

Pharmacy Act 1964 No 48

[1964-48]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
 - [Optometrists Act 2002 No 30](#) (not commenced)
 - [Nurses Amendment Act 2003 No 45](#) (not commenced)
- **See also**
 - [National Competition Policy Health and Other Amendments \(Commonwealth Financial Penalties\) Bill 2004](#)

Authorisation

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New South Wales

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Pharmacy Act 1964 No 48



New South Wales

An Act to regulate the carrying on of business of a pharmacist; to authorise friendly societies and trading and rural societies established under the *Co-operation, Community Settlement, and Credit Act 1923*, as amended by subsequent Acts, to carry on the business of a pharmacist in certain circumstances; to repeal the *Pharmacy Act 1897* and certain other Acts; to amend the *Friendly Societies Dispensaries Enabling Act 1945*, the *Co-operation, Community Settlement, and Credit Act 1923* and certain other Acts; and for purposes connected therewith.

Part 1 Preliminary

1 Name of Act and commencement

- (1) This Act may be cited as the *Pharmacy Act 1964*.
- (2) Except as provided in subsection (3), this Act shall commence upon a day to be appointed by the Governor and notified by proclamation published in the Gazette.
- (3) (Repealed)

2 Repeal and savings

- (1) (Repealed)
- (2) All persons who, immediately before the commencement of this Act, were registered pharmacists under the *Pharmacy Act 1897-1957* shall be deemed to be registered under this Act.
- (3) The Register of Pharmacists kept under the *Pharmacy Act 1897-1957* shall, subject to the provisions of this Act, be deemed to be the Register of Pharmacists under this Act.
- (4) A reference in any other Act or instrument to a registered pharmacist or a pharmacist registered under the *Pharmacy Act 1897*, or any amendment thereof, or a practising pharmacist shall be read and construed as a reference to a pharmacist registered under this Act.
- (5) (Repealed)

3 Definitions

(1) In this Act, unless the context or subject matter otherwise indicates or requires:

Advertising means advertising:

- (a) in a newspaper, magazine or other publication,
- (b) in a circular, hand bill, poster or other notice,
- (c) orally or by any means of producing or transmitting light or sound, or
- (d) in any other manner.

After-hours pharmacy has the meaning ascribed thereto by section 78 of the [Factories, Shops and Industries Act 1962](#), as amended by subsequent Acts.

Board means the Pharmacy Board of New South Wales constituted under the provisions of this Act.

Business of a pharmacist means the business of a chemist, pharmaceutical chemist, pharmacist, druggist, homoeopathic chemist, dispensing chemist or dispensing druggist.

Medical practitioner means a person registered under the [Medical Practitioners Act 1938](#), as amended by subsequent Acts.

nurse practitioner means a person authorised under the [Nurses Act 1991](#) to practise as a nurse practitioner.

Pharmacist means a person registered under this Act.

Pharmacy means any premises in or on which a person carries on the business of a pharmacist and includes such portion (if any) of those premises in or on which the person sells or offers for sale goods of any kind, but does not include any such premises located in a public hospital controlled by a statutory health corporation within the meaning of the [Health Services Act 1997](#).

Prescribed means prescribed by this Act, or by the regulations.

Register means the Register of Pharmacists under this Act.

Registrar means the registrar appointed under the provisions of this Act.

Regulations means regulations made under this Act.

(2) In this Act:

- (a) a reference to a function includes a reference to a power, authority and duty, and

- (b) a reference to the exercise of a function includes, where the function is a duty, a reference to the performance of the duty.

3A Notes

Notes included in this Act do not form part of the Act.

Part 2 The Pharmacy Board of New South Wales

4 Constitution of the Board

There is constituted by this Act a corporation under the corporate name of the Pharmacy Board of New South Wales.

5 Functions of the Board

- (1) The Board has the functions conferred or imposed on it by or under this or any other Act.
- (2) The principal functions of the Board are the following:
 - (a) to promote and maintain the highest standards of professional conduct and ethics in the pharmacy profession,
 - (b) to provide for education about pharmacy and for pharmaceutical research,
 - (c) to consult with and to advise the appropriate authorities on standards of training for pharmacists,
 - (d) to determine the length and content of training and re-training programs for the purposes of this Act,
 - (e) to make recommendations in relation to education courses which form part of the prerequisite for registration,
 - (f) to publish and distribute information concerning this Act and the regulations to pharmacists and other interested persons,
 - (g) to publish reports, information and advice to the general public concerning any pharmaceutical matter,
 - (h) to advise the Minister on matters relating to the registration of pharmacists, standards of pharmacy practice and any other matter arising under or related to this Act,
 - (i) to generally carry out all matters relating to the practice of pharmacy authorised or required by this Act.

6 Membership of the Board

- (1) The Board is to consist of 9 members.
- (2) Of the members:
 - (a) 5 are to be pharmacists elected in accordance with the regulations by pharmacists, and
 - (b) 3 are to be appointed by the Governor and to be comprised of:
 - (i) a pharmacist nominated by the governing body of a University in New South Wales designated for the time being by the Minister, being a University that has a Faculty or Department of Pharmacy, and
 - (ii) a barrister or solicitor nominated by the Minister, and
 - (iii) a person (other than a pharmacist) nominated by the Minister to represent the interests of members of the community as consumers of services provided by pharmacists, and
 - (c) 1 is to be a person nominated by the Minister, being an officer of the Department of Health or an employee of a public health organisation within the meaning of the [Health Services Act 1997](#).
- (3) If the governing body of the University designated for the time being does not nominate a person within such time or in such manner as may be specified by the Minister by notice in writing to the body, the Governor may instead appoint to be a member a person nominated by the Minister.

7 President of the Board

- (1) One of the elected members of the Board is, in and by an instrument executed by the Governor, to be appointed as president of the Board.
- (2) The Governor may remove a member from the office of president.
- (3) A person who is the president is to be taken to have vacated office as president if the person:
 - (a) is removed from that office by the Governor under this section, or
 - (b) resigns that office by instrument in writing addressed to the Minister, or
 - (c) ceases to be a member.

8 Committees

- (1) The Board may, under this section, establish committees to assist it in connection with the exercise of any of its functions, other than functions relating to complaints

about pharmacists or former pharmacists or inquiries into such complaints.

- (2) It does not matter that any or all of the members of such a committee are not members of the Board.
- (3) The procedure for the calling of meetings of such a committee and for the conduct of business at those meetings may be determined by the Board or (subject to any determination of the Board) by the committee.

9 Other provisions relating to the Board

Schedule 1 has effect with respect to the members and procedure of the Board.

10 (Repealed)

11 The registrar and other staff

- (1) The Board may appoint a person to be registrar for the purposes of this Act.
- (2) The Board may employ such other staff as may be necessary to enable the Board to exercise its functions.
- (3) The Board may, with the concurrence of the Health Administration Corporation, fix the salaries, wages, allowances and conditions of employment of its staff in so far as they are not fixed by or under another Act or law.
- (4) The *Public Sector Management Act 1988* does not apply to the employment of staff under this section and a person is not, as a member of that staff, subject to that Act.

Part 3 Registration of pharmacists

12 Register of Pharmacists

- (1) The Board shall keep a register, to be called the Register of Pharmacists.
- (2) The registrar shall enter in the register, in the prescribed manner and on payment of the fee fixed by the Board:
 - (a) the full name and address of every pharmacist,
 - (b) the date of the pharmacist's registration,
 - (c) particulars of the qualification or qualifications in respect of which the pharmacist's registration is granted,
 - (d) particulars of such further or additional qualifications possessed by the pharmacist as the Board may direct to be entered in the register,
 - (e) particulars of any conditions imposed on the pharmacist by an order of the Board,

- (f) particulars of any certificate, diploma, membership, degree, licence, letters, testimonial, or other title, status, document or description which the pharmacist is authorised by the Board to use in relation to himself or herself as a pharmacist or the carrying on of the business of a pharmacist by the pharmacist,
 - (g) such other particulars and matters as are directed or authorised by this Act or the regulations to be entered therein.
- (3) The Board may subject to the provisions of this Act make such alterations and additions to the register as are necessary to correct any errors in the particulars entered in the register and without limiting the generality of the foregoing provisions of this subsection shall cause to be removed from the register the name of:
- (a) every deceased pharmacist,
 - (b) every pharmacist who has ceased to possess or does not possess the qualifications in respect of which the pharmacist was registered, and
 - (c) every pharmacist who is a mentally ill person, a protected person or an incapable person within the meaning of the *Mental Health Act 1958*, as amended by subsequent Acts.
- (4) Every pharmacist shall, within one month after changing the pharmacist's address as appearing in the register, give written notice to the Board of the pharmacist's new address.
- (5) The register shall at all reasonable times be open to inspection at the office of the Board by any person on payment of the fee fixed by the Board.
- (6) The registrar shall, as soon as practicable in each year, cause to be printed and published a list of the names and addresses of all pharmacists corrected up to the thirty-first day of December of the last preceding year.

13 Qualifications for registration—New South Wales graduates

- (1) Subject to section 17, a person shall be entitled to be registered as a pharmacist if the person:
- (a) has passed through a regular graded course in pharmacy of at least three years' duration at the University of Sydney or at any other prescribed university in New South Wales and has received from that university after due examination a degree in pharmacy,
 - (b) satisfies the Board that the person has served in the Commonwealth of Australia for not less than the prescribed period as an assistant:
 - (i) in the business of a pharmacist at a pharmacy used for dispensing and compounding medical prescriptions,

- (ii) to a pharmacist in charge of a dispensary (not forming part of a business referred to in subparagraph (i)) in which medicines are dispensed or compounded on the order or prescription of a medical practitioner,
 - (iii) to a pharmacist who is also the managing director or general manager of a company where such assistantship is served in a pharmacy used by such company for the purpose of dispensing and compounding medical prescriptions, or
 - (iv) to a pharmacist in charge of a dispensary in a pharmacy used by a company for the purpose of dispensing and compounding medicines, and
- (c) has had experience in the dispensing and compounding of medical prescriptions that the Board regards as sufficient to enable the person satisfactorily to carry on the business of a pharmacist in New South Wales.

(1A) The regulations may:

- (a) prescribe different periods in respect of the qualifications or level of pass obtained in a course in pharmacy, and
- (b) otherwise require that a prescribed period is to be served in accordance with the regulations.

(1B) If a person who has been awarded a pass degree in pharmacy satisfies the Board that the person has served as an assistant to a pharmacist in charge of approved premises, the prescribed period that the person is required to serve under subsection (1) (b) is to be reduced by the period (not exceeding 1,000 hours or such other period as may be prescribed) that the person has served in approved premises.

(2) In this section:

approved premises means any premises in respect of which a declaration under subsection (3) is in force.

pharmacist includes a person registered under the law in force relating to the registration of pharmacists in any other State of the Commonwealth of Australia or in the Australian Capital Territory.

(3) The Board may, by order under the hand of the registrar published in the Gazette, declare any premises specified or described in the order to be approved premises for the purposes of this section as from the date of publication of the order or from a later date specified in the order.

14 Prescribed foreign qualifications for registration

Subject to section 17, a person shall be entitled to be registered as a pharmacist if the person holds the prescribed qualification granted by any prescribed university, college,

institute or other body in any place outside New South Wales and has either within or outside New South Wales had, for a period of not less than twelve months, experience in the dispensing and compounding of medical prescriptions that the Board regards as sufficient to enable the person satisfactorily to carry on the business of a pharmacist in New South Wales.

15 Other foreign qualifications for registration

Subject to section 17, a person shall be entitled to be registered as a pharmacist if the person:

- (a) holds a qualification granted by any university, college, institute or other body in any place outside New South Wales (not being a prescribed qualification referred to in section 14) which qualification is recognised by the Board as furnishing such evidence of knowledge and skill in pharmacy that, if the person satisfies the requirements of paragraphs (b) and (d), the person would have the requisite knowledge and skill for the efficient carrying on of the business of a pharmacist in New South Wales,
- (b) has passed an examination in pharmacy, including such subjects as may be approved by the Board, before examiners appointed by the Senate of the University of Sydney or the governing body of any other prescribed university in New South Wales, and
- (c) (Repealed)
- (d) has either within or outside New South Wales had, for a period of not less than twelve months, experience in the dispensing and compounding of medical prescriptions that the Board regards as sufficient to enable the person to carry on satisfactorily the business of a pharmacist in New South Wales.

16 Qualifications for registration—New South Wales apprentices

Subject to section 17 a person shall be entitled to be registered as a pharmacist if the person:

- (a) has passed a preliminary examination as prescribed by regulation under the *Pharmacy Act 1897-1957* and had, before the twelfth day of June, one thousand nine hundred and fifty-nine, commenced to serve as an apprentice in the business of a pharmacist in New South Wales at a pharmacy used for dispensing and compounding medical prescriptions, or as an apprentice to a pharmacist in charge of a dispensary of a friendly society, or as an apprentice to a pharmacist who is also a managing director or general manager of a company where such apprenticeship is served in a pharmacy used by such company in New South Wales for the purpose of dispensing and compounding medical prescriptions, or as an apprentice to a pharmacist in charge of a dispensary in a pharmacy used by a company in New South Wales for the purpose of dispensing and compounding medicines:

Provided that the Board may, upon application made to the Board in the prescribed

manner and form and supported by such evidence as the Board requires, accept in lieu of any part of the requirements specified in the foregoing provisions of this paragraph a course of training in the Australian Capital Territory which in the opinion of the Board is of a standard substantially similar to the standard fixed by or under this Act for that part of those requirements,

- (b) has satisfactorily served under such apprenticeship for a period of not less than three years,
- (c) has attended one course of lectures acknowledged by the Board in each of the following subjects, namely, chemistry, practical chemistry, botany and materia medica, and has also passed examinations in each of the said subjects at the University of Sydney or some school or college of pharmacy recognised by the Board, and
- (d) has passed an examination held before the expiration of a period of three years commencing on the day on which the assent of Her Majesty to the *Pharmacy (Amendment) Act 1969* was signified before examiners appointed by the Senate of the University of Sydney in the subject of practical pharmacy.

17 Additional requirements for registration

- (1) A person shall not be entitled to be registered as a pharmacist pursuant to section 13, 14, 15 or 16 unless:
 - (a) the Board is satisfied that the person has attained the age of 18 years and is of good character, and
 - (a1) the person proves to the satisfaction of the Board that he has a knowledge of the English language adequate to carry on the business of a pharmacist, and
 - (b) the person's application for registration is accompanied by the registration fee fixed by the Board.
- (2) Upon registering a person as a pharmacist pursuant to section 13, 14, 15 or 16, the Board shall issue to the person a certificate of registration in the prescribed form.
- (3) If a person applies to be registered as a pharmacist later than 5 years after the person was last registered as a pharmacist, the Board may refuse to register the person until the person has passed, at a standard satisfactory to the Board, such oral or written examination (or oral and written examinations) as the Board considers appropriate.

17A Provisional registration

- (1) Where:
 - (a) a person has applied to be registered,

- (b) the person would, if the Board were satisfied:
 - (i) that the person has had the requisite service and experience referred to in section 13, or the requisite experience referred to in section 14, as the case may require, and
 - (ii) as to the matters referred to in paragraph (a) of subsection (1) of section 17, be entitled to be registered, and
 - (c) the person's application for registration has not been dealt with by the Board, the president of the Board or, in the president's absence from the City of Sydney, any other member of the Board authorised generally by the Board to grant certificates of provisional registration, may, if satisfied as to the matters referred to in subparagraphs (i) and (ii) of paragraph (b), and on payment of the prescribed fee, grant to that person a certificate of provisional registration in the prescribed form.
- (2) Where, on an application made by any person for a certificate of provisional registration under this subsection, the Board, the president of the Board or, in the president's absence from the City of Sydney, any other member of the Board authorised generally by the Board to grant certificates of provisional registration is satisfied:
- (a) that that person is justly entitled to a prescribed qualification referred to in section 14 that is to be conferred on or granted to the person by a prescribed university, college, institute or other body, so referred to, that is in the Commonwealth of Australia,
 - (b) that the person will in due course have that prescribed qualification conferred on or granted to the person according to the practice of that prescribed university, college, institute or other body,
 - (c) that the person has had the requisite experience referred to in section 14, and
 - (d) as to the matters referred to in paragraph (a) of subsection (1) of section 17, the Board or if the Board has not dealt with the person's application under this subsection the president of the Board or other such member of the Board may, on payment of the fee fixed by the Board, grant to that person a certificate of provisional registration in the prescribed form.
- (3) Where a person has obtained a certificate of provisional registration the person shall be deemed to be registered under this Act until:
- (a) the date stated in the certificate, or
 - (b) such later date as may be fixed by the Board,

which date shall, in either case, be not later than three months after the granting of the certificate.

- (4) The Board may, at any time before the date so stated or fixed, for such cause as to it seems proper, cancel a certificate of provisional registration without prejudice to the application of the holder of the certificate to be registered.
- (5) Upon the cancellation of a certificate of provisional registration, the holder of the certificate shall thereupon cease to be deemed to be registered.
- (6) If a person to whom a certificate of provisional registration has been granted becomes registered before the date stated or fixed pursuant to subsection (3) in respect of that certificate, the person's registration shall, unless otherwise decided by the Board, date from the granting of the certificate.

18 (Repealed)

19 Roll fee

- (1) Every pharmacist shall, on or before the thirty-first day of October in each year (which day is in this section referred to as the **prescribed day**) pay to the registrar a roll fee fixed by the Board for the year commencing on the first day of January next following the prescribed day.
- (2) Together with the roll fee, the pharmacist shall furnish particulars of the pharmacist's address for entry in the register and such other particulars as may be prescribed.
- (3) If a pharmacist does not pay the roll fee referred to in subsection (1) on or before the prescribed day in any year, the Board shall forthwith notify the pharmacist by letter addressed to the pharmacist at the pharmacist's address as appearing in the register, that if the fee be not paid before the thirty-first day of December next following the prescribed day the pharmacist's name will be removed from the register.

If any pharmacist who has been so notified fails to pay such fee before the said thirty-first day of December, the Board shall remove the pharmacist's name from the register.

- (4) If the name of any pharmacist is or has been removed from the register under this section or section 8 of the *Pharmacy Act 1897-1957*, the Board shall upon application in writing and if it is satisfied that the pharmacist is of good character restore the pharmacist's name to the register upon payment of the fee fixed by the Board.

The regulations may provide for the waiver of such part of such fee as the Board may in any particular case deem proper.

- (5) (Repealed)

Part 4 Complaints and disciplinary proceedings

19A Definitions

In this Act:

Committee means a Professional Standards Committee constituted under section 19C.

conduct means any act or omission.

professional misconduct, in relation to a pharmacist, includes:

- (a) any conduct that demonstrates a lack of adequate:
 - (i) knowledge,
 - (ii) experience,
 - (iii) skill,
 - (iv) judgment, or
 - (v) care,by the pharmacist in the practice of pharmacy, and
- (b) the pharmacist's contravening (whether by act or omission) a provision of this Act or the regulations, and
- (c) the pharmacist's contravening a condition imposed on the pharmacist's registration by the Board, and
- (d) the pharmacist's contravening an order made or a direction given by the Board, and
- (e) the pharmacist's carrying on the business of a pharmacist, or having a direct or indirect pecuniary interest in such a business, for or on behalf of, or in association with, a person, corporation or partnership that is not entitled to carry on that business or to have that interest, and
- (f) the pharmacist's being an habitual drunkard or being addicted to any deleterious drug, and
- (g) any other improper or unethical conduct of the pharmacist relating to the practice of pharmacy.

19B Complaints about former pharmacists

- (1) A complaint may be made under this Act about a person who, although not a pharmacist when the complaint is made to, or lodged with, the Health Care Complaints Commission or the registrar, was registered as a pharmacist not more than 5 years before that time.

- (2) For the purposes of this Act, a reference to a pharmacist against whom a complaint has been made includes a reference to a person against whom a complaint has been made pursuant to this section.

19C Professional Standards Committees

- (1) There are to be Professional Standards Committees.
- (2) The Committees are to have and may exercise the jurisdiction and functions conferred or imposed on them by or under this Act.
- (3) When the Board decides to refer a complaint to a Committee for inquiry, the Board must:
 - (a) appoint 3 persons (including a barrister or solicitor) to sit as the Committee for the purpose of conducting an inquiry into the complaint, and
 - (b) nominate one of those persons to be chairperson of the Committee.
- (4) A Committee is to consist of:
 - (a) 2 pharmacists, and
 - (b) one lay person (that is, a person who is not a pharmacist) appointed from among a panel of lay persons for the time being nominated by the Minister.
- (5) A person may be appointed to sit on a Committee whether or not the person is a member of the Board, but not if the person has dealt with the particular matter before the Committee in the person's capacity as such a member.
- (6) One or more Committees may conduct more than one inquiry at the same time.
- (7) A member of a Committee, while sitting on the Committee, is entitled to be paid by the Board at the same rate as a witness who gives expert evidence in the Supreme Court.

19D Making of complaints about pharmacists

- (1) A complaint may be made by any person that a pharmacist:
 - (a) has been convicted in New South Wales of an offence, or
 - (b) has been convicted elsewhere than in New South Wales in respect of an act or omission that would, if it had taken place in New South Wales, have constituted an offence, or
 - (c) has been guilty of professional misconduct, or
 - (d) has advertised in contravention of the regulations, or

(e) does not have sufficient physical or mental capacity to carry on the business of a pharmacist, or

(f) is not of good character.

(2) A complaint is to be made to or lodged with the Health Care Complaints Commission or the registrar.

19E Procedure on receipt of complaint by the registrar

(1) On receipt of a complaint by the registrar, the registrar is required to refer the complaint to the Board and to notify the Health Care Complaints Commission of the receipt and nature of the complaint.

(2) The Board may require the complainant to provide further particulars of the complaint and may make such preliminary inquiries concerning the complaint as it thinks fit.

(3) The Board may inform the pharmacist against whom the complaint is made of the nature of the complaint and invite the pharmacist to make, within such time as the Board specifies in the notice, such representations to the Board with respect to the complaint as the pharmacist thinks fit.

(4) The Board is required to consider any representations made to it within the time specified in its notice.

19F Determination of how complaint to be dealt with

The Board may decide at any time in relation to a complaint:

(a) that it will deal with the complaint at a meeting of the Board, or

(b) that it will investigate the complaint, or

(b1) that it will cause the complaint to be investigated by the Health Care Complaints Commission under the [Health Care Complaints Act 1993](#), or

(c) that it will refer the complaint to a Committee for inquiry if, in the opinion of the Board, it is appropriate for it to be dealt with by the Committee, or

(d) that it will conduct an inquiry into the complaint, or

(e) that it will decline to deal with or will dismiss the complaint.

19G Investigation by the Board

(1) In investigating a complaint, the Board:

(a) may conduct the investigation in such manner as it thinks fit, and

(b) may inform itself on any matter in such manner as it thinks fit, and

- (c) may receive written or oral submissions, and
 - (d) is not required to conduct its proceedings in a formal manner, and
 - (e) is not bound by rules of evidence.
- (2) Neither the complainant nor the pharmacist concerned are entitled to be legally represented at any appearance before the Board in the course of an investigation under this section.
- (3) A finding or recommendation of the Board made during or as a consequence of such an investigation is admissible as evidence in any legal proceedings.

19H Conduct of inquiry by the Board or a Committee

- (1) If the Board decides to conduct an inquiry into a complaint or a complaint is referred to a Committee for an inquiry:
- (a) the Board or Committee, in conducting the inquiry, is to sit as in open court unless it determines to do otherwise, and
 - (b) the person against whom the complaint was made is to be afforded an opportunity of defence either in person or by a barrister or solicitor or another adviser.
- (2) For the purposes of conducting an inquiry, the Board is to consist of 3 members of the Board (including a barrister or solicitor) appointed to conduct the inquiry by the president.
- (3) When the president nominates members of the Board to conduct an inquiry, the president is to nominate one of those members to be chairperson of the Board for the purposes of the inquiry.
- (4) The president may nominate himself or herself as a member or as chairperson under this section.
- (5) Schedule 2 applies with respect to an inquiry by the Board or a Committee.

20 Consequences of misconduct etc

- (1) If the Board (after an inquiry conducted by the Board consisting of the members referred to in section 19H or a Committee) is satisfied that the subject-matter of a complaint against a pharmacist is proved, the Board may do any one or more of the following:
- (a) caution or reprimand the person,
 - (b) order that the person seek medical or psychiatric treatment or counselling,

- (c) order that such conditions, relating to the person's practising pharmacy, as it considers appropriate be imposed on the person's registration,
 - (d) order that the person complete such educational courses as are specified by the Board,
 - (e) order that the person report on the person's pharmacy practice at the times, in the manner and to the persons specified by the Board,
 - (f) order that the person seek and take advice, in relation to the management of the person's pharmacy practice, from such persons as are specified by the Board,
 - (g) by its order, impose a fine on the person of an amount, not exceeding 40 penalty units, specified in the order,
 - (h) by its order, suspend the person's registration for such period (not exceeding 12 months) as the Board thinks fit,
 - (i) by its order, remove the person's name from the register.
- (2) If a pharmacist's registration is suspended under this section, the secretary must note in the register the suspension and its date and cause.
- (3) The Board is not to suspend a person's registration or remove a person's name from the register for having committed an offence if, having regard to the nature of the offence or the circumstances under which it was committed, the Board is of the opinion that it does not render the person unfit in the public interest to be registered as a pharmacist.
- (4) Any fine imposed under this section:
- (a) is to be paid to the registrar who is to pay it to the credit of the Consolidated Fund in such manner as the Treasurer may direct, and
 - (b) may be recovered as a debt due to the Crown in a court of competent jurisdiction.

20A Refusal or suspension of registration or removal from register on ground of unfitness

- (1) Notwithstanding any other provision of this Act where the Board is satisfied on such evidence as to it seems proper that any applicant for registration under this Act or any pharmacist is, by reason of infirmity, injury or illness, whether mental or physical, unfit to carry on the business of a pharmacist the Board may refuse to register the applicant's name in the register or may order that the name of the pharmacist be removed from the register or that the pharmacist be suspended from practice as a pharmacist for such period as may be specified in the order.
- (2) For the purposes of subsection (1) the Board:
- (a) may require an applicant for registration or a pharmacist to undergo, at the

expense of the Board, such medical examinations by such medical practitioners as may be specified by the Board, and

(b) may hold such inquiry as the Board thinks fit.

- (3) A failure or refusal by any person required by the Board to undergo a medical examination in accordance with a requirement of the Board made under paragraph (a) of subsection (2) may be regarded by the Board as evidence that that person is, by reason of infirmity, injury or illness, whether mental or physical, unfit to carry on the business of a pharmacist.
- (4) Nothing in subsection (1) affects the powers of the Board under any other provision of this Act to refuse an application for registration under this Act or to remove the name of a pharmacist from the register or to suspend a pharmacist from practice.
- (5) (Repealed)

20AA Removal of name etc from register outside New South Wales

(1) Where:

- (a) after the commencement of the *Pharmacy (Amendment) Act 1971*, a pharmacist has, while registered under this Act:
- (i) ceased to be registered under the law in force relating to the registration of pharmacists in some place outside New South Wales, or
 - (ii) been suspended from practice as a pharmacist under the law referred to in subparagraph (i),

because of some act or omission on the pharmacist's part, and

- (b) the Board is of the opinion that it would, if there had been an inquiry under this Act and the commission of the act or the omission had been proved thereat, have been satisfied that the pharmacist had been guilty of misconduct in a professional respect because of the act or omission,

the Board may, without making such an inquiry, order that the pharmacist's name be removed from the register or that the pharmacist be suspended from practice as a pharmacist for such period, not exceeding twelve months, as the Board determines, or may caution or reprimand the pharmacist.

- (2) This section has effect notwithstanding anything in section 20, but nothing in this section prevents any matter that may be, but has not been, dealt with under this section from being dealt with under section 20 if the Board, in any particular case, so decides.
- (3) The provisions of subsection (3) of section 20 apply, mutatis mutandis, in respect of a

person referred to in paragraph (a) of subsection (1).

21 Effect of Board's order

- (1) An order made by the Board under section 20 or 20AA does not take effect until the expiration of a period of one month after the date on which notification in writing of the order is served personally on the pharmacist, or is sent by registered post by the registrar to the pharmacist at the pharmacist's address as appearing in the register.
- (2) If within such period the pharmacist gives due notice of appeal to a District Court as provided in section 22, the order of the Board shall not take effect unless the order of the Board is confirmed by the District Court or the appeal is for any reason dismissed by the District Court and, in the case of an order of the Board that the name of the pharmacist be removed from the register, until the expiration of a period of one month after such confirmation or dismissal.
- (3) Where an order of the Board that a pharmacist be suspended from practice is confirmed by the District Court or an appeal against such order is dismissed, the period of suspension named in the order appealed from shall commence upon the day on which the court confirms the order or dismisses the appeal, as the case may be.

21A Written statements of decisions

- (1) If, under section 20 or 20AA, the Board decides to make an order in respect of a person or decides to caution or reprimand a person, the Board shall, within one month of making its order or of deciding to caution or reprimand the person, provide the person, any person who made a complaint which resulted in the order or decision and such other persons as it considers appropriate, with a written statement of its decision.
- (2) If the Board makes a decision in relation to a person under any provision of this Act, other than section 20 and 20AA, the person may request in writing that the Board provide the person with a written statement of the decision.
- (3) Any such request shall be made within 60 days after the decision to which it relates.
- (4) The Board shall provide a written statement of the decision within one month of receipt of such a request.
- (5) A written statement of a decision shall:
 - (a) set out any findings on material questions of fact,
 - (b) refer to any evidence or other material on which the findings were based, and
 - (c) give the reasons for the decision.
- (6) Despite any other provision of this section, the Board is not required to include

confidential information in any such statement, and if a statement would be false or misleading if it did not include the confidential information, the Board is not required to provide the statement.

(7) If, because of subsection (6), confidential information is not included in a written statement of a decision or such a statement is not provided to a person, the Board shall, within one month of a decision under section 20 or 20AA or receipt of a request under subsection (2), give notice in writing to the person to whom the Board is required (or would, but for subsection (6), be required) to provide the statement, indicating that:

- (a) the confidential information is not included, or
- (b) the statement will not be provided,

as appropriate, and giving the reasons why the confidential information is not included or the statement will not be provided.

(8) In this section:

confidential information means information that:

- (a) has not previously been published or made available to the public when a written statement of a decision to which it is or may be relevant is being prepared,
- (b) relates to the personal or business affairs of a person, other than a person to whom the Board is required (or would, but for subsection (6), be required) to provide a written statement of a decision, and
- (c) is information:
 - (i) that was supplied in confidence,
 - (ii) the publication of which would reveal a trade secret,
 - (iii) that was provided in compliance with a duty imposed by an enactment, or
 - (iv) the provision of which by the Board would be in breach of any enactment.

(9) Nothing in this section affects the power of a court to make an order for the discovery of documents or to require the giving of evidence or the production of documents to a court.

22 Appeal against orders of the Board

(1) Any person aggrieved:

- (a) by an order made under section 20, or
- (b) by any refusal or failure to register the person as a pharmacist,

may, not later than 1 month after being served or sent notice of the order in accordance with section 21 or not later than 3 months after the application for registration was lodged, appeal to the District Court against the order or the refusal or failure.

- (2) Any such appeal is to be made in accordance with rules of court and will be in the nature of a new hearing at which new evidence may be given.
- (3) The District Court may make such order as it thinks fit, which is final and without appeal.
- (3A) The Board is to give effect to the District Court's order.
- (4) The provisions of this section do not apply so as to enable an applicant for provisional registration or the holder of a certificate of provisional registration that has been cancelled to appeal against the refusal or cancellation of the certificate of provisional registration.

22A Effect of removal from register or suspension from practice

- (1) Where the name of a pharmacist has, whether before or after the commencement of the *Pharmacy (Amendment) Act 1971*, been removed from the register under this Act, and until the pharmacist's name is restored thereto, the pharmacist shall be deemed not to be registered as a pharmacist under this Act.
- (2) Where a pharmacist has, whether before or after the commencement of the *Pharmacy (Amendment) Act 1971*, been suspended from practice as a pharmacist under this Act for a specified period, the pharmacist shall, for the purposes of sections 25, 27 and 28, and not otherwise, be deemed not to be a pharmacist during that period.
- (3) Where a person is suspended from practice as a pharmacist under this Act, the registrar shall enter in the register a memorandum of that fact and of the date and cause thereof.

23 Surrender of certificates of registration

- (1) Any person whose name is removed from the register, or who has been suspended from practice as a pharmacist or whose certificate of provisional registration has been cancelled, pursuant to the provisions of this Act, shall within fourteen days from the notification to the person by the registrar of such removal or suspension or cancellation surrender to the Board any certificate of registration or provisional registration issued to the person under this Act and held by the person.
- (2) Any person who, without reasonable excuse, contravenes this section is guilty of an offence against this Act and liable to a penalty not exceeding 2 penalty units.

24 Restoration of name to register

Where the name of any person has been removed from the register (otherwise than under section 19 of this Act or section 8 of the *Pharmacy Act 1897-1957*), or any person has been suspended from practice as a pharmacist, the person's name shall not be restored to the register, and the suspension of such person shall not be terminated before the period for which the suspension was imposed, except by direction of the Board or by order of a court of competent jurisdiction. The Board may, if it thinks fit in any case, direct the registrar, without fee, to restore to the register any name removed therefrom or on payment of such fee, not exceeding the current registration fee as the Board may, from time to time direct, and the registrar shall restore the name accordingly.

Part 5 Control of pharmacies

24A Register of Pharmacies

(1) An application for:

(a) an approval of premises as suitable for carrying on the business of a pharmacist,
or

(b) registration of an owner of such a business,

is required to be made to the registrar in a form approved by the Minister and to be accompanied by the fee fixed by the Board.

(2) The Board may require any such application to be verified by a statutory declaration.

(3) The Board may:

(a) reject the application, or

(b) by its order, approve the premises or direct that the owner be registered.

(4) Premises are not to be approved if they fail to comply with any standard prescribed for them by the regulations.

(5) The Board may, by its order, revoke an approval under this section if the premises concerned are found not to comply with any such standard.

(6) The Board is to keep a register containing particulars of approved premises and registered owners, to be called the Register of Pharmacies which, on payment of the fee fixed by the Board, may be inspected at the office of the Board at any reasonable time.

24B Appeals against refusal to approve pharmacy or to register owner

(1) Any person aggrieved by a decision or an order of the Board under section 24A relating:

- (a) to an application for the approval of premises or the registration of an owner, or
 - (b) to revocation of an approval of premises,
- may appeal against the decision or order to the District Court.

- (2) For the purposes of such an appeal, an application for an approval or for registration that has not been dealt with by the Board within one month of its having been lodged (or such longer period as may be agreed by the applicant and the Board) is to be taken to have been rejected.
- (3) Any such appeal is to be made in accordance with rules of court and will be in the nature of a new hearing at which new evidence may be given.
- (4) The District Court may make such order as it thinks fit, which is final and without appeal.
- (5) The Board is to give effect to the District Court's order.

24C Pharmacies to be approved and owners registered

- (1) A person must not carry on the business of a pharmacist at any premises unless:
 - (a) the premises are the subject of a current approval of the Board, and
 - (b) the owner of the business is registered in the Register of Pharmacies.
- (2) This section does not apply so as to require the approval of premises at which a pharmacist carried on the business of a pharmacist immediately before the date of assent to the [Pharmacy \(Amendment\) Act 1989](#) until the second anniversary of that date of assent.

25 Persons other than pharmacists not to have interest in pharmacists' businesses

- (1) A person (not being a pharmacist), a corporation or a body of persons unincorporated shall not carry on, as owner or otherwise, the business of a pharmacist in a pharmacy or otherwise have a pecuniary interest, direct or indirect, in the business of a pharmacist carried on in a pharmacy.
- (1A) Subsection (1) does not prevent a body of persons unincorporated, being a partnership consisting only of pharmacists and formed for the purpose of carrying on, as owner or otherwise, the business of a pharmacist in a pharmacy or for the purpose of otherwise having a pecuniary interest, direct or indirect, in such a business carried on in a pharmacy, from so carrying on, or otherwise having such a pecuniary interest in, such a business.
- (2) Subsection (1) does not prevent:
 - (a) an individual from being employed in the carrying on of the business of a

pharmacist, or

- (b) an individual, a body corporate or an unincorporated body from having a pecuniary interest, direct or indirect, in the business of a pharmacist as a party to a bill of sale given in respect of that business, or
- (c) an individual, a body corporate or an unincorporated body from having such an interest in circumstances prescribed by the regulations.

(2A)-(2C) (Repealed)

- (3) Any person or corporation who or which contravenes any provision of this section shall be guilty of an offence against this Act.
- (4) If any unincorporated association contravenes any provision of this section the members of the board of management or other controlling authority thereof shall be severally guilty of an offence against this Act.
- (5) This section shall not operate to prevent any person, corporation or body of persons unincorporated who or which has entered into possession of the business of a pharmacist under a bill of sale, from carrying on subject to section 27 such business in a pharmacy during a period not exceeding three months after the date upon which such person, corporation or body of persons so entered into possession.

This subsection shall extend to and in respect of any person, corporation or body of persons unincorporated who or which has so entered into possession before the commencement of this Act but in the case only of a person the period of three months referred to in this subsection shall commence to run upon the date of such commencement.

(6) Where:

- (a) a person's name is removed from the register or the person is suspended from practice as a pharmacist under this Act, and
- (b) the person was entitled to carry on, and was carrying on, the business of a pharmacist in a pharmacy immediately before the person's name was so removed or the person's suspension took effect,

this section shall not operate to prevent the person from carrying on subject to section 27 that business during the period of three months next following the day on which the person's name was so removed or the person's suspension took effect.

- (7) A person who carries on the business of a pharmacist in a pharmacy by virtue of subsection (6) shall, during the period during which the person so carries on that business, neither enter nor be in any premises in which that business is so carried on unless the person has the consent of the Board to do so and the person complies with

any conditions imposed by the Board in relation thereto (which consent and conditions the Board is hereby authorised to give, impose and revoke from time to time).

25A Certain provisions in certain bills of sale to be void

- (1) Any provision in a bill of sale given in respect of the business of a pharmacist that:
 - (a) requires the grantor to purchase or otherwise obtain goods or services in connection with that business from the grantee or from any other specified person,
 - (b) gives to the grantee power to control the manner in which that business shall be carried on,
 - (c) gives to the grantee access to the books of account kept in respect of that business otherwise than for the purpose of determining whether or not the grantor is complying with the conditions of the bill of sale, or
 - (d) provides that the grantee shall receive any consideration that varies according to the profits or takings of that business,shall be void.
- (2) The provisions of subsection (1) do not apply to a bill of sale granted before the day on which the assent of Her Majesty to the *Pharmacy (Amendment) Act 1969* was signified until the expiration of a period of five years commencing on that day.

25B Direction to supply information about pecuniary interests

The Board may, by a written notice given personally or by post to a pharmacist, direct the pharmacist to supply to the Board, within the time specified in the notice, such information relating to pecuniary interests in any business of a pharmacist carried on by the pharmacist as is required by the notice.

26 Restrictions on carrying on business of a pharmacist in pharmacies

- (1) A pharmacist (whether as owner or otherwise and whether alone or as a partner) must not:
 - (a) carry on the business of a pharmacist in more than 3 pharmacies, or
 - (b) have a direct or indirect pecuniary interest in the business of a pharmacist carried on in more than 3 pharmacies, or
 - (c) carry on such a business in one or more pharmacies and have such an interest in one or more pharmacies so that the total number of pharmacies involved exceeds 3.
- (2) A pharmacist must not:

- (a) carry on the business of a pharmacist in a pharmacy, or
- (b) have a direct or indirect pecuniary interest in the business of a pharmacist carried on in a pharmacy,

as a member of more than 3 partnerships of pharmacists.

(3) Subsection (1) shall not operate to prohibit:

- (a) a pharmacist who, either alone or as a partner of any other person, was immediately before the commencement of this Act carrying on the business of a pharmacist in a pharmacy (in this paragraph referred to as an **original pharmacy**), being one of two or more pharmacies in which the pharmacist was immediately before the prescribed date carrying on such business, from continuing after such commencement to carry on (whether as owner or otherwise) such business in that original pharmacy or:
 - (i) in another pharmacy in which the pharmacist was immediately before such commencement entitled under the *Pharmacy Act 1897-1957* to carry on, and was carrying on, such business, or
 - (ii) with the approval in writing of the Minister in another pharmacy which is in the prescribed area in relation to that pharmacy, or
- (b) (Repealed)
- (c) a pharmacist or a body of persons unincorporated, being a partnership consisting only of pharmacists, from continuing after the commencement of the *Pharmacy (Amendment) Act 1970*, to have a pecuniary interest, direct or indirect, in the business of a pharmacist carried on in a pharmacy (other than an interest by reason of the carrying on of such business by such pharmacist or body), being the same interest as the pharmacist lawfully had immediately before that commencement until the expiration of a period of one year after that commencement or the expiration of any agreement under which the pharmacist has that pecuniary interest, whichever first occurs.

In this subsection:

prescribed date means the twenty-seventh day of November, one thousand nine hundred and forty.

the prescribed area, in relation to an original pharmacy, means:

- (a) an area that is within 16 kilometres of the original pharmacy, or
- (b) where the original pharmacy was situated in the area that consists of the County of Cumberland, the County of Northumberland and that part of the City of Greater Wollongong that is not within the County of Cumberland—that area.

(3A) A pharmacist is not guilty of an offence under this section only because the pharmacist:

- (a) carries on, as a partner, not more than one after-hours pharmacy in addition to any business of a pharmacist that is being carried on without contravening this section, or
- (b) carries on the business of a pharmacist or has a direct or indirect pecuniary interest in such a business, conducted at a branch pharmacy approved by the Board in accordance with the regulations.

(3B) Where:

- (a) immediately before the commencement of the *Pharmacy (Amendment) Act 1971*, a pharmacist referred to in paragraph (a) of subsection (3) was entitled, by virtue of that paragraph, to carry on, and was carrying on, the business of a pharmacist, and
- (b) that business ceases, after that commencement, to be carried on for any continuous period that exceeds four days,

the pharmacist shall not be entitled, by virtue of that paragraph, to carry on that business after the expiration of that period without the approval in writing of the Minister.

- (4) A pharmacist who contravenes the provisions of subsection (1) shall be guilty of an offence against this Act.
- (5) (Repealed)

27 Pharmacist to be in charge of every pharmacy and dispensary

- (1) The business of a pharmacist carried on in a pharmacy and any dispensary (not forming part of such a business) in which medicines are dispensed or compounded on the order or prescription of a medical practitioner or nurse practitioner, shall be in charge of a pharmacist who shall personally superintend the carrying on of the said business or the said dispensary.
- (2) If the business of a pharmacist is carried on in a pharmacy, or a dispensary is carried on, in contravention of subsection (1), the owner of the business and if the pharmacist in charge of the business or dispensary is by the terms of the pharmacist's employment required to be in charge of the business or dispensary at the time of the contravention, such pharmacist shall be guilty of an offence against this Act.
- (3) If any owner who contravenes subsection (1) is a body of persons unincorporated, the members of the board of management or other controlling authority thereof shall be severally guilty of an offence against this Act.

(4) It shall be a sufficient defence to a prosecution of an owner for a contravention of subsection (1) if the owner proves to the satisfaction of the court that the owner used all due diligence to prevent the contravention.

(5) (Repealed)

27A Exemptions for certain friendly societies

(1) Sections 24C, 25 and 26 do not apply to the carrying on of the business of a pharmacist by a friendly society at the same premises as, or at premises within 1.6 kilometres of, premises at which the friendly society operated a pharmacy on 31 July 1945.

(2) Sections 24C, 25 and 26 do not apply to the carrying on of the business of a pharmacist by a friendly society in accordance with a written approval given by the Minister.

(3) Such an approval is not to be given unless the Minister is satisfied that:

(a) the net profits arising from the operation of the pharmacy will be applied solely to the provision of benefits (other than benefits in the form of dividends or shares) to members of the friendly society, and

(b) the operation of the pharmacy is justified in the interests of members of the friendly society or of members of the public, or both.

(4) The Minister may give such an approval unconditionally or subject to conditions, and may at any time vary or revoke such an approval.

(5) Such an approval:

(a) is taken to be in force in respect of any pharmacy that, immediately before the repeal of the *Friendly Societies Dispensaries Enabling Act 1945*, was being lawfully operated by a friendly society in reliance on section 2 (2A) and (2B) of that Act, and

(b) may be amended or revoked accordingly.

Part 6 General

28 Medicines to be dispensed by pharmacists

(1) A person, other than a pharmacist or a person acting under the personal supervision of a pharmacist, must not dispense or compound any medicine on the order or prescription of a medical practitioner or nurse practitioner.

(2) This section does not prevent an authorised person from dispensing medicine in the ordinary course of his or her profession:

- (a) if the practitioner does not charge for the medicine more than its cost to the practitioner, or
- (b) if, because of the circumstances of the case (such as where the medicine is dispensed in a location in which there is no pharmacist), it would be unreasonable to require the medicine to be obtained from a pharmacist, or
- (c) in such circumstances as may be prescribed by the regulations.

(3) In this section:

authorised person means a medical practitioner, or a nurse practitioner who is authorised to dispense the medicine concerned under section 17A of the *Poisons and Therapeutic Goods Act 1966*.

Note—

Under the *Poisons and Therapeutic Goods Act 1966* the Director-General of the Department of Health may authorise a nurse practitioner to possess, use, supply or prescribe certain substances specified in the Poisons List.

29 Business of deceased pharmacist may be carried on temporarily

Nothing in this Act shall prevent the executor of the will, or the administrator or trustee of the estate, of any deceased person who was carrying on the business of a pharmacist in a pharmacy on the day of the person's death, or a person entitled under the will or in the estate of any such deceased person, from continuing subject to section 27 to carry on such business under the name of such deceased person, or from having, as such executor, administrator, trustee or person entitled, a pecuniary interest, direct or indirect, in such business, for a period of twelve months after the date of death of such deceased person, or after the day appointed pursuant to subsection (2) of section 1, whichever is the later, or for such further period as the Minister may allow in writing in any particular case.

30 Pharmacists to use only registered qualifications

- (1) A pharmacist shall not use any certificate, diploma, membership, degree, licence, letters, testimonial or other title, status, document or description in relation to himself or herself as a pharmacist, in relation to the carrying on of the business of a pharmacist by the pharmacist, other than:
 - (a) the particulars (if any) which the Board has authorised pursuant to paragraph (f) of subsection (2) of section 12 to be entered in connection with the pharmacist's name in the register, or
 - (b) the description of chemist, pharmaceutical chemist, pharmacist, druggist, homoeopathic chemist, dispensing chemist, dispensing druggist, member of the Pharmaceutical Society of New South Wales or any abbreviation of

any such expression.

- (2) Any person other than a pharmacist who poses as a pharmacist or assumes or uses the title of pharmacist, or poses as or assumes or uses the title of chemist, pharmaceutical chemist, pharmacist, druggist, homoeopathic chemist, dispensing chemist, dispensing druggist or other words whatsoever of similar meaning or uses or exhibits any title, term, sign or symbol which may be construed to mean that the person is qualified to perform the duties of a pharmacist shall be guilty of an offence against this Act:

Provided that this subsection shall not apply to a person, corporation or body of persons unincorporated carrying on a business in accordance with the provisions of subsection (5) of section 25 or to a person continuing a business under the name of a deceased person in accordance with the provisions of section 29.

A corporation carrying on the business of a pharmacist in a pharmacy shall not be guilty of an offence against this subsection by reason only that it describes itself in connection with the carrying on of such business as "chemists" or as "chemists and druggists" or as "dispensing chemists".

31 Appointment of inspectors

The Director-General of the Department of Health may from time to time appoint inspectors for the purposes of this Act.

32 Power of entry of inspectors and authorised persons

- (1) For the purpose of ascertaining whether the provisions of this Act or any regulations are being or have been complied with an inspector or person authorised in writing in that behalf (either generally or in any particular case) by the president of the Board may at all reasonable times enter any part of any premises in which the business of a pharmacist is carried on.
- (2) Every person who wilfully delays or obstructs any inspector or authorised person in the exercise of the inspector's or authorised person's powers under this section shall be guilty of an offence against this Act.

33 False entries in the register

Any registrar or other person who wilfully makes or causes to be made any false entry in or falsification of the register, and any person who wilfully procures or attempts to procure himself or herself or any other person to be registered or to be granted a certificate of provisional registration under this Act by making or producing, or causing to be made or produced, any false or fraudulent representation or declaration, either verbally or in writing, and any person aiding or assisting therein, shall be guilty of an offence against this Act and liable to imprisonment for a period not exceeding twelve months.

34 (Repealed)

34A Protection of the Board and others from liability

No matter or thing done or suffered in good faith by a person being:

- (a) the Board or a member of the Board, or
- (b) the registrar or any other member of the staff of the Board, or
- (c) an inspector,

in the execution or intended execution of this Act or the exercise or discharge of the person's functions, subjects the person, or the Crown, to any action, liability, claim or demand.

35 Penalties

- (1) Every person who is guilty of an offence against this Act for which no penalty is expressly provided shall be liable to a penalty not exceeding 5 penalty units.
- (2) All informations for offences under this Act, shall be laid by the registrar, or an inspector appointed under this Act or some other person appointed by the Board for that purpose (either generally or in any particular case), or a member of the police force.
- (3) All proceedings for an offence under this Act or the regulations may be heard and determined in a summary manner before a Local Court.

36 Fees

- (1) The Board may make written orders fixing fees for services provided by the Board in exercising its functions.
- (2) The Board may fix a fee for registration of a person as a pharmacist, for provisional registration or for restoration of a name to the Register of Pharmacists and an annual roll fee only if the fees have been approved by the Minister.
- (3) Fees payable under this Act are to be paid to the registrar on behalf of the Board.
- (4) Any such fee may be recovered by the registrar or any person authorised in writing by the Board in a court of competent jurisdiction as a debt due to the Board.
- (5) Fees and other money (not being fines or penalties) received by the registrar or the Board are to be paid into an account or accounts established by the Board.
- (6) There may be paid from an account or accounts established by the Board:
 - (a) amounts required to meet the expenses of the administration or execution of this Act, and

(b) amounts for such purposes as are set out in regulations made for the purposes of this section on the recommendation of the Board.

(7) The Board may, for any reason the Board considers sufficient, exempt a person from the requirement to pay a fee, or waive or wholly or partly refund a fee, that would otherwise be payable or has been paid in accordance with this Act.

36A Pharmacy Education and Research Account

(1) The Board is required to establish a Pharmacy Education and Research Account.

(2) Such amounts as are recommended by the Board and determined by the Minister from time to time are to be paid into the Account by the Board from fees payable under this Act or the regulations.

(3) Money in the Account may be expended by the Board for or towards any one or more of the following:

(a) education about pharmacy and pharmaceutical research,

(b) the publication and distribution of information concerning this Act and the regulations,

(c) meeting administrative expenditure incurred with respect to the Account and the purposes for which it is used,

or any related purpose.

(4) An expenditure of money under this section is not to be made unless it is authorised by a resolution of the Board supported by at least 6 members.

37 Evidence

A document purporting to be a certificate under the hand of the registrar, and stating any one or more of the following matters:

(a) that any person was or was not on any date or during any period mentioned in the certificate registered under this Act, or

(b) that on any date or during any period mentioned in the certificate the registration of any person was suspended, or

(c) that any person was or was not on any date or during any period mentioned in the certificate the holder of a certificate of provisional registration, or

(d) that on any date mentioned in the certificate the certificate of provisional registration of any person was cancelled,

shall in all courts and before all persons and bodies authorised by law to receive evidence,

be prima facie evidence of the facts stated.

38 Regulations

(1) The Governor may make regulations for or with respect to:

- (a) the proceedings of the Board,
- (b) the election of members of the Board,
- (c) the manner in which a complaint alleging misconduct in a professional respect may be preferred to the Board,
- (d) the payment of fees to the Board,
- (e) advertising in relation to the carrying on of the business of a pharmacist in a pharmacy, including the display of signs in or about the premises on which such a business is so carried on,
- (e1) the supply of information to the Board about pecuniary interests in the business of a pharmacist carried on in a pharmacy, about the acquisition or disposition of any such interests and about the opening or closing of pharmacies,
- (e2) the disclosure to the Board of the details of any bill of sale given in respect of the business of a pharmacist carried on in a pharmacy or the details of any agreement entered into under which any person has a pecuniary interest in such a business so carried on,
- (f) the forms required for the purposes of this Act,
- (g) the copies of Acts and regulations and the books of reference to be kept in any pharmacy in which the business of a pharmacist is carried on and in any dispensary (not forming part of such a business) in which medicines are dispensed or compounded on the order or prescription of a medical practitioner or nurse practitioner,
- (g1) the standards to be complied with by pharmacies (including after-hours and branch pharmacies),
- (h) the equipment and appliances to be installed in every pharmacy in which the business of a pharmacist is carried on and in every dispensary (not forming part of such a business) in which medicines are dispensed or compounded on the order or prescription of a medical practitioner or nurse practitioner,
- (h1) the establishment and conduct of after-hours or branch pharmacies, the formation of partnerships for the purposes of establishing such pharmacies, the admission of additional partners, the holding and transfer of shares in such partnerships, the provisions to be included in agreements for the formation of such

partnerships and any other matters relating to such partnerships,

(h2) the approval of pharmacies as branch pharmacies by the Board,

(i) all matters necessary or convenient for carrying out or giving effect to the provisions of this Act.

(2) The regulations may impose a penalty not exceeding 2 penalty units for any breach thereof.

(3), (4) (Repealed)

39 Savings provision relating to persons affected by certain amendments concerning qualifications for registration

Section 13 as in force immediately before the day on which amendments to that section made by the *Statute Law (Miscellaneous Provisions) Act (No 2) 1990* took effect continues to apply in respect of persons who have completed or commenced a degree in pharmacy before that day.

40 (Repealed)

Schedule 1 Provisions relating to the members and procedure of the Board

(Section 9)

Part 1 The members

1 Acting members and acting president

- (1) The Governor may, from time to time, appoint a person to act in the office of an appointed member of the Board during the illness or absence of the member, and the person, while so acting, has all the functions of the member and is to be taken to be a member.
- (2) The Governor may, from time to time, appoint an elected member to act in the office of president during the illness or absence of the president, and the member, while so acting, has all the functions of the president and is to be taken to be the president.
- (3) A person is not eligible to be appointed under subclause (1) to act in the office of the member of the Board nominated by the governing body of a University unless the person is nominated by that body.
- (4) The Governor may remove any person from any office to which the person was appointed under this clause.
- (5) A person while so acting in the office of a member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may

from time to time determine in respect of the person.

- (6) For the purposes of this clause, a vacancy in the office of a member or the president is to be taken to be an absence from office of the member or the president, as the case may be.

2 Term of office

- (1) Subject to this Schedule:

- (a) an elected member of the Board holds office for 3 years from the date of the member's election, but is eligible (if otherwise qualified) for re-election, and
- (b) an appointed member of the Board holds office for such period not exceeding 3 years, as may be specified in the instrument of appointment of the member, but is eligible (if otherwise qualified) for re-appointment.

- (2) The regulations may make provision for determining the date of a member's election for the purposes of this clause.

3 Remuneration

A member of the Board is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

4 Filling of casual vacancy in office of member

- (1) If the office of any member of the Board becomes vacant, a person may, subject to this Act, be appointed to fill the vacancy.
- (2) In the case of a vacancy in the office of an elected member, the vacancy is to be filled by a pharmacist nominated by the Board.
- (3) A person nominated to fill a vacancy in the office of an elected member is to be taken, for the purposes of this Act, to be an elected member.

5 Casual vacancies

- (1) A member of the Board is to be taken to have vacated office if the member:
 - (a) dies, or
 - (b) absents himself or herself from 4 consecutive meetings of the Board of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for being absent from those meetings, or

- (c) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
 - (d) becomes a temporary patient or a continued treatment patient within the meaning of the *Mental Health Act 1958*, a forensic patient within the meaning of the *Mental Health Act 1983* or a protected person within the meaning of the *Protected Estates Act 1983*, or
 - (e) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable, or
 - (f) resigns the office by instrument in writing addressed to the Minister, or
 - (g) in the case of an appointed member, is removed from office by the Governor under subclause (3) or (4) or under Part 8 of the *Public Sector Management Act 1988*.
- (2) Without limiting the generality of subclause (1), a member who is appointed under:
- (a) section 6 (2) (b) (ii)—and who ceases to be a barrister or solicitor, or
 - (b) section 6 (2) (c)—and who ceases to be an officer or employee referred to in that paragraph,
- is to be taken to have vacated office.
- (3) The Governor may remove an appointed member from office.
- (4) Without affecting the generality of subclause (3), the Governor may remove from office a member who contravenes the provisions of clause 6.

6 Disclosure of pecuniary interests

- (1) A member of the Board who has a direct or indirect pecuniary interest:
- (a) in a matter that is being considered, or is about to be considered, at a meeting of the Board, or
 - (b) in a thing being done or about to be done by the Board,
- must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Board.
- (2) A disclosure by a member at a meeting of the Board that the member:
- (a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or a specified person,

is to be taken to be a sufficient disclosure of the nature of the interest in any matter or thing relating to that company or other body or to that person which may arise after the date of the disclosure.

(3) The Board is required to cause particulars of any disclosure made under subclause (1) or (2) to be recorded in a book kept for the purpose and that book is to be open at all reasonable hours to the inspection of any person on payment of such fee as may be determined by the Board from time to time.

(4) After a member has, or is taken to have, disclosed the nature of an interest in any matter or thing pursuant to subclause (1) or (2), the member must not, unless the Board otherwise determines:

(a) be present during any deliberation of the Board, or take part in any decision of the Board, with respect to that matter, or

(b) exercise any functions under this Act with respect to that thing,

as the case requires.

(5) Notwithstanding that a member contravenes the provisions of this clause, that contravention does not invalidate any decision of the Board or the exercise of any function under this Act.

(6) Nothing in this clause applies to or in respect of an interest of a member in a matter or thing which arises merely because the member is a pharmacist.

(7) A reference in this clause to a meeting of the Board includes a reference to a meeting of a committee of the Board.

7 Effect of certain other Acts

(1) The *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member of the Board and a member is not, as a member, subject to that Act (except Part 8).

(2) If by or under any other Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of the person's time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

that provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

- (3) The office of a member is to be taken for the purposes of any Act not to be an office or place of profit under the Crown.

Part 2 The procedure of the Board

8 General procedure

The procedure for the calling of meetings of the Board and for the conduct of business at those meetings is, subject to this Act, to be as determined by the Board.

9 Quorum

Except as otherwise provided by this Act, the quorum for a meeting of the Board is 5 members.

10 Voting

A decision supported by a majority of the votes cast at a meeting of the Board at which a quorum is present is the decision of the Board.

11 Presiding member

- (1) The president or, in the absence of the president, another member of the Board elected to chair the meeting by the members present, is to preside at a meeting of the Board.
- (2) The person presiding at any meeting of the Board has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

12 Minutes

The Board is required to cause full and accurate minutes to be kept of the proceedings of each meeting of the Board.

Schedule 2 Inquiries by the Board or a Committee

(Section 19H)

1 Proceedings generally

- (1) At an inquiry conducted by it, the Board or a Committee is not bound to observe the rules of law governing the admission of evidence, but may inform itself of any matter in such manner as it thinks fit.
- (2) At a meeting of the Board or of a Committee conducting an inquiry, the chairperson of the Board nominated for the purposes of the inquiry or the chairperson of the

Committee is to preside.

- (3) A decision supported at a meeting by at least 2 of the members of the Board or a Committee conducting an inquiry is the decision of the Board or Committee.

2 Power to summon witnesses and take evidence

- (1) A member of the Board or a Committee may summon a person to appear at an inquiry conducted by the Board or Committee, to give evidence and to produce such documents (if any) as are referred to in the summons.
- (2) The person presiding at the inquiry may require a person appearing at the inquiry to produce a document.
- (3) The Board or a Committee may, at an inquiry conducted by it, take evidence on oath or affirmation and, for that purpose, a member of the Board or Committee:
- (a) may require a person appearing at the inquiry to give evidence either to take an oath or to make an affirmation in a form approved by the person presiding, and
 - (b) may administer an oath to or take an affirmation from a person so appearing at the inquiry.
- (4) A person served with a summons to appear at such an inquiry and to give evidence must not, without reasonable excuse:
- (a) fail to attend as required by the summons, or
 - (b) fail to attend from day to day unless excused, or released from further attendance, by a member of the Board or Committee.
- (5) A person appearing at an inquiry to give evidence must not, without reasonable excuse:
- (a) when required to be sworn or affirm—fail to comply with the requirement, or
 - (b) fail to answer a question that the person is required to answer by the person presiding, or
 - (c) fail to produce a document that the person is required to produce by this clause.

Maximum penalty: 20 penalty units.

3 Power to obtain documents

- (1) A member of the Board or a Committee may, by notice in writing served on a person, require the person:
- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being a member of the Board or Committee or a person authorised by

the Board or Committee in that behalf, and

(b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not fail, without reasonable excuse, to comply with a notice served on the person under this clause.

Maximum penalty: 20 penalty units.

4 Evidence of other proceedings

The Board or a Committee may receive and admit on production, as evidence at any inquiry:

- (a) the judgment and findings of any court (whether civil or criminal and whether or not of New South Wales) or tribunal, or
- (b) the verdict or findings of a jury of any such court, or
- (c) a certificate of the conviction of any person, or
- (d) a transcript of the depositions or of shorthand notes, duly certified by the registrar or clerk of the court or tribunal as correct, of the evidence of witnesses taken in any such court or tribunal,

where the Board or Committee is of the opinion that the judgment, findings, verdict, certificate or evidence is or are relevant to the proceedings.

5 Additional complaints

- (1) The Board or a Committee may at an inquiry conducted by it deal with one or more complaints about a pharmacist.
- (2) If, during any such inquiry, it appears to the Board or a Committee that, having regard to any matters that have arisen, another complaint could have been made against the pharmacist concerned:

(a) whether instead of or in addition to the complaint which was made, and

(b) whether or not by the same complainant,

the Board or Committee may take that other complaint as having been referred to it and may deal with it at the same inquiry.

- (3) If another complaint is taken to have been referred to the Board or a Committee under subclause (2) the complaint may be dealt with after such an adjournment (if any) as is, in the opinion of the Board or Committee, just and equitable in the circumstances.

6 Release of information

- (1) The person presiding at an inquiry conducted by the Board or a Committee may, on the request of a complainant, the pharmacist concerned or any other person, if the person presiding thinks it appropriate in the particular circumstances of the case:
 - (a) direct that the name of any witness is not to be disclosed in the proceedings, or
 - (b) direct that all or any of the following matters:
 - (i) the name and address of any witness,
 - (ii) the name and address of a complainant,
 - (iii) the name and address of a pharmacist,
 - (iv) any specified evidence,
 - (v) the subject-matter of a complaint,must not be published, except in a publication intended primarily for the use of members of the legal or medical profession.
- (2) A direction may be amended or revoked at any time by the person presiding.
- (3) A direction may be given before or during an inquiry, but is not to be given before the inquiry unless notice is given to:
 - (a) the person who requested the direction, and
 - (b) the complainant or the pharmacist concerned, as appropriate, and
 - (c) such other persons as the person presiding thinks fit,of the time and place appointed by the person presiding for consideration of the request.
- (4) A person must not contravene a direction given under this clause.

Maximum penalty: 20 penalty units.

7 Authentication of documents by the Board or a Committee

Every document requiring authentication by the Board or a Committee may be sufficiently authenticated:

- (a) in the case of the Board, without the seal of the Board, if signed by the president of the Board or by a member of the Board authorised to do so by the president, or
- (b) in the case of a Committee, if signed by the chairperson of the Committee or by a member of the Committee authorised to do so by that chairperson.

8 Nominal complainant

At any inquiry conducted by the Board or a Committee, the registrar or an officer of the Department of Health appointed by the Director-General:

- (a) may, with the consent of a complainant, act as the nominal complainant, and
- (b) when so acting, is, for the purposes of this Act and the regulations, to be taken to be the person who made the complaint.

9 Intervention by Director-General

Without limiting the operation of clause 8, the Director-General may intervene in any inquiry conducted by the Board or a Committee, and has a right to be heard:

- (a) personally or by an officer of the Department of Health, and
- (b) also, in the case of any inquiry conducted by the Board, by a barrister or solicitor who is not an officer of the Department of Health.

10 Expedition of inquiries

- (1) It is the duty of the Board and a Committee to conduct inquiries under this Act and to determine those inquiries as soon as is reasonably practicable.
- (2) Without affecting the generality of subclause (1), the Board or a Committee may postpone or adjourn an inquiry being conducted by it as it thinks fit.

11 Evidentiary certificate

A certificate purporting to have been signed by the registrar, to the effect that:

- (a) a person specified in the certificate was or was not a pharmacist at a time or during a period so specified, or
- (b) the name of a person specified in the certificate was removed from the register at a time so specified, or
- (c) a person specified in the certificate was suspended from practising pharmacy from a time so specified and for a period so specified, or
- (d) a condition, particulars of which are set out in the certificate, was, at a time or during a period so specified:
 - (i) imposed on the registration of a person so specified, or
 - (ii) revoked or not in force,

is required, without proof of the signature of the person by whom the certificate purports to have been signed, to be received by the Board, a Committee and all courts as prima

facie evidence of that fact.

12 Certain complaints may not be heard

- (1) The Board or a Committee may decide not to conduct an inquiry, or at any time to terminate an inquiry, if:
 - (a) a complainant fails to comply with a requirement made of the complainant by the Board or Committee, or
 - (b) the person about whom the complaint is made ceases to be a pharmacist.
- (2) The Board or a Committee is not to conduct or continue any inquiry or any appeal if the pharmacist concerned dies.