

PHARMACY.

No. 98 of 1975.

AN ACT to amend the Pharmacy Act, 1964.

BE it enacted by the Queen's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and the Legislative Assembly of Western Australia, in this present Parliament assembled, and by the authority of the same, as follows:—

[Assented to 1st December, 1975.]

1. (1) This Act may be cited as the *Pharmacy Act Amendment Act, 1975*. Short title and citation.

(2) In this Act the Pharmacy Act, 1964, is referred to as the principal Act. Act No. 72 of 1964.

(3) The principal Act as amended by this Act may be cited as the Pharmacy Act, 1964-1975.

Commence-
ment.

2. This Act shall come into operation on a day to be fixed by proclamation.

Section 5
amended.

3. Section 5 of the principal Act is amended—

(a) as to subsection (1)—

(i) by deleting the word “Dentists”, in line eleven, and substituting the word “Dental”;

(ii) by deleting the passage “meaning.”, at the end of that subsection, and substituting a new passage as follows—

meaning;

“the practice of a pharmaceutical chemist” means—

(a) the professional dispensing of medicines and drugs; and

(b) where appropriate, the sale of goods and the provision of services in association with the professional dispensing of medicines and drugs,

and the verb “to practise” has a corresponding meaning; ;
and

(b) by deleting subsection (2) and substituting a new subsection as follows—

(2) Notwithstanding the provision of the Friendly Societies Act, 1894, whereby in addition to carrying on a dispensary for the purpose of dispensing medicines a friendly society is empowered to carry on with any member of the general public the business and trade ordinarily carried on by a pharmaceutical and dispensing chemist and druggist, that provision shall not be taken to confer on a

friendly society the right in association with any dispensary for the purpose of dispensing medicines to sell goods or provide services other than such as are permitted by this Act in relation to the practice of a pharmaceutical chemist. .

4. Section 12 of the principal Act is amended— Section 12 amended.

(a) by deleting the words “or of an offence against this Act”, in lines three and four of subsection (2); and

(b) by deleting the words “or whose name is erased from the register pursuant to this Act”, in lines seven and eight of subsection (2), and substituting the passage “or who, having been convicted of an offence against this Act, has in relation to that offence also had his licence to practise as a pharmaceutical chemist suspended or had his name erased from the register pursuant to section thirty-two of this Act”.

5. Section 18 of the principal Act is amended by deleting the words “Fifty pounds”, in line seven and line fourteen and substituting the words “Two hundred dollars”. Section 18 amended.

6. Section 21 of the principal Act is amended— Section 21 amended.

(a) as to subsection (1),—

(i) by deleting the word “or”, in line five of subparagraph (ii) of paragraph (a) of that subsection, and substituting the word “and”;

- (ii) by adding after subparagraph (ii) of paragraph (a) a new subparagraph as follows—
 - (iii) passed the examination in a course of First Aid approved by the Council; or ;
- (iii) by inserting before the word “he”, in line one of paragraph (b), the passage “except where the limitation imposed by subsection (2) of this section applies,”;
- (iv) by inserting after the word “competency”, in line two of paragraph (d), the words “or certificate of identity”;
- (v) by inserting after the word “State”, being the last word in paragraph (d), a new passage as follows—
 - ; and—
 - (i) in the case of an applicant from another State of the Commonwealth or from New Zealand if so required, but otherwise at the time of submitting the application, he produces a certificate from the relevant board of pharmacy or other evidence satisfactory to the Council that subsequent to obtaining that qualification he completed normally within the jurisdiction of that board of pharmacy a period of employment in a pharmacy as a pharmaceutical chemist, or as a chemist and druggist, for not less than one year and that he has completed in the State a period of employment of not less than four weeks in a

pharmacy under the direct personal control and supervision of a pharmaceutical chemist; and

- (ii) he produces evidence satisfactory to the Council that he remains in good standing with the society, college or board of pharmacy by which the certificate or diploma was issued; and
 - (iii) he signs a statutory declaration that he has studied the law governing the practice of pharmacy and the sale of poisons in the State ;
- (b) as to subsection (2), by deleting the passage commencing with the word "that", in line six of that subsection, and ending with the word "and", in line eighteen; and
- (c) as to subsection (3), by deleting the word "shall", in line three of that subsection, and substituting the words "may be required to".

7. Section 22 of the principal Act is amended by deleting the words "the prescribed fee", in lines two and three of subsection (2), and substituting the words "any fee that may be prescribed in relation thereto".

Section 22
amended.

8. Section 23 of the principal Act is amended—

Section 23
amended.

- (a) by repealing subsection (1) and re-enacting it with amendments as follows—

23. (1) No person who is a pharmaceutical chemist shall carry on the practice of a pharmaceutical chemist, whether as principal or manager for a principal, and no company or friendly

Restrictions
on the
carrying
on of a
pharmacy.

society registered under the Friendly Societies Act, 1894, shall carry on the practice of a pharmaceutical chemist by and under the supervision of a person who is a pharmaceutical chemist, in any pharmacy unless that pharmacy is registered in accordance with the provisions of this section. ;

(b) as to subsection (3), by inserting after the word “sooner”, in line two of that subsection, the words “suspended or”; and

(c) by adding after subsection (4) two new subsections as follows—

(5) The conditions that may be prescribed for the purposes of this section may include conditions requiring the applicant to make a full disclosure of the persons or bodies having an interest in the business, or any portion of the business, and the extent of each such interest.

(6) The provisions of this section do not apply to or in relation to any pharmacy attached to or operated by a hospital to which the Hospitals Act, 1927, applies. .

Section 25
amended.

9. Section 25 of the principal Act is amended—

(a) as to subsection (1), by deleting the word “January”, in line two of that subsection, and substituting the word “February”;

(b) by deleting subsection (2); and

(c) as to subsection (3),—

(i) by inserting after the word “is”, in line two of that subsection, the words “or is not”; and

- (ii) by deleting the words "that the person is so qualified and registered", in lines five and six, and substituting the words "of the matters relevant to those proceedings stated in the certificate".

10. Section 28 of the principal Act is repealed and re-enacted with amendments as follows—

Section 28
repealed and
re-enacted.

28. (1) Subject to the provisions of this section, a pharmaceutical chemist who, whether on his own behalf or as the agent, employee, partner or other associate of another person or body, concurrently—

Limitation
as to
interests in,
and places
of, business.

- (a) whether or not in association with any other trade or business carries on the practice of a pharmaceutical chemist in or in relation to more than two pharmacies; or
- (b) has a pecuniary interest, whether direct or indirect, in more than two pharmacies,

commits an offence against this Act.

(2) Where, immediately prior to the coming into operation of the Pharmacy Act Amendment Act, 1975, any pharmaceutical chemist, or any partnership constituted solely by persons who are pharmaceutical chemists, lawfully held a pecuniary interest in a pharmacy that would, but for the provisions of this subsection, thereafter contravene the provisions of subsection (1) of this section that interest may continue lawfully to be held until—

- (a) the agreement under which the interest is so held expires; or
- (b) a period of twelve months has elapsed from the coming into operation of that Act,

whichever first shall happen, but not thereafter.

(3) Subject to the provisions of this section, any provision contained in—

- (a) any document purporting to have effect in relation to the practice of a pharmaceutical chemist;
- (b) a lease, licence or agreement to occupy premises for use as a pharmacy; or
- (c) a bill of sale given in respect of any business associated with the practice of a pharmaceutical chemist or a pharmacy,

that in relation to any such business, pharmacy, or practice purports to enable any person other than the licensed pharmaceutical chemist by whom the practice of a pharmaceutical chemist is carried on to control the manner in which it is carried on, or to receive any consideration that varies according to profits or takings, or to require that goods or services are purchased or obtained from a supplier thereby specified, or to have access to records or accounts otherwise than for the purpose of determining whether or not the grantor of a bill of sale is complying with the conditions of that bill of sale, is void.

(4) The provisions of subsection (3) of this section shall not take effect in relation to a document lawfully entered into prior to the coming into operation of the Pharmacy Act Amendment Act, 1975, until a period of five years has elapsed from the coming into operation of that Act.

Section 29
amended.

11. Section 29 of the principal Act is amended by deleting the words “and addresses” in line three.

Section 30
amended.

12. Section 30 of the principal Act is amended by deleting the passage “and in the manner prescribed to the Council, and upon being so notified the

Council shall amend the register accordingly”, in line three to line six, and substituting the words “to the Council”.

13. Section 32 of the principal Act is repealed and re-enacted with amendments as follows—

Section 32
repealed
and
re-enacted.

32. (1) Under the provisions of this section—

Disciplinary
matters.

(a) a pharmaceutical chemist; and

(b) any company or friendly society engaged in carrying on the practice of a pharmaceutical chemist by and under the supervision of a person who is a pharmaceutical chemist,

may be made a party to disciplinary proceedings instituted by the Council.

(2) The provisions of this section shall be taken to apply to and in relation to any shop or other premises in or in part of which the practice of a pharmaceutical chemist was at the time in question, is, or is intended to be, carried on.

(3) Proceedings under this section shall be instituted by the service by the registrar upon a pharmaceutical chemist, company or friendly society of a summons in the prescribed form requiring he or it to show cause, at a time and place specified in the notice, why he or it should not be dealt with in accordance with the provisions of this section, and that summons shall specify the grounds upon which the proceedings are to be brought in sufficient detail to enable the party so required to show cause to the Council to know what has to be answered.

(4) The registrar may by a summons in the prescribed form require the attendance at disciplinary proceedings before the Council of any pharmaceutical chemist, or any company or

friendly society subject to this Act, any director or secretary of a company which is a party to those proceedings, any officer or trustee of a friendly society which is such a party, and any other person who in his opinion is likely to be able to give evidence or produce documents touching the matter in question, or who a party desires to call as a witness.

"This Act"
includes
regulations
cf. Act No.
30 of 1918,
s. 4.

(5) In conducting any proceedings the Council is not bound by rules of evidence or, subject to the provisions of this Act, of legal procedure but may inform itself in any manner the Council thinks fit, but a party shall be afforded an opportunity to be heard and to examine witnesses and may be represented by a legal practitioner.

(6) Proceedings under this section may be instituted if the Council has reason to believe that the pharmaceutical chemist, company or friendly society to be required to show cause—

- (a) has been convicted of an offence that in the opinion of the Council renders that person, company or friendly society unfit to continue to be engaged in carrying on the practice of a pharmaceutical chemist;
- (b) being a pharmaceutical chemist, is by reason of mental or physical incapacity, alcohol, or addiction to any deleterious drug unfit to continue to practise;
- (c) is guilty of carelessness, incompetence, impropriety, misconduct or infamous conduct in a professional respect;
- (d) is guilty of the breach of an undertaking given by or on behalf of that party pursuant to previous proceedings under this section; or

(e) is guilty of contravening the regulations relating to advertising,

but upon no other grounds.

(7) Where upon any proceedings being instituted under this section the Council determines that a person, company or friendly society has failed to show cause why he or it should not be dealt with in accordance with the provisions of this section, or if that person, company or friendly society fails without reasonable excuse to appear before the Council, the Council may—

(a) where that person is a pharmaceutical chemist,—

(i) order that his name be erased from the register;

(ii) order that for such period as is specified in the order, not being a period in excess of three years, he be prohibited from carrying on the practice of a pharmaceutical chemist, and that his licence be accordingly suspended;

(iii) impose on him a fine not exceeding five hundred dollars; or

(iv) censure him;

(b) in the case of a company or friendly society—

(i) impose on it a fine not exceeding five hundred dollars; or

(ii) censure it; and

(c) in any case—

(i) order any party to the proceedings to pay any costs and expenses of or incidental to those proceedings;

- (ii) require any party to the proceedings to give an undertaking to the Council in such terms as the Council thinks fit, either personally or in the case of a company or friendly society under the hand of a proper officer; and
- (iii) impose or vary any condition in relation to a licence or registration.

(8) Any determination of the Council made under this section—

- (a) shall be recorded in the register, which shall be varied accordingly;
- (b) shall within seven days be notified in writing by the registrar to the pharmaceutical chemist, company or friendly society required to show cause at the last address recorded with the Council; and
- (c) may be expressed to be conditional upon terms to be therein specified, but otherwise has immediate effect.

(9) A summons issued under this section—

- (a) may require the production of any document or thing in the custody or control of the person or body so summoned; and
- (b) may be enforced by the Supreme Court or a Judge, on application by the registrar, in the same manner as a subpoena to the like effect issued by the Supreme Court in a civil action.

(10) The Council may inspect documents or other exhibits before the Council, may retain them for such reasonable period as the registrar certifies to be necessary, and may make copies of so much of them as is relevant to a matter before the Council.

(11) A witness before the Council has the same protection as a witness in a matter before the Supreme Court, and a statement or disclosure made by a person before the Council is not, except in an appeal under this Act, admissible in evidence against that person in any civil or criminal proceedings.

(12) Any fine, costs or expenses ordered to be paid under this section may be recovered from the person or body determined by the Council to be liable therefor in any court of competent jurisdiction as a debt due to the Council.

14. The principal Act is amended by inserting after section 32 a new section, to stand as section 32A, as follows—

Section 32A
added.

32A. (1) Where by reason of extraordinary circumstances it is in the public interest so to do, the Council may, subject to the approval of the Minister, by order suspend any licence or registration granted under this Act to or in relation to any person, company, friendly society, or premises, for a period not exceeding twenty-one days.

Peremptory
suspension.

(2) An order under this section has immediate effect, but notice of the order shall be given to the holder of the licence or registration as soon as practicable.

15. The principal Act is amended by inserting after section 32 a new section, to stand as section 32B, as follows—

Section 32B
added.

32B. A person, company or friendly society that is aggrieved by—

Appeals in
disciplinary
matters.

(a) a determination of the Council under section thirty-two of this Act; or

- (b) the peremptory suspension of a licence or registration under section thirty-two A of this Act,

may appeal against the decision in the manner prescribed by section twenty-seven of this Act and the regulations to a Judge of the Supreme Court.

Section 33
amended.

16. Section 33 of the principal Act is amended—

- (a) by deleting the passage “subsection (2) or subsection (3) of”, in line three of subsection (1) and lines three and four of subsection (2); and

- (b) by adding a new subsection as follows—

(3) Where any licence or registration is suspended pursuant to section thirty-two or section thirty-two A of this Act, that licence or registration shall be deemed not to have effect during the currency of the period of suspension.

Section 34
amended.

17. Section 34 of the principal Act is amended—

- (a) by inserting after the word “register”, in line two, the words “or whose licence is cancelled or for the time being suspended”; and

- (b) by deleting the words “when his name is so erased”, in line six, and substituting the words “at the time of the relevant determination of the Council”.

Section 36
amended.

18. Section 36 of the principal Act is amended—

- (a) as to subsection (1)—

- (i) by deleting the words “and respectively engaged in carrying on the business of a chemist and

druggist or", in lines five to seven, and substituting the words "that is engaged in carrying on the practice";

- (ii) by deleting the words "business of a chemist and druggist or", in lines eleven and twelve, and substituting the word "practice";
- (iii) by deleting the words "that business", in line seventeen, and substituting the words "a practice or business of that kind"; and
- (iv) by deleting the words "One hundred pounds", in line eighteen, and substituting the words "One thousand dollars";

(b) by inserting after subsection (1) a new subsection, to stand as subsection (1a), as follows—

(1a) Except in relation to a pharmacy in respect of which he or it is registered as having an interest pursuant to section twenty-three of this Act, no person shall have a pecuniary interest, whether direct or indirect, in any pharmacy.

Penalty: One thousand dollars. ;

(c) as to subsection (2)—

- (i) by deleting the words "business of a chemist and druggist or", in lines three and four, and substituting the word "practice";
- (ii) by deleting the word "business", in line seven, and substituting the word "practice";
- (iii) by deleting the words "business as mentioned in this paragraph", in line thirteen, and substituting the word "practice";

- (iv) by deleting the word "business", in line nineteen, and substituting the words "practice or business of that kind";
- (v) by deleting the words "business of a chemist and druggist or", in line twenty-four, and substituting the word "practice";
- (vi) by deleting the word "business", in line twenty-seven, line twenty-eight and line thirty-three, and substituting the word "practice";
- (vii) by deleting the words "business of a chemist and druggist or", in lines thirty-nine and forty, and substituting the word "practice";
- (viii) by deleting the word "business" in line forty-eight and again in line fifty-two, and substituting the word "practice";
- (ix) by deleting subparagraph (i) of paragraph (d); and
- (x) by deleting the passage "business of a pharmaceutical chemist", in the last two lines, and substituting a new passage as follows—

practice of a pharmaceutical chemist; or

- (iv) to prevent two or more pharmaceutical chemists constituting a partnership all the members of which are pharmaceutical chemists from carrying on in relation to not more than two pharmacies any

practice that could lawfully have been carried on by one such partner ; and

(d) by adding a new subsection as follows—

(3) For the purposes of this section a person shall not be taken to have a pecuniary interest in any pharmacy by reason only that—

- (a) he is an employee engaged in the practice carried on there; or
- (b) he or it is the grantee of a bill of sale given in respect thereto. .

19. Section 37 of the principal Act is amended by deleting the words “One hundred pounds”, in the next to last line, and substituting the words “One thousand dollars”. Section 37 amended.

20. Section 38 of the principal Act is amended— Section 38 amended.

(a) as to subsection (1)—

- (i) by deleting the passage “business of a chemist or druggist, or”, in lines two and three, and substituting the words “practice of a”; and
- (ii) by deleting the word “business”, in line twelve and again in line fifteen, and substituting the word “practice”;

(b) as to subsection (2)—

- (i) by deleting the words “business of a chemist and druggist or”, in line three, and substituting the word “practice”; and
- (ii) by deleting the word “business”, in line six, line eleven and line thirteen, and substituting the word “practice”; and

(c) as to subsection (3)—

(i) by deleting the words “fifty pounds”, in line four, and substituting the words “five hundred dollars”; and

(ii) by deleting the words “five pounds”, in line five, and substituting the words “fifty dollars”.

Section 39
repealed
and
re-enacted.

21. Section 39 of the principal Act is repealed and re-enacted with amendments as follows—

Dispensing.

39. (1) A person shall not carry out the dispensing of any medicine or drug unless he is—

(a) a pharmaceutical chemist;

(b) a person who carries out such dispensing under the immediate personal supervision of a pharmaceutical chemist;

(c) a medical practitioner; or

(d) a dentist or veterinary surgeon acting in the course of his profession.

(2) For the purposes of this section, a person shall be deemed not to be under the immediate personal supervision of a pharmaceutical chemist in a pharmacy if the number of persons engaged in dispensing medicine or drugs in that pharmacy who are not pharmaceutical chemists exceeds the number of pharmaceutical chemists exercising such supervision in that pharmacy.

Section 40
amended.

22. Section 40 of the principal Act is amended by deleting the words “Fifty pounds”, in line twelve, and substituting the words “Two hundred dollars”.

23. The principal Act is amended by inserting after section 40 a new section, to stand as section 40A, as follows—

Section 40A
added.

40A. (1) No pharmaceutical chemist, company or friendly society engaged in carrying on the practice of a pharmaceutical chemist in a pharmacy shall sell or otherwise trade in, supply or provide any goods or services, not being medicines or drugs, unless those goods or services are—

Limitation
on trading.

- (a) goods or services of a kind which were sold, traded in, supplied or provided in a pharmacy in the State on the first day of July, 1975; or
- (b) goods or services approved by the Council from time to time as being goods or services that may be sold, traded in, supplied or provided by a pharmacy in association with the dispensing of medicines or drugs.

(2) An approval of the Council for the purposes of paragraph (b) of subsection (1) of this section may be limited in application to any specified time, place or circumstance.

(3) A person aggrieved by—

- (a) a determination of the Council that paragraph (a) of subsection (1) of this section does not apply to any goods or services; or
- (b) the refusal of the Council to approve any goods or services for the purposes of paragraph (b) of subsection (1) of this section,

may appeal in writing to the Minister who may thereupon give a direction to the Council in the matter, and the Council shall give effect to any such direction.

(4) Subject to the provisions of subsection (3) of this section, any question as to whether goods or services are or are not goods or services the sale, trading in, supply or providing of which would contravene the provisions of subsection (1) of this section shall be determined by the Council.

(5) Any contravention of the provisions of subsection (1) of this section is an offence against this Act.

(6) In any proceedings for an offence against the provisions of this section—

- (a) the registrar may give a certificate in the form prescribed and signed by him with respect to any determination of the Council made pursuant to subsection (4) of this section; and
- (b) the production of such a certificate purporting to be signed by the registrar shall, without proof of the signature of the person appearing to have signed the certificate or that he is the registrar, be sufficient evidence of the determination of the Council in relation to goods or services of the kind therein specified.

Section 41
repealed
and
re-enacted.

24. Section 41 of the principal Act is repealed and re-enacted with amendments as follows—

Misrepresentation
and allied
offences.

41. (1) Any person who—

- (a) wilfully makes or causes to be made any false entry in the register;
- (b) wilfully procures or attempts to procure, on his own behalf or that of another person, the registration of any person or premises or any licence under this Act by means of a false document, representation or statement;

- (c) aids or assists any other person to contravene the provisions of this section,

commits an offence against this Act.

Penalty: Five hundred dollars or imprisonment for twelve months.

(2) For the purposes of this section any document, or any representation or statement whether verbal or otherwise, shall be taken to be false if the person in question is shown to have known or reasonably ought to have known that it was—

- (a) false or misleading in a material particular; or
 (b) likely to deceive or mislead a person in a material way. .

25. Section 45 of the principal Act is amended— Section 45 amended.

- (a) by deleting the words “twenty-five pounds”, in lines seven and eight, and substituting the words “one hundred dollars”; and
 (b) by deleting the words “two pounds ten shillings”, in line nine, and substituting the words “ten dollars”.

26. Section 46 of the principal Act is amended Section 46 amended. by deleting the word “business”, in line seven and line nine, and substituting the word “practice”.

27. Subsection (2) of section 47 of the principal Act is amended— Section 47 amended.

(a) in paragraph (c)—

- (i) by deleting the word “and”, in line seven; and

- (ii) by inserting after the word "pharmacies", being the last word of the paragraph, the passage ", and such other fees as may be required";
- (b) in paragraph (i), by deleting the word "thereof", in line four, and substituting the words "or suspension of any such registration";
- (c) in paragraph (j), by inserting after the word "against", in line one, the words "determinations or other";
- (d) in paragraph (k), by inserting after the word "thirty-two", in line three, the passage ", thirty-two A";
- (e) in paragraph (n), by deleting the word "business", in line four, and substituting the word "practice";
- (f) in paragraph (o), by inserting after the word "any", in line five, the passage "pharmacy or other premises to which this Act applies, and any equipment therein, and any"; and
- (g) in paragraph (q), by deleting the words "fifty pounds", in lines one and two, and substituting the words "one hundred dollars".
-