

Western Australia

Pharmacy Act 1964

As at 27 May 2008

Version 04-d0-03

Extract from www.slp.wa.gov.au, see that website for further information

Pharmacy Act 1964

CONTENTS

Part I — Preliminary provisions

1.	Short title	2
2.	Commencement	2
4.	Repeal and savings	2
5.	Interpretation	2
5A.	Act not to apply to veterinary pharmacy at Murdoch University	4

Part II — Administration

6.	Pharmaceutical Society established	5
7.	Constitution of Council	5
8.	Council a body corporate	5
9.	Powers of Council	6
10.	Election of Council	6
11.	Council members may be removed from office	7
12.	Resignation or disqualification	7
13.	Vacancies in office	8
14.	Meetings of the Council	8
15.	Appointment of officers and examiners	8
16.	Funds of the Council	9
16A.	Accounts	10
16B.	Audit	10
16C.	Annual report	10
19.	Exemption from liability	11

**Part III — Registration of
pharmaceutical chemists and
pharmacies**

20.	Register	12
21.	Qualifications for registration	12
22.	Registration of pharmaceutical chemists	15
23.	Restrictions on the carrying on of a pharmacy	16
24.	Fees for registration, etc.	17
25.	List of pharmaceutical chemists to be published	17

**Part IV — Provisions relating to the
practice of pharmacy**

26.	Licence to practise as a pharmaceutical chemist	18
28.	Limitation as to interests in, and places of, business	19
29.	Alterations to register	20
30.	Notice to be given of change of address or death	21
31.	Notification of engagement of chemist	21
31A.	Investigator	21
31B.	Report of investigator	22
31C.	Powers of investigator	22
31D.	Warrant to enter premises	24
31E.	Issue of warrant	25
31F.	Execution of warrant	26
31G.	Incriminating information, questions, or documents	26
31H.	Failure to comply with investigation	27
31I.	Obstruction of investigator	28
32.	Disciplinary matters	28
32A.	Peremptory suspension	30
32B.	Reviews in disciplinary matters	31
33.	Cancellation of licence	31
34.	Restriction on employment of person whose name is erased from register	31
35.	Examination to be directed by Council	32

Part V — Miscellaneous provisions

36.	Persons entitled to carry on business as chemists	33
36A.	Practice may be carried on by amalgamated friendly society	35
36B.	Certain advertisements prohibited	35

37.	Certain titles to be used only by chemists	37
38.	Business of pharmaceutical chemist to be carried on by principal or a qualified assistant	37
39.	Dispensing	38
40.	Use of automatic machines prohibited	39
40A.	Limitation on trading	40
41.	Misrepresentation and allied offences	41
42.	Legal proceedings by Council	42
43.	Offences and procedure	42
44.	Time for taking proceedings	42
45.	General penalty	42
46.	Evidence	43
47.	Regulations	43

First Schedule

Acts repealed by this Act

Second Schedule

Register of Pharmaceutical Chemists

Third Schedule

Certificate of Registration as a Pharmaceutical Chemist

Notes

Compilation table	49
Provisions that have not come into operation	51

Western Australia

Pharmacy Act 1964

An Act to consolidate and amend the law relating to pharmacy and the registration of pharmaceutical chemists and of pharmacies; and for incidental and other purposes.

Part I — Preliminary provisions

1. Short title

This Act may be cited as the *Pharmacy Act 1964*¹.

2. Commencement

This Act shall come into operation on a date to be fixed by proclamation¹.

[3. *Repealed by No. 10 of 1998 s. 76.*]

4. Repeal and savings

- (1) The Acts specified in the First Schedule are repealed.
- (2) Without limiting the provisions of the *Interpretation Act 1918*², generally and in particular the provisions of sections 15 and 16 of that Act, it is hereby declared that the repeal effected by this Act does not affect any document or other instrument made or anything whatsoever done under any provision of an Act repealed by this Act or under any corresponding former provision, and the document or other instrument or the thing, so far as it is subsisting or in force at the time of the repeal and could have been made or done under this Act, shall continue and have effect as if it had been made or done under the corresponding provision of this Act and as if that provision had been in force when the document or other instrument was made or the thing was done.

5. Interpretation

- (1) In this Act unless the context requires otherwise —
company means a company, within the meaning of the *Corporations Act 2001* of the Commonwealth, that is taken to be registered in Western Australia;
Council means the Pharmaceutical Council of Western Australia constituted under this Act;

dentist means a person who is a dentist registered under the *Dental Act 1939*;

dispensing in relation to a medicine or a drug means supplying the medicine or drug on and in accordance with a prescription duly given by a medical practitioner, a nurse practitioner registered under the *Nurses and Midwives Act 2006*, a dentist or a registered veterinary surgeon;

friendly society means a corporation that is a friendly society within the meaning of section 16C of the *Life Insurance Act 1995* of the Commonwealth;

medical practitioner means a person who is a medical practitioner registered under the *Medical Act 1894*, or any corresponding previous enactment;

pharmaceutical chemist means a person who is a pharmaceutical chemist registered under the provisions of this Act, or of an Act repealed by this Act, or of the Acts of which an Act repealed by this Act was a compilation;

pharmacy, in relation to premises, means a shop or other premises, or the part of a shop or other premises, in which the business of a pharmaceutical chemist is, or is intended to be, carried on;

register means the Pharmaceutical Register of Western Australia required to be kept under this Act;

registered veterinary surgeon means a person who is registered, or who is deemed to be registered, as a veterinary surgeon under the *Veterinary Surgeons Act 1960*;

registrar means the registrar appointed by the Council under this Act;

sale includes exposing or offering for sale or having in possession for sale and also delivery, whether with or without consideration, in any shop or store or premises appurtenant thereto by the keeper thereof or by his servant or agent; and the verb **to sell** has a corresponding meaning;

s. 5A

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.

[(2) repealed]

[Section 5 amended by No. 98 of 1975 s. 3; No. 10 of 1982 s. 28; No. 26 of 1999 s. 95(2) and (3); No. 9 of 2003 s. 32; No. 20 of 2003 s. 40; No. 50 of 2006 s. 114.]

5A. Act not to apply to veterinary pharmacy at Murdoch University

(1) This Act does not apply to or in relation to the veterinary pharmacy operated by Murdoch University.

(2) In subsection (1) —

Murdoch University means the university referred to in section 4 of the *Murdoch University Act 1973*.

[Section 5A inserted by No. 93 of 1980 s. 2.]

Part II — Administration

6. Pharmaceutical Society established

- (1) The Pharmaceutical Society established in the State at the commencement of this Act shall be the Pharmaceutical Society of Western Australia, and may retain that name and title.
- (2) Every pharmaceutical chemist shall be a member of the Pharmaceutical Society of Western Australia.

7. Constitution of Council

- (1) For the purposes of this Act and for the management of the Pharmaceutical Society of Western Australia there shall be a Council by the name of the “Pharmaceutical Council of Western Australia”, which Council shall consist of 7 members.
- (2) Without limiting the operation of section 4, the persons who immediately before the date of the commencement of this Act were members of the Council shall, subject to this Act, continue to hold office as members thereof until the expiration of the period for which they were elected, and the person who immediately before that date was the president of the Council shall, subject to this Act, continue to hold that office until the expiration of the term of office for which he was elected.

8. Council a body corporate

- (1) The Council shall be a body corporate, with perpetual succession and a common seal, and shall be capable in law of suing and being sued in its corporate name, and may acquire, hold and dispose of real and personal property, and may do and suffer all that bodies corporate may do and suffer.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the seal of the Council affixed to any document or other instrument and shall deem that it was duly affixed.

s. 9

- (3) The Council is deemed to have the powers of an institution within the meaning of the *Public Institutions and Friendly Societies Lands Improvement Act 1892*, and with the approval of the Governor may exercise in respect of lands vested in the Council all or any of the powers conferred on institutions by that Act; but the provisions of that Act requiring the concurrence of three-fourths of the members of an institution shall for the purposes of this Act be deemed not to apply.

9. Powers of Council

- (1) The Council may, with the approval of the Governor, sell, lease or exchange any lands vested in it, and pay or receive money by way of equality of exchange.
- (2) The powers of selling, exchanging, mortgaging or leasing lands that are conferred on the Council by this Act extend to land held in trust for any special purpose, notwithstanding the terms of the trust; but the proceeds of any such sale, and the land or money obtained by any such exchange, shall be subject to the like trusts, so far as may be, as the land so disposed of, and no power shall be exercised under this section without the approval of the Governor.
- (3) The Council may promote, establish and maintain or assist in the promotion, establishment and maintenance of schools of pharmacy or courses of instruction for pharmaceutical students, and may use all or any part of the funds of the Council for those purposes.

10. Election of Council

- (1) At the expiration of the term for which the members of the Council in office at the commencement of this Act are elected —
- (a) pharmaceutical chemists may elect, in the manner and for such term or varying terms and subject to such conditions as to eligibility for and tenure of office, as

shall be prescribed, 7 of their number to form and be the members of the Council; and

- (b) the members of the Council formed pursuant to the provisions of paragraph (a) shall elect, as often as shall be necessary, for such respective terms and subject to such conditions as to eligibility for and tenure of office, as shall be prescribed, 2 of their number to the respective offices of president and deputy president.
- (2) The provisions of this section shall not affect the validity of the constitution or the powers or functions of the Council in office at the date of the commencement of this Act, or the term of office of its members.

11. Council members may be removed from office

The Governor may at any time and from time to time remove from office the president or the deputy president or any other member of the Council.

12. Resignation or disqualification

- (1) Any member of the Council may resign from his office by notice in writing signed by him.
- (2) Any member of the Council who is or becomes bankrupt or insolvent, or is convicted of an indictable offence, or becomes permanently incapable of performing his duties as a member of the Council, or becomes a person who would not be qualified to be appointed a member, 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 32, shall be disqualified from holding office as a member of the Council.

[Section 12 amended by No. 98 of 1975 s. 4.]

s. 13

13. Vacancies in office

- (1) The office of a member of the Council becomes vacant if the member —
 - (a) is or becomes disqualified under this Act;
 - (b) is absent, except on leave granted by the Council, from 3 consecutive meetings of the Council;
 - (c) dies; or
 - (d) resigns his office pursuant to the provisions of this Act.
- (2) Where the office of a member of the Council becomes vacant, the pharmaceutical chemists may in the manner prescribed, elect to that office a pharmaceutical chemist, who shall hold office only for the residue of the term during which the member in lieu of whom he is elected would have held office, and no longer.

14. Meetings of the Council

- (1) At every meeting of the Council the president, or in his absence the deputy president, shall preside, but if both the president and deputy president are absent from any meeting of the Council, the members present shall elect one of their number so present to be chairman of that meeting.
- (2) Each member of the Council shall have one vote, and all questions at any meeting of the Council shall be decided by a majority of the votes of the members present.
- (3) A quorum of the Council is constituted by not less than 4 members, and no action or proceedings of the Council is invalidated by reason only that there is a vacancy or vacancies in the membership of the Council provided that the number of members be not reduced below 4.

15. Appointment of officers and examiners

- (1) The Council shall appoint a registrar and may appoint such other officers and such examiners as it considers necessary for

carrying out the provisions of this Act, and may remove any of those officers or examiners at any time.

- (2) The remuneration of the registrar, other officers, and examiners shall be paid out of the funds of the Council, and shall be at such rates as the Council may from time to time determine.
- (3) Without limiting the operation of section 4 the persons who immediately before the date of the commencement of this Act were respectively the registrar or other officer of the Council or an examiner shall be deemed each to have been appointed in accordance with the provisions of this Act to those respective offices, and shall subject to this Act continue to hold those respective offices under this Act.

16. Funds of the Council

- (1) The funds of the Council shall consist of —
 - (a) the fees prescribed by this Act and the regulations made under this Act and payable to the Council;
 - (b) grants (if any) by the Government of the State, and all gifts, donations, devises and bequests made by any person to the Council, but subject to any trusts declared in relation thereto; and
 - (c) all money or property that comes into the hands of, or is acquired by, the Council under and for the purposes of this Act.
- (2) The funds of the Council may be applied by it for —
 - (a) any of the purposes of this Act;
 - (b) the furtherance of education and research in pharmacy; and
 - (c) any other purpose that in the opinion of the Council will better enable it to exercise and perform its powers and duties under this Act and facilitate the carrying out or giving effect to the objects and purposes of this Act.

s. 16A

16A. Accounts

- (1) The Council shall cause to be kept proper accounts and records of the transactions and affairs of the Council and shall prepare financial statements in accordance with Australian Accounting Standards.
- (2) The financial statements shall be prepared on an accrual basis unless the Council determines otherwise.

[Section 16A inserted by No. 77 of 1987 s. 3.]

16B. Audit

The accounts and financial statements of the Council shall be audited at least once a year, at the expense of the Council, by an auditor appointed by the Council with the prior approval of the Minister.

[Section 16B inserted by No. 77 of 1987 s. 3.]

16C. Annual report

- (1) The Council shall on or before 30 June in each year make and submit to the Minister an annual report of its proceedings for the preceding year ending on 31 December together with a copy of the financial statements and the auditor's report.
- (1a) The Council's annual report is to include details of —
 - (a) the number, nature, and outcome, of —
 - (i) investigations and inquiries undertaken by, or at the direction of, the Council; and
 - (ii) matters that have been brought before the State Administrative Tribunal by the Council;
 - (b) the number and nature of matters referred to in paragraph (a) that are outstanding;
 - (c) any trends or special problems that may have emerged;
 - (d) forecasts of the workload of the Council in the year after the year to which the report relates; and

- (e) any proposals for improving the operation of the Council.
- (2) The Minister shall cause a copy of each annual report, financial statements and auditor's report submitted under subsection (1) to be laid before each House of Parliament within 14 sitting days of that House after receipt of the report by the Minister.

[Section 16C inserted by No. 77 of 1987 s. 3; amended by No. 55 of 2004 s. 925.]

[17, 18. Repealed by No. 55 of 2004 s. 926.]

19. Exemption from liability

No act, matter or thing done or omitted to be done in good faith by the Council or by any member of the Council, or by the registrar or any other officer of the Council, in the administration or intended administration of this Act, or in the exercise or performance or intended exercise or performance of any of its or his powers, functions or duties under this Act, shall subject the Council or any member, or the registrar or any officer of the Council, to any liability in respect thereof.

Part III — Registration of pharmaceutical chemists and pharmacies

20. Register

- (1) The Council shall keep a register to be called “The Pharmaceutical Register of Western Australia”, which register shall be in the form contained in the Second Schedule.
- (2) The Council shall, upon the application of any person entitled to be registered as a pharmaceutical chemist, register or cause to be registered the name of the applicant, together with his residence or place of business, his qualification and the date of the registration, in the register.
- (3) The register kept by the Council and in use immediately before the date of the commencement of this Act under the provisions of the Acts repealed by this Act shall be deemed to be the register required to be kept under and for the purposes of this Act, and subject to the provisions of this Act shall continue to be kept by the Council as such register.
- (4) Every pharmaceutical chemist whose name, at the date of the commencement of this Act, is registered in the register kept by the Council and in use immediately before that date under the provisions of the Acts repealed by this Act, shall be and be deemed to be a pharmaceutical chemist registered under the provisions of this Act.

21. Qualifications for registration

- (1) A person is entitled to apply to the Council for registration as a pharmaceutical chemist under this Act if he has attained the age of 18 years, and —
 - (a) he has —
 - (i) completed a prescribed course of practical training of not less than 2 000 hours’ duration with a pharmaceutical chemist or chemists in

accordance with such conditions as are prescribed and in premises that are approved by the Council; and

- (ii) passed all prescribed examinations or such examinations as in the opinion of the Council are substantially equivalent to those prescribed examinations; and
- (iii) passed the examination in a course of First Aid approved by the Council;

or

- (b) except where the limitation imposed by subsection (2) applies, he has served for at least 4 years as an apprentice in the business of a chemist and druggist or pharmaceutical chemist in any State of the Commonwealth or in the Dominion of New Zealand, in the keeping of open shop for the compounding and dispensing of prescriptions of legally qualified medical practitioners, and has passed all prescribed examinations or such examinations as in the opinion of the Council are substantially equivalent to those prescribed examinations; or
- (c) he has, in special circumstances proved to the satisfaction of the Council to exist, completed some other course of training approved by the Council, and has passed an examination or examinations prescribed or approved by the Council; or
- (d) he holds a certificate or diploma of competency or certificate of identity as a pharmaceutical chemist, or as a chemist and druggist, from any society, college or board of pharmacy recognised by the regulations, which certificate or diploma was issued to him to show that he has passed an examination conducted in the English language and of a standard that in the opinion of the Council is substantially equivalent to that prescribed for

s. 21

the registration of a pharmaceutical chemist in this State;
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 4 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.
- (2) A person who claims to be registered as a pharmaceutical chemist under this Act by virtue of the qualification prescribed by subsection 1(b), shall not be so registered unless he proves to the satisfaction of the Council that he obtained that qualification on or before 31 December 1968.
- (3) A person who applies for registration by virtue of the qualification prescribed by subsection 1(d), may be required to lodge with his application, for the inspection of the Council, the certificate or diploma entitling him so to apply.

[Section 21 amended by No. 98 of 1975 s. 6; No. 26 of 1977 s. 2.]

22. Registration of pharmaceutical chemists

- (1) When any person has applied to the Council to be registered as a pharmaceutical chemist under this Act, and has proved to the satisfaction of the Council that —
- (a) he has attained the age of 18 years;
 - (b) he is entitled to apply for registration by virtue of compliance with the requirements of section 21;
 - (c) the certificate or diploma testifying to his qualification was after examination duly obtained by him from a society, college or board of pharmacy recognised by the regulations, and since obtaining that certificate or diploma his name has not been removed from the register of any country for any cause that would disqualify him from being registered under this Act; and
 - (d) he has such an adequate knowledge of the English language as to be able readily and intelligibly to speak, read and write that language,

the Council may register the person as a pharmaceutical chemist under this Act by causing his name to be registered in the register in accordance with the provisions of section 20(2), or the Council may refuse to register the person.

- (2) A person registered as a pharmaceutical chemist under this Act may, upon payment of any fee that may be prescribed in relation thereto, obtain from the Council a certificate, in the form contained in the Third Schedule that he has been duly registered as a pharmaceutical chemist.
- (3) Where the Council refuses to register a person as a pharmaceutical chemist under this section, that person may apply to the State Administrative Tribunal for a review of the refusal.

[Section 22 amended by No. 98 of 1975 s. 7; No. 26 of 1977 s. 3; No. 55 of 2004 s. 927.]

s. 23

23. Restrictions on the carrying on of a pharmacy

- (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 society, 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.
- (2) The Council may upon the application of a pharmaceutical chemist, or of a company or friendly society referred to in subsection (1), register in his or its name any pharmacy in which the Council is satisfied that the pharmaceutical chemist practices or carries on, or intends to practise or carry on, business as a pharmaceutical chemist, either as principal or manager for a principal, or the company or friendly society carries on or intends to carry on the business of a chemist and druggist or of a pharmaceutical chemist, or the Council may refuse the application or may withhold registration of the pharmacy until the applicant complies with such conditions as may be prescribed.
- (3) The registration of a pharmacy under this section shall, unless sooner suspended or cancelled, remain in force until 30 June next following the date of the registration, and the Council may, upon payment of the prescribed fee, issue a certificate in the prescribed form of registration of a pharmacy.
- (4) Where the Council refuses to register a pharmacy under this section or withholds registration until compliance with prescribed conditions, the applicant may apply to the State Administrative Tribunal for a review of the refusal.
- (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 and Health Services Act 1927* applies.

[Section 23 amended by No. 98 of 1975 s. 8; No. 103 of 1994 s. 18; No. 2 of 1999 s. 22(a); No. 26 of 1999 s. 95(4); No. 55 of 2004 s. 928.]

24. Fees for registration, etc.

The fees for registration as a pharmaceutical chemist and for registration of a pharmacy and the issue of any certificate or registration under this Act, or for any examination required by this Act, shall be those prescribed from time to time by the regulations, and shall be paid to the Council previously to any such registration or examination or the issue of any such certificate.

25. List of pharmaceutical chemists to be published

- (1) The Council shall, in the month of February in every year, cause to be printed, published and offered for sale, at a reasonable price, a correct list of all pharmaceutical chemists in alphabetical order according to their surnames, with their respective residences or places of business, and shall also cause such list to be published at the same time in the *Gazette*.

[(2) repealed]

- (3) A certificate under the hand of the registrar certifying that a person is or is not duly qualified and registered according to the provisions of this Act shall be *prima facie* evidence in all courts and in all legal proceedings of the matters relevant to those proceedings stated in the certificate.

[Section 25 amended by No. 98 of 1975 s. 9.]

**Part IV — Provisions relating to the practice of
pharmacy**

26. Licence to practise as a pharmaceutical chemist

- (1) A pharmaceutical chemist shall not practise or carry on business as a pharmaceutical chemist or, as agent, employee or otherwise, be engaged with any other person in the practice or business of a pharmaceutical chemist, except under the authority of a licence from the Council as prescribed by the regulations and unless he is domiciled in the State.

Penalty: \$100.

- (2) An application for a licence under this section shall be made to the Council in the prescribed manner and be accompanied by the prescribed fee, and the Council may in its discretion —
- (a) grant the licence;
 - (b) refuse the licence; or
 - (c) grant the licence subject to the applicant first complying with and fulfilling such conditions as the Council considers it advisable or necessary in the public interest to impose.
- (3) An applicant for a licence under this section whose application is refused, or is granted subject to conditions imposed by the Council, may apply to the State Administrative Tribunal for a review of the decision.
- (4) Every licence under this section shall be issued in the prescribed form and shall, unless sooner cancelled, remain in force until 30 June next following the date of the issue thereof.
- (5) If a registered pharmaceutical chemist is convicted of an offence under subsection (1) the Council may refer the matter to the State Administrative Tribunal and the Tribunal may order that his name be erased from the register for such period and subject to such conditions as the Tribunal may specify in the order.

[Section 26 amended by No. 113 of 1965 s. 8; No. 55 of 2004 s. 929.]

[27. *Repealed by No. 55 of 2004 s. 930.*]

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

- (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 —
- (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 2 pharmacies; or
 - (b) has a pecuniary interest, whether direct or indirect, in more than 2 pharmacies,

commits an offence against this Act.

- (2) Where, immediately prior to the coming into operation of the *Pharmacy Act Amendment Act 1975*¹, 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) 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 12 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

s. 29

- (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) 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*¹, until a period of 5 years has elapsed from the coming into operation of that Act.

[Section 28 inserted by No. 98 of 1975 s. 10.]

29. Alterations to register

- (1) The Council shall from time to time make all necessary alterations in the register relating to the qualifications of pharmaceutical chemists, and may write or cause to be written a letter addressed to any pharmaceutical chemist, according to his last known address, to inquire whether he has changed his residence or place of business.
- (2) A letter under this section shall be sent by prepaid registered post, and if no answer to the letter is received within 3 months from the date on which it was posted, the Council may erase from the register the name of the pharmaceutical chemist to whom the letter was addressed.

- (3) The Council may restore to the register the name of a pharmaceutical chemist that has been erased pursuant to this section, upon the personal application of that pharmaceutical chemist and production of his certificate or satisfactory proof of his former registration, and payment of all fees in arrear.

[Section 29 amended by No. 98 of 1975 s. 11.]

30. Notice to be given of change of address or death

- (1) A pharmaceutical chemist who changes his place of residence, business or employment shall thereupon notify the change at the time to the Council.
- (2) The Registrar of Births, Deaths and Marriages, on receiving information of the death of a pharmaceutical chemist, shall thereupon transmit notice thereof by post to the registrar of the Council, and the registrar on receipt of such notice shall inform the Council of the death and the Council shall remove the name of that chemist from the register.

[Section 30 amended by No. 98 of 1975 s. 12; No. 40 of 1998 s. 16.]

31. Notification of engagement of chemist

A pharmaceutical chemist who is engaged to take charge of a pharmacy for a period exceeding 3 days during which the pharmacy is open for business, and the person so engaging him, shall notify the registrar of the engagement within the prescribed time and in the prescribed manner.

31A. Investigator

- (1) The Council may appoint a person to investigate a matter relevant to the performance of the Council's functions under this Act and report to the Council.
- (2) The Council is to issue to each investigator it appoints a certificate of appointment in an approved form.

s. 31B

- (3) A certificate purporting to have been issued under this section is evidence in any court of the appointment to which the certificate purports to relate.

[Section 31A inserted by No. 55 of 2004 s. 931.]

31B. Report of investigator

- (1) An investigator must —
- (a) within such period as the Council requires prepare a report on the investigation, and make recommendations as to the manner in which the matter should be dealt with; and
 - (b) immediately after preparing the report, provide the Council with a copy of the report.
- (2) The investigator must return his certificate of appointment at the time the Council is provided with a copy of the report.

[Section 31B inserted by No. 55 of 2004 s. 931.]

31C. Powers of investigator

- (1) An investigator may for the purposes of an investigation —
- (a) enter and inspect the premises of a person named in a warrant issued under section 31E(1), and exercise the powers referred to in section 31E(2)(b) and (c);
 - (b) require a person to produce to the investigator any document or other thing concerning the investigation that is in the possession or under the control of the person;
 - (c) inspect any document or other thing produced to the investigator and retain it for such reasonable period as the investigator thinks fit, and make copies of a document or any of its contents;
 - (d) require a person —
 - (i) to give the investigator such information as the investigator requires; and

- (ii) to answer any question put to that person, in relation to the matter the subject of the investigation; and
 - (e) exercise other powers conferred on an investigator by the regulations.
- (2) A requirement made under subsection (1)(b) —
 - (a) must be made by notice in writing given to the person required to produce the document or other thing;
 - (b) must specify the time at or within which the document or other thing is to be produced;
 - (c) may, by its terms, require that the document or other thing required be produced at a place and by means specified in the requirement; and
 - (d) where the document required is not in a readable format, must be treated as a requirement to produce —
 - (i) the document itself; and
 - (ii) the contents of the document in a readable format.
- (3) A requirement made under subsection (1)(d) —
 - (a) may be made orally or by notice in writing served on the person required to give information or answer a question, as the case may be;
 - (b) must specify the time at or within which the information is to be given or the question is to be answered, as the case may be; and
 - (c) may, by its terms, require that the information or answer required —
 - (i) be given orally or in writing;
 - (ii) be given at or sent or delivered to a place specified in the requirement;

s. 31D

- (iii) in the case of written information or answers be sent or delivered by means specified in the requirement; and
 - (iv) be verified by statutory declaration.
- (4) If under subsection (1)(d) an investigator requires a person to give information or answer a question, the investigator must inform that person that the person is required under this Act to give the information or answer the question.
- (5) An investigator must produce his certificate of appointment if requested to do so by a person in respect of whom the investigator has exercised, or is about to exercise, a power under this section.

[Section 31C inserted by No. 55 of 2004 s. 931.]

31D. Warrant to enter premises

- (1) If the Council has determined in a particular case that an investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of an investigation, the investigator may apply to a magistrate for a warrant to be issued in respect of those premises.
- (2) An application for a warrant must —
 - (a) be in writing;
 - (b) be accompanied by a notice in writing from the Council stating that it has determined in the particular case that the investigator has reasonable grounds for believing that entry to premises is necessary for the purpose of the investigation;
 - (c) set out the grounds for seeking the warrant; and
 - (d) describe the premises that are to be entered.

- (3) A magistrate to whom an application is made under this section must refuse it if —
- (a) the application does not comply with the requirements of this Act; or
 - (b) when required to do so by the magistrate, the investigator does not give to the magistrate more information about the application.
- (4) The information in an application or given to a magistrate under this section must be verified before the magistrate on oath or affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit.
- [Section 31D inserted by No. 55 of 2004 s. 931.]*

31E. Issue of warrant

- (1) A magistrate to whom an application is made under section 31D may issue a warrant, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary for the purpose referred to in that section.
- (2) A warrant under subsection (1) authorises the investigator —
- (a) to enter and inspect the premises named in the warrant;
 - (b) to require a person on the premises to answer questions or produce documents or other things in the person's possession concerning the investigation; and
 - (c) to inspect documents and other things, and take copies of or extracts from documents, produced in compliance with a requirement made under paragraph (b).
- (3) There must be stated in a warrant —
- (a) the purpose for which the warrant is issued;
 - (b) the name of the person to whom the warrant is issued; and
 - (c) a description of the premises that may be entered.

s. 31F

- (4) A magistrate who issues a warrant must cause a record to be made of particulars of the grounds that the magistrate has relied on to justify the issue of the warrant.

[Section 31E inserted by No. 55 of 2004 s. 931.]

31F. Execution of warrant

- (1) If asked by the occupier or a person in charge of the premises, the person executing a warrant must produce it for inspection.
- (2) A warrant ceases to have effect —
- (a) at the end of the period of one month after its issue;
 - (b) if it is withdrawn by the magistrate who issued it; or
 - (c) when it is executed,

whichever occurs first.

[Section 31F inserted by No. 55 of 2004 s. 931.]

31G. Incriminating information, questions, or documents

Without prejudice to the provisions of section 11 of the *Evidence Act 1906*, where under section 31C a person is required to —

- (a) give any information;
- (b) answer any question; or
- (c) produce any document,

he shall not refuse to comply with that requirement on the ground that the information, answer, or document may tend to incriminate the person or render the person liable to any penalty, but the information or answer given, or document produced, by the person shall not be admissible in evidence in any proceedings against the person other than proceedings in respect of an offence against section 31H(1)(b).

[Section 31G inserted by No. 55 of 2004 s. 931.]

31H. Failure to comply with investigation

- (1) Where under section 31C a person is required to give any information, answer any question, or produce any document and that person, without reasonable excuse (proof of which shall lie on him) —
- (a) fails to give that information or answer that question at or within the time specified in the requirement;
 - (b) gives any information or answer that is false in any particular; or
 - (c) fails to produce that document at or within the time specified in the requirement,

the person commits an offence.

Penalty: \$2 000.

- (2) It is a defence in any proceeding for an offence under subsection (1)(a) or (c) for the defendant to show —
- (a) that, in the case of an alleged offence arising out of a requirement made orally under section 31C, the investigator did not, when making the requirement, inform the defendant that he was required under this Act to give the information or answer the question, as the case may be;
 - (b) that, in the case of an alleged offence arising out of a requirement made by notice in writing under section 31C, the notice did not state that he was required under this Act to give the information, answer the question, or produce the document or thing, as the case may be;
 - (c) that the time specified in the requirement did not afford the defendant sufficient notice to enable him to comply with the requirement; or

s. 31I

- (d) that, in any case, the investigator did not, before making the requirement, have reasonable grounds to believe that compliance with the requirement would materially assist in the investigation being carried out.

[Section 31H inserted by No. 55 of 2004 s. 931.]

31I. Obstruction of investigator

A person shall not prevent or attempt to prevent an investigator from entering premises or otherwise obstruct or impede an investigator in the exercise of his powers under section 31C.

Penalty: \$2 000.

[Section 31I inserted by No. 55 of 2004 s. 931.]

32. Disciplinary matters

- (1) There is proper cause for disciplinary action if a pharmaceutical chemist, company or friendly society —
 - (a) has been convicted of an offence that 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 commenced under this section; or
 - (e) is guilty of contravening the regulations relating to advertising.
- (2) The Council may allege to the State Administrative Tribunal that there is proper cause for disciplinary action, as mentioned

in subsection (1), against a pharmaceutical chemist, company or friendly society.

- (3) If in a proceeding commenced by an allegation under this section the State Administrative Tribunal is of the opinion that proper cause exists for disciplinary action, the Tribunal 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 3 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 \$500; or
 - (iv) censure him;
 - (b) in the case of a company or friendly society —
 - (i) impose on it a fine not exceeding \$500; or
 - (ii) censure it;and
 - (c) in any case —
 - (i) by order require any party to the proceedings to give an undertaking to the Council in such terms as the Tribunal specifies in the order, either personally or in the case of a company or friendly society under the hand of a proper officer; and
 - (ii) by order impose or vary any condition in relation to a licence or registration.
- (4) Instead of making an allegation to the Tribunal under subsection (2), if the Council —
- (a) is of the opinion that a proceeding before the Tribunal is not warranted by the nature of the matter involved;

s. 32A

- (b) has afforded to the person concerned the opportunity of giving an explanation to the Council either in person or in writing and is not satisfied by any explanation offered; and
- (c) has afforded to the person concerned the option of the matter proceeding before the Tribunal and that option has not been taken up,

the Council may deal with the matter as described in subsection (3)(a)(iii) or (iv), (3)(b), or (3)(c) except that it cannot impose a fine of more than \$2 500.

- (5) The Council may, in addition to or instead of imposing 1 or more penalties under provisions referred to in subsection (4), order the person concerned to pay all or any of the costs and expenses of or incidental to the proceedings.
- (6) The amount of any penalty, costs, or expenses that the Council orders under subsection (4) or (5) that a person pay is recoverable by the Council in any court of competent jurisdiction as a debt due to the Council.

[Section 32 inserted by No. 55 of 2004 s. 932.]

32A. Peremptory suspension

- (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 21 days.
- (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.

[Section 32A inserted by No. 98 of 1975 s. 14.]

32B. Reviews in disciplinary matters

A person, company or friendly society that is aggrieved by a penalty imposed under section 32(4), an order made under section 32(5) for the payment of costs or expenses, or the peremptory suspension of a licence or registration under section 32A may apply to the State Administrative Tribunal for a review of the decision.

[Section 32B inserted by No. 55 of 2004 s. 933.]

33. Cancellation of licence

- (1) When the name of a pharmaceutical chemist has been erased from the register pursuant to an order of the State Administrative Tribunal, any licence issued to that pharmaceutical chemist under the provisions of section 26 shall be deemed to be thereby cancelled.
- (2) The Council may at any time after the name of a pharmaceutical chemist has been erased from the register pursuant to an order of the State Administrative Tribunal, subject to the regulations and upon payment of the prescribed fee, restore the name of that pharmaceutical chemist in the register, and thereupon the licence of that pharmaceutical chemist deemed to have been cancelled by virtue of subsection (1), shall again become of full force and effect, unless it has expired by effluxion of time.
- (3) Where any licence or registration is suspended pursuant to an order of the State Administrative Tribunal or section 32A, that licence or registration shall be deemed not to have effect during the currency of the period of suspension.

[Section 33 amended by No. 98 of 1975 s. 16; No. 55 of 2004 s. 934.]

34. Restriction on employment of person whose name is erased from register

A person shall not employ a person whose name is erased from the register or whose licence is cancelled or for the time being suspended under the provisions of section 32 in any capacity in

s. 35

the business or at the pharmacy where the latter person is carrying on business or is employed at the time of the relevant determination of the Council or the State Administrative Tribunal.

[Section 34 amended by No. 98 of 1975 s. 17; No. 55 of 2004 s. 935.]

35. Examination to be directed by Council

- (1) The Council shall control and direct all examinations that it considers requisite for the purposes of this Act in such subjects as may from time to time be prescribed.
- (2) The Council may, upon the results of the examinations held under this Act, grant or refuse all certificates of competency, skill, knowledge and qualification to practise the business or calling of a pharmaceutical chemist.

Part V — Miscellaneous provisions

36. Persons entitled to carry on business as chemists

- (1) Subject to the provisions of subsection (2), no person other than —
- (a) a pharmaceutical chemist; or
 - (b) a company, or a friendly society, that is engaged in carrying on the practice of a pharmaceutical chemist by and under the immediate supervision of a licensed pharmaceutical chemist,

shall carry on the practice of a pharmaceutical chemist, or assume or use or exhibit any title, direction or sign, whether including any of the words, “pharmacy”, “pharmaceutical”, “drug store”, “dispensary” or otherwise, that can be considered to mean that he is carrying on a practice or business of that kind.

Penalty: \$1 000 or imprisonment for 12 months.

- (1a) Except in relation to a pharmacy in respect of which he or it is registered as having an interest pursuant to section 23, no person shall have a pecuniary interest whether direct or indirect, in any pharmacy.

Penalty: \$1 000.

- (2)(a) Nothing in this section shall extend to or be deemed to give any right to a company or friendly society to carry on the practice of a pharmaceutical chemist other than a company or friendly society that at the date of the commencement of this Act is registered and carrying on such practice under the immediate personal supervision of a pharmaceutical chemist, and except as so provided, it shall not be lawful for any company, friendly society or association of persons, not being licensed pharmaceutical chemists, to carry on or assist in the carrying on of such practice, or to assume or use or exhibit any title, direction or sign, whether including any of the words, “pharmacy”, “pharmaceutical”, “drug store”, “dispensary” or otherwise, that can be considered to mean that such company,

s. 36

friendly society or association of persons is carrying on any such practice or business of that kind, or that any of those persons is qualified as a pharmaceutical chemist.

- (b) Every company or friendly society which is at the date of the commencement of this Act carrying on the practice of a pharmaceutical chemist under any Act repealed by this Act, is by force of this paragraph limited to the carrying on of that practice at the place where the practice was carried on at that date; but where the Minister is satisfied, having regard to the circumstances of the case, that sufficient necessity exists for the company or friendly society to vacate that place, that company or friendly society, as the case may be, may carry on that practice at such other place in the immediate vicinity of the place so vacated, as the Minister may, from time to time, approve.
- (c) The legal personal representative of a pharmaceutical chemist who has died whilst carrying on the practice of a pharmaceutical chemist, or any person seizing and taking possession of the stock-in-trade of a pharmaceutical chemist under a mortgage, bill of sale or other security, or the liquidator of any company in the course of being wound up, or any mortgagee or receiver seizing and taking possession of the stock-in-trade of a company under a mortgage, bill of sale or other security, may continue to carry on the practice of the pharmaceutical chemist or of the company, as the case may be, for a period not exceeding 12 months, or for such further period as the Council may permit upon and subject to the express condition that such practice is so carried on by and under the immediate personal supervision and management of a duly licensed pharmaceutical chemist.
- (d) Nothing in this section operates —
 - [(i) deleted]*
 - (ii) to prevent a medical practitioner from supplying or selling any medicine or drug to a patient whom he is treating and for the purpose of that treatment, or, where it is not reasonably practicable in the circumstances to

- obtain any medicine or drug at a pharmacy, from supplying or selling the medicine or drug to any person;
- (iii) to permit the carrying on by a medical practitioner of the practice of a pharmaceutical chemist; or
 - (iv) to prevent 2 or more pharmaceutical chemists constituting a partnership all the members of which are pharmaceutical chemists from carrying on in relation to not more than 2 pharmacies any practice that could lawfully have been carried on by one such partner.
- (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.

[Section 36 amended by No. 98 of 1975 s. 18; No. 2 of 1999 s. 22(b); No. 26 of 1999 s. 95(5).]

36A. Practice may be carried on by amalgamated friendly society

Where prior to the coming into operation of the *Pharmacy Act Amendment Act 1977*¹, a friendly society was lawfully carrying on the practice of a pharmaceutical chemist and that friendly society amalgamates with another friendly society then so carrying on such a practice, the practices may thereafter be carried on by the societies as so amalgamated but in all other respects the provisions of section 36 shall apply.

[Section 36A inserted by No. 26 of 1977 s. 4.]

36B. Certain advertisements prohibited

- (1) Subject to subsection (3), a person shall not in any sign or advertisement or by any other means whatsoever, whether on his own behalf or on behalf of any other person, cause or permit any reference to be made to the fact that he or any other person provides or offers to provide, or may provide or offer to

s. 36B

provide, dispensing or other professional advice or services relating to the supply of any medicine or drug.

Penalty: \$1 000 or imprisonment for 12 months.

- (2) Subject to subsections (3) and (4), a person shall not in any sign or advertisement use the word “chemist”, “druggist”, “pharmaceutist” or “pharmacist” or any derivative of that word, whether alone or in conjunction with any other word or words.

Penalty: \$1 000 or imprisonment for 12 months.

- (3) This section does not apply to —

- (a) a pharmaceutical chemist; or
- (b) a company, or a friendly society, that is engaged in carrying on the practice of a pharmaceutical chemist by and under the immediate supervision of a licensed pharmaceutical chemist.

- (4) Subsection (2) does not apply to —

- (a) a manufacturer, importer, distributor or provider of goods or services or both in relation to any advertisement, whether published in any newspaper or other printed medium or broadcast by radio, television or other visual or audible means in which it is indicated that —
 - (i) medicines or drugs; or
 - (ii) goods or services referred to in section 40A(1)(a) or (b),

are obtainable, whether by sale or otherwise, from any pharmaceutical chemist, company or friendly society referred to in section 40A(1); or

- (b) a person who uses in any sign or advertisement, which sign or advertisement does not refer, whether expressly or by implication, to the availability or supply of any medicine or drug or to the provision of dispensing or other professional advice or services relating to the supply of any medicine or drug, for the purpose of describing a profession, trade or calling the word

“chemist”, “druggist”, “pharmaceutist” or “pharmacist”
or any derivative of that word.

*[Section 36B inserted by No. 93 of 1980 s. 3; amended by No. 2
of 1999 s. 22(c); No. 26 of 1999 s. 95(6).]*

37. Certain titles to be used only by chemists

- (1) No person other than a pharmaceutical chemist shall assume or use the title of pharmaceutical chemist, pharmaceutist, pharmacist, chemist and druggist, dispensing chemist, dispensing druggist, homoeopathic chemist or other words of like import, or use or exhibit any title, term or sign that can be construed to mean that the person is qualified as a pharmaceutical chemist.
- (2) Except in cases of emergency, a person shall not accept any prescription for preparation of medicine otherwise than at a pharmacy at which the medicine shall be prepared and supplied.
- (3) A person who contravenes any provision of this section commits an offence against this Act.

Penalty: \$1 000 or imprisonment for 12 months.

[Section 37 amended by No. 98 of 1975 s. 19.]

38. Business of pharmaceutical chemist to be carried on by principal or a qualified assistant

- (1) A pharmaceutical chemist shall not —
 - (a) carry on or attempt to carry on the practice of a pharmaceutical chemist;
 - (b) assume or use the title of a pharmaceutical chemist, pharmaceutist, pharmacist, chemist and druggist, dispensing chemist, homoeopathic chemist, or other title of like import; or
 - (c) use or exhibit any title, term or sign on any shop, house or premises that can be construed to mean that the

s. 39

practice of a pharmaceutical chemist is carried on therein,

unless the practice carried on by him is conducted by and under the personal supervision of himself or of an assistant who is a pharmaceutical chemist.

- (2) Every pharmaceutical chemist and every company or friendly society engaged in carrying on the practice of a pharmaceutical chemist under this Act, and every person or assistant under whose conduct or management the practice or any branch of the business of a pharmaceutical chemist or any pharmacy is carried on, shall have his name legibly painted or written, and continually so maintained, on a conspicuous place on the front of the building where that practice is carried on, and on every label, invoice or other document that is issued or used in or in connection with that practice.
- (3) A person who fails to comply with or acts contrary to any of the provisions of this section commits an offence against this Act, and is liable upon conviction to a penalty of \$500, and in addition \$50 for every day during which that failure or act continues.

[Section 38 amended by No. 98 of 1975 s. 20.]

39. Dispensing

- (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, nurse practitioner 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.

(3) In this section —

nurse practitioner has the meaning given by section 3 of the *Nurses and Midwives Act 2006*.

[Section 39 inserted by No. 98 of 1975 s. 21; amended by No. 9 of 2003 s. 33; No. 50 of 2006 s. 114.]

40. Use of automatic machines prohibited

(1) Any person who —

- (a) instals or permits to be installed any automatic machine for the sale or supply of any drug or medicine;
- (b) sells or supplies any drug or medicine by means of an automatic machine; or
- (c) permits or suffers any person to purchase or be supplied with or otherwise obtain any drug or medicine by means of any automatic machine,

commits an offence against this Act.

Penalty: \$200.

(2) In this section the term *automatic machine* means any machine or mechanical device used or capable of being used for the purpose of selling or supplying goods without the personal manipulation or attention of the seller or supplier or his employee or other agent at the time of the sale or supply.

[Section 40 amended by No. 98 of 1975 s. 22.]

s. 40A

40A. Limitation on trading

- (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 —
 - (a) goods or services of a kind which were sold, traded in, supplied or provided in a pharmacy in the State on 1 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 subsection 1(b) may be limited in application to any specified time, place or circumstance.
- (3) A person aggrieved by —
 - (a) a determination of the Council that subsection 1(a) 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 subsection 1(b),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), 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) shall be determined by the Council.
- (5) Any contravention of the provisions of subsection (1) 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); 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 40A inserted by No. 98 of 1975 s. 23.]

41. Misrepresentation and allied offences

- (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: \$500 or imprisonment for 12 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.

[Section 41 inserted by No. 98 of 1975 s. 24.]

s. 42

42. Legal proceedings by Council

- (1) The Council may, in its corporate name, by the registrar or any person authorised for the purpose in writing under the hand of the president, commence, carry on, prosecute and defend any action, prosecution or proceeding whatsoever, both civil and criminal.
- (2) All courts, judges and persons acting judicially shall take judicial notice of the signature of the president to any authorisation under subsection (1).

[Section 42 amended by No. 84 of 2004 s. 80.]

43. Offences and procedure

[(1) repealed]

- (2) All fees payable under this Act shall be paid to the Council to be applied towards the expenses of carrying this Act into effect.

[Section 43 amended by No. 59 of 2004 s. 141.]

44. Time for taking proceedings

- (1) Proceedings in respect of any offence against this Act shall be commenced within 6 months after the offence thereby charged is committed.
- (2) No order, judgment, warrant or other proceeding made or purporting to be made under or concerning the conviction of any offender against this Act shall be quashed or vacated for want of form only, or be removed or removable by *certiorari* or by writ or process whatsoever into any superior court of the State.

45. General penalty

Any person who acts in contravention of, or fails to comply with, any of the provisions of this Act or the regulations made under this Act commits an offence against this Act, and is liable to the penalty expressly mentioned as the penalty for the offence, but where a penalty is not expressly mentioned is liable

to a penalty of \$100 and in the case of a continuing offence, to a further penalty of \$10 for each day during which the offence continues.

[Section 45 amended by No. 98 of 1975 s. 25.]

46. Evidence

In a prosecution under any of sections 36, 37 or 38, the fact that a person is apparently employed or engaged in any shop, house or premises where drugs are kept or stored for sale, or acts in the capacity of a salesman therein, is *prima facie* proof that such person carries on a practice as a pharmaceutical chemist in that shop or house or those premises, and personally conducts and supervises the business carried on therein.

[Section 46 amended by No. 98 of 1975 s. 26.]

47. Regulations

- (1) The Governor, either with or without the recommendation of the Council, may make regulations prescribing all matters that by this Act are required or permitted to be prescribed, or that may be necessary or convenient to be prescribed, for carrying this Act into operation or for facilitating the operation of this Act.
- (2) Without limiting the generality of the powers conferred by subsection (1), the Governor may make regulations for or with respect to all or any of the following matters —
 - (a) regulating the meetings and proceedings of the Council, and the conduct of its business;
 - (b) prescribing the manner of and time and place for electing the members and the president and deputy president of the Council;
 - (c) prescribing the annual licence fees to be paid by the pharmaceutical chemists to the Council for the purpose of defraying the expenses necessary to carry out the provisions of this Act, the fees for the examination of persons qualifying to be registered as pharmaceutical

s. 47

chemists, the fees for the registration of pharmaceutical chemists and pharmacies, and such other fees as may be required;

- (d) prescribing the subjects for the examination of persons qualifying for registration as pharmaceutical chemists;
- (e) prescribing the conditions under which persons may undertake practical training for the purpose of qualifying to obtain registration as pharmaceutical chemists;
- (f) prescribing the form of agreement to be made between a pharmaceutical chemist and a student in relation to that practical training;
- (g) prescribing the conditions and standards to be complied with in places used for the purpose of, and the records to be kept and furnished in respect to, that practical training;
- (h) prescribing that the certificates or diplomas of competency as a pharmacist or as a chemist and druggist of any specified society, college or board of pharmacy shall be recognised by the Council;
- (i) regulating the registration and deregistration of pharmaceutical chemists, the registration of pharmacies and the cancellation or suspension of any such registration, and the application for, issue, cancellation, and suspension of licences by the Council;
- (j) regulating appeals against determinations or other decisions of the Council under section 40A(3) and prescribing the procedure to be followed in respect thereof;
- (k) regulating the proceedings of the Council in exercise of any of the powers conferred upon it by sections 32, 32A and 33;
- (l) prescribing conditions to be complied with for the purpose of obtaining registration of pharmacies;

- (m) prescribing the forms to be used for the purposes of this Act, and the fees to be charged and paid in respect of any application, registration, certificate or other proceeding, act or thing provided or required under this Act;
- (n) providing for the facilities and services to be provided in premises in which a pharmaceutical chemist licensed under this Act carries on his practice, and the equipment to be provided and maintained in those premises for the storage, custody, dispensing and sale of medicines and drugs;
- (o) providing for general or particular inspections by the Council, or by any officer of the Council authorised in that behalf by writing under the hand of the president or deputy president of the Council, of any pharmacy or other premises to which this Act applies, and any equipment therein, and any books, entries, letters, documents, instruments, or other writings required by this Act to be kept by persons subject to the provisions of this Act;
- (p) prescribing the purposes for which persons subject to the provisions of this Act may advertise, and regulating or prohibiting the form and subject matter of advertisements and the manner of the publication thereof; and
- (q) imposing a penalty not exceeding \$100, for a breach of any regulation.

[Section 47 amended by No. 98 of 1975 s. 27; No. 55 of 2004 s. 936.]

First Schedule

Acts repealed by this Act

Pharmacy and Poisons Act Compilation Act 1910.

Pharmacy and Poisons Act 1910.

Pharmacy and Poisons Act Amendment Act 1937.

Pharmacy and Poisons Act Amendment Act 1948.

Pharmacy and Poisons Act Amendment Act 1952.

Pharmacy and Poisons Act Amendment Act 1954.

Pharmacy and Poisons Act Amendment Act 1962.

Second Schedule

[Section 20]

Pharmacy Act 1964

Register of Pharmaceutical Chemists

Name	Residence or Place of Business	Qualification	Date of Registration
------	-----------------------------------	---------------	----------------------

Third Schedule

[Section 22]

Pharmacy Act 1964

Certificate of Registration as a Pharmaceutical Chemist

This is to certify that
residing at, in
has been duly registered as a pharmaceutical chemist under the provisions of the
Pharmacy Act 1964.

Dated at this day of 20 .

Pharmaceutical Council of Western Australia.

(Signed) A. B.

President.

(Signed) C. D.

Registrar.

Notes

- ¹ This is a compilation of the *Pharmacy Act 1964* and includes the amendments made by the other written laws referred to in the following table ^{1a}. The table also contains information about any reprint.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Pharmacy Act 1964</i>	72 of 1964	11 Dec 1964	1 Jul 1965 (see s. 2 and <i>Gazette</i> 25 Jun 1965 p. 1836)
<i>Decimal Currency Act 1965</i>	113 of 1965	21 Dec 1965	Act other than s. 4-9: 21 Dec 1965 (see s. 2(1)); s. 4-9: 14 Feb 1966 (see s. 2(2))
<i>Pharmacy Act Amendment Act 1975</i>	98 of 1975	1 Dec 1975	21 May 1976 (see s. 2 and <i>Gazette</i> 21 May 1976 p. 1473)
Reprint of the <i>Pharmacy Act 1964</i> approved 31 Aug 1976 (includes amendments listed above)			
<i>Pharmacy Act Amendment Act 1977</i>	26 of 1977	27 Oct 1977	27 Oct 1977
<i>Pharmacy Amendment Act 1980</i>	93 of 1980	9 Dec 1980	9 Dec 1980
<i>Companies (Consequential Amendments) Act 1982</i>	10 of 1982	14 May 1982	1 Jul 1982 (see s. 2(1) and <i>Gazette</i> 25 Jun 1982 p. 2079) s. 28(1)
Reprint of the <i>Pharmacy Act 1964</i> approved 18 Apr 1983 (includes amendments listed above)			
<i>Acts Amendment (Financial provisions of regulatory bodies) Act 1987 s. 3</i>	77 of 1987	26 Nov 1987	1 Jan 1988 (see s. 2)
<i>Criminal Law Amendment Act (No. 2) 1992 s. 16(1)</i>	51 of 1992	9 Dec 1992	6 Jan 1993
<i>Hospitals Amendment Act 1994 s. 18</i>	103 of 1994	11 Jan 1995	3 Feb 1995 (see s. 2 and <i>Gazette</i> 3 Feb 1995 p. 333)
<i>Statutes (Repeals and Minor Amendments) Act (No. 2) 1998 s. 76</i>	10 of 1998	30 Apr 1998	30 Apr 1998 (see s. 2(1))
<i>Acts Repeal and Amendment (Births, Deaths and Marriages Registration) Act 1998 s. 16</i>	40 of 1998	30 Oct 1998	14 Apr 1999 (see s. 2 and <i>Gazette</i> 9 Apr 1999 p. 1433)

Pharmacy Act 1964

Short title	Number and year	Assent	Commencement
Reprint of the <i>Pharmacy Act 1964</i> as at 29 Jan 1999 (includes amendments listed above)			
<i>Friendly Societies (Western Australia) Act 1999</i> s. 22	2 of 1999	25 Mar 1999	24 May 1999 (see s. 2 and <i>Gazette</i> 21 May 1999 p. 1999)
<i>Acts Amendment and Repeal (Financial Sector Reform) Act 1999</i> s. 95	26 of 1999	29 Jun 1999	1 Jul 1999 (see s. 2(1) and <i>Gazette</i> 30 Jun 1999 p. 2905)
<i>Nurses Amendment Act 2003</i> Pt. 3 Div. 3	9 of 2003	9 Apr 2003	9 Apr 2003 (see s. 2)
<i>Corporations (Consequential Amendments) Act (No. 2) 2003</i> Pt. 20	20 of 2003	23 Apr 2003	15 Jul 2001 (see s. 2(1) and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> Pt. 2 Div. 101 ³	55 of 2004	24 Nov 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Law Amendment (Simple Offences) Act 2004</i> s. 82 ⁴	70 of 2004	8 Dec 2004	31 May 2005 (see s. 2 and <i>Gazette</i> 14 Jan 2005 p. 163)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
Reprint 4: The <i>Pharmacy Act 1964</i> as at 11 Nov 2005 (includes amendments listed above)			
<i>Nurses and Midwives Act 2006</i> s. 114	50 of 2006	6 Oct 2006	19 Sep 2007 (see s. 2 and <i>Gazette</i> 18 Sep 2007 p. 4711)

^{1a} On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

Provisions that have not come into operation

Short title	Number and year	Assent	Commencement
<i>Medical Practitioners Act 2008</i> s. 162 ⁵	22 of 2008	27 May 2008	To be proclaimed (see s. 2)

² Repealed by the *Interpretation Act 1984*.

³ The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

⁴ The amendment to s. 18(3) in the *Criminal Law Amendment (Simple Offences) Act 2004* s. 82 is not included because the subsection it seeks to amend was repealed by the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* s. 926.

⁵ On the date as at which this compilation was prepared, the *Medical Practitioners Act 2008* s. 162, which gives effect to Sch. 3 cl. 43, had not come into operation. It reads as follows:

“

162. Consequential amendments

Schedule 3 sets out consequential amendments.

”.

Schedule 3 cl. 43 reads as follows:

“

Schedule 3 — Consequential amendments

43. Pharmacy Act 1964 amended

- (1) The amendments in this clause are to the *Pharmacy Act 1964*.
- (2) Section 5(1) is amended in the definition of “medical practitioner” by deleting “*Medical Act 1894*” and inserting instead —
“ *Medical Practitioners Act 2008* ”.

”.