

DEPARTMENT OF STATE
DIVISION OF PROFESSIONAL REGULATION
2500 Board of Pharmacy
Statutory Authority: 24 Delaware Code, Section 2509 (24 **Del.C.** §2509)
24 DE Admin. Code 2500

PROPOSED

PUBLIC NOTICE

The Delaware Board of Pharmacy, in accordance with 29 **Del.C.** Chapter 101 and 24 **Del.C.** §2509, proposes amendments to its regulation 2.0. Specifically, the amendments to 2.0 **Grounds for Disciplinary Proceeding** codify the Board's position that, in good faith and upon reasonable belief, a Pharmacist may withhold a suspected forged prescription for release to law enforcement without fear of disciplinary action by the Board. Minor grammatical, typographic, and stylistic changes are also included.

The Board previously originally proposed such an amendment, which appeared in the *Delaware Register of Regulations*, Volume 10, Issue 10, at page 1553 on April 1, 2007. In response to written and oral comments received at its April 18, 2007, meeting, the Board decided to modify the previous proposal. The Board's modified proposal is contained herein and supersedes the prior proposal.

A public hearing is scheduled for Wednesday, June 20, 2007 at 10:00 a.m. in the second floor Conference Room A of the Cannon Building, 861 Silver Lake Boulevard, Dover, Delaware 19904. The Board will receive and consider input in writing from any person concerning the proposed regulations. Written comments should be submitted to the Board care of Judy Letterman at the above address. The final date to submit written comments shall be at the public hearing. Anyone wishing to obtain a copy of the proposed regulations or to make comments at the public hearing should contact Judy Letterman at the above address or by calling (302) 744-4504.

The Board will consider promulgating the proposed regulations immediately following the public hearing.

2500 Board of Pharmacy

(Break in Continuity of Sections)

2.0 Grounds for Disciplinary Proceeding

2.1 ~~Unprofessional conduct~~ shall ~~that may merit discipline pursuant to 24 Del.C. §2518(a)~~ includes but is not limited to the following act(s) of a pharmacist pursuant to 24 ~~Del.C. §2518(A)~~:

2.1.1 Knowingly engaging in any activity which violates ~~State and Federal Statutes~~ laws and Regulations governing the practice of ~~P~~pharmacy;

2.1.2 Knowingly dispensing an outdated or questionable product;

2.1.3 Knowingly dispensing the cheaper product and charging third party vendors for a more expensive product;

2.1.4 Knowingly charging for more dosage units than is actually dispensed;

2.1.5 Knowingly altering prescriptions or other records which the law requires the pharmacies or pharmacists to maintain;

2.1.6 Knowingly dispensing medication without proper authorization;

2.1.7 Knowingly defrauding any persons or government agency receiving pharmacy services;

2.1.8 Placing a signature on any affidavit pertaining to any phase of the practice of pharmacy which the pharmacist knows to contain false information;

2.1.9 Fraudulently altering or forging the contents of prescriptions;

2.1.10 Payment of money or the providing of free services to a third party in return for the third party's referral of patients to the pharmacist or pharmacy;

2.1.11 Dispensing any legend drugs either for personal use or for use by another person without a valid order from a prescriber. Valid prescription means that it is not only written correctly, but is for a medical use (i.e. prescriptions written "as directed" are prohibited);

2.1.12 Unauthorized substitution;

- 2.1.13 Dispensing medications which are not approved for marketing by the Food and Drug Administration nor approved for marketing by State law;
- 2.1.14 Continuous failure to correct violations of Statutes and Regulations noted in Board of Pharmacy communication;
- 2.1.15 Knowingly allowing persons who are not registered pharmacists to dispense medication without proper supervision;
- 2.1.16 Knowingly committing a fraudulent act. This would include destroying or altering any records such as prescriptions, profiles, third party vouchers and receipts;
- 2.1.17 Knowingly misbranding a drug by using a brand name when a generic is dispensed;
- 2.1.18 Practicing under the influence of drugs or alcohol;
- 2.1.19 The placement of an advertisement which the pharmacist knows to be false or misleading;
- 2.1.20 Knowingly breaching confidentiality of the patient/pharmacist relationship by supplying information to unauthorized persons;
- 2.1.21 Engaging in activities that would discredit the profession of pharmacy;
- 2.1.22 Attempting to circumvent the patient counseling requirements or discouraging the patients from receiving patient counseling concerning their prescription drug orders; and
- 2.1.23 Using facsimile equipment to circumvent documentation, authenticity, verification, or other standards of pharmacy or drug diversion. ~~(Effective 2/29/96)~~

2.2 Pharmacists may, in good faith and upon reasonable belief, withhold suspected forged prescriptions for release to law enforcement. When, in the judgment of the pharmacist, it is not prudent or possible to retain a suspected forged prescription, the pharmacist may exercise the option of making and retaining a copy of the prescription for release to law enforcement. Reporting the incident to law enforcement supports the personal responsibility of the dispensing pharmacist to be constantly vigilant against forged or altered prescriptions.

4 DE Reg. 163 (7/1/00)

10 DE Reg. 1683 (05/01/07) (Prop.)

***Please Note: As the rest of the sections were not amended, they are not being published. A complete set of the rules and regulations for the Board of Pharmacy is available at: <http://www.state.de.us/research/AdminCode/title24/2500%20Board%20of%20Pharmacy.shtml#TopOfPage>**