereof must be canceled. The board, on application of the delinquent licenseholder and upon the payment of all unpaid fees, may authorize the issuance of a new license without examination, if it is satisfied that the applicant is a proper individual to receive the same.

#### **43-15-27. Change place of business - Record - Fee.**

Every licensed pharmacist, within thirty days after changing a place of business as designated on the books of the board, shall notify the secretary of the board of the new place of business and shall accompany the notice with a fee to be set by the board not to exceed twenty-five dollars. Upon receipt of the fee and the notice of change of place of business, the secretary shall make the necessary change in the register and issue a receipt for the fee to the person sending it.

#### **43-15-28. Certificate of registration canceled - Notice of hearing.**

Repealed by S.L. 1989, ch. 522, § 2.

#### **43-15-28.1. Temporary suspension - Appeal.**

1. If the board has verified evidence that probable cause or grounds for discipline requires the suspension of a pharmacy permit or license of a pharmacist and if harm to the public is so imminent and critical that substantial harm could or would likely result if the permit or license is not suspended prior to a hearing, the board may order a temporary suspension ex parte.
2. An ex parte temporary suspension remains in effect for not more than sixty days, unless otherwise terminated by the board.

3. The board shall set the date of a full hearing on the cause and grounds for discipline regarding the permit or license for not later than sixty days from the issuance of the ex parte temporary suspension order. Within three days after the issuance of the ex parte suspension order, the board shall serve the pharmacy or pharmacist with a copy of the order along with a copy of the complaint and notice of the date set for the full hearing.
4. The pharmacy or pharmacist may appeal the ex parte temporary suspension order prior to the full hearing. For purposes of appeal, the district court shall decide whether probable cause or grounds for discipline reasonably requires the temporary suspension to adequately protect the public interest. The court shall give priority to the appeal for prompt disposition.

**43-15-29. False registration - Penalty.**

Any person who procures or attempts to procure license as a pharmacist, for that person or any other person under this chapter, by making or causing to be made any false representations, or who falsely or fraudulently represents that the person is licensed, is guilty of a class A misdemeanor, and in addition to the penalty imposed by the court, shall, if a licensed pharmacist, have the license canceled by the board.

**43-15-30. Licensed pharmacist member of North Dakota pharmaceutical association.**

Repealed by S.L. 2009, ch. 365, § 5.

**43-15-31. Prescriptions to be filed and preserved.**

Every licensed pharmacist in the state shall file, or cause to be filed, any prescription, or a copy thereof, which has been compounded or dispensed in the pharmacist's pharmacy or drugstore. The prescription or a copy of the prescription must be preserved for at least five years after it has been filled. The pharmacist may furnish a copy of any prescription to the party presenting it on the request of such party only.

**43-15-31.1. Patient profile record system.**

A patient profile record system must be maintained in all pharmacies for persons for whom prescriptions are dispensed. The patient profile record system must be devised so as to enable the immediate retrieval of information necessary to enable the dispensing pharmacist to identify previously dispensed medication at the time a prescription is presented for dispensing. One profile card may be maintained for all members of a family living at the same address and possessing the same family name.

The following information must be recorded:

1. The family name and the first name of the person for whom the medication is intended, which is the patient.
2. The address of the patient.
3. An indication of the patient's age group, e.g., infant, child, adult.
4. The original date the medication is dispensed pursuant to the receipt of a physician's prescription.
5. The number or designation identifying the prescription.
6. The prescriber's name.
7. The name, strength, and quantity of the drug dispensed.
8. The initials of the dispensing pharmacist, and the date of dispensing medication as a renewal (refill) if said initials and such date are not recorded on the back of the original prescription.

The pharmacist shall attempt to ascertain and shall record any allergies and idiosyncrasies of the patient and any chronic conditions which may relate to drug utilization as communicated to the pharmacy by the patient.

Upon receipt of a prescription, a pharmacist must examine the patient's profile record before dispensing the medication to determine the possibility of a harmful drug interaction or reaction. Upon recognizing a potential harmful reaction or interaction, the pharmacist shall take

appropriate action to avoid or minimize the problem which shall, if necessary, include consultation with the physician.

A patient profile record must be maintained for a period of not less than five years from the date of the last entry in the profile record.

#### **43-15-31.2. Prescription drug information required.**

With each prescription dispensed, the licensed pharmacist or the licensed intern pharmacist, in addition to labeling the prescription in accordance with law, must explain to the patient or the patient's agent the directions for use and a warning of the potential harmful effect of combining any form of alcoholic beverage with the medication and any additional information, in writing if necessary, to assure the proper utilization of the medication or device prescribed. For those prescriptions delivered outside the confines of the pharmacy, the explanation must be by telephone or in writing, provided that this does not apply to those prescriptions for patients in hospitals or institutions where the medication is to be administered by a nurse or other individual licensed to administer medications, or to those prescriptions for patients who are to be discharged from a hospital or institution.

#### **43-15-31.3. Oral transmission of prescriptions.**

An oral transmission of a prescription drug may be accepted and dispensed by a pharmacist or licensed pharmacist intern if received from a practitioner, or a nurse licensed under chapter 43-12.1 who is authorized by the practitioner to orally transmit the prescription, or a registered dental hygienist or a registered dental assistant who is authorized by the supervising dentist to orally transmit the prescription. The practitioner shall document the order for oral transmission in the patient's records. Only a licensed pharmacist or a licensed pharmacist intern or a registered pharmacy technician may receive an orally transmitted new or refill prescription.

#### **43-15-31.4. Limited prescriptive practices.**

1. A pharmacist has limited prescriptive practices to initiate or modify drug therapy following diagnosis or established protocols by a licensed physician or an advanced practice registered nurse, under the supervision of the licensed physician or advanced practice registered nurse, in accordance with this section. The licensed physician, advanced practice registered nurse, and the pharmacist must have access to the patient's appropriate medical records. The care provided to the patient by the pharmacist must be recorded in the patient's medical records and communicated to the licensed physician or the advanced practice registered nurse.
2. The licensed physician or advanced practice registered nurse, and the pharmacist, shall prepare a collaborative agreement concerning the scope of the pharmacist's prescriptive practices and shall update the agreement if the scope of the pharmacist's prescriptive practices is modified. The collaborative agreement, or an amendment to the agreement, is effective if executed by the licensed physician or advanced practice registered nurse, and the pharmacist.
3. The collaborative agreement may be between a medical director and pharmacist-in-charge. The medical director and pharmacist-in-charge shall document and update the agreement for any physician, advanced practice registered nurse, and pharmacist covered under the agreement.
4. A collaborative agreement must be made available to the respective licensing boards of the parties to the agreement.
5. The collaborative agreement must include a provision that requires the pharmacist to immediately notify the licensed physician or advanced practice registered nurse if the pharmacist initiates or modifies a drug therapy.

#### **43-15-31.5. Administration of drugs - Rules.**

A pharmacist who administers drugs must have authority from the board. The board shall adopt rules to establish educational and operational requirements for a pharmacist to obtain and

maintain authority to administer drugs. The board may adopt rules to establish educational and operational requirements to allow a pharmacy technician to administer a drug under the immediate personal supervision and control of a pharmacist. Rules adopted by the board under this section must include:

1. Educational requirements, which include, at a minimum:
  - a. Basic immunology, including the human immune response;
  - b. The mechanism of immunity, adverse effects, dose, and administration schedule of available vaccines and approved medication and immunization;
  - c. Current immunization guidelines and recommendations of the centers for disease control and prevention;
  - d. Management of adverse events, including identification, appropriate response, documentation, and reporting;
  - e. Physiology and techniques of administration of drugs; and
  - f. Recordkeeping requirements established by law, rule, and regulation or established standards of care.
2. A requirement an authorized pharmacist shall obtain and maintain current certification in cardiopulmonary resuscitation or basic cardiac life support.
3. Requirements for content of practitioner orders and protocols.
4. Requirements relating to the reporting of the administration to a patient's primary health care provider and to the department of health and human services.
5. Requirements relating to environments in which drugs may be administered.

**43-15-32. Who may engage in drug business.**

Every store, dispensary, pharmacy, laboratory, or office, selling, dispensing, or compounding drugs, medicines, or chemicals, or compounding or dispensing prescriptions of medical practitioners in the state, and every business carried on under a name which contains the words "drugs", "drugstore", or "pharmacy", or which is described or referred to in such terms by advertisements, circulars, posters, signs, or otherwise, must be in charge of a registered pharmacist.

**43-15-33. License to sell emergency medicines.**

Repealed by S.L. 1999, ch. 379, § 8.

**43-15-34. Operation of pharmacy - Permit required - Application - Fee.**

No person, copartnership, association, corporation, or limited liability company shall open, establish, operate, or maintain any pharmacy within this state without first obtaining a permit so to do from the board. Application for the permit shall be made upon a form to be prescribed and furnished by the board and shall be accompanied by a fee to be set by the board not to exceed three hundred dollars. A like fee shall be paid upon each annual renewal thereof. Separate applications shall be made and separate permits required for each pharmacy opened, established, operated, or maintained by the same owner and for the change of location, name, or ownership of an existing pharmacy.

**43-15-34.1. Out-of-state pharmacies.**

Any pharmacy operating outside the state which ships, mails, or delivers in any manner a dispensed prescription drug or legend drug into North Dakota shall obtain and hold a pharmacy permit issued by the North Dakota state board of pharmacy and that part of the pharmacy operation dispensing the prescription for a North Dakota resident shall abide by state law and rules of the board.

**43-15-35. Requirements for permit to operate pharmacy - Exceptions.**

1. The board shall issue a permit to operate a pharmacy, or a renewal permit, upon satisfactory proof of all of the following:
  - a. The pharmacy will be conducted in full compliance with existing laws and with the rules and regulations established by the board.

- b. The equipment and facilities of the pharmacy are such that prescriptions can be filled accurately and properly, and United States pharmacopeia and national formulary preparations properly compounded and so that it may be operated and maintained in a manner that will not endanger public health and safety.
  - c. The pharmacy is equipped with proper pharmaceutical and sanitary appliances and kept in a clean, sanitary, and orderly manner.
  - d. The management of the pharmacy is under the personal charge of a pharmacist duly licensed under the laws of this state.
  - e. The applicant for such permit is qualified to conduct the pharmacy, and is a licensed pharmacist in good standing or is a partnership, each active member of which is a licensed pharmacist in good standing; a corporation or an association, the majority stock in which is owned by licensed pharmacists in good standing; or a limited liability company, the majority membership interests in which is owned by licensed pharmacists in good standing, actively and regularly employed in and responsible for the management, supervision, and operation of such pharmacy.
  - f. Suitable reference sources either in book or electronic data form, are available in the pharmacy or online, which might include the United States pharmacopeia and national formulary, the United States pharmacopeia dispensing information, facts and comparisons, micro medex, the American society of health-system pharmacists formulary, or other suitable references pertinent to the practice carried on in the licensed pharmacy.
2. The provisions of subdivision e of subsection 1 do not apply to:
- a. The holder of a permit on July 1, 1963, if otherwise qualified to conduct the pharmacy, provided that any such permit holder that discontinues operations under such permit or fails to renew such permit upon expiration is not exempt from the provisions of subdivision e of subsection 1 as to the discontinued or lapsed permit.
  - b. A hospital pharmacy furnishing service only to patients in that hospital.
  - c. The applicant for a permit to operate a pharmacy which is a hospital, if the pharmacy for which the hospital seeks a permit to operate is a retail pharmacy that is the sole provider of pharmacy services in the community and is a retail pharmacy that was in existence before the hospital took over operations. A hospital operating a pharmacy under this subdivision may operate the pharmacy at any location in the community.
  - d. The applicant for a permit to operate a pharmacy which is the owner of a postgraduate medical residency training program if the pharmacy is collocated with and is run in direct conjunction with the postgraduate medical residency training program. For purposes of this subdivision, the postgraduate medical residency training program must be accredited by the accreditation council on graduate medical education or other national accrediting organization.

**43-15-36. Board shall make rules and regulations governing permits - Prescribe equipment necessary.**

The rules and regulations relating to the granting, revocation, and renewal of a permit must be adopted and become effective only upon the affirmative vote of a majority of the members of the board. The board shall prescribe the minimum of technical equipment which a pharmacy at all times must possess.

**43-15-37. Term of permit - Renewal - Fee - Application.**

Repealed by omission from this code.

**43-15-38. Failure to renew permit - When new permit granted.**

If an application for renewal of a permit issued for the operation or maintenance of a pharmacy in this state is not made before the first day of June of the fiscal year for which the

permit was issued, the existing permit, or renewal permit, lapses and becomes null and void upon the thirtieth day of that month. A new or further renewal of a permit may be granted only:

1. Upon evidence satisfactory to the board of good and sufficient reason or excuse for failure to file an application within the time prescribed.
2. Upon payment of the regular renewal fee and an additional fee to be set by the board not to exceed two hundred dollars.

**43-15-38.1. Closing a pharmacy.**

The permit holder and the pharmacist in charge are jointly responsible to follow the procedures outlined in the rules for closing a pharmacy.

**43-15-39. Permit and renewal permit posted - Not transferable.**

The permit to operate and maintain a pharmacy in this state, and the renewal thereof, must be posted and exposed in a conspicuous place in the pharmacy. Such permit or renewal permit is not transferable.

**43-15-40. Board may revoke permits and renewal permits.**

The board, after due notice and opportunity to be heard, may revoke any permit to establish and maintain a pharmacy, or a renewal thereof, if it is disclosed upon an examination or inspection that the pharmacy is not being operated or conducted according to the rules and regulations of the board and the laws of this state.

**43-15-41. Board to give notice of refusal or revocation of permits - Appeal.**

If an application for a permit or for a renewal thereof is refused, or a permit or a renewal of permit is revoked, the board shall notify the applicant or permittee by registered or certified mail of such refusal or revocation, with its reasons therefor. The applicant or permittee aggrieved by the refusal or revocation may appeal from the decision or order of the board to the district court of Burleigh County, at any time within thirty days after the receipt of the decision or order appealed from. The appellant shall give bond in the penal sum of two hundred fifty dollars, to be approved by the clerk of the district court, conditioned that appellant will pay all costs if the order or decision of the board is affirmed. With the perfecting of the appeal and the filing of the bond, the decision or order of the board must be stayed pending the determination of the appeal.

**43-15-42. Penalty for violation of rule regulating pharmacies.**

Any person who violates any rule legally adopted by the board pursuant to this chapter is guilty of an infraction.

**43-15-42.1. Penalties - Reinstatement - Criminal prosecutions - Judicial review.**

1. Upon the finding of the existence of grounds for discipline of any person holding, seeking, or renewing a permit or license under this chapter, the board may impose one or more of the following penalties:
  - a. Suspension of the offender's permit or license for a term to be determined by the board.
  - b. Revocation of the offender's permit or license.
  - c. Restriction of the offender's permit or license to prohibit the offender from performing certain acts or from engaging in the practice of pharmacy in a particular manner for a term to be determined by the board.
  - d. Refusal to issue or renew offender's permit or license.
  - e. Placement of the offender or the offender's permit or license under suspension and supervision by the board for a period to be determined by the board.
  - f. Cancellation of the offender's permit or license.
  - g. Reprimand.
  - h. Imposition of a fine not to exceed one thousand dollars for each offense involving diversion of controlled substances or a fine not to exceed five hundred dollars for

any other offense, with the sanction that the permit or license may be suspended until the fine is paid to the board.

2. Any person whose permit or license to practice pharmacy in North Dakota has been suspended, revoked, or restricted pursuant to this chapter, whether voluntarily or by action of the board, has the right, at reasonable intervals, to petition the board for reinstatement of such permit or license. A petition must be made in writing and in the form prescribed by the board. Upon investigation and hearing, the board may in its discretion grant or deny such petition, or it may modify its original finding to reflect any circumstances which have changed sufficiently to warrant such modifications.
3. Nothing herein shall be construed as barring criminal prosecutions for violations of this chapter if such violations are deemed as criminal offenses in other statutes of North Dakota or of the United States.
4. All final decisions by the board shall be subject to judicial review pursuant to chapter 28-32.

#### **43-15-42.2. Impaired pharmacists program.**

1. Any pharmaceutical peer review committee may report relevant facts to the board relating to the acts of any pharmacist in this state if it has knowledge relating to the pharmacist which, in the opinion of the peer review committee, might impair competency due to dependency on alcohol or drugs, abuse of alcohol or drugs, or due to physical or mental illness, or which might endanger the public health and safety or provide grounds for disciplinary action under chapter 43-15.
2. Any committee of a professional association comprised primarily of pharmacists, its staff, or any district or local intervenor participating in a program established to aid pharmacists impaired by substance abuse or mental or physical illness may report in writing to the board the name of the impaired pharmacist together with the pertinent information relating to the impairment. The board may report to any committee of such professional association, or the association's designated staff, information which it may receive with regard to any pharmacist who may be impaired by substance abuse or mental or physical illness.
3. Upon a determination by the board that a report submitted by a peer review committee or professional association committee is without merit, the report must be expunged from the pharmacist's individual record in the board's office. A pharmacist or a pharmacist's authorized representative may, on request, examine the pharmacist's peer review or the pharmaceutical association's committee report submitted to the board and place into the record a statement of reasonable length of the pharmacist's view with respect to any information in the report.
4. Notwithstanding the provisions of section 44-04-18, the records and proceedings of the board, compiled in conjunction with an impaired pharmacist peer review committee, are confidential and are not to be considered public records or open records unless the affected pharmacist so requests; provided, however, the board may disclose this confidential information only if any of the following apply:
  - a. In a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order.
  - b. To the pharmacist licensing or disciplinary authorities of other jurisdictions.
  - c. Under an order of a court of competent jurisdiction.
5.
  - a. No employee or member of the board, peer review committee member, pharmaceutical association committee member, or pharmaceutical association district or local intervenor furnishing in good faith information, data, reports, or records for the purposes of aiding the impaired pharmacist may, by reason of furnishing the information, be liable for damages to any person.
  - b. No employee or member of the board or the committee, staff, or intervenor program is liable for damages to any person for any action taken or recommendations made in good faith by the board, committee, or staff.

#### **43-15-42.3. Reporting requirements - Penalty.**

A pharmacist, pharmacy permitholder, pharmacy intern, pharmacy technician, health care institution in the state, state agency, or law enforcement agency in the state having actual knowledge that a pharmacist, pharmacy intern, or pharmacy technician may have committed any of the grounds for disciplinary action provided by law or rules adopted by the board shall promptly report that information in writing to the state board of pharmacy. A pharmacist, pharmacy technician, or institution from which the pharmacist or pharmacy technician voluntarily resigns, or voluntarily limits that individual's staff privileges, shall report the actions of the licensee or registrant to the state board of pharmacy if that action occurs while the licensee or registrant is under formal or informal investigation by the institution or a committee of the institution for any reason related to possible professional incompetence, unprofessional conduct, or mental or physical impairment. Upon receiving a report concerning a licensee or registrant, the board's investigative committee may investigate any evidence that appears to show a licensee or registrant is committing, or may have committed, any of the grounds for disciplinary action provided by law or rules adopted by the board. A person required to report under this section who makes a report in good faith is not subject to criminal prosecution or civil liability for making the report. For purposes of any civil proceeding, the good faith of a person who makes the report under this section is presumed. A report to the impaired pharmacist program, the pharm-assist committee, of the North Dakota pharmacists association is considered reporting under this section. For purposes of this section, a person has actual knowledge if that person acquired the information by personal observation or under circumstances that cause that person to believe there exists a substantial likelihood that the information is correct. An agency or health care institution that violates this section is guilty of a class B misdemeanor. A pharmacist, pharmacy permitholder, pharmacy intern, or pharmacy technician who violates this section is guilty of a class B misdemeanor and is subject to administrative action by the state board of pharmacy as specified by law or by rule.

#### **43-15-42.4. Limitations on disciplinary actions.**

The board may not take disciplinary action against a pharmacist based solely on the pharmacist dispensing ivermectin for the off-label treatment or prevention of severe acute respiratory syndrome coronavirus 2 identified as SARS-CoV-2, or any mutation or viral fragments of SARS-CoV-2. This section does not limit the board from taking a disciplinary action on another basis, such as unlicensed practice, inappropriate documentation, or substandard care, or any basis that would in the board's determination harm the patient.

#### **43-15-43. Pharmacist negligently endangering life - Penalty.**

Any pharmacist in this state, who in putting up any drug or medicine, willfully or negligently:

1. Omits to label the drug or medicine;
2. Puts an untrue label, stamp, or other designation of contents upon the box, bottle, or package containing the drug or medicine;
3. Substitutes a different article for an article prescribed or ordered;
4. Puts up a greater or less quantity of an article than that prescribed or ordered; or
5. Deviates from the terms of the prescription or order in any manner,

in consequence of which human life is endangered, is guilty of a class A misdemeanor.

#### **43-15-44. Penalty for violations.**

Any person who willfully violates any of the provisions of this chapter for which another penalty is not specifically provided is guilty of a class B misdemeanor.

#### **43-15-45. Costs of prosecution - Disciplinary proceedings.**

In any order or decision issued by the board in resolution of a disciplinary proceeding, the board may direct any certificate holder, permitholder, or licenseholder, or any pharmacy or pharmacist found not in compliance, guilty, or in violation of one or more of the grounds set forth in subsection 1 of section 43-15-10, to pay the board a sum not to exceed the reasonable and actual costs of the investigation and prosecution of the case, with the sanction that the

certificate of registration, permit, or license may be suspended until the costs are paid to the board.