

IN THE SENATE

SENATE BILL NO. 1327

BY EDUCATION COMMITTEE

AN ACT

1 RELATING TO LIFE-THREATENING ALLERGIES IN SCHOOLS; AMENDING CHAPTER 5, TI-  
2 TLE 33, IDAHO CODE, BY THE ADDITION OF A NEW SECTION 33-520A, IDAHO CODE,  
3 TO DEFINE TERMS, TO AUTHORIZE SCHOOLS TO VOLUNTARILY MAINTAIN A SUPPLY  
4 OF EPINEPHRINE AUTO-INJECTORS, TO PROVIDE FOR THE USE OF EPINEPHRINE  
5 AUTO-INJECTORS, TO AUTHORIZE SCHOOLS TO ENTER INTO ARRANGEMENTS WITH  
6 MANUFACTURERS OF EPINEPHRINE AUTO-INJECTORS, TO PROVIDE GUIDELINES FOR  
7 PARTICIPATION AND TO PROVIDE FOR PROTECTION FROM LIABILITY FOR GOOD  
8 SAMARITANS; AMENDING SECTION 54-1705, IDAHO CODE, TO ADD A DEFINITION;  
9 AMENDING SECTION 54-1732, IDAHO CODE, TO REVISE A PROVISION RELATING TO  
10 THE LABELING OF A LEGEND DRUG AND TO MAKE TECHNICAL CORRECTIONS; AMEND-  
11 ING SECTION 54-1733, IDAHO CODE, TO PROVIDE FOR EPINEPHRINE AUTO-IN-  
12 JECTORS WHEN A PRESCRIBER DOES NOT HAVE A PRESCRIBER-PATIENT RELATION-  
13 SHIP; AMENDING SECTION 54-1734, IDAHO CODE, TO PROVIDE AN EXCEPTION  
14 FOR SCHOOLS POSSESSING STOCK SUPPLIES OF EPINEPHRINE AUTO-INJECTORS;  
15 AMENDING SECTIONS 37-3201 AND 54-1761, IDAHO CODE, TO PROVIDE CORRECT  
16 CODE REFERENCES; AND AMENDING SECTIONS 54-4702 AND 54-5110, IDAHO CODE,  
17 TO PROVIDE CORRECT CODE REFERENCES AND TO MAKE TECHNICAL CORRECTIONS.  
18

19 Be It Enacted by the Legislature of the State of Idaho:

20 SECTION 1. That Chapter 5, Title 33, Idaho Code, be, and the same is  
21 hereby amended by the addition thereto of a NEW SECTION, to be known and des-  
22 ignated as Section 33-520A, Idaho Code, and to read as follows:

23 33-520A. LIFE-THREATENING ALLERGIES IN SCHOOLS -- GUIDELINES, STOCK  
24 SUPPLY OF EPINEPHRINE AUTO-INJECTORS AND EMERGENCY ADMINISTRATION. (1) As  
25 used in this section, the following definitions shall apply:

26 (a) "Administer" means the direct application of an epinephrine auto-  
27 injector to the body of an individual.

28 (b) "Designated school personnel" means an employee, agent or vol-  
29 unteer of a school designated by the governing authority of a school  
30 who has completed the training to provide or administer an epinephrine  
31 auto-injector to a student.

32 (c) "Epinephrine auto-injector" means a device that automatically in-  
33 jects a premeasured dose of epinephrine.

34 (d) "Provide" means the supply of one (1) or more epinephrine auto-in-  
35 jectors to an individual.

36 (e) "School" means any public or nonpublic school.

37 (f) "Self-administration" means a student or other person's discre-  
38 tionary use of an epinephrine auto-injector, whether provided by the  
39 student or by a school nurse or designated school personnel pursuant to  
40 the provisions of this section.

41 (2) Any physician, advanced practice registered nurse licensed to pre-  
42 scribe or physician assistant licensed to prescribe pursuant to title 54,

1 Idaho Code, may prescribe epinephrine auto-injectors in the name of a school  
2 to be maintained for use in accordance with subsection (3) of this section.  
3 Licensed pharmacists and physicians may dispense epinephrine auto-injec-  
4 tors pursuant to a prescription issued in accordance with this subsection. A  
5 school may maintain a stock supply of epinephrine auto-injectors.

6 (3) The governing authority of a school may authorize school nurses and  
7 designated school personnel to do the following:

8 (a) Provide an epinephrine auto-injector to a student to self-admin-  
9 ister the epinephrine auto-injector in accordance with a prescription  
10 specific to the student on file with the school nurse;

11 (b) Administer an epinephrine auto-injector to a student in accordance  
12 with a prescription specific to the student on file with the school  
13 nurse; and

14 (c) Administer an epinephrine auto-injector to any student or other in-  
15 dividual on school premises that the school nurse or designated school  
16 personnel in good faith believes is experiencing anaphylaxis regard-  
17 less of whether the student or other individual has a prescription for  
18 an epinephrine auto-injector.

19 (4) A school may enter into arrangements with manufacturers of epineph-  
20 rine auto-injectors or third-party suppliers of epinephrine auto-injectors  
21 to obtain epinephrine auto-injectors at fair market price, reduced price or  
22 free.

23 (5) The governing authority of a school that participates in supplying  
24 and administering epinephrine auto-injectors pursuant to the provisions of  
25 this section shall do the following:

26 (a) Require each school that maintains a stock supply and administers  
27 epinephrine auto-injectors to submit a report of each incident at the  
28 school or related school event involving a severe allergic reaction or  
29 the administration of an epinephrine auto-injector to the governing au-  
30 thority of the school or its designee; and

31 (b) Establish detailed standards for training programs that must be  
32 completed by designated school personnel in order to provide or admin-  
33 ister an epinephrine auto-injector in accordance with this section.  
34 Such training may be conducted online and, at a minimum, shall cover:

35 (i) Techniques on how to recognize symptoms of severe allergic  
36 reactions, including anaphylaxis;

37 (ii) Standards and procedures for the storage, administration and  
38 disposal of an epinephrine auto-injector; and

39 (iii) Emergency follow-up procedures.

40 (6) There shall be no civil liability for any damages for a physician,  
41 advanced practice registered nurse, physician's assistant or pharma-  
42 cist providing a prescription or standing protocol for school epinephrine  
43 auto-injectors consistent with the standard of care for the provider. Fur-  
44 ther, there shall be no civil liability for damages for a school or its  
45 employees or agents for any injuries that result from the administration or  
46 self-administration of an epinephrine auto-injector regardless of whether  
47 authorization for use was given by the student's parents, guardian or med-  
48 ical provider provided the actions taken in administering or providing the  
49 injector were reasonable under the circumstances. The liability protec-  
50 tions in this section do not apply to acts or omissions constituting gross

1 negligence, those that are reckless or that constitute willful and wanton  
 2 behavior. The liability protections in this section are in addition to any  
 3 provided under section 5-330, Idaho Code.

4 SECTION 2. That Section 54-1705, Idaho Code, be, and the same is hereby  
 5 amended to read as follows:

6 54-1705. DEFINITIONS. In this chapter:

7 (1) "Board of pharmacy" or "board" means the Idaho state board of phar-  
 8 macy.

9 (2) "Central drug outlet" means a resident or nonresident pharmacy,  
 10 drug outlet, or business entity employing or contracting pharmacists to  
 11 perform centralized pharmacy services.

12 (3) "Central pharmacist" means a pharmacist performing centralized  
 13 pharmacy services.

14 (4) "Centralized pharmacy services" means the processing by a central  
 15 drug outlet or central pharmacist of a request from another pharmacy to fill,  
 16 refill, or dispense a prescription drug order, perform processing functions  
 17 or provide cognitive or pharmaceutical care services. Each function may be  
 18 performed by the same or different persons and at the same or different loca-  
 19 tions.

20 (5) "Compounding" means the act of incorporating two (2) or more sub-  
 21 stances to create a finished drug product.

22 ~~(3)~~(56) "Counseling" or "counsel" means the effective communication by  
 23 the pharmacist of information as set out in this chapter, to the patient or  
 24 caregiver, in order to improve therapeutic outcomes by maximizing proper use  
 25 of prescription drugs and devices. Specific areas of counseling shall in-  
 26 clude, but are not limited to:

27 (a) Name and strength and description of the drug;

28 (b) Route of administration, dosage, dosage form, continuity of ther-  
 29 apy and refill information;

30 (c) Special directions and precautions for preparation, administra-  
 31 tion, storage and use by the patient as deemed necessary by the pharma-  
 32 cist;

33 (d) Side effects or adverse effects and interactions and therapeutic  
 34 contraindications that may be encountered, including their avoidance,  
 35 which may interfere with the proper use of the drug or device as was in-  
 36 tended by the prescriber, and the action required if they occur;

37 (e) Techniques for self-monitoring drug therapy; and

38 (f) Action to be taken in the event of a missed dose.

39 ~~(6)~~ "Deliver" or "delivery" means the actual, constructive or at-  
 40 tempted transfer of a drug or device from one (1) person to another, whether  
 41 or not for a consideration.

42 ~~(7)~~ "Device" means an instrument, apparatus, implement, machine, con-  
 43 trivance, implant, in vitro reagent or other similar related article includ-  
 44 ing any component part or accessory which is:

45 (a) Recognized in the official United States Pharmacopoeia or official  
 46 National Formulary, other drug compendia or any supplement to them;

47 (b) Intended for use in the diagnosis of disease or other conditions, or  
 48 the cure, mitigation, treatment or prevention of disease in man or other  
 49 animal;

1 (c) Intended to affect the structure or any function of the body of man  
2 or other animal, and which does not achieve any of its principal in-  
3 tended purposes through chemical action within or on the body of man or  
4 other animal, and which is not dependent upon being metabolized for the  
5 achievement of any of its principal intended purposes.

6 (~~89~~) "Dispense" or "dispensing" means the preparation and delivery of  
7 a drug pursuant to a lawful prescription drug order of a practitioner in a  
8 suitable container appropriately labeled for subsequent administration to  
9 or use by a patient or other individual entitled to receive the prescription.

10 (~~910~~) "Distribute" means the delivery of a drug other than by adminis-  
11 tering or dispensing.

12 (~~101~~) "Drug" means:

13 (a) Articles recognized as drugs in the official United States Phar-  
14 macopoeia, official National Formulary, official Homeopathic Pharma-  
15 copoeia, other drug compendia or any supplement to any of them;

16 (b) Articles intended for use in the diagnosis, cure, mitigation,  
17 treatment or prevention of disease in man or other animal;

18 (c) Articles, other than food, intended to affect the structure or any  
19 function of the body of man or other animals; and

20 (d) Articles intended for use as a component of any articles specified  
21 in paragraph (a), (b) or (c) of this subsection.

22 (~~112~~) "Drug order" means a prescription drug order issued in the unique  
23 form and manner permitted for a patient or resident of an institutional  
24 facility or as permitted for other purposes as defined in rules. Unless  
25 specifically differentiated, state law applicable to a prescription drug  
26 order is also applicable to a drug order.

27 (~~123~~) "Drug outlets" means all resident or nonresident pharmacies,  
28 business entities and other facilities where employees or personnel are en-  
29 gaged in the practice of pharmacy, in the provision of pharmaceutical care,  
30 or in the dispensing, delivering, distributing or manufacturing of drugs or  
31 devices in or into Idaho.

32 (~~134~~) "Extern" means a bona fide student enrolled in an approved school  
33 or college of pharmacy who has not received his first professional degree in  
34 pharmacy.

35 (~~145~~) "Externship" means a structured practical experience program in  
36 pharmacy administered by a school or college of pharmacy.

37 (~~156~~) "Institutional facility" means a facility for which its primary  
38 purpose is to provide a physical environment for patients to obtain health  
39 care services and in which patients spend a majority of their time, as may be  
40 further defined by board rules.

41 (~~167~~) "Intern" means any person who has completed a course of study at  
42 an approved school or college of pharmacy, received the first professional  
43 degree in pharmacy and is registered with the board as a pharmacist intern.  
44 Interns must register with the board prior to commencement of an internship  
45 program.

46 (~~178~~) "Internship" means a postgraduate practical experience program  
47 under the supervision of a preceptor.

48 (~~189~~) "Investigational or new drug" means any drug which is limited by  
49 state or federal law to use under professional supervision of a practitioner  
50 authorized by law to prescribe or administer such drug.

1           (1920) "Labeling" means the process of preparing and affixing of a la-  
2           bel to any drug container, exclusive however, of the labeling by a manufac-  
3           turer, packer or distributor of a nonprescription drug or commercially pack-  
4           aged legend drug or device. Any such label shall include all information re-  
5           quired by federal and state law.

6           (201) "Limited service outlet" means a resident or nonresident facil-  
7           ity or business entity that is subject to registration by the board, pursuant  
8           to section 54-1729, Idaho Code, and has employees or personnel engaged in  
9           the practice of pharmacy, in the provision of pharmaceutical care, or in the  
10          dispensing, delivering, distributing or manufacturing of drugs or devices  
11          but is not a retail pharmacy, institutional facility, manufacturer, whole-  
12          saler, veterinary drug outlet, nonresident central drug outlet or mail ser-  
13          vice pharmacy.

14          (212) "Mail service pharmacy" means a nonresident pharmacy that ships,  
15          mails or delivers by any lawful means a dispensed legend drug to residents  
16          in this state pursuant to a legally issued prescription drug order and en-  
17          sures the provision of corresponding related pharmaceutical care services  
18          required by law.

19          (223) "Manufacture" means the production, preparation, propagation,  
20          compounding, conversion or processing of a device or a drug, either directly  
21          or indirectly by extraction from substances of natural origin or independ-  
22          ently by means of chemical synthesis or by a combination of extraction and  
23          chemical synthesis and includes any packaging or repackaging of the sub-  
24          stance or labeling or relabeling of its container, except that this term does  
25          not include the preparation or compounding of a drug by an individual for his  
26          own use or the preparation, compounding, packaging or labeling of a drug:

27               (a) By a pharmacist or practitioner as an incident to his administer-  
28               ing, dispensing or, as authorized by board rule, distributing of a drug  
29               in the course of his professional practice; or

30               (b) By a practitioner or by his authorization under his supervision for  
31               the purpose of or as an incident to research, teaching or chemical anal-  
32               ysis and not for sale.

33          (234) "Manufacturer" means a person who by compounding, cultivating,  
34          harvesting, mixing or other process, produces or prepares legend drugs,  
35          and includes persons who prepare such drugs in dosage forms by mixing, com-  
36          pounding, encapsulating, entableting, or other process, or who packages or  
37          repackages such drugs, but does not include pharmacists or practitioners in  
38          the practice of their profession.

39          (245) "Nonprescription drugs" means medicines or drugs which may be  
40          sold without a prescription drug order and which are prepackaged for use by  
41          the consumer and labeled in accordance with state and federal law.

42          (256) "Nonresident" means a person or business entity located in the  
43          District of Columbia or a state other than Idaho that practices pharmacy  
44          including, but not limited to, pharmaceutical care services into Idaho.

45          (267) "Person" means an individual, corporation, partnership, associa-  
46          tion or any other legal entity.

47          (278) "Pharmaceutical care" means drug therapy and other pharmaceuti-  
48          cal patient care services intended to achieve outcomes related to the cure or  
49          prevention of a disease, elimination or reduction of a patient's symptoms,

1 or arresting or slowing of a disease process as defined in the rules of the  
2 board.

3 (289) "Pharmacist" means an individual licensed by this state to engage  
4 in the practice of pharmacy or a pharmacist registered by this state who is  
5 located in another state or the District of Columbia and is engaged in the  
6 practice of pharmacy into Idaho, unless exempted.

7 (2930) "Pharmacist-in-charge" (PIC) means a pharmacist whose qualifi-  
8 cations, responsibilities and reporting requirements are defined in rule.

9 (301) "Pharmacy" means any facility, department or other place where  
10 prescription drug orders are filled or compounded and prescriptions are  
11 sold, dispensed, offered or displayed for sale, which has, as its principal  
12 purpose, the dispensing of drug and health supplies intended for the general  
13 health, welfare and safety of the public.

14 (312) "Practitioner" means a person licensed in this state and permit-  
15 ted by such license to dispense, conduct research with respect to or adminis-  
16 ter drugs in the course of professional practice or research in this state.

17 (323) "Precursor" means a substance, other than a legend drug which is  
18 an immediate chemical intermediate that can be processed or synthesized into  
19 a legend drug, and is used or produced primarily for use in the manufacture  
20 of a legend drug by persons other than persons licensed to manufacture such  
21 legend drugs by the Idaho board of pharmacy, registered by the state board  
22 of health and welfare, or licensed to practice pharmacy by the Idaho board of  
23 pharmacy.

24 (334) "Preceptor" means a pharmacist licensed and in good standing who  
25 supervises the internship or externship training of a registered student  
26 pharmacist. The preceptor shall be actively engaged in the practice of phar-  
27 macy on a full-time employment basis.

28 (35) "Prescriber" means an individual currently licensed, registered  
29 or otherwise authorized to prescribe and administer drugs in the course of  
30 professional practice.

31 (326) "Prescription drug or legend drug" means a drug which, under fed-  
32 eral law is required, prior to being dispensed or delivered, to be labeled  
33 with one (1) of the following statements:

- 34 (a) "Caution: Federal law prohibits dispensing without a prescrip-  
35 tion"; or  
36 (b) "Rx Only"; or  
37 (c) "Caution: Federal law restricts this drug to use by or on the order  
38 of a licensed veterinarian";  
39 or a drug which is required by any applicable federal or state law or regula-  
40 tion to be dispensed on prescription drug order only or is restricted to use  
41 by practitioners only.

42 (357) "Prescription drug order" means a valid order of a practitioner  
43 for a drug or device for an ultimate user of the drug or device.

44 (368) "Prospective drug review" includes, but is not limited to, the  
45 following activities:

- 46 (a) Evaluation of the prescription drug order for:  
47 (i) Known allergies;  
48 (ii) Rational therapy contraindications;  
49 (iii) Reasonable dose and route of administration; and  
50 (iv) Reasonable directions for use.

- 1 (b) Evaluation of the prescription drug order for duplication of ther-  
 2 apy.  
 3 (c) Evaluation of the prescription drug order for interactions:  
 4 (i) Drug-drug;  
 5 (ii) Drug-food; and  
 6 (iii) Drug-disease.  
 7 (d) Evaluation of the prescription drug order for proper utilization:  
 8 (i) Over or under utilization; and  
 9 (ii) Abuse/misuse.

10 (379) "Record" means all papers, letters, memoranda, notes, prescrip-  
 11 tions, drug orders, invoices, statements, patient medication charts or  
 12 files, computerized records or other written indicia, documents or objects  
 13 which are used in any way in connection with the purchase, sale or handling of  
 14 any drug or device.

15 (3840) "Sale" means every sale and includes:  
 16 (a) Manufacturing, processing, transporting, handling, packaging or  
 17 any other production, preparation or repackaging;  
 18 (b) Exposure, offer, or any other proffer;  
 19 (c) Holding, storing or any other possession;  
 20 (d) Dispensing, giving, delivering or any other supplying; and  
 21 (e) Applying, administering or any other usage.

22 (3941) "Warehouseman" means a person who stores legend drugs for others  
 23 and who has no control over the disposition of such drugs except for the pur-  
 24 pose of such storage.

25 (402) "Wholesaler" means a person engaged in the business of distribut-  
 26 ing legend drugs that he himself has not produced or prepared, to persons in-  
 27 cluded in any of the classes named in subsection (2) (a) through (f) of sec-  
 28 tion 54-1734, Idaho Code.

29 SECTION 3. That Section 54-1732, Idaho Code, be, and the same is hereby  
 30 amended to read as follows:

31 54-1732. VIOLATIONS AND PENALTIES. (1) No drug outlet designated in  
 32 section 54-1729, Idaho Code, shall be operated until a certificate of reg-  
 33 istration has been issued to said facility by the board. Upon the finding of  
 34 a violation of this subsection, the board may impose one (1) or more of the  
 35 penalties enumerated in section 54-1728, Idaho Code.

36 (2) Reinstatement of a certificate that has been suspended, revoked  
 37 or restricted by the board may be granted in accordance with the procedures  
 38 specified in section 54-1728(6), Idaho Code.

39 (3) The following acts, or the failure to act, and the causing of any  
 40 such act or failure are unlawful:

41 (a) The sale, delivery or administration of any prescription drug or  
 42 legend drug unless:

43 (i) Such legend drug is dispensed or delivered by a pharmacist  
 44 upon an original prescription, drug order or prescription drug or-  
 45 der by a practitioner in good faith in the course of his practice.  
 46 Any person violating the provisions of this subparagraph shall  
 47 be guilty of a felony, and on conviction thereof shall be impris-  
 48 oned in the state penitentiary for a term not to exceed three (3)

1 years, or punished by a fine of not more than five thousand dollars  
2 (\$5,000) or by both such fine and imprisonment.

3 ~~(ii) There is affixed, i~~In the case of a legend drug dispensed  
4 ~~or delivered by a pharmacist or prescriber, to the immediate con-~~  
5 ~~tainer in which such drug is delivered there is a label bearing the~~  
6 ~~name, address, and phone number of the establishment from which~~  
7 ~~such drug was dispensed; the date on which the prescription for~~  
8 ~~such drug was filled; the number of such prescription as filed in~~  
9 ~~the prescription files of the pharmacist who filled the prescrip-~~  
10 ~~tion; the name of the practitioner who prescribed such drug; the~~  
11 ~~name of the patient, and if such drugs were prescribed for an ani-~~  
12 ~~mal, a statement of the species of the animal; and the directions~~  
13 ~~for the use of the drug as contained in the prescription; or in~~  
14 ~~the case of a legend drug delivered or administered by a practi-~~  
15 ~~tioner in the course of his practice, the immediate container in~~  
16 ~~which such drug is delivered bears a label on which appears the di-~~  
17 ~~rections for use of such drug; the name and address of such practi-~~  
18 ~~tioner; the name of the patient; and if such drug is prescribed for~~  
19 ~~an animal, a statement of the species of the animal~~ affixed to the  
20 immediate container in which such drug is dispensed. Any person  
21 violating this subparagraph shall be guilty of a misdemeanor and  
22 upon conviction thereof shall be fined not more than five hundred  
23 dollars (\$500). Nothing in this subparagraph prohibits a prac-  
24 titioner from delivering professional samples of legend drugs in  
25 their original containers in the course of his practice when oral  
26 directions for use are given at the time of such delivery.

27 (b) The refilling of any prescription or drug order for a legend drug  
28 except as designated on the prescription or drug order, or by the autho-  
29 rization of the practitioner. Any person guilty of violating this para-  
30 graph shall be guilty of a misdemeanor and upon conviction thereof shall  
31 be incarcerated in the county jail for a term not to exceed one (1) year,  
32 or punished by a fine of not more than one thousand dollars (\$1,000) or  
33 by both such fine and incarceration.

34 (c) The possession or use of a legend drug or a precursor by any person  
35 unless such person obtains such drug on the prescription or drug order  
36 of a practitioner. Any person guilty of violating this paragraph shall  
37 be guilty of a misdemeanor and upon conviction thereof shall be incar-  
38 cerated in the county jail for a term not to exceed one (1) year, or pun-  
39 ished by a fine of not more than one thousand dollars (\$1,000) or by both  
40 such fine and incarceration.

41 (d) The failure to keep records as required by the board. Any person  
42 guilty of violating this paragraph shall be guilty of a misdemeanor and  
43 upon conviction thereof shall be incarcerated in the county jail for a  
44 term not to exceed one (1) year, or punished by a fine of not more than  
45 one thousand dollars (\$1,000) or by both such fine and incarceration.

46 (e) The refusal to make available and to accord full opportunity to  
47 check any record, as required by the board. Any person guilty of violat-  
48 ing this paragraph shall be guilty of a misdemeanor and upon conviction  
49 thereof shall be incarcerated in the county jail for a term not to exceed

1 one (1) year, or punished by a fine of not more than one thousand dollars  
2 (\$1,000) or by both such fine and incarceration.

3 (f) It is unlawful to:

4 (i) Obtain or attempt to obtain a legend drug or procure or at-  
5 tempt to procure the administration of a legend drug by fraud, de-  
6 ceit, misrepresentation or subterfuge; by the forgery or alter-  
7 ation of a prescription, drug order, or of any written order; by  
8 the concealment of a material fact; or by the use of a false name or  
9 the giving of a false address.

10 (ii) Communicate information to a physician in an effort unlaw-  
11 fully to procure a legend drug, or unlawfully to procure the ad-  
12 ministration of any such drug. Any such communication shall not be  
13 deemed a privileged communication.

14 (iii) Intentionally make a false statement in any prescription,  
15 drug order, order, report or record required by this chapter.

16 (iv) For the purpose of obtaining a legend drug to falsely assume  
17 the title of, or represent himself to be, a manufacturer, whole-  
18 saler, pharmacist, physician, dentist, veterinarian or other per-  
19 son.

20 (v) Make or utter any false or forged prescription or false drug  
21 order or forged written order.

22 (vi) Affix any false or forged label to a package or receptacle  
23 containing legend drugs. This subparagraph does not apply to law  
24 enforcement agencies or their representatives while engaged in  
25 enforcing state and federal drug laws.

26 (vii) Wholesale or retail any prescription or legend drug to any  
27 person in this state not entitled by law to deliver such drug to  
28 another.

29 Every violation of subsection (3) (f) (i) through (vi) of this section shall  
30 be a misdemeanor and any person convicted thereof shall be incarcerated in  
31 the county jail for a term not to exceed one (1) year, or fined not more than  
32 one thousand dollars (\$1,000), or punished by both such fine and imprison-  
33 ment. Any person violating subsection (3) (f) (vii) of this section is guilty  
34 of a felony and on conviction thereof shall be imprisoned in the state peni-  
35 tentiary for a term not to exceed three (3) years, or punished by a fine of not  
36 more than five thousand dollars (\$5,000), or by both such fine and imprison-  
37 ment.

38 (4) Provided however, that a veterinarian may dispense or deliver a  
39 legend drug prescribed for an animal upon the prescription, drug order, or  
40 prescription drug order of another veterinarian. The label shall ~~comply~~  
41 ~~with the provisions of~~ be affixed pursuant to subsection (3) (a) (ii) of this  
42 section, and penalties for violations of the provisions of this subsection  
43 shall be as provided in this section for like violations by a pharmacist.

44 (5) The ultimate user of a legend drug who has lawfully obtained such  
45 legend drug may deliver, without being registered, the legend drug to an-  
46 other person for the purpose of disposal of the legend drug if the person re-  
47 ceiving the legend drug for purposes of disposal is authorized under a state  
48 or federal law or regulation to engage in such activity.

49 ~~Every violation of subsection (3) (f) (i) through (vi) of this section~~  
50 ~~shall be a misdemeanor and any person convicted thereof shall be incarcer-~~

1 ~~ated in the county jail for a term not to exceed one (1) year, or fined not~~  
2 ~~more than one thousand dollars (\$1,000), or punished by both such fine and~~  
3 ~~imprisonment. Any person violating subsection (3) (f) (vii) of this section~~  
4 ~~is guilty of a felony, and on conviction thereof shall be imprisoned in the~~  
5 ~~state penitentiary for a term not to exceed three (3) years, or punished by a~~  
6 ~~fine of not more than five thousand dollars (\$5,000), or by both such fine and~~  
7 ~~imprisonment.~~

8 SECTION 4. That Section 54-1733, Idaho Code, be, and the same is hereby  
9 amended to read as follows:

10 54-1733. VALIDITY OF PRESCRIPTION DRUG ORDERS. (1) Except as pro-  
11 vided in subsection (4) of this section, a prescription drug order for a  
12 legend drug is not valid unless it is issued for a legitimate medical purpose  
13 arising from a prescriber-patient relationship which includes a documented  
14 patient evaluation adequate to establish diagnoses and identify underlying  
15 conditions and/or contraindications to the treatment. Treatment, including  
16 issuing a prescription drug order, based solely on an online questionnaire  
17 or consultation outside of an ongoing clinical relationship does not consti-  
18 tute a legitimate medical purpose. A prescription drug order may be issued  
19 either:

- 20 (a) By a practitioner acting in the usual course of his profession; or  
21 (b) By a physician, dentist, veterinarian, scientific investigator or  
22 other person, other than a pharmacist, who is licensed in a jurisdic-  
23 tion other than the state of Idaho and is permitted by such license to  
24 dispense, conduct research with respect to or administer the prescribed  
25 legend drugs in the course of his professional practice or research in  
26 such jurisdiction, so long as the individual is acting within the jurisdic-  
27 tion, scope and authority of his license when issuing the prescrip-  
28 tion drug order.  
29 (c) The prescription drug order may be signed and sent electronically  
30 pursuant to chapter 50, title 28, Idaho Code.  
31 (d) Transmission of prescription drug order. In addition to delivery  
32 of the original signed written prescription drug order to a licensed  
33 pharmacy:  
34 (i) A prescription drug order that has been signed by the practi-  
35 tioner may be received by a licensed pharmacy for dispensing pur-  
36 poses through a facsimile transmission from the prescribing prac-  
37 titioner or the practitioner's agent, or from an institutional fa-  
38 cility for a patient or resident in such facility;  
39 (ii) A prescription drug order may also be received by a licensed  
40 pharmacist verbally from the practitioner, the practitioner's  
41 agent or from a licensed practical nurse or licensed professional  
42 nurse in an institutional facility for a patient or resident in  
43 such facility;  
44 (iii) A prescription drug order received verbally from the prac-  
45 titioner by a licensed practical nurse or licensed professional  
46 nurse in a licensed institutional facility for a patient or resi-  
47 dent in such facility may also be sent by facsimile transmission  
48 from the institutional facility to a licensed pharmacy for dis-  
49 pensing purposes provided the transmitted document includes the

1 name of the prescriber issuing the prescription drug order, the  
2 name of the nurse who transcribed the order and the name of the per-  
3 son who sent the facsimile.

4 (e) In the event that there are no refills remaining on an existing pre-  
5 scription drug order, and the pharmacist requests a new prescription  
6 drug order from the practitioner, the practitioner's agent, after ob-  
7 taining practitioner authorization, may sign and return the request via  
8 facsimile so long as:

- 9 (i) The request is generated from the pharmacy;  
10 (ii) The request is for medication that the patient is currently  
11 taking;  
12 (iii) There are no changes to the type of drug, its strength or di-  
13 rections for the continuation of therapy;  
14 (iv) The practitioner's agent's transmission is received via fac-  
15 simile from the practitioner's office; and  
16 (v) The request, which is subsequently transmitted back to the  
17 requesting pharmacy by the practitioner's agent, contains all  
18 components of a valid prescription drug order.

19 (2) It is unlawful for a practitioner to knowingly issue an invalid pre-  
20 scription drug order for a legend drug.

21 (3) It is unlawful for a pharmacist or veterinarian to knowingly fill an  
22 invalid prescription drug order for a legend drug.

23 (4) A prescriber who is otherwise authorized to perform any of the ac-  
24 tivities listed in this subsection may prescribe or perform any of the fol-  
25 lowing activities for a patient with whom the prescriber does not have a pre-  
26 scriber-patient relationship under the following circumstances:

- 27 (a) Writing initial admission orders for a newly hospitalized patient;  
28 (b) Writing a prescription for a patient of another prescriber for whom  
29 the prescriber is taking call;  
30 (c) Writing a prescription for a patient examined by a physician as-  
31 sistant, advanced practice registered nurse or other licensed practi-  
32 tioner with whom the prescriber has a supervisory or collaborative re-  
33 lationship;  
34 (d) Writing a prescription for medication on a short-term basis for a  
35 new patient prior to the patient's first appointment;  
36 (e) In emergency situations where life or health of the patient is in  
37 imminent danger;  
38 (f) In emergencies that constitute an immediate threat to the public  
39 health including, but not limited to, empiric treatment or prophylaxis  
40 to prevent or control an infectious disease outbreak;  
41 (g) Epinephrine auto-injectors in the name of a school pursuant to sec-  
42 tion 33-520A, Idaho Code;  
43 (h) If a prescriber makes a diagnosis of a sexually transmitted disease  
44 in a patient, the prescriber may prescribe or dispense antibiotics to  
45 the infected patient's named sexual partner or partners for treatment  
46 of the sexually transmitted disease as recommended by the most current  
47 centers for disease control and prevention (CDC) guidelines.

48 (5) Prescribing drugs to individuals without a prescriber-patient re-  
49 lationship and not in accordance with this section shall be unprofessional  
50 conduct and the prescriber shall be subject to discipline according to the

1 provisions of the Idaho Code chapter pursuant to which the prescriber is li-  
2 censed, certified or registered.

3 SECTION 5. That Section 54-1734, Idaho Code, be, and the same is hereby  
4 amended to read as follows:

5 54-1734. EXCEPTIONS. The provisions of this chapter pertaining to the  
6 sale of prescription drugs are not applicable:

7 (1) To the sale of legend drugs to persons included in any of the classes  
8 named in paragraphs (a) through (fg) in subsection (2) of this section, or  
9 to the agents or employees of such persons, for use in the usual and lawful  
10 course of their business or practice or in the performance of their lawful  
11 official duties, as the case may be; or

12 (2) To the possession of legend drugs by such persons or their agents or  
13 employees for such use:

14 (a) Pharmacists;

15 (b) Practitioners;

16 (c) Persons who procure legend drugs for handling by or under the super-  
17 vision of pharmacists or practitioners employed by them, or for the pur-  
18 pose of lawful research, teaching, or testing, and not for resale;

19 (d) Hospitals and other institutions which procure legend drugs for  
20 lawful administration by practitioners;

21 (e) Manufacturers and wholesalers;

22 (f) Carriers and warehousemen; and

23 (g) Schools possessing stock supplies of epinephrine auto-injectors  
24 pursuant to section 33-520A, Idaho Code.

25 (3) To the sale by a business not licensed as a pharmacy of legend drugs  
26 (excluding controlled substances) designated for veterinary use which re-  
27 quire a prescription, provided that:

28 (a) The business is registered and licensed with the board of pharmacy.

29 (b) The sale is authorized by a written or oral order from a veterinar-  
30 ian licensed in this or another state.

31 1. Prior to dispensing an order from an out-of-state veterinar-  
32 ian, the seller must confirm and document that the veterinarian is  
33 properly licensed in his state.

34 2. Oral orders must be confirmed by the veterinarian in writing no  
35 later than seven (7) days after the seller receives the order.

36 (c) The written order or confirmation of an oral order must be retained  
37 on the premises of the business for at least two (2) years after the  
38 original date of the order.

39 SECTION 6. That Section 37-3201, Idaho Code, be, and the same is hereby  
40 amended to read as follows:

41 37-3201. DEFINITIONS. As used in this chapter:

42 (1) "Code imprint" means a series of letters or numbers assigned by the  
43 manufacturer or distributor to a specific drug, or marks or monograms unique  
44 to the manufacturer or distributor of the drug, or both;

45 (2) "Distributor" means a person who distributes for resale a drug in  
46 solid dosage form under his own label even though he is not the actual manu-  
47 facturer of the drug;

1 (3) "Solid dosage form" means capsules or tablets intended for oral  
2 use;

3 (4) "Legend drug" means any drug defined by section 54-1705(326), Idaho  
4 Code.

5 SECTION 7. That Section 54-1761, Idaho Code, be, and the same is hereby  
6 amended to read as follows:

7 54-1761. DEFINITIONS. As used in sections 54-1760 through 54-1765,  
8 Idaho Code:

9 (1) "Legend drug" has the same meaning as provided in section  
10 54-1705(326), Idaho Code.

11 (2) "Medically indigent" means any person who is in need of a legend  
12 drug and who is not eligible for medicaid or medicare, who cannot afford pri-  
13 vate prescription drug insurance or who does not have income and other re-  
14 sources available sufficient to pay for the legend drug.

15 (3) "Qualifying charitable clinic or center" means a community health  
16 center as defined in section 39-3203, Idaho Code, and means a free medical  
17 clinic as defined in section 39-7702, Idaho Code, acting in consultation  
18 with a pharmacist licensed in the state of Idaho.

19 SECTION 8. That Section 54-4702, Idaho Code, be, and the same is hereby  
20 amended to read as follows:

21 54-4702. DEFINITIONS. As used in this chapter:

22 (1) "Acupuncture" means that theory of health care developed from tra-  
23 ditional and modern Oriental medical philosophies that employs diagnosis  
24 and treatment of conditions of the human body based upon stimulation of spe-  
25 cific acupuncture points on meridians of the human body for the promotion,  
26 maintenance, and restoration of health and for the prevention of disease.  
27 Therapies within the scope of acupuncture include manual, mechanical, ther-  
28 mal, electrical and electromagnetic treatment of such specific indicated  
29 points. Adjunctive therapies included in, but not exclusive to, acupuncture  
30 include herbal and nutritional treatments, therapeutic exercise and other  
31 therapies based on traditional and modern Oriental medical theory.

32 (2) "Board" means the Idaho state board of acupuncture.

33 (3) "NCCAOM" means "National Certification Commission for Acupuncture  
34 and Oriental Medicine."

35 (4) "Practice of acupuncture" means the insertion of acupuncture nee-  
36 dles and use of similar devices and therapies, including application of mox-  
37 ibustion, to specific indicated points on the skin of the human body as indi-  
38 cated pursuant to traditional and modern theories of Oriental medicine. The  
39 "practice of acupuncture" does not include:

40 (a) ~~s~~Surgery; or

41 (b) ~~p~~Prescribing, dispensing or administering any prescription drug or  
42 legend drug as defined in section 54-1705(326), Idaho Code.

43 SECTION 9. That Section 54-5110, Idaho Code, be, and the same is hereby  
44 amended to read as follows:

1           54-5110. NATUROPATHIC MEDICAL FORMULARY COUNCIL ESTABLISHED. There  
2 is hereby established a naturopathic medical formulary council, which is  
3 separate and distinct from the board, to be composed of seven (7) members.  
4 Two (2) members shall be naturopathic physicians licensed under this chap-  
5 ter, and appointed by the board of naturopathic medical examiners. Three  
6 (3) members shall be pharmacists licensed under chapter 17, title 54, Idaho  
7 Code, appointed by the board of naturopathic medical examiners from a list  
8 of nominees provided by the Idaho state board of pharmacy. Two (2) mem-  
9 bers shall be physicians licensed under chapter 18, title 54, Idaho Code,  
10 appointed by the board of naturopathic medical examiners from a list of  
11 nominees provided by the Idaho state board of medicine. The initial coun-  
12 cil shall be appointed as follows: One (1) naturopathic physician shall be  
13 appointed for a one (1) year term; one (1) physician licensed under chapter  
14 18, title 54, Idaho Code, and one (1) pharmacist shall be appointed for a two  
15 (2) year term; and two (2) pharmacists, one (1) naturopathic physician and  
16 one (1) physician licensed under chapter 18, title 54, Idaho Code, shall be  
17 appointed for a three (3) year term. Thereafter, the term of office shall  
18 be three (3) years. A quorum shall consist of five (5) members and shall be  
19 required for any vote to be taken. It shall be the duty of the naturopathic  
20 medical formulary council to establish a formulary for use by naturopathic  
21 physicians, and immediately upon adoption or revision of the formulary,  
22 the council shall transmit the approved formulary to the board, which shall  
23 adopt the formulary by temporary rule. The formulary will be reviewed annu-  
24 ally by the council, or at any time at the request of the board. The formulary  
25 list may not go beyond the scope of prescription medicines and medical de-  
26 vices covered by approved naturopathic medical education and training and  
27 existing naturopathic medical formularies, or board-approved continuing  
28 education. The naturopathic medical formulary shall not include medicines  
29 and devices that are inconsistent with the training provided by approved  
30 naturopathic medical colleges. Nothing herein shall allow a naturopathic  
31 physician to dispense, administer or prescribe any prescription drug as  
32 defined in section 54-1705(3~~2~~6), Idaho Code, or medical device unless such  
33 prescription drug or medical device is specifically included in the naturo-  
34 pathic medical formulary.