

AN ACT

To amend sections 1337.15, 1337.16, 2133.11, 2133.12, 2305.234, 2305.25, 2305.33, 2913.02, 2913.51, 2925.01, 2925.02, 2925.03, 2925.09, 2925.11, 2925.12, 2925.14, 2925.23, 2925.50, 2927.24, 3313.713, 3701.33, 3709.161, 3715.01, 3715.03, 3715.52 to 3715.57, 3715.59, 3715.63 to 3715.66, 3715.69, 3715.70, 3715.71, 3715.73, 3719.01, 3719.011, 3719.05 to 3719.09, 3719.12, 3719.121, 3719.15, 3719.172, 3719.19, 3719.30, 3719.34 to 3719.36, 3719.42, 3719.44, 3719.61, 3719.81, 3719.99, 3729.01, 4121.443, 4301.01, 4301.69, 4303.01, 4303.21, 4303.27, 4303.34, 4506.01, 4723.28, 4725.01, 4729.01, 4729.02, 4729.03, 4729.06 to 4729.09, 4729.11 to 4729.16, 4729.25, 4729.26, 4729.27 to 4729.30, 4729.36, 4729.37, 4729.38, 4729.381, 4729.51, 4729.52, 4729.54, 4729.55, 4729.57, 4729.59, 4729.60, 4729.63, 4729.66, 4729.67, 4731.052, 4731.22, 4741.22, 5123.193, 5126.35, and 5739.02; to amend, for the purpose of adopting new section numbers as indicated in parentheses, sections 4729.01 (4729.02) and 4729.02 (4729.01); to enact sections 4729.281 and 4729.39; and to repeal sections 4729.021, 4729.261, and 4729.262 of the Revised Code to revise the laws pertaining to drugs and the practice of pharmacy.

Be it enacted by the General Assembly of the State of Ohio:

SECTION 1. That sections 1337.15, 1337.16, 2133.11, 2133.12, 2305.234, 2305.25, 2305.33, 2913.02, 2913.51, 2925.01, 2925.02, 2925.03, 2925.09, 2925.11, 2925.12, 2925.14, 2925.23, 2925.50, 2927.24, 3313.713,

3701.33, 3709.161, 3715.01, 3715.03, 3715.52, 3715.53, 3715.54, 3715.55, 3715.56, 3715.57, 3715.59, 3715.63, 3715.64, 3715.65, 3715.66, 3715.69, 3715.70, 3715.71, 3715.73, 3719.01, 3719.011, 3719.05, 3719.06, 3719.07, 3719.08, 3719.09, 3719.12, 3719.121, 3719.15, 3719.172, 3719.19, 3719.30, 3719.34, 3719.35, 3719.36, 3719.42, 3719.44, 3719.61, 3719.81, 3719.99, 3729.01, 4121.443, 4301.01, 4301.69, 4303.01, 4303.21, 4303.27, 4303.34, 4506.01, 4723.28, 4725.01, 4729.01, 4729.02, 4729.03, 4729.06, 4729.07, 4729.08, 4729.09, 4729.11, 4729.12, 4729.13, 4729.14, 4729.15, 4729.16, 4729.25, 4729.26, 4729.27, 4729.28, 4729.29, 4729.30, 4729.36, 4729.37, 4729.38, 4729.381, 4729.51, 4729.52, 4729.54, 4729.55, 4729.57, 4729.59, 4729.60, 4729.63, 4729.66, 4729.67, 4731.052, 4731.22, 4741.22, 5123.193, 5126.35, and 5739.02 be amended; sections 4729.01 (4729.02) and 4729.02 (4729.01) be amended for the purpose of adopting new section numbers as indicated in parentheses; and sections 4729.281 and 4729.39 of the Revised Code be enacted to read as follows:

Sec. 1337.15. (A) Subject to division (H) of this section, an attending physician of a principal is not subject to criminal prosecution or professional disciplinary action and is not liable in damages in a tort or other civil action for actions taken in good faith and in reliance on a health care decision when all of the following are satisfied:

(1) The decision is made by an attorney in fact under a durable power of attorney for health care after ~~he~~ the attorney in fact receives information sufficient to satisfy the requirements of informed consent or refusal or withdrawal of informed consent, and the attending physician, in good faith, believes that the attorney in fact is authorized to make the decision.

(2) The attending physician, in good faith, believes that the decision is consistent with the desires of the principal, or the attorney in fact informs the attending physician that the desires of the principal are unknown and the attending physician, in good faith, believes that the desires of the principal are unknown and that the decision is in the best interest of the principal.

(3) The attending physician determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that the principal has lost the capacity to make informed health care decisions for ~~himself~~ the principal.

(4) If the decision is to withhold or withdraw life-sustaining treatment, the attending physician attempts, in good faith, to determine the desires of the principal to the extent that the principal is able to convey them and places a report of the attempt in the health care records of the principal.

(5) If the decision is to withhold or withdraw life-sustaining treatment, the attending physician determines, in good faith, to a reasonable degree of

medical certainty, and in accordance with reasonable medical standards, that both of the following apply:

(a) The principal is in a terminal condition or in a permanently unconscious state.

(b) There is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for ~~himself~~ the principal.

(6) If the decision pertains to a principal who is pregnant and if the withholding or withdrawal of health care would terminate the pregnancy, the attending physician makes, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, a determination whether or not the pregnancy or health care involved would pose a substantial risk to the life of the principal or a determination whether or not the fetus would be born alive.

(7) If the decision pertains to the provision of nutrition or hydration to a principal who is in a terminal condition or in a permanently unconscious state, the attending physician determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to, or alleviate pain of, the principal.

(8) If the decision pertains to the provision of nutrition or hydration to a principal who is in a permanently unconscious state, the attending physician determines, in good faith, that the principal authorized the attorney in fact to refuse or withdraw informed consent to the provision of nutrition or hydration to ~~him~~ the principal when ~~he~~ the principal is in a permanently unconscious state by complying with the requirements of divisions (E)(2)(a) and (b) of section 1337.13 of the Revised Code.

(B)(1) Notwithstanding the health care decision of the attorney in fact, subject to division (H) of this section, an attending physician of a principal is not subject to criminal prosecution or professional disciplinary action and is not liable in damages in a tort or other civil action for providing or for failing to withdraw life-sustaining treatment.

(2) Subject to division (H) of this section, an attending physician who is carrying out in good faith and in a manner consistent with divisions (C) and (E) of section 1337.13 of the Revised Code the responsibility to provide comfort care to a principal in a terminal condition or in a permanently unconscious state is not subject to criminal prosecution or professional disciplinary action and is not liable in damages in a tort or other civil action for prescribing, dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the principal, including, but not limited to, prescribing, ~~dispensing~~

personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing ~~his~~ the principal's pain or discomfort and not for the purpose of postponing or causing ~~his~~ the principal's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the principal's death.

(C) Subject to division (H) of this section, a consulting physician is not subject to criminal prosecution or professional disciplinary action and is not liable in damages in a tort or other civil action as follows:

(1) If the health care decision involved is one other than the health care decision described in division (C)(2), (3), or (4) of this section, the consulting physician made a determination, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, in conjunction with the attending physician of a principal.

(2) If the decision is to withhold or withdraw life-sustaining treatment, the consulting physician determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, after examining the principal, that the principal is in a terminal condition or in a permanently unconscious state.

(3) If the health care decision involved pertains to a principal who is pregnant and if the withholding or withdrawal of health care would terminate the pregnancy, the consulting physician makes, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, a determination whether or not the pregnancy or health care involved would pose a substantial risk to the life of the principal or a determination whether or not the fetus would be born alive.

(4) If the decision pertains to the provision of nutrition or hydration to a principal who is in a terminal condition or in a permanently unconscious state, the consulting physician determines, in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards, that nutrition or hydration will not or no longer will serve to provide comfort to, or alleviate pain of, the principal.

(D) Subject to division (H) of this section, a person is not subject to criminal prosecution or professional disciplinary action and is not liable in damages in a tort or other civil action for actions taken, in good faith, while relying on a durable power of attorney for health care if the person does not have actual knowledge of either of the following facts:

(1) The durable power of attorney has been revoked pursuant to section 1337.14 of the Revised Code.

(2) The durable power of attorney does not substantially comply with

sections 1337.11 to 1337.17 of the Revised Code.

(E)(1) Subject to division (H) of this section, a consulting physician, an employee or agent of any health care facility or the attending physician of a principal, and health care personnel acting under the direction of the attending physician of a principal are not subject to criminal prosecution or professional disciplinary action and are not liable in damages in a tort or other civil action for any action described in division (A), (B), (C), or (D) of this section that was undertaken, in good faith, pursuant to the direction of the attending physician of the principal.

(2) Subject to division (H) of this section, health care personnel who are acting under the direction of the principal's attending physician and who carry out the responsibility to provide comfort care to a principal in a terminal condition or in a permanently unconscious state in good faith and in a manner consistent with divisions (C) and (E) of section 1337.13 of the Revised Code are not subject to criminal prosecution or professional disciplinary action and are not liable in damages in a tort or other civil action for dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the principal, including, but not limited to, ~~dispensing personally furnishing,~~ administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing ~~his~~ the principal's pain or discomfort and not for the purpose of postponing or causing ~~his~~ the principal's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the principal's death.

(F) Subject to division (H) of this section, a health care facility is not subject to criminal prosecution or professional disciplinary action and is not liable in damages in a tort or other civil action for any action that properly was undertaken pursuant to division (A), (B), (C), (D), or (E) of this section.

(G) Subject to division (H) of this section, an attorney in fact is not subject to criminal prosecution or professional disciplinary action and is not liable in damages in a tort or other civil action for health care decisions made in good faith while acting pursuant to ~~his~~ the attorney in fact's authority under a durable power of attorney for health care.

(H)(1) Sections 1337.11 to 1337.17 of the Revised Code and a durable power of attorney for health care do not affect or limit any potential tort or other civil liability of an attending or consulting physician, an employee or agent of a health care facility or an attending physician, health care personnel acting under the direction of an attending physician, a health care facility, an attorney in fact, or any other person, including, but not limited

to, liability associated with a medical claim, that satisfies both of the following:

(a) The liability arises out of a negligent action or omission in connection with the medical diagnosis, care, or treatment of a principal under a durable power of attorney for health care or arises out of any deviation from reasonable medical standards.

(b) The liability is based on the fact that the negligent action or omission, or the deviation, as described in division (H)(1)(a) of this section caused or contributed to the principal under the durable power of attorney for health care having a terminal condition or being in a permanently unconscious state, or otherwise caused or contributed to any injury to or the wrongful death of the principal.

(2) Sections 1337.11 to 1337.17 of the Revised Code and a durable power of attorney for health care do not grant an immunity from criminal or civil liability or from professional disciplinary action to health care personnel for actions that are outside the scope of their authority.

Sec. 1337.16. (A) No physician, health care facility, other health care provider, person authorized to engage in the business of insurance in this state under Title XXXIX of the Revised Code, health insuring corporation, other health care plan, or legal entity that is self-insured and provides benefits to its employees or members shall require an individual to create or refrain from creating a durable power of attorney for health care, or shall require an individual to revoke or refrain from revoking a durable power of attorney for health care, as a condition of being admitted to a health care facility, being provided health care, being insured, or being the recipient of benefits.

(B)(1) Subject to division (B)(2) of this section, an attending physician of a principal or a health care facility in which a principal is confined may refuse to comply or allow compliance with the instructions of an attorney in fact under a durable power of attorney for health care on the basis of a matter of conscience or on another basis. An employee or agent of an attending physician of a principal or of a health care facility in which a principal is confined may refuse to comply with the instructions of an attorney in fact under a durable power of attorney for health care on the basis of a matter of conscience.

(2)(a) An attending physician of a principal who, or health care facility in which a principal is confined that, is not willing or not able to comply or allow compliance with the instructions of an attorney in fact under a durable power of attorney for health care to use or continue, or to withhold or withdraw, health care that were given under division (A) of section 1337.13

of the Revised Code, or with any probate court reevaluation order issued pursuant to division (D)(6) of this section, shall not prevent or attempt to prevent, or unreasonably delay or attempt to unreasonably delay, the transfer of the principal to the care of a physician who, or a health care facility that, is willing and able to so comply or allow compliance.

(b) If the instruction of an attorney in fact under a durable power of attorney for health care that is given under division (A) of section 1337.13 of the Revised Code is to use or continue life-sustaining treatment in connection with a principal who is in a terminal condition or in a permanently unconscious state, the attending physician of the principal who, or the health care facility in which the principal is confined that, is not willing or not able to comply or allow compliance with that instruction shall use or continue the life-sustaining treatment or cause it to be used or continued until a transfer as described in division (B)(2)(a) of this section is made.

(C) Sections 1337.11 to 1337.17 of the Revised Code and a durable power of attorney for health care created under section 1337.12 of the Revised Code do not affect or limit the authority of a physician or a health care facility to provide or not to provide health care to a person in accordance with reasonable medical standards applicable in an emergency situation.

(D)(1) If the attending physician of a principal and one other physician who examines the principal determine that the principal is in a terminal condition or in a permanently unconscious state, if the attending physician additionally determines that the principal has lost the capacity to make informed health care decisions for the principal and that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal, and if the attorney in fact under the principal's durable power of attorney for health care makes a health care decision pertaining to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment, the attending physician shall do all of the following:

(a) Record the determinations and health care decision in the principal's medical record;

(b) Make a good faith effort, and use reasonable diligence, to notify the appropriate individual or individuals, in accordance with the following descending order of priority, of the determinations and health care decision:

(i) If any, the guardian of the principal. This division does not permit or require the appointment of a guardian for the principal.

(ii) The principal's spouse;

(iii) The principal's adult children who are available within a reasonable period of time for consultation with the principal's attending physician;

(iv) The principal's parents;

(v) An adult sibling of the principal or, if there is more than one adult sibling, a majority of the principal's adult siblings who are available within a reasonable period of time for such consultation.

(c) Record in the principal's medical record the names of the individual or individuals notified pursuant to division (D)(1)(b) of this section and the manner of notification;

(d) Afford time for the individual or individuals notified pursuant to division (D)(1)(b) of this section to object in the manner described in division (D)(3)(a) of this section.

(2)(a) If, despite making a good faith effort, and despite using reasonable diligence, to notify the appropriate individual or individuals described in division (D)(1)(b) of this section, the attending physician cannot notify the individual or individuals of the determinations and health care decision because the individual or individuals are deceased, cannot be located, or cannot be notified for some other reason, the requirements of divisions (D)(1)(b), (c), and (d) of this section and, except as provided in division (D)(3)(b) of this section, the provisions of divisions (D)(3) to (6) of this section shall not apply in connection with the principal. However, the attending physician shall record in the principal's medical record information pertaining to the reason for the failure to provide the requisite notices and information pertaining to the nature of the good faith effort and reasonable diligence used.

(b) The requirements of divisions (D)(1)(b), (c), and (d) of this section and, except as provided in division (D)(3)(b) of this section, the provisions of divisions (D)(3) to (6) of this section shall not apply in connection with the principal if only one individual would have to be notified pursuant to division (D)(1)(b) of this section and that individual is the attorney in fact under the durable power of attorney for health care. However, the attending physician of the principal shall record in the principal's medical record information indicating that no notice was given pursuant to division (D)(1)(b) of this section because of the provisions of division (D)(2)(b) of this section.

(3)(a) Within forty-eight hours after receipt of a notice pursuant to division (D)(1) of this section, any individual so notified shall advise the attending physician of the principal whether the individual objects on a basis specified in division (D)(4)(c) of this section. If an objection as described in that division is communicated to the attending physician, then, within two

business days after the communication, the individual shall file a complaint as described in division (D)(4) of this section in the probate court of the county in which the principal is located. If the individual fails to so file a complaint, the individual's objections as described in division (D)(4)(c) of this section shall be considered to be void.

(b) Within forty-eight hours after the priority individual or any member of a priority class of individuals receives a notice pursuant to division (D)(1) of this section or within forty-eight hours after information pertaining to an unnotified priority individual or unnotified priority class of individuals is recorded in a principal's medical record pursuant to division (D)(2)(a) or (b) of this section, the individual or a majority of the individuals in the next class of individuals that pertains to the principal in the descending order of priority set forth in divisions (D)(1)(b)(i) to (v) of this section shall advise the attending physician of the principal whether the individual or majority object on a basis specified in division (D)(4)(c) of this section. If an objection as described in that division is communicated to the attending physician, then, within two business days after the communication, the objecting individual or majority shall file a complaint as described in division (D)(4) of this section in the probate court of the county in which the principal is located. If the objecting individual or majority fails to file a complaint, the objections as described in division (D)(4)(c) of this section shall be considered to be void.

(4) A complaint of an individual that is filed in accordance with division (D)(3)(a) of this section or of an individual or majority of individuals that is filed in accordance with division (D)(3)(b) of this section shall satisfy all of the following:

- (a) Name any health care facility in which the principal is confined;
- (b) Name the principal, the principal's attending physician, and the consulting physician associated with the determination that the principal is in a terminal condition or in a permanently unconscious state;
- (c) Indicate whether the plaintiff or plaintiffs object on one or more of the following bases:
 - (i) To the attending physician's determination that the principal has lost the capacity to make informed health care decisions for the principal;
 - (ii) To the attending physician's determination that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal;
 - (iii) That, in exercising the attorney in fact's authority, the attorney in fact is not acting consistently with the desires of the principal or, if the desires of the principal are unknown, in the best interest of the principal;

(iv) That the durable power of attorney for health care has expired or otherwise is no longer effective;

(v) To the attending physician's and consulting physician's determinations that the principal is in a terminal condition or in a permanently unconscious state;

(vi) That the attorney in fact's health care decision pertaining to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment is not authorized by the durable power of attorney for health care or is prohibited under section 1337.13 of the Revised Code;

(vii) That the durable power of attorney for health care was executed when the principal was not of sound mind or was under or subject to duress, fraud, or undue influence;

(viii) That the durable power of attorney for health care otherwise does not substantially comply with section 1337.12 of the Revised Code.

(d) Request the probate court to issue one or more of the following types of orders:

(i) An order to the attending physician to reevaluate, in light of the court proceedings, the determination that the principal has lost the capacity to make informed health care decisions for the principal, the determination that the principal is in a terminal condition or in a permanently unconscious state, or the determination that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal;

(ii) An order to the attorney in fact to act consistently with the desires of the principal or, if the desires of the principal are unknown, in the best interest of the principal in exercising the attorney in fact's authority, or to make only health care decisions pertaining to life-sustaining treatment that are authorized by the durable power of attorney for health care and that are not prohibited under section 1337.13 of the Revised Code;

(iii) An order invalidating the durable power of attorney for health care because it has expired or otherwise is no longer effective, it was executed when the principal was not of sound mind or was under or subject to duress, fraud, or undue influence, or it otherwise does not substantially comply with section 1337.12 of the Revised Code.

(e) Be accompanied by an affidavit of the plaintiff or plaintiffs that includes averments relative to whether the plaintiff is an individual or the plaintiffs are individuals as described in division (D)(1)(b)(i), (ii), (iii), (iv), or (v) of this section and to the factual basis for the plaintiff's or the plaintiffs' objections;

(f) Name any individuals who were notified by the attending physician

in accordance with division (D)(1)(b) of this section and who are not joining in the complaint as plaintiffs;

(g) Name, in the caption of the complaint, as defendants the attending physician of the principal, the attorney in fact under the durable power of attorney for health care, the consulting physician associated with the determination that the principal is in a terminal condition or in a permanently unconscious state, any health care facility in which the principal is confined, and any individuals who were notified by the attending physician in accordance with division (D)(1)(b) of this section and who are not joining in the complaint as plaintiffs.

(5) Notwithstanding any contrary provision of the Revised Code or of the Rules of Civil Procedure, the state and persons other than an objecting individual as described in division (D)(3)(a) of this section, other than an objecting individual or majority of individuals as described in division (D)(3)(b) of this section, and other than persons described in division (D)(4)(g) of this section are prohibited from commencing a civil action under division (D) of this section and from joining or being joined as parties to an action commenced under division (D) of this section, including joining by way of intervention.

(6)(a) A probate court in which a complaint as described in division (D)(4) of this section is filed within the period specified in division (D)(3)(a) or (b) of this section shall conduct a hearing on the complaint after a copy of it and a notice of the hearing have been served upon the defendants. The clerk of the probate court in which the complaint is filed shall cause the complaint and the notice of the hearing to be so served in accordance with the Rules of Civil Procedure, which service shall be made, if possible, within three days after the filing of the complaint. The hearing shall be conducted at the earliest possible time, but no later than the third business day after such service has been completed. Immediately following the hearing, the court shall enter on its journal its determination whether a requested order will be issued.

(b) If the health care decision of the attorney in fact authorized the use or continuation of life-sustaining treatment and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the principal or an order to the attorney in fact as described in division (D)(4)(d)(i) or (ii) of this section, the court shall issue the requested order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.

(c) If the health care decision of the attorney in fact authorized the withholding or withdrawal of life-sustaining treatment and if the plaintiff or plaintiffs requested a reevaluation order to the attending physician of the principal or an order to the attorney in fact as described in division (D)(4)(d)(i) or (ii) of this section, the court shall issue the requested order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by a preponderance of the evidence and, if applicable, to a reasonable degree of medical certainty and in accordance with reasonable medical standards.

(d) If the plaintiff or plaintiffs requested an invalidation order as described in division (D)(4)(d)(iii) of this section, the court shall issue the order only if it finds that the plaintiff or plaintiffs have established a factual basis for the objection or objections involved by clear and convincing evidence.

(e) If the court issues a reevaluation order to the principal's attending physician pursuant to division (D)(6)(b) or (c) of this section, the attending physician shall make the requisite reevaluation. If, after doing so, the attending physician again determines that the principal has lost the capacity to make informed health care decisions for the principal, that the principal is in a terminal condition or in a permanently unconscious state, or that there is no reasonable possibility that the principal will regain the capacity to make informed health care decisions for the principal, the attending physician shall notify the court in writing of the determination and comply with division (B)(2) of this section.

(E)(1) In connection with the provision of comfort care in a manner consistent with divisions (C) and (E) of section 1337.13 of the Revised Code to a principal who is in a terminal condition or in a permanently unconscious state, nothing in sections 1337.11 to 1337.17 of the Revised Code precludes the attending physician of the principal who carries out the responsibility to provide comfort care to the principal in good faith and while acting within the scope of the attending physician's authority from prescribing, dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the principal, including, but not limited to, prescribing, ~~dispensing~~ personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the principal's pain or discomfort and not for the purpose of postponing or causing the principal's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the principal's death. In connection with the provision of

comfort care in a manner consistent with divisions (C) and (E) of section 1337.13 of the Revised Code to a principal who is in a terminal condition or in a permanently unconscious state, nothing in sections 1337.11 to 1337.17 of the Revised Code precludes health care personnel acting under the direction of the principal's attending physician who carry out the responsibility to provide comfort care to the principal in good faith and while acting within the scope of their authority from dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the principal, including, but not limited to, ~~dispensing personally furnishing~~, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the principal's pain or discomfort and not for the purpose of postponing or causing the principal's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the principal's death.

(2) If, at any time, a priority individual or any member of a priority class of individuals under division (D)(1)(b) of this section or if, at any time, the individual or a majority of the individuals in the next class of individuals that pertains to the principal in the descending order of priority set forth in that division, believes in good faith that both of the following circumstances apply, the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next class of individuals that pertains to the principal may commence an action in the probate court of the county in which a principal who is in a terminal condition or permanently unconscious state is located for the issuance of an order mandating the use or continuation of comfort care in connection with the principal in a manner that is consistent with sections 1337.11 to 1337.17 of the Revised Code:

(a) Comfort care is not being used or continued in connection with the principal.

(b) The withholding or withdrawal of the comfort care is contrary to sections 1337.11 to 1337.17 of the Revised Code.

(F) Except as provided in divisions (D) and (E) of this section in connection with principals who are in a terminal condition or in a permanently unconscious state, sections 1337.11 to 1337.17 of the Revised Code do not authorize the commencement of any civil action in a probate court or court of common pleas for the purpose of obtaining an order relative to a health care decision made by an attorney in fact under a durable power of attorney for health care.

(G) A durable power of attorney for health care, or other document, that is similar to a durable power of attorney for health care authorized by sections 1337.11 to 1337.17 of the Revised Code, that is or has been executed under the law of another state prior to, on, or after October 10, 1991, and that substantially complies with that law or with sections 1337.11 to 1337.17 of the Revised Code shall be considered to be valid for purposes of those sections.

Sec. 2133.11. (A) Subject to division (D) of this section, an attending physician, consulting physician, health care facility, and health care personnel acting under the direction of an attending physician are not subject to criminal prosecution, are not liable in damages in a tort or other civil action, and are not subject to professional disciplinary action for any of the following:

(1) Giving effect to a declaration, if the physician, facility, or personnel gives effect to the declaration in good faith and does not have actual knowledge that the declaration has been revoked or does not substantially comply with this chapter;

(2) Giving effect to a consent under the circumstances described in section 2133.08 of the Revised Code, if the physician, facility, or personnel gives effect to the consent in good faith and does not have actual knowledge that the consent is invalid under that section and if a probate court has not issued an order reversing the consent pursuant to division (E) of that section;

(3) Giving effect to a consent under the circumstances described in section 2133.09 of the Revised Code, if the physician, facility, or personnel gives effect to the consent in good faith and does not have actual knowledge that the consent is invalid under that section and if the appropriate probate court has issued an order authorizing the withholding or withdrawal of nutrition and hydration in connection with the patient in question;

(4) Refusing to or not being able to comply or allow compliance with a declaration of a qualified patient, with a consent given in accordance with section 2133.08 or 2133.09 of the Revised Code, with a probate court order issued pursuant to section 2133.05, 2133.08, or 2133.09 of the Revised Code, or with another applicable provision of this chapter, if the refusal or inability to comply or allow compliance is in good faith, provided that, in the case of an attending physician or health care facility, whichever of the following apply are satisfied:

(a) The attending physician or health care facility does not prevent or attempt to prevent, or unreasonably delay or attempt to unreasonably delay, the transfer of the qualified patient or other patient to the care of a physician who, or a health care facility that, is willing and able to so comply or allow

compliance.

(b) If the declaration of the qualified patient provided for the use or continuation of life-sustaining treatment should the declarant subsequently be in a terminal condition or in a permanently unconscious state, if the consent decision of a priority individual or class of individuals under section 2133.08 of the Revised Code was to use or continue life-sustaining treatment in connection with the patient described in that section, or if the probate court issued a reevaluation order pursuant to section 2133.05 or 2133.08 of the Revised Code that was intended to result in the use or continuation of life-sustaining treatment in connection with the qualified patient or other patient, the attending physician or health care facility used or continued the life-sustaining treatment or caused it to be used or continued until a transfer as described in division (A)(4)(a) of this section was made.

(5) Making determinations other than those described in division (B) of this section, or otherwise acting under this chapter, if the determinations or other actions are made in good faith and in accordance with reasonable medical standards;

(6) Prescribing, dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to a qualified patient or other patient, including, but not limited to, prescribing, ~~dispensing~~ personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing ~~his~~ the qualified patient's or other patient's pain or discomfort and not for the purpose of postponing or causing ~~his~~ the qualified patient's or other patient's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the patient's death, if the attending physician so prescribing, dispensing, administering, or causing to be administered or the health care personnel acting under the direction of the attending physician so dispensing, administering, or causing to be administered are carrying out in good faith the responsibility to provide comfort care described in division (E)(1) of section 2133.12 of the Revised Code.

(B) Subject to division (D) of this section, an attending or consulting physician is not subject to criminal prosecution, is not liable in damages in a tort or other civil action, and is not subject to professional disciplinary action if the physician makes any of the following determinations in good faith, to a reasonable degree of medical certainty, and in accordance with reasonable medical standards:

(1) A determination that a declarant or a patient as described in section

2133.08 of the Revised Code is in a terminal condition;

(2) A determination that a declarant is in a permanently unconscious state;

(3) A determination that a patient as described in section 2133.08 of the Revised Code currently is and for at least the immediately preceding twelve months has been in a permanently unconscious state;

(4) A determination that a declarant or a patient as described in section 2133.08 of the Revised Code no longer is able to make informed decisions regarding the administration of life-sustaining treatment;

(5) A determination that there is no reasonable possibility that a declarant or a patient as described in section 2133.08 of the Revised Code will regain the capacity to make informed decisions regarding the administration of life-sustaining treatment;

(6) A determination that nutrition or hydration will not or no longer will provide comfort or alleviate pain in connection with a patient as described in section 2133.09 of the Revised Code.

(C)(1) Subject to division (D) of this section, an individual who is authorized to give a consent to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment under division (B) of section 2133.08 of the Revised Code and who makes ~~his~~ the decision in good faith is not subject to criminal prosecution, is not liable in damages in a tort or other civil action, and is not subject to professional disciplinary action in connection with that decision.

(2) Subject to division (D) of this section, an individual who is authorized to give a consent to the withholding or withdrawal of nutrition and hydration in connection with a patient under division (A)(4) of section 2133.09 of the Revised Code and who gives the consent in good faith is not subject to criminal prosecution, is not liable in damages in a tort or other civil action, and is not subject to professional disciplinary action in connection with that consent.

(D) This section does not grant an immunity from criminal or civil liability or from professional disciplinary action to health care personnel for actions that are outside the scope of their authority.

Sec. 2133.12. (A) The death of a qualified patient or other patient resulting from the withholding or withdrawal of life-sustaining treatment in accordance with this chapter does not constitute a suicide, aggravated murder, murder, or any other homicide offense for any purpose.

(B)(1) The execution of a declaration shall not do either of the following:

(a) Affect the sale, procurement, issuance, or renewal of any policy of

life insurance or annuity, notwithstanding any term of a policy or annuity to the contrary;

(b) Be deemed to modify or invalidate the terms of any policy of life insurance or annuity that is in effect on October 10, 1991.

(2) Notwithstanding any term of a policy of life insurance or annuity to the contrary, the withholding or withdrawal of life-sustaining treatment from an insured, qualified patient or other patient in accordance with this chapter shall not impair or invalidate any policy of life insurance or annuity.

(3) Notwithstanding any term of a policy or plan to the contrary, the use or continuation, or the withholding or withdrawal, of life-sustaining treatment from an insured, qualified patient or other patient in accordance with this chapter shall not impair or invalidate any policy of health insurance or any health care benefit plan.

(4) No physician, health care facility, other health care provider, person authorized to engage in the business of insurance in this state under Title XXXIX of the Revised Code, health insuring corporation, other health care plan, legal entity that is self-insured and provides benefits to its employees or members, or other person shall require any individual to execute or refrain from executing a declaration, or shall require an individual to revoke or refrain from revoking a declaration, as a condition of being insured or of receiving health care benefits or services.

(C)(1) This chapter does not create any presumption concerning the intention of an individual who has revoked or has not executed a declaration with respect to the use or continuation, or the withholding or withdrawal, of life-sustaining treatment if the individual should be in a terminal condition or in a permanently unconscious state at any time.

(2) This chapter does not affect the right of a qualified patient or other patient to make informed decisions regarding the use or continuation, or the withholding or withdrawal, of life-sustaining treatment as long as the qualified patient or other patient is able to make those decisions.

(3) This chapter does not require a physician, other health care personnel, or a health care facility to take action that is contrary to reasonable medical standards.

(4) This chapter and, if applicable, a declaration do not affect or limit the authority of a physician or a health care facility to provide or not to provide life-sustaining treatment to a person in accordance with reasonable medical standards applicable in an emergency situation.

(D) Nothing in this chapter condones, authorizes, or approves of mercy killing, assisted suicide, or euthanasia.

(E)(1) This chapter does not affect the responsibility of the attending

physician of a qualified patient or other patient, or other health care personnel acting under the direction of the patient's attending physician, to provide comfort care to the patient. Nothing in this chapter precludes the attending physician of a qualified patient or other patient who carries out the responsibility to provide comfort care to the patient in good faith and while acting within the scope of the attending physician's authority from prescribing, dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the patient, including, but not limited to, prescribing, ~~dispensing~~ personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the qualified patient's or other patient's pain or discomfort and not for the purpose of postponing or causing the qualified patient's or other patient's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the patient's death. Nothing in this chapter precludes health care personnel acting under the direction of the patient's attending physician who carry out the responsibility to provide comfort care to the patient in good faith and while acting within the scope of their authority from dispensing, administering, or causing to be administered any particular medical procedure, treatment, intervention, or other measure to the patient, including, but not limited to, ~~dispensing~~ personally furnishing, administering, or causing to be administered by judicious titration or in another manner any form of medication, for the purpose of diminishing the qualified patient's or other patient's pain or discomfort and not for the purpose of postponing or causing the qualified patient's or other patient's death, even though the medical procedure, treatment, intervention, or other measure may appear to hasten or increase the risk of the patient's death.

(2)(a) If, at any time, a person described in division (A)(2)(a)(i) of section 2133.05 of the Revised Code or the individual or a majority of the individuals in either of the first two classes of individuals that pertain to a declarant in the descending order of priority set forth in division (A)(2)(a)(ii) of section 2133.05 of the Revised Code believes in good faith that both of the following circumstances apply, the person or the individual or majority of individuals in either of the first two classes of individuals may commence an action in the probate court of the county in which a declarant who is in a terminal condition or permanently unconscious state is located for the issuance of an order mandating the use or continuation of comfort care in connection with the declarant in a manner that is consistent with division (E)(1) of this section:

(i) Comfort care is not being used or continued in connection with the declarant.

(ii) The withholding or withdrawal of the comfort care is contrary to division (E)(1) of this section.

(b) If a declarant did not designate in the declarant's declaration a person as described in division (A)(2)(a)(i) of section 2133.05 of the Revised Code and if, at any time, a priority individual or any member of a priority class of individuals under division (A)(2)(a)(ii) of section 2133.05 of the Revised Code or, at any time, the individual or a majority of the individuals in the next class of individuals that pertains to the declarant in the descending order of priority set forth in that division believes in good faith that both of the following circumstances apply, the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next class of individuals that pertains to the declarant may commence an action in the probate court of the county in which a declarant who is in a terminal condition or permanently unconscious state is located for the issuance of an order mandating the use or continuation of comfort care in connection with the declarant in a manner that is consistent with division (E)(1) of this section:

(i) Comfort care is not being used or continued in connection with the declarant.

(ii) The withholding or withdrawal of the comfort care is contrary to division (E)(1) of this section.

(c) If, at any time, a priority individual or any member of a priority class of individuals under division (B) of section 2133.08 of the Revised Code or, at any time, the individual or a majority of the individuals in the next class of individuals that pertains to the patient in the descending order of priority set forth in that division believes in good faith that both of the following circumstances apply, the priority individual, the member of the priority class of individuals, or the individual or majority of individuals in the next class of individuals that pertains to the patient may commence an action in the probate court of the county in which a patient as described in division (A) of section 2133.08 of the Revised Code is located for the issuance of an order mandating the use or continuation of comfort care in connection with the patient in a manner that is consistent with division (E)(1) of this section:

(i) Comfort care is not being used or continued in connection with the patient.

(ii) The withholding or withdrawal of the comfort care is contrary to division (E)(1) of this section.

Sec. 2305.234. (A) As used in this section:

(1) "Chiropractic claim," "medical claim," and "optometric claim" have the same meanings as in section 2305.11 of the Revised Code.

(2) "Dental claim" has the same meaning as in section 2305.11 of the Revised Code except that it does not include any claim arising out of a dental operation or any derivative claim for relief that arises out of a dental operation.

(3) "Governmental health care program" has the same meaning as in section 4731.65 of the Revised Code.

(4) "Health care professional" means any of the following who provide medical, dental, or other health-related diagnosis, care, or treatment:

(a) Physicians authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery;

(b) Registered nurses and licensed practical nurses licensed under Chapter 4723. of the Revised Code;

(c) Physician assistants authorized to practice under Chapter 4730. of the Revised Code;

(d) Dentists and dental hygienists licensed under Chapter 4715. of the Revised Code;

(e) Physical therapists licensed under Chapter 4755. of the Revised Code;

(f) Chiropractors licensed under Chapter 4734. of the Revised Code;

(g) Optometrists licensed under Chapter 4725. of the Revised Code;

(h) Podiatrists authorized under Chapter 4731. of the Revised Code to practice podiatry;

(i) Dietitians licensed under Chapter 4759. of the Revised Code;

(j) Pharmacists ~~registered~~ licensed under Chapter 4729. of the Revised Code.

(5) "Health care worker" means a person other than a health care professional who provides medical, dental, or other health-related care or treatment under the direction of a health care professional with the authority to direct that individual's activities, including medical technicians, medical assistants, dental assistants, orderlies, aides, and individuals acting in similar capacities.

(6) "Indigent and uninsured person" means a person who meets all of the following requirements:

(a) The person's income is not greater than one hundred fifty per cent of the current poverty line as defined by the United States office of management and budget and revised in accordance with section 673(2) of the "Omnibus Budget Reconciliation Act of 1981," 95 Stat. 511, 42 U.S.C. 9902, as amended.

(b) The person is not eligible to receive medical assistance under Chapter 5111., disability assistance medical assistance under Chapter 5115. of the Revised Code, or assistance under any other governmental health care program;

(c) Either of the following applies:

(i) The person is not a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan;

(ii) The person is a policyholder, certificate holder, insured, contract holder, subscriber, enrollee, member, beneficiary, or other covered individual under a health insurance or health care policy, contract, or plan, but the insurer, policy, contract, or plan denies coverage or is the subject of insolvency or bankruptcy proceedings in any jurisdiction.

(7) "Operation" means any procedure that involves cutting or otherwise infiltrating human tissue by mechanical means, including surgery, laser surgery, ionizing radiation, therapeutic ultrasound, or the removal of intraocular foreign bodies. "Operation" does not include the administration of medication by injection, unless the injection is administered in conjunction with a procedure infiltrating human tissue by mechanical means other than the administration of medicine by injection.

(8) "Nonprofit shelter or health care facility" means a charitable nonprofit corporation organized and operated pursuant to Chapter 1702. of the Revised Code, or any charitable organization not organized and not operated for profit, that provides shelter, health care services, or shelter and health care services to indigent and uninsured persons, except that "shelter or health care facility" does not include a hospital as defined in section 3727.01 of the Revised Code, a facility licensed under Chapter 3721. of the Revised Code, or a medical facility that is operated for profit.

(9) "Tort action" means a civil action for damages for injury, death, or loss to person or property other than a civil action for damages for a breach of contract or another agreement between persons or government entities.

(10) "Volunteer" means an individual who provides any medical, dental, or other health-care related diagnosis, care, or treatment without the expectation of receiving and without receipt of any compensation or other form of remuneration from an indigent and uninsured person, another person on behalf of an indigent and uninsured person, any shelter or health care facility, or any other person or government entity.

(B)(1) Subject to divisions (E) and (F)(3) of this section, a health care professional who is a volunteer and complies with division (B)(2) of this section is not liable in damages to any person or government entity in a tort

or other civil action, including an action on a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the volunteer in the provision at a nonprofit shelter or health care facility to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, including the provision of samples of medicine and other medical products, unless the action or omission constitutes willful or wanton misconduct.

(2) To qualify for the immunity described in division (B)(1) of this section, a health care professional shall do all of the following prior to providing diagnosis, care, or treatment:

(a) Determine, in good faith, that the indigent and uninsured person is mentally capable of giving informed consent to the provision of the diagnosis, care, or treatment and is not subject to duress or under undue influence;

(b) Inform the person of the provisions of this section;

(c) Obtain the informed consent of the person and a written waiver, signed by the person or by another individual on behalf of and in the presence of the person, that states that the person is mentally competent to give informed consent and, without being subject to duress or under undue influence, gives informed consent to the provision of the diagnosis, care, or treatment subject to the provisions of this section.

(3) A physician or podiatrist who is not covered by medical malpractice insurance, but complies with division (B)(2) of this section, is not required to comply with division (A) of section 4731.143 of the Revised Code.

(C) Subject to divisions (E) and (F)(3) of this section, health care workers who are volunteers are not liable in damages to any person or government entity in a tort or other civil action, including an action upon a medical, dental, chiropractic, optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care worker in the provision at a nonprofit shelter or health care facility to an indigent and uninsured person of medical, dental, or other health-related diagnosis, care, or treatment, unless the action or omission constitutes willful or wanton misconduct.

(D) Subject to divisions (E) and (F)(3) of this section and section 3701.071 of the Revised Code, a nonprofit shelter or health care facility associated with a health care professional described in division (B)(1) of this section or a health care worker described in division (C) of this section is not liable in damages to any person or government entity in a tort or other civil action, including an action on a medical, dental, chiropractic,

optometric, or other health-related claim, for injury, death, or loss to person or property that allegedly arises from an action or omission of the health care professional or worker in providing for the shelter or facility medical, dental, or other health-related diagnosis, care, or treatment to an indigent and uninsured person, unless the action or omission constitutes willful or wanton misconduct.

(E)(1) Except as provided in division (E)(2) of this section, the immunities provided by divisions (B), (C), and (D) of this section are not available to an individual or to a nonprofit shelter or health care facility if, at the time of an alleged injury, death, or loss to person or property, the individuals involved are providing one of the following:

(a) Any medical, dental, or other health-related diagnosis, care, or treatment pursuant to a community service work order entered by a court under division (H)(1) or (2) of section 2951.02 of the Revised Code as a condition of probation or other suspension of a term of imprisonment.

(b) Performance of an operation.

(c) Delivery of a baby.

(2) Division (E)(1) of this section does not apply to an individual who provides, or a nonprofit shelter or health care facility at which the individual provides, diagnosis, care, or treatment that is necessary to preserve the life of a person in a medical emergency.

(F)(1) This section does not create a new cause of action or substantive legal right against a health care professional, health care worker, or nonprofit shelter or health care facility.

(2) This section does not affect any immunities from civil liability or defenses established by another section of the Revised Code or available at common law to which an individual or a nonprofit shelter or health care facility may be entitled in connection with the provision of emergency or other diagnosis, care, or treatment.

(3) This section does not grant an immunity from tort or other civil liability to an individual or a nonprofit shelter or health care facility for actions that are outside the scope of authority of health care professionals or health care workers.

(4) This section does not affect any legal responsibility of a health care professional or health care worker to comply with any applicable law of this state or rule of an agency of this state.

(5) This section does not affect any legal responsibility of a nonprofit shelter or health care facility to comply with any applicable law of this state, rule of an agency of this state, or local code, ordinance, or regulation that pertains to or regulates building, housing, air pollution, water pollution,

sanitation, health, fire, zoning, or safety.

Sec. 2305.25. (A) No health care entity and no individual who is a member of or works on behalf of any of the following boards or committees of a health care entity or of any of the following corporations shall be liable in damages to any person for any acts, omissions, decisions, or other conduct within the scope of the functions of the board, committee, or corporation:

(1) A peer review committee of a hospital, a nonprofit health care corporation which is a member of the hospital or of which the hospital is a member, or a community mental health center;

(2) A board or committee of a hospital or of a nonprofit health care corporation which is a member of the hospital or of which the hospital is a member reviewing professional qualifications or activities of the hospital medical staff or applicants for admission to the medical staff;

(3) A utilization committee of a state or local society composed of doctors of medicine ~~or~~ doctors of osteopathic medicine ~~and surgery~~, or doctors of podiatric medicine;

(4) A peer review committee of nursing home providers or administrators, including a corporation engaged in performing the functions of a peer review committee of nursing home providers or administrators, or a corporation engaged in the functions of another type of peer review or professional standards review committee;

(5) A peer review committee, professional standards review committee, or arbitration committee of a state or local society composed of doctors of medicine, doctors of osteopathic medicine ~~and surgery~~, doctors of dentistry, doctors of optometry, doctors of podiatric medicine, psychologists, or ~~registered~~ pharmacists;

(6) A peer review committee of a health insuring corporation that has at least a two-thirds majority of member physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers, which conduct adversely affects, or could adversely affect, the health or welfare of any patient. For purposes of this division, "health insuring corporation" includes wholly owned subsidiaries of a health insuring corporation.

(7) A peer review committee of any insurer authorized under Title XXXIX of the Revised Code to do the business of sickness and accident insurance in this state that has at least a two-thirds majority of physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care providers, which conduct adversely affects, or could adversely affect,

he health or welfare of any patient;

(8) A peer review committee of any insurer authorized under Title XXXIX of the Revised Code to do the business of sickness and accident insurance in this state that has at least a two-thirds majority of physicians in active practice and that conducts professional credentialing and quality review activities involving the competence or professional conduct of a health care facility that has contracted with the insurer to provide health care services to insureds, which conduct adversely affects, or could adversely affect, the health or welfare of any patient;

(9) A peer review committee of an insurer authorized under Title XXXIX of the Revised Code to do the business of medical professional liability insurance in this state and that conducts professional quality review activities involving the competence or professional conduct of health care providers, which conduct adversely affects, or could affect, the health or welfare of any patient;

(10) A peer review committee of a health care entity.

(B)(1) A hospital shall be presumed to not be negligent in the credentialing of a qualified person if the hospital proves by a preponderance of the evidence that at the time of the alleged negligent credentialing of the qualified person it was accredited by the joint commission on accreditation of health care organizations, the American osteopathic association, or the national committee for quality assurance.

(2) The presumption that a hospital is not negligent as provided in division (B)(1) of this section may be rebutted only by proof, by a preponderance of the evidence, of any of the following:

(a) The credentialing and review requirements of the accrediting organization did not apply to the hospital, the qualified person, or the type of professional care that is the basis of the claim against the hospital.

(b) The hospital failed to comply with all material credentialing and review requirements of the accrediting organization that applied to the qualified person.

(c) The hospital, through its medical staff executive committee or its governing body and sufficiently in advance to take appropriate action, knew that a previously competent qualified person with staff privileges at the hospital had developed a pattern of incompetence that indicated that the qualified person's privileges should have been limited prior to treating the plaintiff at the hospital.

(d) The hospital, through its medical staff executive committee or its governing body and sufficiently in advance to take appropriate action, knew that a previously competent qualified person with staff privileges at the

hospital would provide fraudulent medical treatment but failed to limit the qualified person's privileges prior to treating the plaintiff at the hospital.

(3) If the plaintiff fails to rebut the presumption provided in division (B)(1) of this section, upon the motion of the hospital, the court shall enter judgment in favor of the hospital on the claim of negligent credentialing.

(C) Nothing in this section otherwise shall relieve any individual or health care entity from liability arising from treatment of a patient. Nothing in this section shall be construed as creating an exception to section 2305.251 of the Revised Code.

(D) No person who provides information under this section without malice and in the reasonable belief that the information is warranted by the facts known to the person shall be subject to suit for civil damages as a result of providing the information.

(E) As used in this section:

(1) "Peer review committee" means a utilization review committee, quality assurance committee, quality improvement committee, tissue committee, credentialing committee, or other committee that conducts professional credentialing and quality review activities involving the competence or professional conduct of health care practitioners.

(2) "Health care entity" means a government entity, a for-profit or nonprofit corporation, a limited liability company, a partnership, a professional corporation, a state or local society as described in division (A)(3) of this section, or other health care organization, including, but not limited to, health care entities described in division (A) of this section, whether acting on its own behalf or on behalf of or in affiliation with other health care entities, that conducts, as part of its purpose, professional credentialing or quality review activities involving the competence or professional conduct of health care practitioners or providers.

(3) "Hospital" means either of the following:

(a) An institution that has been registered or licensed by the Ohio department of health as a hospital;

(b) An entity, other than an insurance company authorized to do business in this state, that owns, controls, or is affiliated with an institution that has been registered or licensed by the Ohio department of health as a hospital.

(4) "Qualified person" means a member of the medical staff of a hospital or a person who has professional privileges at a hospital pursuant to section 3701.351 of the Revised Code.

(F) This section shall be considered to be purely remedial in its operation and shall be applied in a remedial manner in any civil action in

which this section is relevant, whether the civil action is pending in court or commenced on or after the effective date of this section, regardless of when the cause of action accrued and notwithstanding any other section of the Revised Code or prior rule of law of this state.

Sec. 2305.33. (A) As used in this section:

(1) "Bus" has the same meaning as in section 4511.78 of the Revised Code.

(2) "Business of public transportation" means a business that includes among its functions the transporting of passengers in interstate or intrastate commerce by aircraft, railroad train, school or other bus, taxicab, or other type of common carrier, whether or not a charge is imposed for the transportation. "Business of public transportation" includes, but is not limited to, an Ohio transit system.

(3) "Civil action" means a tort or contract action for damages for harm.

(4) "Employee" means an individual who is employed by an employer to operate any aircraft, railroad train, school or other bus, taxicab, or other type of common carrier.

(5) "Employer" means a person that is engaged in the business of public transportation.

(6) "Harm" means injury, death, or loss to person or property.

(7) "Ohio transit system" means a county transit system operated in accordance with sections 306.01 to 306.13 of the Revised Code, a regional transit authority operated in accordance with sections 306.30 to 306.71 of the Revised Code, a regional transit commission operated in accordance with sections 306.80 to 306.90 of the Revised Code, any municipally owned transportation system, and any mass transit company that operates exclusively within the territorial limits of a municipal corporation, or within the territorial limits of a municipal corporation and one or more municipal corporations immediately contiguous to that municipal corporation.

(8) "Physician" means a person who is licensed pursuant to Chapter 4731. of the Revised Code to practice medicine or surgery or osteopathic medicine and surgery.

(9) "Prescription" has the same meaning as in section ~~4729.02~~ 4729.01 of the Revised Code.

(10) "School bus" has the same meaning as in section 4511.01 of the Revised Code.

(11) "Tort action" means a civil action for damages for injury, death, or loss to person or property, other than a civil action for damages for a breach of contract or another agreement between persons. "Tort action" includes, but is not limited to, a civil action for damages against a physician on the

ground of a breach of the confidentiality of the physician-patient relationship.

(B) A physician is not liable in damages in a civil action for harm that allegedly is incurred by an employee as a result of the physician reporting any of the following to the employer of the employee:

(1) The physician has determined that the employee is using a drug of abuse dispensed pursuant to a prescription and that the employee's use of the drug of abuse represents a potential risk of harm to passengers on any aircraft, railroad train, school or other bus, taxicab, or other type of common carrier operated by the employee;

(2) The physician has determined that the employee is using a drug of abuse otherwise than pursuant to a prescription.

(3) The physician has determined that the employee has a condition, other than one involving the use of a drug of abuse, that represents a potential risk of harm to passengers on any aircraft, railroad train, school or other bus, taxicab, or other type of common carrier operated by the employee.

(C)(1) This section does not create, and shall not be construed as creating, a new cause of action or substantive legal right against a physician and in favor of an employee who was a patient of the physician, who was the subject of a report described in division (B) of this section, and who allegedly sustained harm as a result of the report, or in favor of any other person who allegedly sustained harm as a result of the report.

(2) This section does not impose, and shall not be construed as imposing, a duty upon a physician to make a report as described in division (B) of this section to an employer of an employee who the physician determines is using a drug of abuse dispensed pursuant to a prescription or is using a drug of abuse other than pursuant to a prescription, or who the physician determines has a condition, other than one involving the use of a drug of abuse, that represents a potential risk of harm to passengers on the type of common carrier operated by the employee.

(3) This section does not affect and shall not be construed as affecting, any immunities from civil liability or defenses established by another section of the Revised Code or available at common law, to which a physician may be entitled.

(D) In the event that a physician makes a report described in division (B) of this section, the physician also shall make a report to the employee who was the subject of the report. If the report to the employer is in writing, the report to the employee shall be in writing.

Sec. 2913.02. (A) No person, with purpose to deprive the owner of

property or services, shall knowingly obtain or exert control over either the property or services in any of the following ways:

(1) Without the consent of the owner or person authorized to give consent;

(2) Beyond the scope of the express or implied consent of the owner or person authorized to give consent;

(3) By deception;

(4) By threat.

(B) Whoever violates this section is guilty of theft. Except as otherwise provided in this division, a violation of this section is petty theft, a misdemeanor of the first degree. If the value of the property or services stolen is five hundred dollars or more and is less than five thousand dollars or if the property stolen is any of the property listed in section 2913.71 of the Revised Code, a violation of this section is theft, a felony of the fifth degree. If the value of the property or services stolen is five thousand dollars or more and is less than one hundred thousand dollars or if the property stolen is a firearm or dangerous ordnance, as defined in section 2923.11 of the Revised Code,~~;~~ a violation of this section is grand theft, a felony of the fourth degree. If the property stolen is a motor vehicle, as defined in section 4501.01 of the Revised Code, a violation of this section is grand theft of a motor vehicle, a felony of the fourth degree. If the value of the property or services stolen is one hundred thousand dollars or more, a violation of this section is aggravated theft, a felony of the third degree. If the property stolen is any dangerous drug, as defined in section ~~4729.02~~ 4729.01 of the Revised Code, a violation of this section is theft of drugs, a felony of the fourth degree, or, if the offender previously has been convicted of a felony drug abuse offense, as defined in section 2925.01 of the Revised Code, a felony of the third degree.

Sec. 2913.51. (A) No person shall receive, retain, or dispose of property of another knowing or having reasonable cause to believe that the property has been obtained through commission of a theft offense.

(B) Whoever violates this section is guilty of receiving stolen property. Except as otherwise provided in this division, receiving stolen property is a misdemeanor of the first degree. If the value of the property involved is five hundred dollars or more and is less than five thousand dollars, if the property involved is any of the property listed in section 2913.71 of the Revised Code, receiving stolen property is a felony of the fifth degree. If the property involved is a motor vehicle, as defined in section 4501.01 of the Revised Code, if the property involved is a dangerous drug, as defined in section ~~4729.02~~ 4729.01 of the Revised Code, ~~or~~ if the value of the property

involved is five thousand dollars or more and is less than one hundred thousand dollars, or if the property involved is a firearm or dangerous ordnance, as defined in section 2923.11 of the Revised Code, receiving stolen property is a felony of the fourth degree. If the value of the property involved is one hundred thousand dollars or more, receiving stolen property is a felony of the third degree.

Sec. 2925.01. As used in this chapter:

(A) "Administer," "controlled substance," "dispense," "distribute," "~~federal drug abuse control laws,~~" "hypodermic," "manufacturer," "official written order," "person," "pharmacist," "pharmacy," "~~practitioner,~~" "~~prescription,~~" "sale," "schedule I," "schedule II," "schedule III," "schedule IV," "schedule V," and "wholesaler" have the same meanings as in section 3719.01 of the Revised Code.

(B) "Drug dependent person" and "drug of abuse" have the same meanings as in section 3719.011 of the Revised Code.

(C) "Drug," "dangerous drug," ~~and "Federal Food, Drug, and Cosmetic Act licensed health professional authorized to prescribe drugs,"~~ and "prescription" have the same meanings as in section ~~4729.02~~ 4729.01 of the Revised Code.

(D) "Bulk amount" of a controlled substance means any of the following:

(1) For any compound, mixture, preparation, or substance included in schedule I, schedule II, or schedule III, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish and except as provided in division (D)(2) or (5) of this section, whichever of the following is applicable:

(a) An amount equal to or exceeding ten grams or twenty-five unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I opiate or opium derivative;

(b) An amount equal to or exceeding ten grams of a compound, mixture, preparation, or substance that is or contains any amount of raw or gum opium;

(c) An amount equal to or exceeding thirty grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of a schedule I hallucinogen other than tetrahydrocannabinol or lysergic acid amide, or a schedule I stimulant or depressant;

(d) An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II opiate or opium derivative;

(e) An amount equal to or exceeding five grams or ten unit doses of a compound, mixture, preparation, or substance that is or contains any amount of phencyclidine;

(f) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant that is in a final dosage form manufactured by a person authorized by the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the federal drug abuse control laws, as defined in section 3719.01 Of the Revised Code, that is or contains any amount of a schedule II depressant substance or a schedule II hallucinogenic substance;

(g) An amount equal to or exceeding three grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule II stimulant, or any of its salts or isomers, that is not in a final dosage form manufactured by a person authorized by the Federal Food, Drug, and Cosmetic Act and the federal drug abuse control laws.

(2) An amount equal to or exceeding one hundred twenty grams or thirty times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III or IV substance other than an anabolic steroid or a schedule III opiate or opium derivative;

(3) An amount equal to or exceeding twenty grams or five times the maximum daily dose in the usual dose range specified in a standard pharmaceutical reference manual of a compound, mixture, ~~specification~~ preparation, or substance that is or contains any amount of a schedule III opiate or opium derivative;

(4) An amount equal to or exceeding two hundred fifty milliliters or two hundred fifty grams of a compound, mixture, preparation, or substance that is or contains any amount of a schedule V substance;

(5) An amount equal to or exceeding two hundred solid dosage units, sixteen grams, or sixteen milliliters of a compound, mixture, preparation, or substance that is or contains any amount of a schedule III anabolic steroid.

(E) "Unit dose" means an amount or unit of a compound, mixture, or preparation containing a controlled substance that is separately identifiable and ~~is~~ in a form ~~indicating~~ that indicates that it is the amount or unit by which the controlled substance is separately administered to or taken by an individual.

(F) "Cultivate" includes planting, watering, fertilizing, or tilling.

(G) "Drug abuse offense" means any of the following:

(1) A violation of division (A) of section 2913.02 that constitutes theft of drugs, or a violation of section 2925.02, 2925.03, 2925.04, 2925.05, 2925.06, 2925.11, 2925.12, 2925.13, 2925.22, 2925.23, 2925.31, 2925.32, 2925.36, or 2925.37 of the Revised Code;

(2) A violation of an existing or former law of this or any other state or of the United States that is substantially equivalent to any section listed in division (G)(1) of this section;

(3) An offense under an existing or former law of this or any other state, or of the United States, of which planting, cultivating, harvesting, processing, making, manufacturing, producing, shipping, transporting, delivering, acquiring, possessing, storing, distributing, dispensing, selling, inducing another to use, administering to another, using, or otherwise dealing with a controlled substance is an element;

(4) A conspiracy to commit, attempt to commit, or complicity in committing or attempting to commit any offense under division (G)(1), (2), or (3) of this section.

(H) "Felony drug abuse offense" means any drug abuse offense that would constitute a felony under the laws of this state, any other state, or the United States.

(I) "Harmful intoxicant" does not include beer or intoxicating liquor but means any compound, mixture, preparation, or substance the gas, fumes, or vapor of which when inhaled can induce intoxication, excitement, giddiness, irrational behavior, depression, stupefaction, paralysis, unconsciousness, asphyxiation, or other harmful physiological effects, and includes, but is not limited to, any of the following:

(1) Any volatile organic solvent, plastic cement, model cement, fingernail polish remover, lacquer thinner, cleaning fluid, gasoline, or other preparation containing a volatile organic solvent;

(2) Any aerosol propellant;

(3) Any fluorocarbon refrigerant;

(4) Any anesthetic gas.

(J) "Manufacture" means to plant, cultivate, harvest, process, make, prepare, or otherwise engage in any part of the production of a drug, by propagation, extraction, chemical synthesis, or compounding, or any combination of the same, and includes packaging, repackaging, labeling, and other activities incident to production.

(K) "Possess" or "possession" means having control over a thing or substance, but may not be inferred solely from mere access to the thing or

substance through ownership or occupation of the premises upon which the thing or substance is found.

(L) "Sample drug" means a drug or pharmaceutical preparation that would be hazardous to health or safety if used without the supervision of a ~~practitioner~~ licensed health professional authorized to prescribe drugs, or a drug of abuse, and that, at one time, had been placed in a container plainly marked as a sample by a manufacturer.

(M) "Standard pharmaceutical reference manual" means the current edition, with cumulative changes if any, of any of the following reference works:

(1) "The National Formulary";

(2) "The United States Pharmacopeia," prepared by authority of the United States Pharmacopeial Convention, Inc.;

(3) Other standard references that are approved by the state board of pharmacy.

(N) "Juvenile" means a person under eighteen years of age.

(O) "Counterfeit controlled substance" means any of the following:

(1) Any drug that bears, or whose container or label bears, a trademark, trade name, or other identifying mark used without authorization of the owner of rights to that trademark, trade name, or identifying mark;

(2) Any unmarked or unlabeled substance that is represented to be a controlled substance manufactured, processed, packed, or distributed by a person other than the person that manufactured, processed, packed, or distributed it;

(3) Any substance that is represented to be a controlled substance but is not a controlled substance or is a different controlled substance;

(4) Any substance other than a controlled substance that a reasonable person would believe to be a controlled substance because of its similarity in shape, size, and color, or its markings, labeling, packaging, distribution, or the price for which it is sold or offered for sale.

(P) An offense is "committed in the vicinity of a school" if the offender commits the offense on school premises, in a school building, or within one thousand feet of the boundaries of any school premises.

(Q) "School" means any school operated by a board of education or any school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted at the time a criminal offense is committed.

(R) "School premises" means either of the following:

(1) The parcel of real property on which any school is situated, whether

or not any instruction, extracurricular activities, or training provided by the school is being conducted on the premises at the time a criminal offense is committed;

(2) Any other parcel of real property that is owned or leased by a board of education of a school or the governing body of a school for which the state board of education prescribes minimum standards under section 3301.07 of the Revised Code and on which some of the instruction, extracurricular activities, or training of the school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted on the parcel of real property at the time a criminal offense is committed.

(S) "School building" means any building in which any of the instruction, extracurricular activities, or training provided by a school is conducted, whether or not any instruction, extracurricular activities, or training provided by the school is being conducted in the school building at the time a criminal offense is committed.

(T) "Disciplinary counsel" means the disciplinary counsel appointed by the board of commissioners on grievances and discipline of the supreme court under the Rules for the Government of the Bar of Ohio.

(U) "Certified grievance committee" means a duly constituted and organized committee of the Ohio state bar association or of one or more local bar associations of the state of Ohio that complies with the criteria set forth in Rule V, section 6 of the Rules for the Government of the Bar of Ohio.

(V) "Professional license" means any license, permit, certificate, registration, qualification, admission, temporary license, temporary permit, temporary certificate, or temporary registration that is described in divisions (W)(1) to (35) of this section and that qualifies a person as a professionally licensed person.

(W) "Professionally licensed person" means any of the following:

(1) A person who has obtained a license as a manufacturer of controlled substances or a wholesaler of controlled substances under Chapter 3719. of the Revised Code;

(2) A person who has received a certificate or temporary certificate as a certified public accountant or who has registered as a public accountant under Chapter 4701. of the Revised Code and who holds a live permit issued under that chapter;

(3) A person who holds a certificate of qualification to practice architecture issued or renewed and registered under Chapter 4703. of the Revised Code;

(4) A person who is registered as a landscape architect under Chapter 4703. of the Revised Code or who holds a permit as a landscape architect issued under that chapter;

(5) A person licensed as an auctioneer or apprentice auctioneer or licensed to operate an auction company under Chapter 4707. of the Revised Code;

(6) A person who has been issued a certificate of registration as a registered barber under Chapter 4709. of the Revised Code;

(7) A person licensed and regulated to engage in the business of a debt pooling company by a legislative authority, under authority of Chapter 4710. of the Revised Code;

(8) A person who has been issued a cosmetologist's license, manicurist's license, esthetician's license, managing cosmetologist's license, managing manicurist's license, managing esthetician's license, cosmetology instructor's license, manicurist instructor's license, esthetician instructor's license, or tanning facility permit under Chapter 4713. of the Revised Code;

(9) A person who has been issued a license to practice dentistry, a general anesthesia permit, a conscious intravenous sedation permit, a limited resident's license, a limited teaching license, a dental hygienist's license, or a dental hygienist's teacher's certificate under Chapter 4715. of the Revised Code;

(10) A person who has been issued an embalmer's license, a funeral director's license, or a funeral home license, or who has been registered for a funeral director's apprenticeship under Chapter 4717. of the Revised Code;

(11) A person who has been licensed as a registered nurse or practical nurse, or who has been issued a certificate for the practice of nurse-midwifery under Chapter 4723. of the Revised Code;

(12) A person who has been licensed to practice optometry or to engage in optical dispensing under Chapter 4725. of the Revised Code;

(13) A person licensed to act as a pawnbroker under Chapter 4727. of the Revised Code;

(14) A person licensed to act as a precious metals dealer under Chapter 4728. of the Revised Code;

(15) A person ~~registered~~ licensed as a pharmacist, a pharmacy intern, a wholesale distributor of dangerous drugs, or a terminal distributor of dangerous drugs under Chapter 4729. of the Revised Code;

(16) A person who is authorized to practice as a physician assistant under Chapter 4730. of the Revised Code;

(17) A person who has been issued a certificate to practice medicine and surgery, osteopathic medicine and surgery, a limited branch of medicine or

surgery, or podiatry under Chapter 4731. of the Revised Code;

(18) A person licensed as a psychologist or school psychologist under Chapter 4732. of the Revised Code;

(19) A person registered to practice the profession of engineering or surveying under Chapter 4733. of the Revised Code;

(20) A person who has been issued a ~~certificate~~ license to practice chiropractic under Chapter 4734. of the Revised Code;

(21) A person licensed to act as a real estate broker, real estate salesman, limited real estate broker, or limited real estate salesman under Chapter 4735. of the Revised Code;

(22) A person registered as a registered sanitarian under Chapter 4736. of the Revised Code;

(23) A person licensed to operate or maintain a junkyard under Chapter 4737. of the Revised Code;

(24) A person who has been issued a motor vehicle salvage dealer's license under Chapter 4738. of the Revised Code;

(25) A person who has been licensed to act as a steam engineer under Chapter 4739. of the Revised Code;

(26) A person who has been issued a license or temporary permit to practice veterinary medicine or any of its branches, or who is registered as a graduate animal technician under Chapter 4741. of the Revised Code;

(27) A person who has been issued a hearing aid dealer's or fitter's license or trainee permit under Chapter 4747. of the Revised Code;

(28) A person who has been issued a class A, class B, or class C license or who has been registered as an investigator or security guard employee under Chapter 4749. of the Revised Code;

(29) A person licensed and registered to practice as a nursing home administrator under Chapter 4751. of the Revised Code;

(30) A person licensed to practice as a ~~speech~~ speech-language pathologist or audiologist under Chapter 4753. of the Revised Code;

(31) A person issued a license as an occupational therapist or physical therapist under Chapter 4755. of the Revised Code;

(32) A person who is licensed as a professional clinical counselor or professional counselor, licensed as a social worker or independent social worker, or registered as a social work assistant under Chapter 4757. of the Revised Code;

(33) A person issued a license to practice dietetics under Chapter 4759. of the Revised Code;

(34) A person who has been issued a license or ~~temporary~~ limited permit to practice respiratory therapy under Chapter 4761. of the Revised

Code;

(35) A person who has been issued a real estate appraiser certificate under Chapter 4763. of the Revised Code.

(X) "Cocaine" means any of the following:

(1) A cocaine salt, isomer, or derivative, a salt of a cocaine isomer or derivative, or the base form of cocaine;

(2) Coca leaves or a salt, compound, derivative, or preparation of coca leaves, including ecgonine, a salt, isomer, or derivative of ecgonine, or a salt of an isomer or derivative of ecgonine;

(3) A salt, compound, derivative, or preparation of a substance identified in division (X)(1) or (2) of this section that is chemically equivalent to or identical with any of those substances, except that the substances shall not include decocainized coca leaves or extraction of coca leaves if the extractions do not contain cocaine or ecgonine.

(Y) "L.S.D." means lysergic acid diethylamide.

(Z) "Hashish" means the resin or a preparation of the resin contained in marihuana, whether in solid form or in a liquid concentrate, liquid extract, or liquid distillate form.

(AA) "Marihuana" has the same meaning as in section 3719.01 of the Revised Code, except that it does not include hashish.

(BB) An offense is "committed in the vicinity of a juvenile" if the offender commits the offense within one hundred feet of a juvenile or within the view of a juvenile, regardless of whether the offender knows the age of the juvenile, whether the offender knows the offense is being committed within one hundred feet of or within view of the juvenile, or whether the juvenile actually views the commission of the offense.

(CC) "Presumption for a prison term" or "presumption that a prison term shall be imposed" means a presumption, as described in division (D) of section 2929.13 of the Revised Code, that a prison term is a necessary sanction for a felony in order to comply with the purposes and principles of sentencing under section 2929.11 of the Revised Code.

(DD) "Major drug offender" has the same meaning as in section 2929.01 of the Revised Code.

(EE) "Minor drug possession offense" means either of the following:

(1) A violation of section 2925.11 of the Revised Code as it existed prior to July 1, 1996;

(2) A violation of section 2925.11 of the Revised Code as it exists on and after July 1, 1996, ~~this~~ that is a misdemeanor or a felony of the fifth degree.

(FF) "Mandatory prison term" has the same meaning as in section

2929.01 of the Revised Code.

(GG) "Crack cocaine" means a compound, mixture, preparation, or substance that is or contains any amount of cocaine that is analytically identified as the base form of cocaine or that is in a form that resembles rocks or pebbles generally intended for individual use.

Sec. 2925.02. (A) No person shall knowingly do any of the following:

(1) By force, threat, or deception, administer to another or induce or cause another to use a controlled substance;

(2) By any means, administer or furnish to another or induce or cause another to use a controlled substance with purpose to cause serious physical harm to the other person, or with purpose to cause the other person to become drug dependent;

(3) By any means, administer or furnish to another or induce or cause another to use a controlled substance, and thereby cause serious physical harm to the other person, or cause the other person to become drug dependent;

(4) By any means, do any of the following:

(a) Furnish or administer a controlled substance to a juvenile who is at least two years the offender's junior, when the offender knows the age of the juvenile or is reckless in that regard;

(b) Induce or cause a juvenile who is at least two years the offender's junior to use a controlled substance, when the offender knows the age of the juvenile or is reckless in that regard;

(c) Induce or cause a juvenile who is at least two years the offender's junior to commit a felony drug abuse offense, when the offender knows the age of the juvenile or is reckless in that regard;

(d) Use a juvenile, whether or not the offender knows the age of the juvenile, to perform any surveillance activity that is intended to prevent the detection of the offender or any other person in the commission of a felony drug abuse offense or to prevent the arrest of the offender or any other person for the commission of a felony drug abuse offense.

(B) Division (A)(1), (3), or (4) of this section does not apply to manufacturers, wholesalers, ~~practitioners~~ licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. of the Revised Code or section 4723.56 of the Revised Code.

(C) Whoever violates this section is guilty of corrupting another with drugs. The penalty for the offense shall be determined as follows:

(1) Except as otherwise provided in this division, if the drug involved is

any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, corrupting another with drugs is a felony of the second degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the drug involved is any compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, and if the offense was committed in the vicinity of a school, corrupting another with drugs is a felony of the first degree, and, subject to division (E) of this section, the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(2) Except as otherwise provided in this division, if the drug involved is any compound, mixture, preparation, or substance included in schedule III, IV, or V, corrupting another with drugs is a felony of the second degree, and there is a presumption for a prison term for the offense. If the drug involved is any compound, mixture, preparation, or substance included in schedule III, IV, or V and if the offense was committed in the vicinity of a school, corrupting another with drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(3) Except as otherwise provided in this division, if the drug involved is marihuana, corrupting another with drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the drug involved ~~is~~ is marihuana and if the offense was committed in the vicinity of a school, corrupting another with drugs is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(D) In addition to any prison term authorized or required by division (C) or (E) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section or the clerk of that court shall do all of the following that are applicable regarding the offender:

(1)(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.

(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, any mandatory fine imposed pursuant to division (D)(1)(a) of this section and any fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code shall be paid by the clerk of the court in accordance with and subject to the requirements of, and shall be used as specified in, division (F) of section 2925.03 of the Revised Code.

(c) If a person is charged with any violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the forfeited bail shall be paid by the clerk of the court pursuant to division (D)(1)(b) of this section as if it were a fine imposed for a violation of this section.

(2) The court either shall revoke or, if it does not revoke, shall suspend for not less than six months or more than five years, the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to a violation of this section that is a felony of the first degree and shall suspend for not less than six months nor more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any other violation of this section. If an offender's driver's or commercial driver's license or permit is revoked pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the revocation. Upon the filing of the motion and the court's finding of good cause for the termination, the court may terminate the revocation.

(3) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

(E) Notwithstanding the prison term otherwise authorized or required for the offense under division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, if the violation of division (A) of this section involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, the court, in lieu of the prison term that otherwise is authorized or required, shall impose upon the offender the mandatory prison term specified in division (D)(3)(a) of section 2929.14 of

the Revised Code and may impose an additional prison term under division (D)(3)(b) of that section.

Sec. 2925.03. (A) No person shall knowingly sell or offer to sell a controlled substance.

(B) This section does not apply to any of the following:

(1) Manufacturers, practitioners licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. or section 4723.56 of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule I or schedule II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), (e), or (f) of this section, aggravated trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(1)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved exceeds the bulk amount but does not exceed five times the bulk amount, aggravated trafficking in drugs is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison

terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) Except as otherwise provided in this division, if the amount of the drug involved exceeds five times the bulk amount but does not exceed fifty times the bulk amount, aggravated trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved exceeds fifty times the bulk amount but does not exceed one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved exceeds one hundred times the bulk amount and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, aggravated trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(2) If the drug involved in the violation is any compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of trafficking in drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), (d), or (e) of this section, trafficking in drugs is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(2)(c), (d), or (e) of this section, if the offense was committed in the vicinity of a school or in the

vicinity of a juvenile, trafficking in drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved exceeds the bulk amount but does not exceed five times the bulk amount, trafficking in drugs is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved exceeds five times the bulk amount but does not exceed fifty times the bulk amount, trafficking in drugs is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved exceeds fifty times the bulk amount, trafficking in drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved exceeds fifty times the bulk amount and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of trafficking in marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), (f), or (g) of this section, trafficking in marihuana is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(3)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in

determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved exceeds two hundred grams but does not exceed one thousand grams, trafficking in marihuana is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the drug involved exceeds one thousand grams but does not exceed five thousand grams, trafficking in marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved exceeds five thousand grams but does not exceed twenty thousand grams, trafficking in marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved exceeds twenty thousand grams, trafficking in marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved exceeds twenty thousand grams and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(g) Except as otherwise provided in this division, if the offense involves a gift of twenty grams or less of marihuana, trafficking in marihuana is a minor misdemeanor upon a first offense and a misdemeanor of the third degree upon a subsequent offense. If the offense involves a gift of twenty

grams or less of marihuana and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in marihuana is a misdemeanor of the third degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of trafficking in cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), (f), or (g) of this section, trafficking in cocaine is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(4)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved exceeds five grams but does not exceed ten grams of cocaine that is not crack cocaine or exceeds one gram but does not exceed five grams of crack cocaine, trafficking in cocaine is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved exceeds ten grams but does not exceed one hundred grams of cocaine that is not crack cocaine or exceeds five grams but does not exceed ten grams of crack cocaine, trafficking in cocaine is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved exceeds one hundred grams but does not exceed five hundred grams of cocaine that is not crack cocaine or exceeds ten grams but does not exceed twenty-five grams of crack cocaine, trafficking in cocaine is a felony

of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within one of those ranges and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved exceeds five hundred grams but does not exceed one thousand grams of cocaine that is not crack cocaine or exceeds twenty-five grams but does not exceed one hundred grams of crack cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved exceeds one thousand grams of cocaine that is not crack cocaine or exceeds one hundred grams of crack cocaine and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(5) If the drug involved in the violation is L.S.D. or a compound, mixture, preparation, or substance containing L.S.D., whoever violates division (A) of this section is guilty of trafficking in L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), (f), or (g) of this section, trafficking in L.S.D. is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(5)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved exceeds ten unit doses but does not exceed fifty unit doses of L.S.D. in a solid form or exceeds one gram but does not exceed five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the fourth degree, and there is a

presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved exceeds fifty unit doses but does not exceed two hundred fifty unit doses of L.S.D. in a solid form or exceeds five grams but does not exceed twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) Except as otherwise provided in this division, if the amount of the drug involved exceeds two hundred fifty unit doses but does not exceed one thousand unit doses of L.S.D. in a solid form or exceeds twenty-five grams but does not exceed one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved exceeds one thousand unit doses but does not exceed five thousand unit doses of L.S.D. in a solid form or exceeds one hundred grams but does not exceed five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved exceeds five thousand unit doses of L.S.D. in a solid form or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form and regardless of

whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of trafficking in heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), (f), or (g) of this section, trafficking in heroin is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(6)(c), (d), (e), (f), or (g) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved exceeds one gram but does not exceed five grams, trafficking in heroin is a felony of the fourth degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) Except as otherwise provided in this division, if the amount of the drug involved exceeds five grams but does not exceed ten grams, trafficking in heroin is a felony of the third degree, and there is a presumption for a prison term for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the second degree, and there is a presumption for a prison term for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved exceeds ten grams but does not exceed fifty grams, trafficking in heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court

shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved exceeds fifty grams but does not exceed two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(g) If the amount of the drug involved exceeds two hundred fifty grams and regardless of whether the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in heroin is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of trafficking in hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), or (f) of this section, trafficking in hashish is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) Except as otherwise provided in division (C)(7)(c), (d), (e), or (f) of this section, if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) Except as otherwise provided in this division, if the amount of the drug involved exceeds ten grams but does not exceed fifty grams of hashish in a solid form or exceeds two grams but does not exceed ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) Except as otherwise provided in this division, if the amount of the

drug involved exceeds fifty grams but does not exceed two hundred fifty grams of hashish in a solid form or exceeds ten grams but does not exceed fifty grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(e) Except as otherwise provided in this division, if the amount of the drug involved exceeds two hundred fifty grams but does not exceed one thousand grams of hashish in a solid form or exceeds fifty grams but does not exceed two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense. If the amount of the drug involved is within that range and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the second degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) Except as otherwise provided in this division, if the amount of the drug involved exceeds one thousand grams of hashish in a solid form or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, trafficking in hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree. If the amount of the drug involved exceeds one thousand grams of hashish in a solid form or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form and if the offense was committed in the vicinity of a school or in the vicinity of a juvenile, trafficking in hashish is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree.

(D) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1) If the violation of division (A) of this section is a felony of the first,

second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent. Except as otherwise provided in division (H)(1) of this section, a mandatory fine or any other fine imposed for a violation of this section is subject to division (F) of this section. If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk of the court shall pay the forfeited bail pursuant to divisions (D)(1) and (F) of this section, as if the forfeited bail was a fine imposed for a violation of this section. If any amount of the forfeited bail remains after that payment and if a fine is imposed under division (H)(1) of this section, the clerk of the court shall pay the remaining amount of the forfeited bail pursuant to divisions (H)(2) and (3) of this section, as if that remaining amount was a fine imposed under division (H)(1) of this section.

(2) The court shall revoke or suspend the driver's or commercial driver's license or permit of the offender in accordance with division (G) of this section.

(3) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, the court forthwith shall comply with section 2925.38 of the Revised Code.

(E) When a person is charged with the sale of or offer to sell a bulk amount or a multiple of a bulk amount of a controlled substance, the jury, or the court trying the accused, shall determine the amount of the controlled substance involved at the time of the offense and, if a guilty verdict is returned, shall return the findings as part of the verdict. In any such case, it is unnecessary to find and return the exact amount of the controlled substance involved, and it is sufficient if the finding and return is to the effect that the amount of the controlled substance involved is the requisite amount, or that the amount of the controlled substance involved is less than the requisite amount.

(F)(1) Notwithstanding any contrary provision of section 3719.21 of the Revised Code and except as provided in division (H) of this section, the clerk of the court shall pay any mandatory fine imposed pursuant to division (D)(1) of this section and any fine other than a mandatory fine that is imposed for a violation of this section pursuant to division (A) or (B)(5) of section 2929.18 of the Revised Code to the county, township, municipal corporation, park district, as created pursuant to section 511.18 or 1545.04 of the Revised Code, or state law enforcement agencies in this state that

primarily were responsible for or involved in making the arrest of, and in prosecuting, the offender. However, the clerk shall not pay a mandatory fine so imposed to a law enforcement agency unless the agency has adopted a written internal control policy under division (F)(2) of this section that addresses the use of the fine moneys that it receives. Each agency shall use the mandatory fines so paid to subsidize the agency's law enforcement efforts that pertain to drug offenses, in accordance with the written internal control policy adopted by the recipient agency under division (F)(2) of this section.

(2)(a) Prior to receiving any fine moneys under division (F)(1) of this section or division (B)(5) of section 2925.42 of the Revised Code, a law enforcement agency shall adopt a written internal control policy that addresses the agency's use and disposition of all fine moneys so received and that provides for the keeping of detailed financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure. The policy shall not provide for or permit the identification of any specific expenditure that is made in an ongoing investigation. All financial records of the receipts of those fine moneys, the general types of expenditures made out of those fine moneys, and the specific amount of each general type of expenditure by an agency are public records open for inspection under section 149.43 of the Revised Code. Additionally, a written internal control policy adopted under this division is such a public record, and the agency that adopted it shall comply with it.

(b) Each law enforcement agency that receives in any calendar year any fine moneys under division (F)(1) of this section or division (B)(5) of section 2925.42 of the Revised Code shall prepare a report covering the calendar year that cumulates all of the information contained in all of the public financial records kept by the agency pursuant to division (F)(2)(a) of this section for that calendar year, and shall send a copy of the cumulative report, no later than the first day of March in the calendar year following the calendar year covered by the report, to the attorney general. Each report received by the attorney general is a public record open for inspection under section 149.43 of the Revised Code. Not later than the fifteenth day of April in the calendar year in which the reports are received, the attorney general shall send to the president of the senate and the speaker of the house of representatives a written notification that does all of the following:

(i) Indicates that the attorney general has received from law enforcement agencies reports of the type described in this division that cover the previous calendar year and indicates that the reports were received under

this division;

(ii) Indicates that the reports are open for inspection under section 149.43 of the Revised Code;

(iii) Indicates that the attorney general will provide a copy of any or all of the reports to the president of the senate or the speaker of the house of representatives upon request.

(3) As used in division (F) of this section:

(a) "Law enforcement agencies" includes, but is not limited to, the state board of pharmacy and the office of a prosecutor.

(b) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

(G) When required under division (D)(2) of this section, the court either shall revoke or, if it does not revoke, shall suspend for not less than six months or more than five years, the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to a violation of this section that is a felony of the first degree and shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or pleads guilty to any other violation of this section. If an offender's driver's or commercial driver's license or permit is revoked pursuant to this division, the offender, at any time after the expiration of two years from the day on which the offender's sentence was imposed or from the day on which the offender finally was released from a prison term under the sentence, whichever is later, may file a motion with the sentencing court requesting termination of the revocation; upon the filing of such a motion and the court's finding of good cause for the termination, the court may terminate the revocation.

(H)(1) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code, in addition to any other penalty or sanction imposed for the offense under this section or sections 2929.11 to 2929.181 of the Revised Code, and in addition to the forfeiture of property in connection with the offense as prescribed in sections 2925.42 to 2925.45 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section may impose upon the offender an additional fine specified for the offense in division (B)(4) of section 2929.18 of the Revised Code. A fine imposed under division (H)(1) of this section is not subject to division (F) of this section and shall be used solely for the support of one or more eligible alcohol and drug addiction programs in accordance with divisions (H)(2) and (3) of this section.

(2) The court that imposes a fine under division (H)(1) of this section

shall specify in the judgment that imposes the fine one or more eligible alcohol and drug addiction programs for the support of which the fine money is to be used. No alcohol and drug addiction program shall receive or use money paid or collected in satisfaction of a fine imposed under division (H)(1) of this section unless the program is specified in the judgment that imposes the fine. No alcohol and drug addiction program shall be specified in the judgment unless the program is an eligible alcohol and drug addiction program and, except as otherwise provided in division (H)(2) of this section, unless the program is located in the county in which the court that imposes the fine is located or in a county that is immediately contiguous to the county in which that court is located. If no eligible alcohol and drug addiction program is located in any of those counties, the judgment may specify an eligible alcohol and drug addiction program that is located anywhere within this state.

(3) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay any fine imposed under division (H)(1) of this section to the eligible alcohol and drug addiction program specified pursuant to division (H)(2) of this section in the judgment. The eligible alcohol and drug addiction program that receives the fine moneys shall use the moneys only for the alcohol and drug addiction services identified in the application for certification under section 3793.06 of the Revised Code or in the application for a license under section 3793.11 of the Revised Code filed with the department of alcohol and drug addiction services by the alcohol and drug addiction program specified in the judgment.

(4) Each alcohol and drug addiction program that receives in a calendar year any fine moneys under division (H)(3) of this section shall file an annual report covering that calendar year with the court of common pleas and the board of county commissioners of the county in which the program is located, with the court of common pleas and the board of county commissioners of each county from which the program received the moneys if that county is different from the county in which the program is located, and with the attorney general. The alcohol and drug addiction program shall file the report no later than the first day of March in the calendar year following the calendar year in which the program received the fine moneys. The report shall include statistics on the number of persons served by the alcohol and drug addiction program, identify the types of alcohol and drug addiction services provided to those persons, and include a specific accounting of the purposes for which the fine moneys received were used. No information contained in the report shall identify, or enable a person to

determine the identity of, any person served by the alcohol and drug addiction program. Each report received by a court of common pleas, a board of county commissioners, or the attorney general is a public record open for inspection under section 149.43 of the Revised Code.

(5) As used in divisions (H)(1) to (5) of this section:

(a) "Alcohol and drug addiction program" and "alcohol and drug addiction services" have the same meanings as in section 3793.01 of the Revised Code.

(b) "Eligible alcohol and drug addiction program" means an alcohol and drug addiction program that is certified under section 3793.06 of the Revised Code or licensed under section 3793.11 of the Revised Code by the department of alcohol and drug addiction services.

Sec. 2925.09. (A) No person shall administer, dispense, distribute, manufacture, possess, sell, or use any drug, other than a controlled substance, that is not approved by the United States food and drug administration, or the United States department of agriculture, unless one of the following applies:

(1) The United States food and drug administration has approved an application for investigational use in accordance with the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and the drug is used only for the approved investigational use;

(2) The United States department of agriculture has approved an application for investigational use in accordance with the federal "Virus-Serum-Toxin Act," 37 Stat. 832 (1913), 21 U.S.C.A. ~~as amended,~~ 151, as amended, and the drug is used only for the approved investigational use;

(3) A ~~practitioner~~ licensed health professional authorized to prescribe drugs, other than a veterinarian, prescribes or combines two or more drugs as a single product for medical purposes;

(4) A pharmacist, pursuant to a prescription, compounds and dispenses two or more drugs as a single product for medical purposes.

(B)(1) As used in this division, "dangerous drug," "prescription," "sale at retail," "wholesale distributor of dangerous drugs," and "terminal distributor of dangerous drugs," have the same meanings ~~set forth~~ as in section ~~4729.02~~ 4729.01 of the Revised Code.

(2) Except as provided in division (B)(3) of this section, no person shall administer, dispense, distribute, manufacture, possess, sell, or use any dangerous drug to or for livestock or any animal that is generally used for food or in the production of food, unless the drug is prescribed by a licensed veterinarian by prescription or other written order and the drug is used in

accordance with the veterinarian's order or direction.

(3) Division (B)(2) of this section does not apply to a registered wholesale distributor of dangerous drugs, a licensed terminal distributor of dangerous drugs, or a person who possesses, possesses for sale, or sells, at retail, a drug in accordance with Chapters 3719., 4729., or 4741. of the Revised Code.

(C) Whoever violates division (A) or (B)(2) of this section is guilty of a felony of the fifth degree on a first offense and of a felony of the fourth degree on each subsequent offense.

Sec. 2925.11. (A) No person shall knowingly obtain, possess, or use a controlled substance.

(B) This section does not apply to any of the following:

(1) Manufacturers, ~~practitioners~~ licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. or section 4723.56 of the Revised Code;

(2) If the offense involves an anabolic steroid, any person who is conducting or participating in a research project involving the use of an anabolic steroid if the project has been approved by the United States food and drug administration;

(3) Any person who sells, offers for sale, prescribes, dispenses, or administers for livestock or other nonhuman species an anabolic steroid that is expressly intended for administration through implants to livestock or other nonhuman species and approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, and is sold, offered for sale, prescribed, dispensed, or administered for that purpose in accordance with that act;

(4) Any person who obtained the controlled substance pursuant to a prescription issued by a ~~practitioner~~ licensed health professional authorized to prescribe drugs, where the drug is in the original container in which it was dispensed to such person.

(C) Whoever violates division (A) of this section is guilty of one of the following:

(1) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, cocaine, L.S.D., heroin, and hashish, whoever violates division (A) of this section is guilty of aggravated possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(1)(b), (c), (d), or (e) of this section, aggravated possession of drugs is a felony of the fifth degree,

and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved exceeds the bulk amount but does not exceed five times the bulk amount, aggravated possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved exceeds five times the bulk amount but does not exceed fifty times the bulk amount, aggravated possession of drugs is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(d) If the amount of the drug involved exceeds fifty times the bulk amount but does not exceed one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(e) If the amount of the drug involved exceeds one hundred times the bulk amount, aggravated possession of drugs is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(2) If the drug involved in the violation is a compound, mixture, preparation, or substance included in schedule III, IV, or V, whoever violates division (A) of this section is guilty of possession of drugs. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(2)(b), (c), or (d) of this section, possession of drugs is a misdemeanor of the third degree or, if the offender previously has been convicted of a drug abuse offense, a misdemeanor of the second degree. If the drug involved in the violation is an anabolic steroid included in schedule III and if the offense is a misdemeanor of the third degree under this division, in lieu of sentencing the offender to a term of imprisonment in a detention facility, the court may place the offender on conditional probation pursuant to division (F) of section 2951.02 of the Revised Code.

(b) If the amount of the drug involved exceeds the bulk amount but does not exceed five times the bulk amount, possession of drugs is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved exceeds five times the bulk

amount but does not exceed fifty times the bulk amount, possession of drugs is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved exceeds fifty times the bulk amount, possession of drugs is a felony of the second degree, and the court shall impose upon the offender as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(3) If the drug involved in the violation is marihuana or a compound, mixture, preparation, or substance containing marihuana other than hashish, whoever violates division (A) of this section is guilty of possession of marihuana. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(3)(b), (c), (d), (e), or (f) of this section, possession of marihuana is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds one hundred grams but does not exceed two hundred grams, possession of marihuana is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved exceeds two hundred grams but does not exceed one thousand grams, possession of marihuana is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved exceeds one thousand grams but does not exceed five thousand grams, possession of marihuana is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved exceeds five thousand grams but does not exceed twenty thousand grams, possession of marihuana is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved exceeds twenty thousand grams, possession of marihuana is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(4) If the drug involved in the violation is cocaine or a compound, mixture, preparation, or substance containing cocaine, whoever violates division (A) of this section is guilty of possession of cocaine. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(4)(b), (c), (d), (e), or (f) of this section, possession of cocaine is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved exceeds five grams but does not exceed twenty-five grams of cocaine that is not crack cocaine or exceeds one gram but does not exceed five grams of crack cocaine, possession of cocaine is a felony of the fourth degree, and there is a presumption for a prison term for the offense.

(c) If the amount of the drug involved exceeds twenty-five grams but does not exceed one hundred grams of cocaine that is not crack cocaine or exceeds five grams but does not exceed ten grams of crack cocaine, possession of cocaine is a felony of the third degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the third degree.

(d) If the amount of the drug involved exceeds one hundred grams but does not exceed five hundred grams of cocaine that is not crack cocaine or exceeds ten grams but does not exceed twenty-five grams of crack cocaine, possession of cocaine is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved exceeds five hundred grams but does not exceed one thousand grams of cocaine that is not crack cocaine or exceeds twenty-five grams but does not exceed one hundred grams of crack cocaine, possession of cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved exceeds one thousand grams of cocaine that is not crack cocaine or exceeds one hundred grams of crack cocaine, possession of cocaine is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(5) If the drug involved in the violation is L.S.D., whoever violates division (A) of this section is guilty of possession of L.S.D. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(5)(b), (c), (d), (e), or (f) of this section, possession of L.S.D. is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of L.S.D. involved exceeds ten unit doses but does not exceed fifty unit doses of L.S.D. in a solid form or exceeds one gram but does not exceed five grams of L.S.D. in a liquid concentrate, liquid extract,

or liquid distillate form, possession of L.S.D. is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of L.S.D. involved exceeds fifty unit doses, but does not exceed two hundred fifty unit doses of L.S.D. in a solid form or exceeds five grams but does not exceed twenty-five grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of L.S.D. involved exceeds two hundred fifty unit doses but does not exceed one thousand unit doses of L.S.D. in a solid form or exceeds twenty-five grams but does not exceed one hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of L.S.D. involved exceeds one thousand unit doses but does not exceed five thousand unit doses of L.S.D. in a solid form or exceeds one hundred grams but does not exceed five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of L.S.D. involved exceeds five thousand unit doses of L.S.D. in a solid form or exceeds five hundred grams of L.S.D. in a liquid concentrate, liquid extract, or liquid distillate form, possession of L.S.D. is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(6) If the drug involved in the violation is heroin or a compound, mixture, preparation, or substance containing heroin, whoever violates division (A) of this section is guilty of possession of heroin. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(6)(b), (c), (d), (e), or (f) of this section, possession of heroin is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(b) If the amount of the drug involved exceeds one gram but does not

exceed five grams, possession of heroin is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(c) If the amount of the drug involved exceeds five grams but does not exceed ten grams, possession of heroin is a felony of the third degree, and there is a presumption for a prison term for the offense.

(d) If the amount of the drug involved exceeds ten grams but does not exceed fifty grams, possession of heroin is a felony of the second degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the second degree.

(e) If the amount of the drug involved exceeds fifty grams but does not exceed two hundred fifty grams, possession of heroin is a felony of the first degree, and the court shall impose as a mandatory prison term one of the prison terms prescribed for a felony of the first degree.

(f) If the amount of the drug involved exceeds two hundred fifty grams, possession of heroin is a felony of the first degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the first degree and may impose an additional mandatory prison term prescribed for a major drug offender under division (D)(3)(b) of section 2929.14 of the Revised Code.

(7) If the drug involved in the violation is hashish or a compound, mixture, preparation, or substance containing hashish, whoever violates division (A) of this section is guilty of possession of hashish. The penalty for the offense shall be determined as follows:

(a) Except as otherwise provided in division (C)(7)(b), (c), (d), (e), or (f) of this section, possession of hashish is a minor misdemeanor.

(b) If the amount of the drug involved equals or exceeds five grams but does not exceed ten grams of hashish in a solid form or equals or exceeds one gram but does not exceed two grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a misdemeanor of the fourth degree.

(c) If the amount of the drug involved exceeds ten grams but does not exceed fifty grams of hashish in a solid form or exceeds two grams but does not exceed ten grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the fifth degree, and division (B) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(d) If the amount of the drug involved exceeds fifty grams but does not exceed two hundred fifty grams of hashish in a solid form or exceeds ten grams but does not exceed fifty grams of hashish in a liquid concentrate,

liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(e) If the amount of the drug involved exceeds two hundred fifty grams but does not exceed one thousand grams of hashish in a solid form or exceeds fifty grams but does not exceed two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the third degree, and there is a presumption that a prison term shall be imposed for the offense.

(f) If the amount of the drug involved exceeds one thousand grams of hashish in a solid form or exceeds two hundred grams of hashish in a liquid concentrate, liquid extract, or liquid distillate form, possession of hashish is a felony of the second degree, and the court shall impose as a mandatory prison term the maximum prison term prescribed for a felony of the second degree.

(D) Arrest or conviction for a minor misdemeanor violation of this section does not constitute a criminal record and need not be reported by the person so arrested or convicted in response to any inquiries about the person's criminal record, including any inquiries contained in any application for employment, license, or other right or privilege, or made in connection with the person's appearance as a witness.

(E) In addition to any prison term authorized or required by division (C) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction that is imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to a violation of division (A) of this section shall do all of the following that are applicable regarding the offender:

(1)(a) If the violation is a felony of the first, second, or third degree, the court shall impose upon the offender the mandatory fine specified for the offense under division (B)(1) of section 2929.18 of the Revised Code unless, as specified in that division, the court determines that the offender is indigent.

(b) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay a mandatory fine or other fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(c) If a person is charged with a violation of this section that is a felony of the first, second, or third degree, posts bail, and forfeits the bail, the clerk shall pay the forfeited bail pursuant to division (E)(1)(b) of this section as if it were a mandatory fine imposed under division (E)(1)(a) of this section.

(2) The court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section.

(3) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

(F) It is an affirmative defense, as provided in section 2901.05 of the Revised Code, to a charge of a fourth degree felony violation under this section that the controlled substance that gave rise to the charge is in an amount, is in a form, is prepared, compounded, or mixed with substances that are not controlled substances in a manner, or is possessed under any other circumstances, that indicate that the substance was possessed solely for personal use. Notwithstanding any contrary provision of this section, if, in accordance with section 2901.05 of the Revised Code, an accused who is charged with a fourth degree felony violation of division (C)(2), (4), (5), or (6) of this section sustains the burden of going forward with evidence of and establishes by a preponderance of the evidence the affirmative defense described in this division, the accused may be prosecuted for and may plead guilty to or be convicted of a misdemeanor violation of division (C)(2) of this section or a fifth degree felony violation of division (C)(4), (5), or (6) of this section respectively.

(G) When a person is charged with possessing a bulk amount or multiple of a bulk amount, division (E) of section 2925.03 of the Revised Code applies regarding the determination of the amount of the controlled substance involved at the time of the offense.

Sec. 2925.12. (A) No person shall knowingly make, obtain, possess, or use any instrument, article, or thing the customary and primary purpose of which is for the administration or use of a dangerous drug, other than marihuana, when the instrument involved is a hypodermic or syringe, whether or not of crude or extemporized manufacture or assembly, and the instrument, article, or thing involved has been used by the offender to unlawfully administer or use a dangerous drug, other than marihuana, or to prepare a dangerous drug, other than marihuana, for unlawful administration or use.

(B) This section does not apply to manufacturers, ~~practitioners~~ licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct was in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. or section 4723.56 of the Revised Code.

(C) Whoever violates this section is guilty of possessing drug abuse instruments, a misdemeanor of the second degree. If the offender previously has been convicted of a drug abuse offense, a violation of this section is a misdemeanor of the first degree.

(D) In addition to any other sanction imposed for a violation of this section, the court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section. If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

Sec. 2925.14. (A) As used in this section, "drug paraphernalia" means any equipment, product, or material of any kind that is used by the offender, intended by the offender for use, or designed for use, in propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body, a controlled substance in violation of this chapter. "Drug paraphernalia" includes, but is not limited to, any of the following equipment, products, or materials that are used by the offender, intended by the offender for use, or designed by the offender for use, in any of the following manners:

(1) A kit for propagating, cultivating, growing, or harvesting any species of a plant that is a controlled substance or from which a controlled substance can be derived;

(2) A kit for manufacturing, compounding, converting, producing, processing, or preparing a controlled substance;

(3) An isomerization device for increasing the potency of any species of a plant that is a controlled substance;

(4) Testing equipment for identifying, or analyzing the strength, effectiveness, or purity of, a controlled substance;

(5) A scale or balance for weighing or measuring a controlled substance;

(6) A diluent or adulterant, such as quinine hydrochloride, mannitol,

mannite, dextrose, or lactose, for cutting a controlled substance;

(7) A separation gin or sifter for removing twigs and seeds from, or otherwise cleaning or refining, marihuana;

(8) A blender, bowl, container, spoon, or mixing device for compounding a controlled substance;

(9) A capsule, balloon, envelope, or container for packaging small quantities of a controlled substance;

(10) A container or device for storing or concealing a controlled substance;

(11) A hypodermic syringe, needle, or instrument for parenterally injecting a controlled substance into the human body;

(12) An object, instrument, or device for ingesting, inhaling, or otherwise introducing into the human body, marihuana, cocaine, hashish, or hashish oil, such as a metal, wooden, acrylic, glass, stone, plastic, or ceramic pipe, with or without a screen, permanent screen, hashish head, or punctured metal bowl; water pipe; carburetion tube or device; smoking or carburetion mask; roach clip or similar object used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand; miniature cocaine spoon, or cocaine vial; chamber pipe; carburetor pipe; electric pipe; air driver pipe; chillum; bong; or ice pipe or chiller.

(B) In determining if an object is drug paraphernalia, a court or law enforcement officer shall consider, in addition to other relevant factors, the following:

(1) Any statement by the owner, or by anyone in control, of the object, concerning its use;

(2) The proximity in time or space of the object, or of the act relating to the object, to a violation of any provision of this chapter;

(3) The proximity of the object to any controlled substance;

(4) The existence of any residue of a controlled substance on the object;

(5) Direct or circumstantial evidence of the intent of the owner, or of anyone in control, of the object, to deliver it to any person whom the owner or person in control of the object knows intends to use the object to facilitate a violation of any provision of this chapter. A finding that the owner, or anyone in control, of the object, is not guilty of a violation of any other provision of this chapter does not prevent a finding that the object was intended or designed by the offender for use as drug paraphernalia.

(6) Any oral or written instruction provided with the object concerning its use;

(7) Any descriptive material accompanying the object and explaining or depicting its use;

(8) National or local advertising concerning the use of the object;

(9) The manner and circumstances in which the object is displayed for sale;

(10) Direct or circumstantial evidence of the ratio of the sales of the object to the total sales of the business enterprise;

(11) The existence and scope of legitimate uses of the object in the community;

(12) Expert testimony concerning the use of the object.

(C)(1) No person shall knowingly use, or possess with purpose to use, drug paraphernalia.

(2) No person shall knowingly sell, or possess or manufacture with purpose to sell, drug paraphernalia, if the person knows or reasonably should know that the equipment, product, or material will be used as drug paraphernalia.

(3) No person shall place an advertisement in any newspaper, magazine, handbill, or other publication that is published and printed and circulates primarily within this state, if the person knows that the purpose of the advertisement is to promote the illegal sale in this state of the equipment, product, or material that the offender intended or designed for use as drug paraphernalia.

(D) This section does not apply to manufacturers, ~~practitioners~~ licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4729., 4731., and 4741. or section 4723.56 of the Revised Code. This section shall not be construed to prohibit the possession or use of a hypodermic as authorized by section 3719.172 of the Revised Code.

(E) Notwithstanding sections 2933.42 and 2933.43 of the Revised Code, any drug paraphernalia that was used, possessed, sold, or manufactured in a violation of this section shall be seized, after a conviction for that violation shall be forfeited, and upon forfeiture shall be disposed of pursuant to division (D)(8) of section 2933.41 of the Revised Code.

(F)(1) Whoever violates division (C)(1) of this section is guilty of illegal use or possession of drug paraphernalia, a misdemeanor of the fourth degree.

(2) Except as provided in division (F)(3) of this section, whoever violates division (C)(2) of this section is guilty of dealing in drug paraphernalia, a misdemeanor of the second degree.

(3) Whoever violates division (C)(2) of this section by selling drug paraphernalia to a juvenile is guilty of selling drug paraphernalia to

juveniles, a misdemeanor of the first degree.

(4) Whoever violates division (C)(3) of this section is guilty of illegal advertising of drug paraphernalia, a misdemeanor of the second degree.

(G) In addition to any other sanction imposed for a violation of this section, the court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section. If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

Sec. 2925.23. (A) No person shall knowingly make a false statement in any prescription, order, report, or record required by Chapter 3719. or 4729. of the Revised Code.

(B) No person shall intentionally make, utter, or sell, or knowingly possess a false or forged:

(1) Prescription;

(2) Uncompleted preprinted prescription blank used for writing a prescription;

(3) Official written order;

(4) License for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;

(5) Registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

(C) No person, by theft as defined in section 2913.02 of the Revised Code, shall acquire any of the following:

(1) A prescription;

(2) An uncompleted preprinted prescription blank used for writing a prescription;

(3) An official written order;

(4) A blank official written order;

(5) A license or blank license for a terminal distributor of dangerous drugs as required in section 4729.60 of the Revised Code;

(6) A registration certificate or blank registration certificate for a wholesale distributor of dangerous drugs as required in section 4729.60 of the Revised Code.

(D) No person shall knowingly make or affix any false or forged label to a package or receptacle containing any dangerous drugs.

(E) Divisions (A) and (D) of this section do not apply to ~~practitioners~~

licensed health professionals authorized to prescribe drugs, pharmacists, owners of pharmacies, and other persons whose conduct is in accordance with Chapters 3719., 4715., 4725., 4729., 4731., and 4741. of the Revised Code or section 4723.56 of the Revised Code.

(F) Whoever violates this section is guilty of illegal processing of drug documents. The penalty for the offense shall be determined as follows:

(1) If the drug involved is a compound, mixture, preparation, or substance included in schedule I or II, with the exception of marihuana, illegal processing of drug documents is a felony of the fourth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(2) If the drug involved is a dangerous drug or a compound, mixture, preparation, or substance included in schedule III, IV, or V or is marihuana, illegal processing of drug documents is a felony of the fifth degree, and division (C) of section 2929.13 of the Revised Code applies in determining whether to impose a prison term on the offender.

(G) In addition to any prison term authorized or required by division (F) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under this section or sections 2929.11 to 2929.18 of the Revised Code, the court that sentences an offender who is convicted of or pleads guilty to any violation of divisions (A) to (D) of this section shall do both of the following:

(1) The court shall suspend for not less than six months or more than five years the driver's or commercial driver's license or permit of any person who is convicted of or has pleaded guilty to a violation of this section.

(2) If the offender is a professionally licensed person or a person who has been admitted to the bar by order of the supreme court in compliance with its prescribed and published rules, in addition to any other sanction imposed for a violation of this section, the court forthwith shall comply with section 2925.38 of the Revised Code.

(H) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of court shall pay a fine imposed for a violation of this section pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

Sec. 2925.50. If a violation of this chapter is a violation of the federal narcotic drug abuse control laws, as defined in section 3719.01 of the Revised Code, a conviction or acquittal under the federal narcotic drug abuse control laws for the same act is a bar to prosecution in this state.

Sec. 2927.24. (A) As used in this section, ~~"poison" and "drug" have the same meanings;~~

(1) "Poison" has the same meaning as in section 3719.01 Of the Revised Code.

(2) "Drug" has the same meaning as in section ~~4729.02~~ 4729.01 of the Revised Code.

(B) Except as provided in division (D) of this section, no person shall knowingly mingle a poison or other harmful substance with a food, drink, nonprescription drug, prescription drug, or pharmaceutical product, or knowingly place a poison or other harmful substance in a spring, well, reservoir, or public water supply, if the person knows or has reason to know that the food, drink, nonprescription drug, prescription drug, pharmaceutical product, or water may be ingested or used by another person. For purposes of this division, a person does not know or have reason to know that water may be ingested or used by another person if it is disposed of as waste into a household drain including the drain of a toilet, sink, tub, or floor.

(C) No person shall inform another person that a poison or other harmful substance has been or will be placed in a food, drink, nonprescription drug, prescription drug, or other pharmaceutical product, spring, well, reservoir, or public water supply, if the placement of the poison or other harmful substance would be a violation of division (B) of this section, and the person knows both that the information is false and that the information likely will be disseminated to the public.

(D)(1) A person may mingle a drug with a food or drink for the purpose of causing the drug to be ingested or used in the quantity described by its labeling or prescription.

(2) A person may place a poison or other harmful substance in a spring, well, reservoir, or public water supply in such quantity as is necessary to treat the spring, well, reservoir, or water supply to make it safe for human consumption and use.

(3) The provisions of division (A) of this section shall not be applied in a manner that conflicts with any other state or federal law or rule relating to substances permitted to be applied to or present in any food, raw or processed, any milk or milk product, any meat or meat product, any type of crop, water, or alcoholic or nonalcoholic beverage.

(E)(1) Whoever violates division (B) of this section is guilty of contaminating a substance for human consumption or use, a felony of the first degree. If the offense involved an amount of poison or other harmful substance sufficient to cause death if ingested or used by a person or if the offense resulted in serious physical harm to another person, whoever

violates division (B) of this section is guilty of an aggravated felony of the first degree and shall be imprisoned for life.

(2) Whoever violates division (C) of this section is guilty of spreading a false report of contamination, a felony of the fourth degree.

Sec. 3313.713. (A) As used in this section:

(1) "Drug prescribed by a physician" means a drug described in section ~~4729.02~~ 4729.01 of the Revised Code that is to be administered pursuant to the instructions of the prescribing physician, whether or not required by law to be sold only upon a prescription.

(2) "Federal law" means the "Education For All Handicapped Children Act of 1975," 89 Stat. 775, 20 U.S.C. 1401, as amended.

(B) The board of education of each city, local, exempted village, and joint vocational school district, shall not later than one hundred twenty days after the effective date of this section, adopt a policy on the authority of its employees, when acting in situations other than those governed by sections 2305.23, 2305.231, and 3313.712 of the Revised Code, to administer drugs prescribed by physicians to students enrolled in the schools of the district. The policy shall provide either that:

(1) Except as otherwise required by federal law, no person employed by the board shall, in the course of such employment, administer any drug prescribed by a physician to any student enrolled in the schools of the district.

(2) Designated persons employed by the board are authorized to administer to a student a drug prescribed by a physician for the student. Except as otherwise provided by federal law, the board's policy may provide that certain drugs or types of drugs shall not be administered or that no employee, or no employee without appropriate training, shall use certain procedures, such as injection, to administer a drug to a student.

(C) No drug prescribed by a physician for a student shall be administered pursuant to federal law or a policy adopted under division (B) of this section until the following occur:

(1) The board, or a person designated by the board, receives a written request, signed by the parent, guardian, or other person having care or charge of the student, that the drug be administered to the student.

(2) The board, or a person designated by the board, receives a statement, signed by the physician who prescribed the drug, that includes all of the following information:

- (a) The name and address of the student;
- (b) The school and class in which the student is enrolled;
- (c) The name of the drug and the dosage to be administered;

(d) The times or intervals at which each dosage of the drug is to be administered;

(e) The date the administration of the drug is to begin;

(f) The date the administration of the drug is to cease;

(g) Any severe adverse reactions that should be reported to the physician and one or more phone numbers at which the physician can be reached in an emergency;

(h) Special instructions for administration of the drug, including sterile conditions and storage.

(3) The parent, guardian, or other person having care or charge of the student agrees to submit a revised statement signed by the physician who prescribed the drug to the board or a person designated by the board if any of the information provided by the physician pursuant to division (C)(2) of this section changes.

(4) The person authorized by the board to administer the drug receives a copy of the statement required by division (C)(2) or (3) of this section.

(5) The drug is received by the person authorized to administer the drug to the student for whom the drug is prescribed ~~it~~ in the container in which it was dispensed by the prescribing physician or a licensed pharmacist.

(6) Any other procedures required by the board are followed.

(D) If a drug prescribed by a physician is administered to a student, the board of education shall acquire and retain copies of the written requests required by division (C)(1) and the statements required by divisions (C)(2) and (3) of this section and shall ensure that by the next school day following the receipt of any such statement a copy is given to the person authorized to administer drugs to the student for whom the statement has been received. The board, or a person designated by the board, shall establish a location in each school building for the storage of drugs to be administered under this section and federal law. All such drugs shall be stored in that location in a locked storage place, except that drugs that require refrigeration may be kept in a refrigerator in a place not commonly used by students.

(E) No person who has been authorized by a board of education to administer a drug and has a copy of the most recent statement required by division (C)(2) or (3) of this section given to ~~him~~ the person in accordance with division (D) of this section prior to administering the drug is liable in civil damages for administering or failing to administer the drug, unless such person acts in a manner that constitutes gross negligence or wanton or reckless misconduct.

(F) Whenever a board of education is required to designate a person or persons to perform any function or functions in connection with a drug

policy adopted under this section, the board may designate such persons either by name or by position, training, qualifications, or similar distinguishing factors.

Nothing in this section shall be construed to require a person employed by a board of education to administer a drug to a student unless the board's policy adopted in compliance with this section establishes such a requirement. A board shall not require an employee to administer a drug to a student if the employee objects, on the basis of religious convictions, to administering the drug.

A policy adopted by a board of education pursuant to this section may be changed, modified, or revised by action of the board.

Nothing in this section affects the application of section 2305.23, 2305.231, or 3313.712 of the Revised Code to the administration of emergency care or treatment to a student.

Sec. 3701.33. The public health council shall consist of the following seven members to be appointed by the governor:

(A) Three physicians who are licensed to practice medicine in the state;

(B) A pharmacist who ~~has been granted a certificate~~ is licensed to practice pharmacy in the state;

(C) A registered nurse who is licensed to practice nursing as a registered nurse in the state;

(D) A sanitarian who holds a valid certificate of registration as a sanitarian issued under section 4736.11 of the Revised Code;

(E) A member of the public who is not associated with or financially interested in the practice of medicine, nursing, pharmacy, or environmental health and is at least sixty years of age.

Terms of office shall be for seven years, commencing on the first day of July and ending on the thirtieth day of June. Each member shall hold office from the date of appointment until the end of the term for which the member was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which the member's predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of the member's term until a the member's successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

The council shall meet four times each year and may meet at such other times as the business of the council requires. The time and place for holding regular meetings shall be fixed in the bylaws of the council. Special meetings may be called upon the request of any four members of the council or upon request of the director of health, and may be held at any place

nsidered advisable by the council or director. Four members of the council constitute a quorum for the transaction of business. The council, on or before the first day of July of each year, shall designate the member who shall act as its ~~chairman~~ chairperson for the ensuing year. The director, upon request of the council, shall detail an officer or employee of the department of health to act as secretary of the council, and shall detail such other employees as the council requires.

The members of the council shall be paid the rate established pursuant to division (J) of section 124.15 of the Revised Code while in conference and shall be reimbursed their necessary and reasonable traveling and other expenses incurred in the performance of their regular duties.

Sec. 3709.161. (A) The board of health of a city or general health district may procure a policy or policies of insurance insuring the members of the board, the health commissioner, and the employees of the board against liability on account of damage or injury to persons and property resulting from any act or omission that occurs in the individual's official capacity as a member or employee of the board or resulting solely out of such membership or employment.

(B)(1) As used in this division, "health care professional" means all of the following:

(a) A dentist or dental hygienist licensed under Chapter 4715. of the Revised Code;

(b) A registered nurse or licensed practical nurse licensed under Chapter 4723. of the Revised Code;

(c) A person ~~authorized~~ licensed under Chapter 4729. of the Revised Code to practice as a pharmacist;

(d) A person authorized under Chapter 4730. of the Revised Code to practice as a physician assistant;

(e) A person authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatry;

(f) A psychologist licensed under Chapter 4732. of the Revised Code;

(g) A veterinarian licensed under Chapter 4741. of the Revised Code;

(h) A speech-language pathologist or audiologist licensed under Chapter 4753. of the Revised Code;

(i) An occupational therapist, physical therapist, physical therapist assistant, or athletic trainer licensed under Chapter 4755. of the Revised Code;

(j) A professional clinical counselor, professional counselor, independent social worker, or social worker licensed under Chapter 4757. of

the Revised Code;

(k) A dietician licensed under Chapter 4759. of the Revised Code.

(2) The board of health of a city or general health district may purchase liability insurance for a health care professional with whom the board contracts for the provision of health care services against liability on account of damage or injury to persons and property arising from the health care professional's performance of services under the contract. The policy shall be purchased from an insurance company licensed to do business in this state, if such a policy is available from such a company. The board of health of a city or general health district shall report the cost of the liability insurance policy and subsequent increases in the cost to the director of health on a form prescribed by the director.

Sec. 3715.01. (A) As used in ~~sections 3715.01 to 3715.72 of the Revised Code~~ this chapter:

~~(1) "Director" means the director of agriculture.~~

~~(2) "Board of pharmacy" means the board of pharmacy as defined in and established by section 4729.01 of the Revised Code.~~

~~(3) "Public health council" means the public health council as defined in and established by section 3701.33 of the Revised Code.~~

~~(4)~~(2) "Person" means an individual, partnership, corporation, or association.

~~(5)~~(3) "Food" means:

(a) Articles used for food or drink for humans or animals;

(b) Chewing gum;

(c) Articles used for components of any such articles.

~~(6)~~(4) "Drug" means:

(a) Articles recognized in the ~~official~~ United States pharmacopoeia; and national formulary, or any supplement to them;

(b) Articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in humans or animals;

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

(d) Articles intended for use as a component of any ~~such of the foregoing~~ articles but does not include, other than devices or their components, parts, or accessories.

~~(7)~~(5) "Device," except when used in division (B)(1) of this section and in division ~~(B)~~(A)(10) of section 3715.52, division (F) of section 3715.60, division (A)(5) of section 3715.64, and division (C) of section 3715.67 of the Revised Code, means any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article,

cluding any component, part, or accessory, that is any of the following:

(a) Recognized in ~~an official compendium~~ the United States pharmacopoeia and national formulary, or any supplement to them;

(b) Intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment, or prevention of disease in humans or ~~other~~ animals;

(c) Intended to affect the structure or any function of the body of humans or animals, and that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or animals and is not dependent upon being metabolized for the achievement of any of its principal intended purposes.

~~(8)(6)~~ "Cosmetic" means:

(a) Articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance;

(b) Articles intended for use as a component of any such article, except that ~~such term~~ "cosmetic" does not include soap.

~~(9) "Official compendium" means the official United States pharmacopoeia, national formulary, or any supplement.~~

~~(10)(7)~~ "Label" means a display of written, printed, or graphic matter upon the immediate container, exclusive of package liners, of any ~~articles~~ article.

Any word, statement, or other information required by ~~sections 3715.01 to 3715.72 of the Revised Code~~ this chapter to appear on the label must appear on the outside container or wrapper, if any, of the retail package of ~~such the~~ the article, or ~~such the~~ the label must be easily legible through the outside container or wrapper.

~~(11)(8)~~ "Labeling" means all labels and other written, printed, or graphic matter:

(a) Upon an article or any of its containers or wrappers;

(b) Accompanying such article.

~~(12)(9)~~ "Advertisement" means all representations disseminated in any manner or by any means, other than by labeling, for the purpose of inducing, or ~~which that~~ that are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics.

~~(13)(10)~~ "New drug" means:

(a) Any drug the composition of which is such that ~~such the~~ the drug is not generally recognized among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the

conditions prescribed, recommended, or suggested in the labeling thereof;

(b) Any drug the composition of which is such that ~~such the~~ drug, as a result of investigation to determine its safety for use under such conditions, has become so recognized, but ~~which that~~ has not, ~~otherwise other~~ than in ~~such investigations an investigation~~, been used to a material extent or for a material time under such conditions.

~~(14)~~(11) "Contaminated with filth" applies to any food, drug, device, or cosmetic that has not been protected as far as may be necessary by all reasonable means from dust, dirt, and all foreign or injurious substances.

~~(15)~~ "Federal act" means the "Federal Food, Drug and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended.

~~(16)~~(12) "Honey" means the nectar and saccharine exudation of plants that has been gathered, modified, and stored in a honeycomb by honeybees.

~~(17)~~(13) "Finished dosage form" means the form of a drug that is, or is intended to be, dispensed or administered to humans or animals and requires no further manufacturing or processing other than packaging, reconstituting, or labeling.

~~(18)~~(14)(a) "Manufacture" means the planting, cultivating, harvesting, processing, making, preparing, or otherwise engaging in any part of the production of a ~~dangerous~~ drug by propagating, compounding, converting, or processing, either directly or indirectly by extracting from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes ~~any the~~ following:

(i) Any packaging or repackaging of the drug or labeling or relabeling of its container, the promotion and marketing of the drug, and other activities incident to production, ~~except that this term:~~

(ii) The preparation and promotion of commercially available products from bulk compounds for resale by pharmacies, licensed health professionals authorized to prescribe drugs, or other persons.

(b) "Manufacture" does not include the preparation, compounding, packaging, or labeling of a ~~dangerous~~ drug by a pharmacist as an incident to ~~dispensing~~ either of the following:

(i) Dispensing a dangerous drug in the usual course of professional practice;

(ii) Providing a licensed health professional authorized to prescribe drugs with a drug for the purpose of administering to patients or for using the drug in treating patients in the professional's office.

~~(19)~~(15) "Dangerous drug" has the same meaning given as in ~~division~~ ~~(D)~~ of section ~~4729.02~~ 4729.01 of the Revised Code.

~~(20)~~(16) "Generically equivalent drug" means a drug that contains identical amounts of the identical active ingredients ~~in the identical dosage forms~~, but not necessarily containing the same inactive ingredients, that meets the identical compendial or other applicable standard of identity, strength, quality, and purity, including potency, and where applicable, content uniformity, disintegration times, or dissolution rates, as the prescribed brand name drug and the manufacturer or distributor holds, if applicable, either an approved new drug application or an approved abbreviated new drug application unless other approval by law or from the federal food and drug administration is required.

No drug shall be considered a generically equivalent drug for the purposes of ~~sections 3715.01 to 3715.72 of the Revised Code~~ this chapter if it has been listed by the federal food and drug administration as having proven bioequivalence problems.

(17) "Licensed health professional authorized to prescribe drugs" and "prescriber" have the same meanings as in section 4729.01 Of the Revised Code.

(B) For the purposes of sections 3715.52 to 3715.72 of the Revised Code:

(1) If an article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading, there shall be taken into account, among other things, not only representations made or suggested by statement, word, design, device, sound, or in any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequence which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual.

(2) The provisions regarding the selling of food, drugs, devices, or cosmetics include the manufacture, production, processing, packing, exposure, offer, possession, and holding of any such article for sale; and the sale, dispensing, and giving of any such article, and the supplying or applying of any such articles in the conduct of any food, drug, or cosmetic establishment, ~~but~~. The provisions do not prohibit the administering or dispensing of a drug or device by a member of the medical, dental, or veterinary profession in good faith in the course of professional practice only a licensed health professional authorized to prescribe drugs from administering or personally furnishing a drug or device to a patient.

(3) The representation of a drug, in its labeling or advertisement, as an antiseptic is a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or ~~such~~ other use ~~as~~ that involves prolonged contact with the body.

(4) Whenever jurisdiction is vested in the director of agriculture or the state board of pharmacy, the jurisdiction of the board ~~of pharmacy~~ shall be limited to the sale, offering for sale, giving away, delivery, or dispensing in any manner of drugs at the wholesale and retail levels or to the consumer and shall be exclusive in the case of such sale, offering for sale, giving away, delivery, or dispensing in any manner of drugs at the wholesale and retail levels or to the consumer in any place where prescriptions are dispensed or compounded.

~~(C)~~(5) To assist in effectuating the provisions of those sections ~~3715.52 to 3715.72 of the Revised Code~~, the director of agriculture or state board of pharmacy may request assistance or data from any government or private agency or individual.

Sec. 3715.03. The director of agriculture, ~~in the performance of his performing duties under this chapter~~, may enter a creamery, factory, store salesroom, ~~drugstore~~ pharmacy, laboratory, or other place where ~~he~~ the director believes or has reason to believe drugs, food, or drink is made, prepared, dispensed, sold, or offered for sale; examine the books therein; and open a cask, tub, jar, bottle, or other package containing or supposed to contain a drug or an article of food or drink and examine the contents or cause them to be examined and analyzed ~~the contents thereof~~.

Sec. 3715.52. (A) ~~As used in sections 3715.52 to 3715.72 of the Revised Code, "practitioner" has the same meaning as in section 4729.02 of the Revised Code.~~

~~(B)~~ The following acts and causing them are prohibited:

(1) The manufacture, sale, or delivery, holding or offering for sale of any food, drug, device, or cosmetic that is adulterated or misbranded;

(2) The adulteration or misbranding of any food, drug, device, or cosmetic;

(3) The receipt in commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the delivery or proffered delivery thereof for pay or otherwise;

(4) The sale, delivery for sale, holding for sale, or offering for sale of any article in violation of section 3715.61 or 3715.65 of the Revised Code;

(5) The dissemination of any false advertisement;

(6) The refusal to permit entry or inspection, or to permit the taking of a

sample, as authorized by section 3715.70 of the Revised Code;

(7) The giving of a guaranty or undertaking ~~which guaranty or undertaking~~ that is false, except by a person who relied on a guaranty or undertaking to the same effect signed by, and containing the name and address of the person residing in this state from whom the person received in good faith the food, drug, device, or cosmetic;

(8) The removal or disposal of a detained or embargoed article in violation of section 3715.55 of the Revised Code;

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if ~~such the~~ such the act is done while ~~such the~~ such the article is held for sale and results in ~~such the~~ such the article being misbranded;

(10) Forging, counterfeiting, simulating, or falsely representing, or without proper authority using any mark, stamp, tag, label, or other identification device authorized or required by ~~regulations promulgated under~~ rules adopted pursuant to sections 3715.52 to 3715.72 of the Revised Code;

(11) The using, on the labeling of any drug or in any advertisement relating to ~~such a~~ a drug, of any representation or suggestion that any application with respect to ~~such the~~ the drug is effective under section 3715.65 of the Revised Code or that ~~such the~~ the drug complies with the provisions of ~~such that~~ that section;

~~(12) The sale, offering for sale, giving away, or delivery at retail or to the consumer without a prescription from a practitioner of any drug which under federal or Ohio law can be sold only on prescription;~~

~~(13)~~ The using by any person to the person's own advantage, or revealing, other than to the director of agriculture or to the courts when relevant in any judicial proceeding under sections 3715.52 to 3715.72 of the Revised Code, any information acquired under authority of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, concerning any information ~~which that~~ that as a trade secret is entitled to protection;

~~(14)~~(13) The issuance by the manufacturer, packer, or distributor of a dangerous drug of any advertisements, catalogues, or price lists, except those lists specifically designed for disseminating price change information, that do not contain in clearly legible form the name and place of business of the manufacturer who mixed the final ingredients and if different, the manufacturer who produced the drug in its finished dosage form and, if different, the packer or distributor.

~~(C)~~(B)(1) No person at a flea market shall sell, offer for sale, or

knowingly permit the sale of any of the following products:

(a) Baby food, infant formula, or similar products;

(b) Any drug, cosmetic, or device;

(c) Any product on which is printed or stamped an expiration date or a date recommended by the manufacturer as either the last day on which the product should be offered for sale or the last day on which the product should be used.

(2) Division ~~(C)~~(B)(1) of this section does not apply to a person who keeps available for public inspection an identification card identifying the person as an authorized representative of the manufacturer or distributor of any drug, cosmetic, or device, as long as the card is not false, fraudulent, or fraudulently obtained.

(3) Division ~~(C)~~(B)(1)(c) of this section does not apply to a person or governmental entity that is licensed as a food service operation under Chapter 3732. of the Revised Code or is listed in division (A)(9) or (12) of section 3732.01 of the Revised Code.

(4) As used in division ~~(C)~~(B)(1) of this section, "flea market" means any location, other than a permanent retail store, at which space is rented or otherwise made available to others for the conduct of business as transient or limited vendors as defined in section 5739.17 of the Revised Code.

Sec. 3715.53. In addition to the remedies provided and irrespective of whether or not there exists an adequate remedy at law, the director of agriculture or the state board of pharmacy is hereby authorized to apply to the court of common pleas in the county wherein any of the provisions of section 3715.52 of the Revised Code are being violated for a temporary or permanent injunction restraining any person from ~~such~~ committing the violation.

Sec. 3715.54. (A) No person shall be subject to the penalties prescribed in section 3715.99 of the Revised Code for violating division ~~(B)~~(A)(1) or (3) of section 3715.52 of the Revised Code if ~~he~~ the person established a guaranty or undertaking signed by, and containing the name and address of, the person residing in this state from whom ~~he~~ the person received in good faith the article, to the effect that ~~such~~ the article is not adulterated or misbranded within the meaning of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code.

(B) No publisher, radio-broadcast licensee, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which a false advertisement relates, shall be liable under this section by reason of the dissemination ~~by him~~ of ~~such~~ a false advertisement.

Sec. 3715.55. (A) As used in this section, "expired" means:

(1) In the case of a drug, that the expiration date required by 21 C.F.R. 211.137 has passed;

(2) In the case of infant formula, the "use by" date required by 21 C.F.R. 107.20 has passed;

(3) In the case of baby food, that any expiration date, "use by" date, or sale date established by state or federal law or marked on the container by the manufacturer, processor, or packager has passed.

(B) Whenever the director of agriculture or the state board of pharmacy finds or has cause to believe, that any food, drug, device, or cosmetic is adulterated, or so misbranded as to be dangerous or fraudulent, within the meaning of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, or that a drug, infant formula, or baby food is expired, the director or board shall affix to ~~such~~ the article a tag or other appropriate marking, giving notice that ~~such~~ the article is, or is suspected of being, adulterated, misbranded, or expired and has been detained or embargoed, and warning all persons not to remove or dispose of ~~such~~ the article by sale or otherwise until permission for removal or disposal is given by the director or the board or the court. No person may remove or dispose of ~~such~~ a detained or embargoed article by sale or otherwise without such permission.

(C) When an article detained or embargoed has been found by the director or ~~the board of pharmacy~~ to be adulterated, misbranded, or expired, the director or board shall petition the municipal or county court in whose jurisdiction the article is detained or embargoed for an order for condemnation of ~~such~~ the article. When the director or the board has not found within ten days that an article so detained or embargoed is adulterated, misbranded, or expired, the director or board shall remove the tag or other marking.

(D) If the court finds that a detained or embargoed article is adulterated, misbranded, or expired, ~~such~~ the article shall, after entry of the decree, be destroyed at the expense of the claimant thereof, under the supervision of the director or the board, and all court costs, fees, storage, and other proper expenses shall be taxed against the claimant of ~~such~~ the article or the claimant's agent; provided, that when the adulteration or misbranding can be corrected by proper labeling or processing of the article, the court, after entry of the decree and after such costs, fees, and expenses have been paid and a good and sufficient bond, conditioned that ~~such~~ the article shall be so labeled or processed, has been executed, may by order direct that ~~such~~ the article be delivered to the claimant thereof for ~~such~~ labeling or processing under the supervision of the director or the board. The expense of ~~such~~

supervision shall be paid by the claimant. ~~Such~~ The bond shall be returned to the claimant of the article on representation to the court by the director or the board that the article is no longer in violation of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, and that the expenses of ~~such~~ supervision have been paid.

(E) Whenever the director finds in any room, building, vehicle of transportation, or other structure, any meat, sea food, poultry, vegetable, fruit, or other perishable articles ~~which that~~ are unsound, or contain any filthy, decomposed, or putrid substance, or ~~which that~~ may be poisonous or deleterious to health or otherwise unsafe, ~~such the~~ articles are declared to be a nuisance, and the director shall forthwith condemn or destroy the ~~same~~ articles, or in any other manner render the ~~same~~ articles unsalable as human food.

Sec. 3715.56. The attorney general, prosecuting attorney, or city director of law to whom the director of agriculture or the state board of pharmacy reports any violation of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, shall cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner required by law. ~~Before~~ The director of agriculture, ~~before reporting~~ any violation of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, ~~is reported~~ to any such attorney for the institution of a criminal proceeding, shall give the person against whom the proceeding is contemplated ~~shall be given~~ appropriate notice and an opportunity to present ~~his views~~ testimony before the director ~~or the board of pharmacy~~, either orally or in writing, in person, or by attorney, with regard to the contemplated proceeding.

Sec. 3715.57. Nothing in sections 3715.01 and 3715.52 to 3715.72; ~~inclusive~~, of the Revised Code, shall be construed as requiring the director of agriculture or the state board of pharmacy to report minor violations for the institution of proceedings under sections 3715.01 and 3715.52 to 3715.72; ~~inclusive~~, of the Revised Code, whenever the director or ~~the~~ board ~~of pharmacy~~ believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning.

Sec. 3715.59. Food is adulterated within the meaning of sections 3715.01, 3715.02, and 3715.52 to 3715.72 of the Revised Code, if any of the following apply:

(A) It bears or contains any poisonous or deleterious substance ~~which~~ that may render it injurious to health; but in case the substance is not an added substance, ~~such the~~ food shall not be considered adulterated if the quantity of ~~such the~~ substance in ~~such the~~ food does not ordinarily render it injurious to health.

(B) It bears or contains any added poisonous or added deleterious substance ~~which~~ that is unsafe within the meaning of section 3715.62 of the Revised Code.

(C) It consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food.

(D) It has been produced, processed, prepared, packed, or held under ~~insanitary~~ unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health.

(E) It is the product of a diseased animal or an animal ~~which~~ that has died otherwise than by slaughter, or an animal that has been fed upon the uncooked offal from a slaughterhouse.

(F) Its container is composed, in whole or in part, of any poisonous or deleterious substance ~~which~~ that may render the contents injurious to health.

(G) Any valuable constituent has been, in whole or in part, omitted or abstracted ~~therefrom~~ from the food.

(H) Any substance has been substituted wholly or in part ~~therefor~~ for the food.

(I) Damage or inferiority has been concealed in any manner.

(J) Any substance has been added ~~thereto~~ to or mixed or packed ~~therewith~~ with the food so as to increase its bulk or weight, ~~or~~ reduce its quality or strength, or make it appear better or of greater value than it is.

(K) It is confectionery; and it bears or contains any alcohol or nonnutritive article or substance ~~except~~ other than harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one per cent, harmless natural wax not in excess of four-tenths of one per cent, harmless natural gum, ~~and or~~ pectin; ~~provided, except~~ that this division shall not apply to any confectionery by reason of its containing less than one-half of one per cent by volume of alcohol derived solely from the use of flavoring extracts, or to any chewing gum by reason of its containing harmless nonnutritive masticatory substances.

(L) It bears or contains a coal-tar color other than one from a batch ~~which has been~~ certified under authority of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended.

Sec. 3715.63. A drug or device is adulterated within the meaning of sections 3715.01 and 3715.52 to 3715.72, ~~inclusive,~~ of the Revised Code, if any of the following apply:

(A) It consists, in whole or in part, of any filthy, putrid, or decomposed substance.

(B) It has been produced, processed, prepared, packed, or held under

~~insanitary~~ unsanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health.

(C) It is a drug and its container is composed, in whole or in part, of any poisonous or deleterious substance ~~which~~ that may render the contents injurious to health.

(D) It is a drug and it bears or contains, for purposes of coloring only, a coal-tar color other than one from a batch certified under ~~the~~ authority of the "Federal Food, ~~drug~~ Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended.

(E) It purports to be or is represented as a drug the name of which is recognized in ~~an official compendium~~ the United States pharmacopoeia and national formulary, or any supplement to them, and its strength differs from; or its quality or purity falls below the standard set forth in ~~such compendium~~ those compendiums. ~~Such~~ A determination as to strength, quality, or purity shall be made in accordance with the tests or methods of assay set forth in ~~such compendium~~ the compendiums, or in the absence or inadequacy of such tests or methods of assay, those prescribed under the authority of the ~~federal act. No~~ "Federal Food, Drug, and Cosmetic Act." A drug defined recognized in an official compendium the compendiums is not adulterated under this division because it differs from the standard of strength, quality, or purity ~~therefor~~ set forth for that drug in such compendium the compendiums, if its the difference in strength, quality, or purity ~~from such standard~~ is plainly stated on its label. Whenever a drug is recognized in both the ~~United States pharmacopoeia and the~~ homoeopathic pharmacopoeia of the United States and in the United States pharmacopoeia and national formulary, including their supplements, it shall be subject to the requirements of the United States pharmacopoeia and national formulary unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the homoeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia and national formulary.

(F) It is not subject to the provisions of division (E) of this section, and its strength differs from; or its purity or quality falls below that which it purports or is represented to possess.

(G) It is a drug and any substance has been:

(1) Mixed or packed ~~therewith~~ with the drug so as to reduce ~~its~~ the drug's quality or strength;

(2) Substituted wholly or in part ~~therefor~~ for the drug.

Sec. 3715.64. (A) A drug or device is misbranded within the meaning of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, if:

(1) Its labeling is false or misleading in any particular.

(2) It is in package form and does not bear a label containing both of the following:

(a) In clearly legible form, the name and place of business of the manufacturer, packer, or distributor;

(b) An accurate statement of the quantity of the contents in terms of weight, measure, or numerical count; but reasonable variations shall be permitted, and exemptions as to small packages shall be apply as established by regulations prescribed rules adopted by the director of agriculture or state board of pharmacy.

(3) It is a dangerous drug and does not bear a label containing in clearly legible form the name and place of business of the manufacturer of the finished dosage form and, if different, the packer or distributor.

(4) It is a dangerous drug in finished solid oral dosage form, ~~unless and it has~~ does not have clearly and prominently marked or imprinted on it an individual symbol, company name, national drug code number or other number, words, letters, or any combination thereof, identifying the drug and its manufacturer or distributor. This requirement does not apply to drugs that are compounded by a ~~registered~~ licensed pharmacist. The manufacturer or distributor of each such drug shall make available to the state board of pharmacy descriptive material identifying the mark or imprint used by the manufacturer or distributor. The board ~~of pharmacy~~ shall provide this information to all poison control centers in ~~the~~ this state. Upon application by a manufacturer or distributor, the board may exempt a drug from the requirements of this division on the grounds that marking or imprinting ~~such drugs~~ the drug is not feasible because of its size, texture, or other unique characteristic.

(5) Any word, statement, or other information that is required by or under authority of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code; to appear on the label or labeling is not prominently placed ~~thereon with such conspicuousness~~ on the label or labeling in a conspicuous manner, as compared with other words, statements, designs, or devices, ~~in~~ on the label or labeling, and in such terms ~~as to~~ that render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use.

(6) ~~It is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, beta eucaine, bromal, eannabis, cabromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphonmethane, or any chemical derivative of such substance, which derivative has been found by the~~

~~director to be, and by regulations proposed by the director and adopted by the public health council designated as, habit forming, unless its label bears the name and quantity or proportion of such substance or derivative and in juxtaposition therewith the statement "Warning -- May be habit forming."~~

~~(7)~~ It is a drug and it is not designated solely by a name recognized in ~~an official compendium~~ the United States pharmacopoeia and national formulary, or any supplement to them, unless its label bears:

(a) The common or usual name of the drug, if any;

(b) In case it is fabricated from two or more ingredients, the common or usual name of each active ingredient the drug contains, including the kind and quantity or proportion of any alcohol, and also including whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanalid, acetophenetidin, aminopyrine, atropine, hyoscine, hyoscyamine, arsenic, digitalis, digitalis glycosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, ~~contained therein~~; but to the extent that compliance with these requirements is impracticable, exemptions shall be apply as established by ~~regulations proposed by the director and~~ rules adopted by the ~~public health council~~ director of agriculture or state board of pharmacy.

~~(8)~~(7) Its labeling does not bear the following:

(a) Adequate directions for use of the drug or device, except that when compliance with this requirement is not necessary for a particular drug or device to protect the public health, the director shall adopt rules exempting the drug or device from the requirement;

(b) ~~Such adequate~~ Adequate warnings against use in those pathological conditions or by children ~~where~~ when its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, presented in such a manner and form; as are necessary for the protection of users;

~~(e) Where compliance with any requirements of division (A)(8)(a) of this section, as applied to any drug or device, is not necessary for the protection of the public health, the director shall propose and the public health council shall adopt regulations exempting such drug or device from such requirements.~~

~~(9)~~(8) It purports to be a drug the name of which is recognized in ~~an official compendium, unless~~ the United States pharmacopoeia and national formulary, or any supplement to them, and it is not packaged and labeled as prescribed ~~therein, but~~ in those compendiums, except that the method of packing may be modified with the consent of the director of agriculture. Whenever a drug is recognized in both ~~the United States pharmacopoeia and~~

the homoeopathic pharmacopoeia of the United States and in the United States pharmacopoeia and national formulary, including their supplements, it shall be subject to the requirements of the United States pharmacopoeia and national formulary with respect to packaging and labeling unless it is labeled and offered for sale as a homoeopathic drug, in which case it shall be subject to the provisions of the homoeopathic pharmacopoeia of the United States; and not to those of the United States pharmacopoeia and national formulary.

~~(10)~~(9) It has been found by the director of agriculture to be a drug liable to deterioration, unless it is packaged in ~~such~~ the form and manner, and its label bears a statement of ~~such~~ precautions, as required by ~~regulations proposed by the director and rules~~ adopted by the ~~public health council~~ director as necessary for the protection of public health. No ~~such regulation~~ rule shall be established for any drug recognized in ~~an official compendium~~ the United States pharmacopoeia and national formulary, or any supplements to them, until the director has informed the appropriate ~~body~~ bodies charged with the revision of ~~such compendium~~ those compendiums of the need for ~~such~~ packaging or labeling requirements and ~~such body has~~ those bodies have failed within a reasonable time to prescribe such requirements.

~~(11)~~(10)(a) It is a drug and its container is so made, formed, or filled as to be misleading.

(b) It is an imitation of another drug.

(c) It is offered for sale under the name of another drug.

(d) The drug sold or dispensed is not the brand or drug specifically prescribed or ordered or, when dispensed by a pharmacist upon prescription, is neither the brand or drug prescribed nor a generically equivalent drug.

~~(12)~~(11) It is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in ~~the~~ its labeling ~~thereof.~~

~~(13)~~(12) It is a drug intended for human use ~~by man~~ to which the following apply:

(a) Because of its toxicity or other potentiality for harmful effect, ~~or~~ the method of its use, or the collateral measures necessary to its use, the drug is not safe for use except under the supervision of a ~~practitioner, or person licensed to prescribe any drug which, under the federal act, federal narcotic law, as defined in section 4729.02 of the Revised Code, and under sections 3715.01 to 3715.75, or Chapter 3719, of the Revised Code, may be dispensed only upon a prescription~~ licensed health professional authorized to prescribe drugs;

(b) ~~Is~~ The drug is limited by an effective application under section 505 of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, to use under professional supervision by a ~~practitioner~~ licensed health professional authorized to prescribe drugs, unless it is dispensed only:

(i) Upon a written or electronic prescription ~~of a practitioner;~~

(ii) Upon ~~the an~~ oral prescription ~~of a practitioner,~~ which is reduced promptly to writing by the pharmacist;

(iii) By refilling ~~any such written or oral~~ a prescription if ~~such~~ refilling is authorized by the prescriber either in the original prescription or by oral order, which is promptly reduced to writing by the pharmacist.

(B) Any drug dispensed ~~by filling or refilling pursuant to~~ a written, electronic, or oral prescription of a ~~practitioner, or person licensed to prescribe any drug which,~~ under the federal act, federal narcotic law, as defined in section 4729.02 of the Revised Code, or under sections 3715.01 to 3715.75, or Chapter 3719. of the Revised Code, ~~may be dispensed only upon a prescription~~ licensed health professional authorized to prescribe drugs shall be exempt from the requirements of division (A) of this section, except divisions (A)(1) and ~~(11)(10)~~ of this section, if the drug bears a label containing the name and address of the dispenser, the serial number and the date of the prescription or its filling is dispensed, the name of the prescriber, ~~and, if stated in the prescription,~~ the name of the patient, and, ~~if stated in the prescription,~~ the directions for use and cautionary statements, ~~if any, contained in the prescription.~~ Unless the prescription directions prohibit labeling, the label shall include the brand name of the drug dispensed. If the drug dispensed has no brand name, the generic name and the distributor of the finished dosage form shall be included. ~~This exemption shall not apply to any drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail.~~

Sec. 3715.65. (A) No person shall sell, deliver, offer for sale, hold for sale, or give away any new drug unless:

(1) An application with respect ~~thereto~~ to the drug has become effective under section 505 of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended.

(2) ~~When such~~ If the drug is not subject to the federal act ~~unless it~~ "Federal Food, Drug, and Cosmetic Act," the drug has been tested and ~~has been~~ found to be safe for use under the conditions prescribed, recommended, or suggested in the its labeling ~~thereof,~~ and, prior to selling the drug or offering it for sale ~~such drug,~~ there has been filed with the director of agriculture an application setting forth all of the following:

(a) Full reports of investigations ~~which~~ that have been made to show whether or not ~~such the~~ drug is safe for use;

(b) A full list of the articles used as components of ~~such the~~ drug;

(c) A full statement of the drug's composition ~~of such drug~~;

(d) A full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of ~~such the~~ drug;

(e) ~~Such samples of such~~ Samples, as the director may require, of the drug and of the articles used as components thereof as the director may require of the drug;

(f) Specimens of the labeling proposed to be used for ~~such the~~ drug.

(B) An application provided for in division (A)(2) of this section shall become effective sixty days after ~~the filing thereof it is filed~~, except that if the director finds after due notice to the applicant and after giving ~~him the~~ applicant an opportunity for a hearing, that the drug is not safe for use under the conditions prescribed, recommended, or suggested in the drug's proposed labeling ~~thereof, he~~ the director shall, prior to the effective date of the application, issue an order refusing to permit the application to become effective. The order may be revoked by the director.

(C) This section does not apply to the following:

(1) A drug intended solely for investigational use by experts qualified by scientific training and experience to investigate the safety ~~in~~ of drugs provided that the drug is plainly labeled "For investigational use only";

(2) A drug sold in this state at any time prior to the enactment of sections 3715.01 and 3715.52 to 3715.72, ~~inclusive~~, of the Revised Code, or introduced into interstate commerce at any time prior to the enactment of the ~~federal act~~ "Federal Food, Drug, and Cosmetic Act";

(3) Any drug ~~which that~~ is licensed under the "Public Health Service Act," of July 1, 1944 (42 U.S.C. Supp. V 201) 58 stat. 682 (1944), 42 U.S.C.A. 301, as amended, or under the "~~Animal~~ Virus-Serum-Toxin ~~Law~~ Act," of March 4, 1913 (21 U.S.C. 151) 37 Stat. 832 (1913), 21 U.S.C.A. 151, as amended.

~~(D) An order refusing to permit an application under this section to become effective may be revoked by the director.~~

Sec. 3715.66. (A) A cosmetic is adulterated within the meaning of sections 3715.01 and 3715.52 to 3715.72, ~~inclusive~~, of the Revised Code, if:

~~(A)(1)~~ It bears or contains any poisonous or deleterious substance ~~which~~ that may render it injurious to users under the conditions of use prescribed in the labeling or advertisement ~~thereof~~ of the cosmetic, or under ~~such~~ conditions of use as that are customary or usual; ~~provided, except that this~~

provision does not apply to coal-tar hair dye, ~~the~~ if both of the following conditions are met:

~~(a)~~ The label of which bears the following legend conspicuously displayed thereon: "Caution-This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying directions should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness;" ~~and the~~

~~(b)~~ The labeling of which bears adequate directions for ~~such~~ preliminary testing. ~~For the purpose of this division and division (E) of this section the term "hair dye" does not include eyelash dyes or eyebrows dyes.~~

~~(B)~~ (2) It contains, in whole or in part, any filthy, putrid, or decomposed substance.

~~(C)~~ (3) It has been produced, processed, prepared, packed, or held under ~~insanitary~~ unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health.

~~(D)~~ (4) Its container is composed, in whole or in part, of any poisonous or deleterious substance ~~which~~ that may render the contents injurious to health.

~~(E)~~ (5) It is not a hair dye and it bears or contains a coal-tar color other than one from a batch ~~which has been~~ certified under authority of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended.

(B) For purposes of divisions (A)(1) and (5) of this section, "hair dye" does not include eyelash dye or eyebrow dye.

Sec. 3715.69. The authority to adopt rules for the enforcement of section 3715.02, divisions (E), (G), (H), and (I) of section 3715.60, division (A)(2) of section 3715.64, and section 3715.67 of the Revised Code is vested in the director of agriculture. The authority to adopt rules for the enforcement of sections 3715.01 and 3715.52 to 3715.72 of the Revised Code, excluding divisions (E), (G), (H), and (I) of section 3715.60, division (A)(2) of section 3715.64, and section 3715.67 of the Revised Code, is vested in ~~the public health council, provided that the rules are first proposed for adoption by~~ the director of agriculture or the state board of pharmacy. The rules adopted in so far as practicable shall conform with ~~those~~ the regulations promulgated under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. ~~301-395 (1996)~~ 301, as amended.

Sec. 3715.70. (A) The director of agriculture or the state board of pharmacy shall have free access at all reasonable hours to any factory, warehouse, or establishment in which foods, drugs, devices, or cosmetics

are manufactured, processed, packed, or held for introduction into commerce, or to enter any vehicle being used to transport or hold ~~such~~ foods, drugs, devices, or cosmetics in commerce, for the ~~purpose~~ following purposes:

~~(A) Of inspecting such~~ (1) To inspect the factory, warehouse, establishment, or vehicle to determine if any of the provisions of sections 3715.01 or 3715.52 to 3715.72, ~~inclusive~~, of the Revised Code, are being violated;

~~(B)(2) To secure samples of specimens of any food, drug, device, or cosmetic after paying or offering to pay for such sample.~~

(B) The director or the board of ~~pharmacy~~ shall make or cause to be made examinations of samples secured under the provisions of this section to determine whether or not any provisions of sections 3715.01 and 3715.52 to 3715.72, ~~inclusive~~, of the Revised Code; are being violated.

Sec. 3715.71. ~~(A)~~ The director of agriculture or the state board of pharmacy may cause to be published from time to time reports summarizing all judgments, decrees, and court orders ~~which that~~ have been rendered under sections 3715.01 and 3715.52 to 3715.72, ~~inclusive~~, of the Revised Code, including the nature of the charge and the disposition thereof.

~~(B)~~ The director or ~~the~~ board of ~~pharmacy~~ may also cause to be disseminated ~~such any~~ information regarding food, drugs, devices, and cosmetics as that the director or ~~the~~ board of ~~pharmacy~~ deems necessary in the interest of public health and the protection of the consumer against fraud. ~~Nothing~~

Nothing in this section shall be construed to prohibit the director or ~~the~~ board of ~~pharmacy~~ from collecting, reporting, and illustrating the results of ~~the~~ investigations of conducted by the director or ~~the~~ board of ~~pharmacy~~.

Sec. 3715.73. (A) All fines or forfeited bonds assessed and collected under prosecution by the director of agriculture or prosecution commenced by the director in enforcement of ~~sections 3715.01 to 3715.72, inclusive, of the Revised Code~~, this chapter shall, within thirty days, be paid to the director and by ~~him~~ the director paid into the state treasury.

(B) All fines or forfeited bonds assessed and collected under prosecution by the state board of pharmacy or prosecution commenced by the board in enforcement of ~~sections 3715.01 to 3715.72, inclusive, of the Revised Code~~, this chapter shall, within thirty days, be paid to the ~~secretary~~ executive director of the board and by ~~him~~ the executive director paid into the state treasury.

Sec. 3719.01. As used in this chapter:

(A) "Administer" means the direct application of a drug, whether by

injection, inhalation, ingestion, or any other means to a person or an animal.

~~(B)~~ "Board" means the state board of pharmacy established by section 4729.01 of the Revised Code.

~~(C)~~ "Drug enforcement administration" means the drug enforcement administration of the United States department of justice or its successor agency.

~~(D)~~~~(C)~~ "Controlled substance" means a drug, compound, mixture, preparation, or substance included in schedule I, II, III, IV, or V.

~~(E)~~~~(D)~~ "Dangerous drug" has the same meaning as in section 4729.02 4729.01 of the Revised Code.

~~(F)~~~~(E)~~ "Dispense" means to sell, leave with, give away, dispose of, or deliver.

~~(G)~~~~(F)~~ "Distribute" means to deal in, ship, transport, or deliver but does not include administering or dispensing a drug.

~~(H)~~~~(G)~~ "Drug" has the same meaning as in section 4729.02 4729.01 of the Revised Code.

~~(I)~~~~(H)~~ "Drug abuse offense," "felony drug abuse offense," "cocaine," and "hashish" have the same meanings as in section 2925.01 of the Revised Code.

~~(J)~~~~(I)~~ "Federal drug abuse control laws" means the "Comprehensive Drug Abuse Prevention and Control Act of 1970," 84 Stat. 1242, 21 U.S.C. 801, as amended.

~~(K)~~~~(J)~~ "Hospital" means an institution for the care and treatment of the sick and injured that is certified by the department of health and approved by the state board of pharmacy as proper to be entrusted with the custody of controlled substances and the professional use of controlled substances under the direction of a practitioner or pharmacist.

~~(L)~~~~(K)~~ "Hypodermic" means a hypodermic syringe or needle, or other instrument or device for the injection of medication.

~~(M)~~~~(L)~~ "Isomer", except as otherwise expressly stated, means the ~~optical~~ optical isomer.

~~(N)~~~~(M)~~ "Laboratory" means a laboratory approved by the state board of pharmacy as proper to be entrusted with the custody of controlled substances and the use of controlled substances for scientific and clinical purposes and for purposes of instruction.

~~(O)~~~~(N)~~ "Manufacturer" means a person who ~~plants, cultivates, harvests, processes, makes, prepares, or otherwise engages in any part of the production of manufactures~~ a controlled substance by propagation, compounding, conversion, or processing, either directly or indirectly by extraction from substances of natural origin, or independently by means of

~~chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container and other activities incident to production, except that a "manufacturer" does not include a pharmacist who prepares, compounds, packages, or labels a controlled substance as an incident to dispensing a controlled substance in accordance with a prescription and in the usual course of professional practice, as "manufacture" is defined in section 3715.01 Of the Revised Code.~~

~~(P)~~(O) "Marihuana" means all parts of a plant of the genus cannabis, whether growing or not; the seeds of a plant of that type; the resin extracted from a part of a plant of that type; and every compound, manufacture, salt, derivative, mixture, or preparation of a plant of that type or of its seeds or resin. "Marihuana" does not include the mature stalks of the plant, fiber produced from the stalks, oils or cake made from the seeds of the plant, or any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted from the mature stalks, fiber, oil or cake, or the sterilized seed of the plant that is incapable of germination.

~~(Q)~~(P) "Narcotic drugs" means coca leaves, opium, isonipecaine, amidone, isoamidone, ketobemidone, as defined in this division, and every substance not chemically distinguished from them and every drug, other than cannabis, that may be included in the meaning of "narcotic drug" under the federal drug abuse control laws. ~~Coca~~ As used in this division:

(1) "Coca leaves" includes cocaine and any compound, manufacture, salt, derivative, mixture, or preparation of coca leaves, except derivatives of coca leaves, that ~~do~~ does not contain cocaine, ecgonine, or substances from which cocaine or ecgonine may be synthesized or made. ~~Isonipecaine~~

(2) "Isonipecaine" means any substance identified chemically as 1-methyl-4-phenyl-piperidine-4-carboxylic acid ethyl ester, or any salt thereof, by whatever trade name designated. ~~Amidone~~

(3) "Amidone" means any substance identified chemically as 4-4-diphenyl-6-dimethylamino-heptanone-3, or any salt thereof, by whatever trade name designated. ~~Isoamidone~~

(4) "Isoamidone" means any substance identified chemically as 4-4-diphenyl-5-methyl-6-dimethylaminohexanone-3, or any salt thereof, by whatever trade name designated. ~~Ketobemidone~~

(5) "Ketobemidone" means any substance identified chemically as 4-(3-hydroxyphenyl)-1-methyl-4-piperidyl ethyl ketone hydrochloride, or any salt thereof, by whatever trade name designated.

~~(R) of that nature of that nature~~ "Nurse" means a person licensed to

~~engage in the practice of nursing in this state.~~

~~(S)~~(Q) "Official written order" means an order written on a form provided for that purpose by the director of the United States drug enforcement administration, under any laws of the United States making provision for the order, if the order forms are authorized and required by federal law.

~~(T)~~(R) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. "Opiate" does not include, unless specifically designated as controlled under section 3719.41 of the Revised Code, the dextrorotatory isomer of ~~3-methoxy-N-methylmorphinan~~ 3-methoxy-N-methylmorphinan and its salts (dextro-methorphan). "Opiate" does include its racemic and levoratory forms.

~~(U)~~(S) "Opium poppy" means the plant of the species papaver somniferum L., except its seeds.

~~(V)~~(T) "Person" means any individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, or other legal entity.

~~(W)~~(U) "Pharmacist" means a person ~~registered with the board as a compounder and dispenser of drugs~~ licensed under Chapter 4729. Of the Revised Code to engage in the practice of pharmacy.

~~(X)~~(V) "Pharmacy" means ~~any area, room, rooms, place of business, department, or portion of any of the foregoing, where prescriptions are filled or where drugs, dangerous drugs, or poisons are compounded, sold, offered, or displayed for sale, dispensed, or distributed to the public~~ has the same meaning as in section 4729.01 Of the Revised Code.

(W) "Poison" means any drug, chemical, or preparation likely to be deleterious or destructive to adult human life in quantities of four grams or less.

~~(Y)~~(X) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(Z) "Practitioner" means the following:

(1) A person who is licensed pursuant to Chapter 4715., 4731., or 4741. of the Revised Code and authorized by law to write prescriptions for drugs or dangerous drugs;

(2) ~~An advanced practice nurse authorized under section 4723.56 of the Revised Code to prescribe drugs and therapeutic devices.~~

(AA) "Prescription" means a written or oral order for a controlled substance for the use of a particular person or a particular animal given by a

~~practitioner in the course of professional practice and in accordance with the regulations promulgated by the director of the United States drug enforcement administration pursuant to the federal drug abuse control laws.~~

~~(BB)~~(Y) "Licensed health professional authorized to prescribe drugs," "prescriber," and "prescription" have the same meanings as in section 4729.01 Of the Revised Code.

~~(Z)~~ "Registry number" means the number assigned to each person registered under the federal drug abuse control laws.

~~(CC)~~(AA) "Sale" includes delivery, barter, exchange, transfer, or gift, or offer thereof, and each transaction of those natures made by any person, whether as principal, proprietor, agent, servant, or employee.

~~(DD)~~(BB) "Schedule I," "schedule II," "schedule III," "schedule IV," and "schedule V" mean controlled substance schedules I, II, III, IV, and V, respectively, established pursuant to section 3719.41 of the Revised Code, as amended pursuant to section 3719.43 or 3719.44 of the Revised Code.

~~(EE)~~(CC) "Wholesaler" means a person who, on official written orders other than prescriptions, supplies controlled substances that the person has not manufactured, produced, or prepared personally and includes a "wholesale distributor of dangerous drugs" as defined in section ~~4729.02~~ 4729.01 of the Revised Code.

~~(FF)~~(DD) "Animal shelter" means a facility operated by a humane society or any society organized under Chapter 1717. of the Revised Code or a dog pound operated pursuant to Chapter 955. of the Revised Code.

~~(GG)~~(EE) "Terminal distributor of dangerous drugs" has the same meaning as in section ~~4729.02~~ 4729.01 of the Revised Code.

~~(HH)~~(FF) "Category III license" means a license issued to a terminal distributor of dangerous drugs as set forth in section 4729.54 of the Revised Code.

~~(II)~~(JJ)(GG) "Prosecutor" has the same meaning as in section 2935.01 of the Revised Code.

Sec. 3719.011. As used in the Revised Code:

(A) "Drug of abuse" means any controlled substance as defined in section 3719.01 of the Revised Code, any harmful intoxicant as defined in section 2925.01 of the Revised Code, and any dangerous drug as defined in section ~~4729.02~~ 4729.01 of the Revised Code.

(B) "Drug dependent person" means any person who, by reason of the use of any drug of abuse, is physically, psychologically, or physically and psychologically dependent upon the use of such drug, to the detriment of ~~his~~ the person's health or welfare.

(C) "Person in danger of becoming a drug dependent person" means any

person who, by reason of ~~his~~ the person's habitual or incontinent use of any drug of abuse, is in imminent danger of becoming a drug dependent person.

Sec. 3719.05. (A) ~~As used in this section and section 3719.06 of the Revised Code:~~

~~(1) "Dentist" means a person licensed under Chapter 4715. of the Revised Code to practice dentistry.~~

~~(2) "Physician" means a person holding a valid certificate issued under Chapter 4731. of the Revised Code authorizing him to practice medicine and surgery, osteopathic medicine and surgery, or podiatry.~~

~~(3) "Veterinarian" means a person licensed under Chapter 4741. of the Revised Code to practice veterinary medicine.~~

~~(B) A pharmacist may dispense schedule II controlled substances to any person upon a written prescription given by a dentist, physician, or veterinarian and schedule III or IV controlled substances to any person upon a written or oral prescription given by a practitioner. Each written prescription shall be properly executed, dated, and signed by the person prescribing on the day when issued and bearing the full name and address of the patient for whom, or of the owner of the animal for which, the schedule II controlled substance is dispensed, and the full name, address, and registry number under the federal drug abuse control laws of the person prescribing. If the prescription is for an animal, it shall state the species of animal for which the drug is prescribed. The issued in accordance with section 3719.06 Of the Revised Code. When dispensing controlled substances, a pharmacist shall act in accordance with rules adopted by the state board of pharmacy and in accordance with the following:~~

~~(1) The prescription shall be retained on file by the owner of the pharmacy in which it is filled for a period of ~~two~~ three years, so as to be readily accessible for inspection by any public officer or employee engaged in the enforcement of Chapter 2925., 3719., or ~~4719: 4729.~~ of the Revised Code. Each~~

~~(2) Each oral prescription shall be recorded by the pharmacist and ~~such~~ the record shall show the name and address of the patient for whom, or of the owner of the animal for which the ~~schedule III or IV~~ controlled substance is dispensed, the full name, address, and registry number under the federal drug abuse control laws of the ~~practitioner prescribing~~ prescriber, the name of the ~~schedule III or IV~~ controlled substance dispensed, the amount dispensed, and the date when dispensed. ~~Such~~ The record shall be retained on file by the owner of the pharmacy in which it is filled for a period of ~~two~~ three years. ~~No~~~~

(3) A schedule II controlled substance shall be dispensed only upon a

written prescription, except that it may be dispensed upon an oral prescription in emergency situations as provided in the federal drug abuse control laws.

(4) A prescription for a schedule II controlled substance shall not be refilled. Prescriptions

(5) Prescriptions for schedule III and IV controlled substances may be refilled not more than five times in a six-month period from the date the prescription is given by a practitioner prescriber.

~~(C)~~(B) The legal owner of any stock of schedule II controlled substances in a pharmacy, upon discontinuance of dealing in ~~said~~ those drugs, may sell ~~said~~ the stock to a manufacturer, wholesaler, or owner of a pharmacy registered under the federal drug abuse control laws pursuant to an official written order.

~~(D) A pharmacist may dispense, upon an official written order to a practitioner in quantities not exceeding one ounce at any one time, aqueous or oleaginous solutions of which the content of narcotic drugs does not exceed a proportion greater than twenty per cent of the complete solution, to be used for medicinal purposes.~~

~~(E) Notwithstanding division (B) of this section, schedule II controlled substances may be dispensed orally and without the written prescription of a dentist, physician, or veterinarian in emergency situations as prescribed under the federal drug abuse control laws.~~

Sec. 3719.06. (A) ~~A dentist or physician licensed to prescribe, dispense, and administer controlled substances to a human being~~ licensed health professional authorized to prescribe drugs, if acting in the course of his professional practice, in accordance with the laws regulating the professional's practice, and in accordance with rules adopted by the state board of pharmacy, may do the following:

(1) ~~Prescribe schedule II controlled substances by a written prescription;~~

~~(2) Prescribe schedule, III or, IV, and V controlled substances by a written or oral prescription;~~

~~(3)~~(2) Administer or dispense personally furnish to patients schedule II, III, ~~or~~ IV, and V controlled substances;

~~(4)~~(3) Cause schedule II, III, ~~and~~ IV, and V controlled substances to be administered under ~~his~~ the prescriber's direction and supervision.

~~(B) No dentist or physician~~ licensed health professional authorized to prescribe drugs shall prescribe, ~~dispense, or administer, or personally furnish~~ a schedule III anabolic steroid for the purpose of human muscle building or enhancing human athletic performance and no pharmacist shall dispense a schedule III anabolic steroid for either purpose, unless it has been

approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended. ~~Each~~

~~(C) Each written prescription shall be properly executed, dated, and signed by the dentist or physician prescribing prescriber on the day when issued and shall bear the full name and address of the person for whom, or the owner of the animal for which, the controlled substance is prescribed and the full name, address, and registry number under the federal drug abuse control laws of the person prescribing prescriber. If the prescription is for an animal, it shall state~~

~~(B) A veterinarian licensed to prescribe, dispense, and administer controlled substances to an animal in the course of his professional practice may do the following:~~

- ~~(1) Prescribe schedule II controlled substances by a written prescription;~~
- ~~(2) Prescribe schedule III or IV controlled substances by a written or oral prescription;~~
- ~~(3) Administer and dispense schedule II, III, or IV controlled substances;~~
- ~~(4) Cause schedule II, III, and IV controlled substances to be administered by an assistant or orderly under his direction and supervision.~~

~~Each written prescription shall be dated and signed by the veterinarian prescribing on the day when issued and shall bear the full name and address of the owner of the animal, the species of the animal for which the controlled substance is prescribed, and the full name, address, and registry number under the federal drug abuse control laws of the veterinarian prescribing.~~

~~(C) An advanced practice nurse approved under section 4723.56 of the Revised Code to prescribe controlled substances may prescribe by written or oral prescription any schedule III or IV controlled substance that is recommended by the formulary committee for advanced practice nurses and included in the formulary established by rules adopted under section 4723.58 of the Revised Code. No advanced practice nurse shall prescribe a schedule III anabolic steroid for the purpose of human muscle building or enhancing human athletic performance unless it is approved for that purpose under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended. Each written prescription shall be dated and signed by the advanced practice nurse issuing the prescription on the day issued and shall bear the full name and address of the person for whom the controlled substance is prescribed and the advanced practice nurse's full name, address, and registry number under the federal drug abuse control laws.~~

~~Any person, who has obtained from a practitioner any controlled substance for administration to a human being or an animal during the absence of such practitioner, shall return to such practitioner any unused portion of such drug, when it is no longer required by such human being or animal.~~

Sec. 3719.07. (A) As used in this section, "description" means the dosage form, strength, and quantity, and the brand name, if any, or the generic name, of a drug or controlled substance.

~~(B)(1) Every practitioner, or other person who is authorized to administer or use controlled substances, licensed health professional authorized to prescribe drugs shall keep a record of all such drugs controlled substances received by him, and a record of all such drugs controlled substances administered, dispensed, or used by him, otherwise other than by prescription. Every other person, except a pharmacist, manufacturer, or wholesaler, who is authorized to purchase and use controlled substances shall keep a record of all controlled substances purchased and used other than by prescription. The records shall be kept in accordance with the provisions of division (E)(C)(1) of this section. The keeping of a record of the quantity, character, and potency of solutions or other preparations purchased or made up by a practitioner or other person using small quantities of solutions or other preparations of controlled substances for local application, and of the dates when purchased or made up, without keeping a record of the amount of such solution or other preparation applied by him to individual patients is a sufficient compliance with this division.~~

~~No record need be kept of schedule V controlled substances administered, dispensed, or used in the treatment of any one person or animal, when the amount administered, dispensed, or used for that purpose does not exceed in any forty eight consecutive hours:~~

- ~~(1) One hundred twenty-five milligrams of opium;~~
- ~~(2) Thirty milligrams of morphine or of any of its salts;~~
- ~~(3) Two hundred fifty milligrams of codeine or any of its salts;~~
- ~~(4) One hundred twenty-five milligrams of dihydrocodeine or any of its salts;~~
- ~~(5) Thirty milligrams of ethylmorphine or any of its salts;~~
- ~~(6) A quantity of any other schedule V controlled substances or any combination of schedule V controlled substances that does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated.~~

~~(B)(2) Manufacturers and wholesalers shall keep records of all controlled substances compounded, mixed, cultivated, grown, or by any~~

other process produced or prepared by them, and of all controlled substances received or ~~dispensed~~ sold by them; The records shall be kept in accordance with division ~~(F)~~(C)(2) of this section.

~~(C)~~(3) Every category III terminal distributor of dangerous drugs shall keep records of all controlled substances received or ~~dispensed by them,~~ sold. The records shall be kept in accordance with division ~~(G)~~(C)(3) of this section.

~~(D)~~(4) Every person who sells or purchases for resale, ~~or who dispenses~~ schedule V controlled substances exempted by section 3719.15 of the Revised Code shall keep a record showing the quantities and kinds thereof received, ~~dispensed,~~ or ~~disposed of otherwise,~~ sold. The records shall be kept in accordance with divisions ~~(E)~~(C)(1), ~~(F)~~(2), and ~~(G)~~(3) of this section.

~~(E)~~ Every practitioner or other person, except a pharmacist, manufacturer, or wholesaler, authorized to administer or use controlled substances shall keep a record of all controlled substances received, administered, dispensed, or used which (C)(1) The records required by divisions (B)(1) and (4) of this section shall contain the following:

~~(1)~~(a) The description of all controlled substances received, the name and address of the person from whom received, and the date of receipt;

~~(2)~~(b) The description of controlled substances administered, dispensed, purchased, sold, or used; the date of administering, dispensing, purchasing, selling, or using; the name and address of the person to whom, or for whose use, or the owner and species of the animal for which the controlled substance was administered, dispensed, purchased, sold, or used.

~~(F)~~ Every manufacturer and wholesaler shall keep a record of all controlled substances compounded, mixed, cultivated, grown, or by any other process produced or prepared, received, or dispensed by him which (2) The records required by divisions (B)(2) and (4) of this section shall contain the following:

~~(1)~~(a) The description of all ~~drugs~~ controlled substances produced or prepared, the name and address of the person from whom received, and the date of receipt;

~~(2)~~(b) The description of controlled substances ~~dispensed~~ sold, the name and address of each person to whom a controlled substance is ~~dispensed~~ sold, the amount of the controlled substance ~~dispensed~~ sold to each person, and the date it was ~~so dispensed~~ sold.

~~(G)~~ Every category III terminal distributor of dangerous drugs shall keep a record of all controlled substances received or dispensed by him which (3) The records required by divisions (B)(3) and (4) of this section

shall contain the following:

~~(1)(a)~~ (a) The description of controlled substances received, the name and address of the person from whom controlled substances are received, and the date of receipt;

~~(2)(b)~~ (b) The name and place of residence of each person to whom controlled substances, including those otherwise exempted by section 3719.15 of the Revised Code, are ~~dispensed~~ sold, the description of ~~such the~~ the controlled substances ~~dispensed sold~~ to each person, and the date such the controlled substances are ~~dispensed sold~~ to each person, ~~and the name and address of the practitioner prescribing drugs to the person to whom they are dispensed.~~

(D) Every ~~such~~ record required by this section shall be kept for a period of two years ~~and the date of the transaction recorded.~~

The keeping of a record required by or under the federal drug abuse control laws, containing substantially the same information as specified in this section, constitutes compliance with this section.

Every person who purchases for resale or who sells controlled substance preparations exempted by section 3719.15 of the Revised Code shall keep the record required by or under the federal drug abuse control ~~law~~ laws.

~~As used in this section, "description" means the dosage form, strength, and quantity, and the brand name, if any, or the generic name of a drug or controlled substance.~~

Sec. 3719.08. (A) Whenever a manufacturer ~~dispenses~~ sells a controlled substance, and whenever a wholesaler ~~dispenses~~ sells a controlled substance in a package the wholesaler has prepared by him, he the manufacturer or wholesaler shall securely affix to each package in which ~~such the~~ the controlled substance is contained a label showing in legible English the name and address of the vendor and the quantity, kind, and form of controlled substance contained therein. No person, except a pharmacist for the purpose of ~~filling~~ dispensing a controlled substance upon a prescription under Chapter 3719. of the Revised Code shall alter, deface, or remove any label so affixed.

~~(B) Whenever~~ Except as provided in division (C) of this section, when a pharmacist dispenses any controlled substance on a prescription issued by a practitioner, or a practitioner dispenses any controlled substance in the course of his practice, he for use by a patient, or supplies a controlled substance to a licensed health professional authorized to prescribe drugs for use by the professional in personally furnishing patients with controlled substances, the pharmacist shall affix to the container in which such the controlled substance is dispensed; or supplied a label showing the following:

(1) ~~His own name and address, or the~~ The name and address of the owner of the pharmacy for whom he is acting ~~dispensing or supplying the controlled substance;~~

(2) The name of the patient for whom the controlled substance is prescribed ~~or~~ and, if the patient is an animal, the name of the owner and the species of the animal;

(3) ~~The name of the practitioner by whom the prescription was written or by whom the drug was dispensed~~ prescriber;

(4) ~~Such~~ All directions ~~as may be~~ for use stated on the prescription or provided by the ~~practitioner on usage of the drug~~ prescriber;

(5) The date on which the ~~prescription was filled or refilled, whichever date is later~~ controlled substance was dispensed or supplied;

(6) The name, quantity, and strength of the controlled substance and, if applicable, the name of the distributor or manufacturer.

~~(C)~~ The requirements of division (B) of this section do not apply when a controlled substance is prescribed or supplied for administration to an ultimate user who is institutionalized.

~~(C)~~(D) A licensed health professional authorized to prescribe drugs who personally furnishes a controlled substance to a patient shall comply with division (B) of section 4729.29 Of the Revised Code with respect to labeling and packaging of the controlled substance.

(E) No person shall alter, deface, or remove any label ~~so~~ affixed pursuant to this section as long as any of the original contents remain.

~~(D)~~(F) Every label for a schedule II, III, or IV ~~drug~~ controlled substance shall contain the following warning:

"Caution: federal law prohibits the transfer of this drug to any person other than the patient for whom it was prescribed."

Sec. 3719.09. Possession or control of controlled substances is authorized in the following instances and subject to the following conditions:

(A) Possession of controlled substances in the course of business by a manufacturer, wholesaler, ~~practitioner~~ licensed health professional authorized to prescribe drugs, pharmacist, category III terminal distributor of dangerous drugs, or other person authorized to ~~administer, dispense, or~~ possess controlled substances under this chapter or Chapter 3719. or 4729. of the Revised Code;

(B) Possession by any person of any schedule V narcotic drug exempted under section 3719.15 of the Revised Code, where the quantity of the drug does not exceed ~~two grains~~ one hundred thirty milligrams of opium, ~~one-half grain~~ thirty-two and five-tenths milligrams of morphine or any of

its salts, ~~four grains~~ two hundred sixty milligrams of codeine or any of its salts, ~~two grains~~ one hundred thirty milligrams of dihydrocodeine or any of its salts, or ~~one-half grain~~ thirty-two and five-tenths milligrams of ethylmorphine or any of its salts, or, in the case of any other schedule V controlled substance or any combination of narcotic drugs, where the quantity does not exceed in pharmacologic potency any one of the drugs named above in the quantity stated;

(C) Possession by any person of any controlled substance that the person obtained pursuant to a prescription issued by a ~~practitioner~~ licensed health professional authorized to prescribe drugs or that was obtained for the person pursuant to a prescription issued by a ~~practitioner~~ prescriber, when the drug is in a container regardless of whether the container is the original container in which the drug was dispensed to that person directly or indirectly by a pharmacist or personally furnished to that person by the prescriber;

(D) Possession in the course of business of combination drugs that contain pentobarbital and at least one noncontrolled substance active ingredient, in a manufactured dosage form, the only indication of which is for euthanizing animals, or other substance that the state veterinary medical licensing board and the state board of pharmacy both approve under division (A) of section 4729.532 of the Revised Code, by an agent or employee of an animal shelter who is authorized by the licensure of the animal shelter with the state board of pharmacy to purchase and possess the drug solely for use as specified in that section. As used in this division, "in the course of business" means possession or use at an establishment described in a license issued under section 4729.54 of the Revised Code, or outside that establishment when necessary because of a risk to the health or safety of any person, provided that the substance is in a quantity no greater than reasonably could be used to alleviate the risk, is in the original manufacturer's container, and is returned to the establishment as soon as possible after the risk has passed.

Sec. 3719.12. Unless a report has been made pursuant to section 2929.24 of the Revised Code, on the conviction of a manufacturer, wholesaler, ~~practitioner~~ terminal distributor of dangerous drugs, pharmacist, pharmacy intern, dentist, doctor of medicine or osteopathic medicine, podiatrist, registered nurse, licensed practical nurse, physician assistant, or nurse optometrist, or veterinarian of the violation of this chapter or Chapter 2925. of the Revised Code, the prosecutor in the case, ~~on forms provided by the board~~, promptly shall report the conviction to the board that licensed, certified, or registered the ~~manufacturer, wholesaler, practitioner,~~

~~pharmacist, physician assistant, or nurse~~ person to practice or to carry on business. The responsible board shall provide forms to the prosecutor. Within thirty days of the receipt of this information, the board shall initiate action in accordance with Chapter 119. of the Revised Code to determine whether to suspend or revoke the person's license, certificate, or registration.

Sec. 3719.121. (A) Except as otherwise provided in section 4723.28, 4723.35, 4730.25, or 4731.22 of the Revised Code, the license, certificate, or registration of any ~~practitioner, dentist, doctor of medicine or osteopathic medicine, podiatrist, registered nurse, licensed practical nurse, physician assistant, pharmacist, manufacturer, or wholesaler,~~ pharmacy intern, optometrist, or veterinarian who is or becomes addicted to the use of controlled substances, shall be suspended by the board that authorized the person's license, certificate, or registration until the person offers satisfactory proof to the board that the person no longer is addicted to the use of controlled substances.

(B) If the board under which a person has been issued a license, certificate, or evidence of registration determines that there is clear and convincing evidence that continuation of the person's professional practice or method of ~~distributing~~ prescribing or personally furnishing controlled substances presents a danger of immediate and serious harm to others, the board may suspend the person's license, certificate, or registration without a hearing. Except as otherwise provided in sections 4715.30, 4723.281, 4730.25, and 4731.22 of the Revised Code, the board shall follow the procedure for suspension without a prior hearing in section 119.07 of the Revised Code. The suspension shall remain in effect, unless removed by the board, until the board's final adjudication order becomes effective, except that if the board does not issue its final adjudication order within ninety days after the hearing, the suspension shall be void on the ninety-first day after the hearing.

(C) On receiving notification pursuant to section 2929.24 or 3719.12 of the Revised Code, the board under which a person has been issued a license, certificate, or evidence of registration immediately shall suspend the license, certificate, or registration of that person on a plea of guilty to, a finding by a jury or court of the person's guilt of, or conviction of a felony drug abuse offense; a finding by a court of the person's eligibility for treatment in lieu of conviction; a plea of guilty to, or a finding by a jury or court of the person's guilt of, or the person's conviction of an offense in another jurisdiction that is essentially the same as a felony drug abuse offense; or a finding by a court of the person's eligibility for treatment in lieu of conviction in another jurisdiction. The board shall notify the holder of the

license, certificate, or registration of the suspension, which shall remain in effect until the board holds an adjudicatory hearing under Chapter 119. of the Revised Code.

Sec. 3719.15. ~~Except as specifically provided in Chapters~~ This chapter and Chapter 2925. ~~and 3719.~~ of the Revised Code, ~~such chapters shall not apply, except as specifically provided otherwise in those chapters,~~ to the following cases:

(A) Where a ~~practitioner~~ licensed health professional authorized to prescribe drugs administers or ~~dispenses;~~ personally furnishes, or where a pharmacist or ~~owner of a pharmacy~~ sells at retail, any medicinal preparation that contains in ~~one fluid ounce~~ thirty milliliters, or if a solid or semisolid preparation, in ~~one avoirdupois ounce~~ thirty grams, of any of the following:

(1) Not more than ~~two grains~~ one hundred thirty milligrams of opium;

(2) Not more than ~~one quarter of a grain~~ sixteen and twenty-five one hundredths milligrams of morphine or of any of its salts;

(3) Not more than ~~one grain~~ sixty-five milligrams of codeine or of any of its salts;

(4) Not more than ~~one half grain~~ thirty-two and five-tenths milligrams of dihydrocodeine or any of its salts;

(5) Not more than ~~one quarter grain~~ sixteen and twenty-five one hundredths milligrams of ethylmorphine or any of its salts.

Each preparation ~~mentioned~~ specified in divisions (A)(1), (2), (3), (4), and (5) of this section shall in addition contain one or more non-narcotic active medicinal ingredients in sufficient proportion to confer upon the preparation valuable medicinal qualities other than those possessed by the narcotic drug alone.

(6) Pharmaceutical preparations in solid form containing not more than two and five-tenths milligrams diphenoxylate and not less than twenty-five micrograms atropine sulfate per dosage unit.

(B) Where a ~~practitioner~~ licensed health professional authorized to prescribe drugs administers or ~~dispenses;~~ personally furnishes, or where a pharmacist sells at retail, liniments, ointments, and other preparations, that are susceptible of external use only and that contain narcotic drugs in ~~such a combination as prevent their~~ that prevents the drugs from being readily extracted from ~~such the~~ the liniments, ointments, or preparations, except that ~~such sections~~ this chapter and Chapter 2925. Of the Revised Code shall apply to all liniments, ointments, and other preparations; that contain coca leaves in any quantity or combination.

The medicinal preparation, or the liniment, ointment, or other preparation susceptible of external use only, prescribed, personally

furnished, administered, dispensed, or sold, shall contain, in addition to the narcotic drug in it, some drug or drugs conferring upon it medicinal qualities other than those possessed by the narcotic drug alone. ~~Such~~ The preparation shall be prescribed, personally furnished, administered, compounded, dispensed, and sold in good faith as a medicine, and not for the purpose of evading ~~such sections~~ this chapter or Chapter 2925. Of the Revised Code.

Sec. 3719.172. (A) Possession of a hypodermic is authorized for the following:

(1) ~~Any~~ A manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, and any authorized agent or employee of ~~such that~~ that manufacturer, distributor, or dealer, in the regular course of business;

(2) ~~A hospital, owner of a pharmacy, or pharmacist~~ terminal distributor of dangerous drugs, in the regular course of business;

(3) ~~Any practitioner, nurse, or other~~ A person authorized to administer injections, in the regular course of the person's profession or employment;

(4) ~~Any~~ A person, when the hypodermic was lawfully obtained and is kept and used for the purpose of self-administration of insulin or other drug prescribed ~~by a practitioner~~ by a licensed health professional authorized to prescribe drugs;

(5) ~~Any~~ A person whose use of a hypodermic is for legal research, clinical, educational, or medicinal purposes;

(6) ~~Any~~ A farmer, for the lawful administration of a drug to an animal;

(7) ~~Any~~ A person whose use of a hypodermic is for lawful professional, mechanical, trade, or craft ~~purpose~~ purposes.

(B) No manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, or their authorized agents or employees, and no ~~owner of a pharmacy, or pharmacist~~ terminal distributor of dangerous drugs, shall display any hypodermic for sale. No person authorized to possess a hypodermic pursuant to division (A) of this section shall negligently fail to take reasonable precautions to prevent any hypodermic in the person's possession from theft or acquisition by any unauthorized person.

(C) No person other than one of the following shall sell or furnish a hypodermic to another person:

(1) A manufacturer or distributor of, or dealer in, hypodermics or medication packaged in hypodermics, or their authorized agents or employees;

(2) ~~A hospital~~ terminal distributor of dangerous drugs;

(3) ~~A pharmacist or~~ person under the direct supervision of a pharmacist;

(4) A ~~practitioner~~ licensed health professional authorized to prescribe drugs, acting in the regular course of business and as permitted by law;

(5) An individual who holds a current license, certificate, or registration issued under Title 47 of the Revised Code and has been certified to conduct diabetes education by a national certifying body specified in rules adopted by the state board of pharmacy under section 4729.68 of the Revised Code, but only if diabetes education is within the individual's scope of practice under statutes and rules regulating the individual's profession.

(D) No person shall sell or furnish a hypodermic to another whom the person knows or has reasonable cause to believe is not authorized by division (A) of this section to possess a hypodermic.

~~(E) A pharmacist or person under the direct supervision of a pharmacist may furnish hypodermics to another without a prescription by a practitioner, but the pharmacist or person being supervised shall require positive identification of each person to whom hypodermics are furnished, and shall keep a written record of each transaction, including the date, the type and quantity of the articles furnished, and the name, address, and signature of the person to whom such articles are furnished. Such record shall be retained in the same manner as the exempt narcotics register. No pharmacist or person under a pharmacist's supervision shall fail to comply with this division in furnishing hypodermics.~~

Sec. 3719.19. No person shall be prosecuted for a violation of ~~Chapter 3719. of the Revised Code, this chapter~~ if ~~such~~ the person has been acquitted or convicted under the federal narcotic drug abuse control laws of the same act or omission which, it is alleged, constitutes a violation of this chapter.

Sec. 3719.30. No person shall leave or deposit ~~poison~~ dangerous drugs, poisons, or ~~a substance~~ substances containing ~~poison~~ dangerous drugs or poisons in a common, street, alley, lane, or thoroughfare, or a yard or enclosure occupied by another.

Whoever violates this section shall be liable to the person injured for all damages sustained ~~thereby~~ as a result of leaving or depositing the dangerous drugs, poisons, or other substances.

Sec. 3719.34. Sections 3719.32 and 3719.33 of the Revised Code do not apply to substances ~~dispensed to~~ sold or delivered upon the order or prescription of ~~persons~~ a person believed by the ~~dispenser~~ seller or deliverer to be ~~lawfully authorized practitioners of medicine or dentistry~~ a licensed health professional authorized to prescribe drugs. ~~The record of sale and delivery mentioned in section 3719.33 of the Revised Code is not required of manufacturers and wholesalers selling any of the substances mentioned in section 3719.32 of the Revised Code at wholesale, if the box, bottle, or~~

~~package containing such substance when sold at wholesale, is labeled with the name of the substance, "Poison," and the name and address of the manufacturer or wholesaler.~~

Sec. 3719.35. It is not necessary to place a poison label upon, nor record the delivery of, any of the following:

(A) Preparations containing substances named in section 3719.32 of the Revised Code when a single box, bottle, or other package of the bulk of ~~one-half fluid ounce~~ fifteen milliliters or the weight of ~~one-half avoirdupois ounce~~ fifteen grams does not contain more than ~~an~~ one adult medicinal dose of ~~such poisonous substance~~ any of those substances;

(B) The sulphide of antimony, the oxide or carbonate of zinc, or colors ground in oil and intended for use as paints;

(C) ~~Calomel, paregoric, or other preparations of opium containing less than two grains of opium to the fluid ounce;~~

~~(D)~~ Preparations recommended in good faith for ~~diarrhoea~~ diarrhea or cholera, when each bottle or package is accompanied by specific directions for use and a caution against the habitual use ~~thereof of the preparations;~~

~~(E)~~(D) Liniments or ointments when plainly labeled "for external use only";

~~(F)~~(E) Preparations put up and sold in the form of pills, tablets, or lozenges and intended for internal use, when the dose recommended does not contain more than one fourth of an adult medicinal dose of ~~such poisonous substance~~ any of the substances named in section 3719.35 Of the Revised Code.

Sec. 3719.36. The state board of pharmacy ~~or anyone acting in its behalf~~ shall enforce sections 3719.30 to 3719.35 of the Revised Code. If ~~such~~ the board has information that any of ~~such~~ those sections has been violated, it shall investigate, and upon probable cause appearing, shall file a complaint and prosecute the offender.

Fines assessed and collected under prosecutions commenced by ~~such~~ the board shall be paid to the ~~secretary~~ executive director of the state board of pharmacy, and by ~~him~~ the executive director paid into the state treasury to the credit of the ~~occupational licensing and regulatory~~ board of pharmacy drug law enforcement fund created by section 4729.65 Of the Revised Code.

Sec. 3719.42. The state board of pharmacy ~~board~~ shall meet in Columbus at least once each fiscal year for the purpose of carrying out its duties ~~pursuant to Chapter 3719. of the Revised Code~~ under this chapter.

Sec. 3719.44. (A) Pursuant to this section, and by rule adopted ~~pursuant to~~ in accordance with Chapter 119. of the Revised Code, the state board of pharmacy may do any of the following with respect to schedules I, II, III,

IV, and V established in section 3719.41 of the Revised Code:

(1) Add a previously unscheduled compound, mixture, preparation, or substance to any schedule;

(2) Transfer a compound, mixture, preparation, or substance from one schedule to another, provided the transfer does not have the effect under Chapter 3719. of the Revised Code of providing less stringent control of the compound, mixture, preparation, or substance than is provided under the federal narcotic drug abuse control laws;

(3) Remove a compound, mixture, preparation, or substance from the schedules where the board had previously added the compound, mixture, preparation, or substance to the schedules, provided that the removal shall not have the effect under Chapter 3719. of the Revised Code of providing less stringent control of the compound, mixture, preparation, or substance than is provided under the federal narcotic drug abuse control laws.

(B) In making a determination to add, remove, or transfer pursuant to division (A) of this section, the board shall consider the following:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of the pharmacological effect of the substance, if known;

(3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration, and significance of abuse;

(6) The risk to the public health;

(7) The potential of the substance to produce psychic or physiological dependence liability;

(8) Whether the substance is an immediate precursor.

(C) The board may add or transfer a compound, mixture, preparation, or substance to schedule I when it appears that there is a high potential for abuse, that it has no accepted medical use in treatment in this state, or lacks accepted safety for use in treatment under medical supervision.

(D) The board may add or transfer a compound, mixture, preparation, or substance to schedule II when it appears that there is a high potential for abuse, that it has a currently accepted medical use in treatment in this state, or currently accepted medical use in treatment with severe restrictions, and that its abuse may lead to severe physical or severe psychological dependence.

(E) The board may add or transfer a compound, mixture, preparation, or substance to schedule III when it appears that there is a potential for abuse less than the substances included in schedules I and II, that it has a currently accepted medical use in treatment in this state, and that its abuse may lead to

moderate or low physical or high psychological dependence.

(F) The board may add or transfer a compound, mixture, preparation, or substance to schedule IV when it appears that it has a low potential for abuse relative to substances included in schedule III, and that it has a currently accepted medical use in treatment in this state, and that its abuse may lead to limited physical or psychological dependence relative to the substances included in schedule III.

(G) The board may add or transfer a compound, mixture, preparation, or substance to schedule V when it appears that it has lower potential for abuse than substances included in schedule IV, and that it has currently accepted medical use in treatment in this state, and that its abuse may lead to limited physical or psychological dependence relative to substances included in schedule IV.

(H) Even though a compound, mixture, preparation, or substance does not otherwise meet the criteria in this section for adding or transferring it to a schedule, the board may nevertheless add or transfer it to a schedule as an immediate precursor when all of the following apply:

- (1) It is the principal compound used, or produced primarily for use, in the manufacture of a controlled substance;
- (2) It is an immediate chemical intermediary used or likely to be used in the manufacture of such a controlled substance;
- (3) Its control is necessary to prevent, curtail, or limit the manufacture of the scheduled compound, mixture, preparation, or substance of which it is the immediate precursor.

(I) Authority to control under this section does not extend to distilled spirits, wine, or malt beverages, as those terms are defined or used in Chapter 4301. of the Revised Code.

(J) Authority to control under this section does not extend to any nonnarcotic substance if such substance may, under the Federal Food, Drug, and Cosmetic Act ~~as defined in section 4729.02 of the Revised Code~~ and the laws of this state, be lawfully sold over the counter without a prescription. Should a pattern of abuse develop for any nonnarcotic drug sold over the counter, the board may, by rule adopted in accordance with Chapter 119. of the Revised Code, after a public hearing and a documented study to determine that the substance actually meets the criteria listed in division (B) of this section, place such abused substance on a ~~prescription-basis controlled substance schedule~~.

(K)(1) A drug product containing ephedrine that is known as one of the following and is in the form specified shall not be considered a schedule V controlled substance:

- (a) Amesec capsules;
- (b) Bronitin tablets;
- (c) Bronkotabs;
- (d) Bronkolixir;
- (e) Bronkaid tablets;
- (f) Efedron nasal jelly;
- (g) Guiaphed elixir;
- (h) Haysma;
- (i) Pazo hemorrhoid ointment and suppositories;
- (j) Primatene "M" formula tablets;
- (k) Primatene "P" formula tablets;
- (l) Tedrigen tablets;
- (m) Tedral tablets, suspension and elixir;
- (n) T.E.P.;
- (o) Vatronol nose drops.

(2)(a) A product containing ephedrine shall not be considered a controlled substance if the product is a food product or dietary supplement that meets all of the following criteria:

(i) It contains, per dosage unit or serving, not more than the lesser of twenty-five milligrams of ephedrine alkaloids or the maximum amount of ephedrine alkaloids provided in applicable regulations adopted by the United States food and drug administration, and no other controlled substance.

(ii) It contains no hydrochloride or sulfate salts of ephedrine alkaloids.

(iii) It is packaged with a prominent label securely affixed to each package that states all of the following: the amount in milligrams of ephedrine in a serving or dosage unit; the amount of the food product or dietary supplement that constitutes a serving or dosage unit; that the maximum recommended dosage of ephedrine for a healthy adult human is the lesser of one hundred milligrams in a twenty-four-hour period for not more than twelve weeks or the maximum recommended dosage or period of use provided in applicable regulations adopted by the United States food and drug administration; and that improper use of the product may be hazardous to a person's health.

(b)(i) Subject to division (K)(2)(b)(ii) of this section, no person shall dispense, sell, or otherwise give a product described in division (K)(2)(a) of this section to any individual under eighteen years of age.

(ii) Division (K)(2)(b)(i) of this section does not apply to a physician or pharmacist who dispenses, sells, or otherwise gives a product described in division (K)(2)(a) of this section to an individual under eighteen years of

age, to a parent or guardian of an individual under eighteen years of age who dispenses, sells, or otherwise gives a product of that nature to the individual under eighteen years of age, or to a person who, as authorized by the individual's parent or legal guardian, dispenses, sells, or otherwise gives a product of that nature to an individual under eighteen years of age.

(c) No person in the course of selling, offering for sale, or otherwise distributing a product described in division (K)(2)(a) of this section shall advertise or represent in any manner that the product causes euphoria, ecstasy, a "buzz" or "high," or an altered mental state; heightens sexual performance; or, because it contains ephedrine alkaloids, increased muscle mass.

(3) A drug product that contains the isomer pseudoephedrine, or any of its salts, optical isomers, or salts of optical isomers, shall not be considered a controlled substance if the drug product is labeled in a manner consistent with federal law or with the product's over-the-counter tentative final monograph or final monograph issued by the United States food and drug administration.

(4) At the request of any person, the board may except any product containing ephedrine not described in division (K)(1) or (2) of this section or any class of products containing ephedrine from being included as a schedule V controlled substance if it determines that the product or class of products does not contain any other controlled substance. The board shall make the determination in accordance with this section and by rule adopted in accordance with Chapter 119. of the Revised Code.

(L) As used in this section:

(1) "Food" has the same meaning as in section 3715.01 of the Revised Code;

(2) "Dietary supplement" has the meaning given in the "Federal Food, Drug, and Cosmetic Act," 108 Stat. 4327 (1994), 21 U.S.C.A. 321 (ff), as amended.

(3) "Ephedrine alkaloids" means ephedrine, pseudoephedrine, norephedrine, norpseudoephedrine, methylephedrine, and methylpseudoephedrine.

Sec. 3719.61. Nothing in the laws dealing with drugs of abuse shall be construed to prohibit treatment of narcotic drug dependent persons by the continuing maintenance of their dependence through the administration of methadone in accordance with the rules adopted by the department of alcohol and drug addiction services under section 3793.11 of the Revised Code, when all of the following apply:

(A) The likelihood that any person undergoing maintenance treatment

ill be cured of ~~his~~ dependence on narcotic drugs is remote, the treatment is prescribed ~~by a practitioner~~ for the purpose of alleviating or controlling the patient's drug dependence, and the patient's prognosis while undergoing ~~such~~ treatment is at least a partial improvement in ~~his~~ the patient's asocial or antisocial behavior patterns;

(B) In the case of an inpatient in a hospital or clinic, the amount of the maintenance drug dispensed at any one time does not exceed the quantity necessary for a single dose, and ~~such~~ the dose is administered to the patient immediately;

(C) In the case of an outpatient, the amount of the maintenance drug dispensed at any one time shall be determined by ~~a practitioner with regard to~~ the patient's treatment provider taking into account the patient's progress in the treatment program; and the patient's needs for gainful employment, education, and responsible homemaking, ~~provided, except~~ that in no event shall the dosage be greater than the amount permitted by federal law and rules adopted by the department pursuant to section 3793.11 of the Revised Code;

(D) The drug is not dispensed in any case to replace or supplement any part of a supply of the drug previously dispensed, or when there is reasonable cause to believe it will be used or disposed of unlawfully;

(E) The drug is dispensed through a program licensed and operated in accordance with section 3793.11 of the Revised Code.

Sec. 3719.81. (A) A person may furnish another a sample of any drug of abuse, or of any drug or pharmaceutical preparation ~~which that~~ would be hazardous to health or safety if used without the supervision of a ~~practitioner~~ licensed health professional authorized to prescribe drugs, if all of the following apply:

(1) The sample is furnished by a manufacturer, manufacturer's representative, or wholesale dealer in pharmaceuticals to a ~~practitioner~~ licensed health professional authorized to prescribe drugs, or is furnished by ~~such a practitioner professional~~ to a patient for use as medication;

(2) The drug is in the original container in which it was placed by the manufacturer, and ~~such~~ the container is plainly marked as a sample;

(3) Prior to its being furnished, the drug sample has been stored under the proper conditions to prevent its deterioration or contamination;

(4) If the drug is of a type which deteriorates with time, the sample container is plainly marked with the date beyond which the drug sample is unsafe to use, and ~~such~~ the date has not expired on the sample furnished. Compliance with the labeling requirements of the "Federal Food, Drug, and ~~Cosmetics~~ Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as

amended, shall be deemed compliance with this section.

(5) The drug is distributed, stored, or discarded in such a way that the drug sample may not be acquired or used by any unauthorized person, or by any person, including a child, for whom it may present a health or safety hazard.

(B) Division (A) of this section does not ~~apply~~ do any of the following:

(1) Apply to or restrict the furnishing of any sample of a nonnarcotic substance if such the substance may, under the "Federal Food, Drug, and Cosmetic Act", as defined in division (D)(1) of section 4729.02 of the Revised Code, and under the laws of this state, otherwise be lawfully sold over the counter without a prescription;

(2) Authorize an advanced practice nurse to furnish a sample of any drug;

(3) Authorize an optometrist to furnish a sample of a drug that is not a drug the optometrist is authorized to prescribe.

(C) The state board of pharmacy shall, ~~pursuant to sections 119.01 to 119.13~~ in accordance with Chapter 119. of the Revised Code, adopt ~~regulations~~ rules as necessary to give effect to this section.

Sec. 3719.99. (A) Whoever violates section 3719.16 or 3719.161 of the Revised Code is guilty of a felony of the fifth degree. If the offender previously has been convicted of a violation of section 3719.16 or 3719.161 of the Revised Code or a drug abuse offense, a violation of section 3719.16 or 3719.161 of the Revised Code is a felony of the fourth degree. If the violation involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, division (D) of this section applies.

(B) Whoever violates division (C) or (D) of section 3719.172 of the Revised Code is guilty of a felony of the fifth degree. If the offender previously has been convicted of a violation of division (C) or (D) of section 3719.172 of the Revised Code or a drug abuse offense, a violation of division (C) or (D) of section 3719.172 of the Revised Code is a felony of the fourth degree. If the violation involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, division (D) of this section applies.

(C) Whoever violates section 3719.07 or 3719.08 of the Revised Code is guilty of a misdemeanor of the first degree. If the offender previously has been convicted of a violation of section 3719.07 or 3719.08 of the Revised Code or a drug abuse offense, a violation of section 3719.07 or 3719.08 of

the Revised Code is a felony of the fifth degree. If the violation involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, division (D) of this section applies.

(D)(1) If an offender is convicted of or pleads guilty to a felony violation of section 3719.07, 3719.08, 3719.16, or 3719.161 or of division (C) or (D) of section 3719.172 of the Revised Code, if the violation involves the sale, offer to sell, or possession of a schedule I or II controlled substance, with the exception of marihuana, and if the offender, as a result of the violation, is a major drug offender, the court that sentences the offender, in lieu of the prison term authorized or required by division (A), (B), or (C) of this section and sections 2929.13 and 2929.14 of the Revised Code and in addition to any other sanction imposed for the offense under sections 2929.11 to 2929.18 of the Revised Code, shall impose upon the offender, in accordance with division (D)(3)(a) of section 2929.14 of the Revised Code, the mandatory prison term specified in that division and may impose an additional prison term under division (D)(3)(b) of that section.

(2) Notwithstanding any contrary provision of section 3719.21 of the Revised Code, the clerk of the court shall pay any fine imposed for a felony violation of section 3719.07, 3719.08, 3719.16, or 3719.161 or of division (C) or (D) of section 3719.172 of the Revised Code pursuant to division (A) of section 2929.18 of the Revised Code in accordance with and subject to the requirements of division (F) of section 2925.03 of the Revised Code. The agency that receives the fine shall use the fine as specified in division (F) of section 2925.03 of the Revised Code.

(E) Whoever violates section 3719.05, 3719.06, 3719.13, or 3719.31 or division (B) ~~or (E)~~ of section 3719.172 of the Revised Code is guilty of a misdemeanor of the third degree. If the offender previously has been convicted of a violation of section 3719.05, 3719.06, 3719.13, or 3719.31 or division (B) ~~or (E)~~ of section 3719.172 of the Revised Code or a drug abuse offense, a violation of section 3719.05, 3719.06, 3719.13, or 3719.31 or division (B) ~~or (E)~~ of section 3719.172 of the Revised Code is a misdemeanor of the first degree.

(F) Whoever violates section 3719.30 of the Revised Code is guilty of a misdemeanor of the fourth degree. If the offender previously has been convicted of a violation of section 3719.30 of the Revised Code or a drug abuse offense, a violation of section 3719.30 of the Revised Code is a misdemeanor of the third degree.

(G) Whoever violates section 3719.32 or 3719.33 of the Revised Code is guilty of a minor misdemeanor.

(H) Whoever violates division (K)(2)(b) of section 3719.44 of the Revised Code is guilty of a felony of the fifth degree.

(I) Whoever violates division (K)(2)(c) of section 3719.44 of the Revised Code is guilty of a misdemeanor of the second degree.

(J) As used in this section, "major drug offender" has the same meaning as in section 2929.01 of the Revised Code.

Sec. 3729.01. As used in this chapter:

(A) "Ambulatory care facility" means a facility that provides medical, diagnostic, or surgical treatment to patients who do not require hospitalization, including a dialysis center, ambulatory surgical facility, cardiac catheterization facility, diagnostic imaging center, extracorporeal shock wave lithotripsy center, home health agency, inpatient hospice, birthing center, radiation therapy center, emergency facility, and an urgent care center. "Ambulatory health care facility" does not include the private office of a physician or dentist, whether the office is for an individual or group practice.

(B) "Beneficiary" and "third-party payer" have the same meanings as in section 3901.38 of the Revised Code.

(C) "Disability assistance medical assistance program" means the disability assistance medical assistance program established under Chapter 5115. of the Revised Code.

(D) "Emergency facility" means a hospital emergency department or any other facility that provides emergency medical services.

(E) "Global fee" means the collective cost of professional fees, outpatient or inpatient billings, pharmaceutical products, and other medical or surgical products required to ensure satisfactory outcomes for a given diagnosis.

(F) "Health care practitioner" has the same meaning as in section 4769.01 of the Revised Code.

(G) "Health care provider" means a hospital, ambulatory care facility, long-term care facility, pharmacy, emergency facility, or health care practitioner.

(H) "Hospital" has the same meaning as in section 3727.01 of the Revised Code.

(I) "Long-term care facility" means any of the following:

(1) A nursing home, residential care facility, or home for the aging, all as defined in section 3721.01 of the Revised Code;

(2) An adult care facility, as defined in section 3722.01 of the Revised Code;

(3) A nursing facility, as defined in section 5111.20 of the Revised

Code;

(4) An intermediate care facility for the mentally retarded, as defined in section 5111.20 of the Revised Code;

(5) A facility or portion of a facility certified as a skilled nursing facility under Title XVIII of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.

(J) "Medical assistance program" means the program established under Chapter 5111. of the Revised Code and Title XIX of the "Social Security Act," 49 Stat. 620 (1935), 42 U.S.C.A. 301, as amended.

(K) "Medicare" means the program established under Title XVIII of the "Social Security Act."

(L) "Pharmacy" has the same meaning as in section ~~4729.02~~ 4729.01 of the Revised Code.

(M) "Physician" means an individual authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatry.

(N) "Price" means the actual payment for health care services or supplies by a patient or third-party payer.

(O)(1) "Public health care program" means any program of health care benefits that is provided by the state or a political subdivision of this state, including all of the following:

(a) The program for medically handicapped children established under sections 3701.021 to 3701.028 of the Revised Code;

(b) The medical assistance program;

(c) The disability assistance medical assistance program;

(d) Health care benefits administered by the bureau of workers' compensation;

(e) Mental health services certified by the department of mental health and provided in whole or in part under contract with a community mental health board, or a board of alcohol, drug addiction, and mental health services;

(f) Health care services administered by the department of alcohol and drug addiction services or a board of alcohol, drug addiction, and mental health services;

(g) Health care services administered by the department of mental retardation and developmental disabilities or a county board of mental retardation and developmental disabilities;

(h) Health care services administered by the rehabilitation services commission;

(i) Health care services administered by the department of rehabilitation

and correction;

(j) Health care services administered by the department of youth services.

(2) "Public health care program" does not mean health care coverage provided to public employees or health care benefits provided to persons receiving a pension, annuity, allowance, or benefit from the public employees retirement system, the school employees retirement system, the state teachers retirement system, the police and firemen's disability and pension fund, or the state highway patrol retirement system.

Sec. 4121.443. (A) There is hereby created the health care advisory committee consisting of nine members appointed by the administrator of workers' compensation as follows: one who is a representative of physicians licensed to practice medicine and surgery under Chapter 4731. of the Revised Code, one who is a representative of physicians licensed to practice osteopathic medicine and surgery under Chapter 4731. of the Revised Code, one who is a representative of chiropractors licensed under Chapter 4734. of the Revised Code, one who is a representative of pharmacists ~~registered~~ licensed under Chapter 4729. of the Revised Code, one who is a licensed dentist under Chapter 4715. of the Revised Code; one who is a representative of podiatrists certified under Chapter 4731. of the Revised Code; one who is a representative of psychologists licensed under Chapter 4732. of the Revised Code; one who is a representative of rehabilitation specialists, and one who is a representative of hospitals authorized to operate pursuant to section 3727.02 of the Revised Code. The administrator may consult with and obtain recommendations from the Ohio state medical association, the Ohio osteopathic association, the Ohio state chiropractic association, the Ohio pharmacists association, and the Ohio hospital association for the purpose of making ~~his~~ appointments to the committee. The administrator shall make initial appointments to the committee within ninety days after the effective date of this section. Members shall serve at the pleasure of the administrator and may be reappointed. Vacancies shall be filled in the manner provided for original appointments. Committee members shall receive no compensation or expenses for the performance of their duties as members of the committee.

(B) Prior to adopting rules under section 4121.441 of the Revised Code concerning issues pertaining to health care providers, the administrator shall provide the committee an opportunity to comment on and give advice concerning those rules.

(C) No member of the committee shall divulge any confidential information that is disclosed to the member in the performance of ~~his~~

official duties as a member of the committee.

Sec. 4301.01. (A) As used in the Revised Code:

(1) "Intoxicating liquor" and "liquor" include all liquids and compounds, other than beer as defined in division (B)(2) of this section, containing one-half of one per cent or more of alcohol by volume which are fit to use for beverage purposes, from whatever source and by whatever process produced, by whatever name called, and whether the same are medicated, proprietary, or patented. The phrase includes wine, as defined in division (B)(3) of this section even if it contains less than four per cent of alcohol by volume, mixed beverages, as defined in division (B)(4) of this section even if they contain less than four per cent of alcohol by volume, cider, as defined in division (B)(23) of this section, alcohol, and all solids and confections which contain any alcohol.

(2) Except as used in sections 4301.01 to 4301.20, 4301.22 to 4301.52, 4301.56, 4301.70, 4301.72, and 4303.01 to 4303.36 of the Revised Code, "sale" and "sell" include exchange, barter, gift, offer for sale, sale, distribution and delivery of any kind, and the transfer of title or possession of beer and intoxicating liquor either by constructive or actual delivery by any means or devices whatever, including the sale of beer or intoxicating liquor by means of a controlled access alcohol and beverage cabinet pursuant to section 4301.21 of the Revised Code. "Sale" and "sell" do not include the mere solicitation of orders for beer or intoxicating liquor from the holders of permits issued by the division of liquor control authorizing the sale of the beer or intoxicating liquor, but no solicitor shall solicit any such orders until the solicitor has been registered with the division pursuant to section 4303.25 of the Revised Code.

(3) "Vehicle" includes all means of transportation by land, by water, or by air, and everything made use of in any way for such transportation.

(B) As used in sections 4301.01 to 4301.74 of the Revised Code:

(1) "Alcohol" means ethyl alcohol, whether rectified or diluted with water or not, whatever its origin may be, and includes synthetic ethyl alcohol. "Alcohol" does not include denatured alcohol and wood alcohol.

(2) "Beer," "malt liquor," or "malt beverages" includes all brewed or fermented malt products containing one-half of one per cent or more of alcohol by volume but not more than six per cent of alcohol by weight.

(3) "Wine" includes all liquids fit to use for beverage purposes containing not less than one-half of one per cent of alcohol by volume and not more than twenty-one per cent of alcohol by volume, which is made from the fermented juices of grapes, fruits, or other agricultural products, except that as used in sections 4301.13, 4301.421, 4301.422, 4301.432, and

4301.44 of the Revised Code, and, for purposes of determining the rate of the tax that applies, division (B) of section 4301.43 of the Revised Code, "wine" does not include cider.

(4) "Mixed beverages" such as bottled and prepared cordials, cocktails, and highballs are products obtained by mixing any type of whiskey, neutral spirits, brandy, gin, or other distilled spirits with, or over, carbonated or plain water, pure juices from flowers and plants, and other flavoring materials. The completed product shall contain not less than one-half of one per cent of alcohol by volume and not more than twenty-one per cent of alcohol by volume.

(5) "Spirituous liquor" includes all intoxicating liquors containing more than twenty-one per cent of alcohol by volume.

(6) "Sealed container" means any container having a capacity of not more than one hundred twenty-eight fluid ounces, the opening of which is closed to prevent the entrance of air.

(7) "Person" includes firms and corporations.

(8) "Manufacture" includes all processes by which beer or intoxicating liquor is produced, whether by distillation, rectifying, fortifying, blending, fermentation, brewing, or in any other manner.

(9) "Manufacturer" means any person engaged in the business of manufacturing beer or intoxicating liquor.

(10) "Wholesale distributor" and "distributor" means a person engaged in the business of selling to retail dealers for purposes of resale.

(11) "Hotel" has the meaning set forth in section 3731.01 of the Revised Code, subject to the exceptions mentioned in section 3731.03 of the Revised Code.

(12) "Restaurant" means a place located in a permanent building provided with space and accommodations wherein, in consideration of the payment of money, hot meals are habitually prepared, sold, and served at noon and evening, as the principal business of the place. "Restaurant" does not include ~~drugstores~~ pharmacies, confectionery stores, lunch stands, night clubs, and filling stations.

(13) "Club" means a corporation or association of individuals organized in good faith for social, recreational, benevolent, charitable, fraternal, political, patriotic, or athletic purposes, which is the owner, lessor, or occupant of a permanent building or part thereof operated solely for those purposes, membership in which entails the prepayment of regular dues, and includes the place so operated.

(14) "Night club" means a place operated for profit, where food is served for consumption on the premises and one or more forms of

amusement are provided or permitted for a consideration which may be in the form of a cover charge or may be included in the price of the food and beverages, or both, purchased by the patrons thereof.

(15) "At retail" means for use or consumption by the purchaser and not for resale.

(16) "~~Drugstore~~ Pharmacy" means an establishment as defined in section ~~4729.27~~ 4729.01 of the Revised Code, which is under the management or control of a ~~legally registered~~ licensed pharmacist in accordance with section 4729.27 Of the Revised Code.

(17) "Enclosed shopping center" means a group of retail sales and service business establishments that face into an enclosed mall, share common ingress, egress, and parking facilities, and are situated on a tract of land that contains an area of not less than five hundred thousand square feet. "Enclosed shopping center" also includes not more than one business establishment that is located within a free-standing building on such a tract of land, so long as the sale of beer and intoxicating liquor on the tract of land was approved in an election held under former section 4301.353 of the Revised Code.

(18) "Controlled access alcohol and beverage cabinet" means a closed container, either refrigerated, in whole or in part, or nonrefrigerated, access to the interior of which is restricted by means of a device which requires the use of a key, magnetic card, or similar device and from which beer, intoxicating liquor, other beverages, or food may be sold.

(19) "Residence district" means two or more contiguous election precincts located within the same county and also located within the same municipal corporation or within the unincorporated area of the same township, as described by a petition authorized by section 4301.33, 4301.332, 4303.29, or 4305.14 of the Revised Code.

(20) "Low-alcohol beverage" means any brewed or fermented malt product, or any product made from the fermented juices of grapes, fruits, or other agricultural products, that contains either no alcohol or less than one-half of one per cent of alcohol by volume. The beverages described in division (B)(20) of this section do not include a soft drink such as root beer, birch beer, or ginger beer.

(21) "Cider" means all liquids fit to use for beverage purposes that contain one-half of one per cent of alcohol by volume, but not more than six per cent of alcohol by weight that are made through the normal alcoholic fermentation of the juice of sound, ripe apples, including, without limitation, flavored, sparkling, or carbonated cider and cider made from pure condensed apple must.

Sec. 4301.69. (A) Except as otherwise provided in this chapter, no person shall sell beer or intoxicating liquor to an underage person, shall buy beer or intoxicating liquor for an underage person, or shall furnish it to an underage person, unless given by a physician in the regular line of ~~his~~ the physician's practice or given for established religious purposes or unless the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian.

In proceedings before the liquor control commission, no permit holder, or the employee or agent of a permit holder, charged with a violation of this division shall be charged, for the same offense, with a violation of division (A)(1) of section 4301.22 of the Revised Code.

(B) No person who is the owner or occupant of any public or private place shall knowingly allow any underage person to remain in or on the place while possessing or consuming beer or intoxicating liquor, unless the intoxicating liquor or beer is given to the person possessing or consuming it by that person's parent, spouse who is not an underage person, or legal guardian and the parent, spouse who is not an underage person, or legal guardian is present at the time of the person's possession or consumption of the beer or intoxicating liquor.

An owner of a public or private place is not liable for acts or omissions in violation of this division that are committed by a lessee of that place, unless the owner authorizes or acquiesces in the lessee's acts or omissions.

(C) No person shall engage or use accommodations at a hotel, inn, cabin, campground, or restaurant when ~~he~~ the person knows or has reason to know either of the following:

(1) That beer or intoxicating liquor will be consumed by an underage person on the premises of the accommodations that the person engages or uses, unless the person engaging or using the accommodations is the spouse of the underage person and who is not ~~himself~~ an underage person, or is the parent or legal guardian of all of the underage persons, who consume beer or intoxicating liquor on the premises and that person is on the premises at all times when beer or intoxicating liquor is being consumed by an underage person;

(2) That a drug of abuse will be consumed on the premises of the accommodations by any person, except a person who obtained the drug of abuse pursuant to a prescription issued by a ~~practitioner~~ licensed health professional authorized to prescribe drugs and has the drug of abuse in the original container in which it was dispensed to the person.

(D)(1) No person is required to permit the engagement of accommodations at any hotel, inn, cabin, or campground by an underage

person or for an underage person, if the person engaging the accommodations knows or has reason to know that the underage person is intoxicated, or that the underage person possesses any beer or intoxicating liquor and is not accompanied by a parent, spouse who is not an underage person, or legal guardian who is or will be present at all times when the beer or intoxicating liquor is being consumed by the underage person.

(2) No underage person shall knowingly engage or attempt to engage accommodations at any hotel, inn, cabin, or campground by presenting identification that falsely indicates that ~~he~~ the underage person is twenty-one years of age or older for the purpose of violating this section.

(E) No underage person shall knowingly possess or consume any beer or intoxicating liquor, in any public or private place, unless ~~he~~ the underage person is accompanied by a parent, spouse who is not an underage person, or legal guardian, or unless the beer or intoxicating liquor is given by a physician in the regular line of ~~his~~ the physician's practice or given for established religious purposes.

(F) No parent, spouse who is not an underage person, or legal guardian of a minor shall knowingly permit the minor to violate this section or section 4301.63, 4301.632, 4301.633, or 4301.634 of the Revised Code.

(G) The operator of any hotel, inn, cabin, or campground shall make the provisions of this section available in writing to any person engaging or using accommodations at the hotel, inn, cabin, or campground.

(H) As used in this section:

(1) "Drug of abuse" has the same meaning as in section 3719.011 of the Revised Code.

(2) "Hotel" has the same meaning as in section 3731.01 of the Revised Code.

(3) "Licensed health professional authorized to prescribe drugs" and "prescription" have the same meanings as in section 4729.01 Of the Revised Code.

~~(4) "Minor" means a person under the age of eighteen years.~~

~~(4) "Practitioner" and "prescription" have the same meanings as in section 3719.01 of the Revised Code.~~

(5) "Underage person" means a person under the age of twenty-one years.

Sec. 4303.01. As used in sections 4303.01 to 4303.37 of the Revised Code, "intoxicating liquor," "liquor," "sale," "sell," "vehicle," "alcohol," "beer," "malt liquor," "malt beverage," "wine," "mixed beverages," "spirituous liquor," "sealed container," "person," "manufacture," "manufacturer," "wholesale distributor," "distributor," "hotel," "restaurant,"

"club," "night club," "at retail," "~~drugstore~~ pharmacy," and "~~Enclosed~~ enclosed shopping center" have the ~~meaning set forth~~ same meanings as in section 4301.01 of the Revised Code.

Sec. 4303.21. Permit G may be issued to the owner of a ~~drugstore~~ pharmacy in charge of a ~~registered~~ licensed pharmacist to be named in such permit for the sale at retail of alcohol for medicinal purposes in quantities at each sale of not more than one gallon upon the written prescription of a physician or dentist who is lawfully and regularly engaged in the practice of ~~his~~ the physician's or dentist's profession in this state, and for the sale of industrial alcohol for mechanical, chemical, or scientific purposes to a person known by the seller to be engaged in such mechanical, chemical, or scientific pursuits; all subject to section 4303.34 of the Revised Code. The fee for this permit is fifty dollars.

Sec. 4303.27. Each permit issued under sections 4303.02 to 4303.23 of the Revised Code, shall authorize the person named to carry on the business specified at the place or in the boat, vessel, or classes of dining car equipment described, and shall be issued for one year, or part thereof, commencing on the day after the uniform expiration dates designated by the division of liquor control, or for the unexpired portion of such year, and no longer, subject to suspension, revocation, or cancellation as authorized or required by Chapters 4301. and 4303. of the Revised Code. Upon application by a permit holder, the superintendent of liquor control may expand during specified seasons of the year the premises for which the permit holder's permit was issued to include a premises immediately adjacent to the premises for which the permit was issued, so long as the immediately adjacent premises is under the permit holder's ownership and control and is located in an area where sales under the permit are not prohibited because of a local option election. Whenever the superintendent considers it advisable to cancel the unexpired portion of an outstanding permit in order that the permit may be issued on one of the uniform expiration dates designated by the superintendent, the superintendent shall refund to the holder a proportionate amount representing the unexpired portion of the permit year pursuant to section 4301.41 of the Revised Code. Such permit does not authorize the person named to carry on the business specified at any place or in any vehicle, boat, vessel, or class of dining car equipment other than that named, nor does it authorize any person other than the one named in such permit to carry on such business at the place or in the vehicle, boat, vessel, or class of dining car equipment named, except pursuant to compliance with the rules and orders of the division governing the assignment and transfer of permits, and with the consent of the division.

The holder of a G permit may substitute the name of another ~~registered~~ licensed pharmacist for that entered on the permit, subject to rules of the division.

Chapters 4301. and 4303. of the Revised Code do not prohibit the holder of an A, B, C, or D permit from making deliveries of beer or intoxicating liquor containing not more than twenty-one per cent of alcohol by volume, or prohibit the holder of an A or B permit from selling or distributing beer or intoxicating liquor to a person at a place outside this state, or prohibit the holder of any such a permit, or an H permit, from delivering any beer or intoxicating liquor so sold from a point in this state to a point outside this state.

Sec. 4303.34. The sale of alcohol under G and I permits is subject to the following restrictions in addition to those imposed by the rules or orders of the division of liquor control:

(A) All sales under such permits shall be made by the ~~registered~~ licensed pharmacist in charge of the store or by a ~~registered assistant pharmacist~~ licensed pharmacy intern, lawfully employed therein.

(B) All sales to hospitals, infirmaries, and medical or educational institutions for the uses authorized by such permits shall be made only upon the written, signed, dated, and sworn application of the superintendent of such institution.

(C) All sales of alcohol to physicians, dentists, and veterinary surgeons shall be made only on the written, signed, dated, and sworn application of such physician, dentist, or veterinary surgeon, personally presented by the applicant.

(D) All sales of alcohol for mechanical, chemical, or scientific purposes shall be made only upon the written application of the purchaser known by the ~~registered pharmacist or assistant pharmacist~~ pharmacy intern to be a person engaged in such mechanical, chemical, or scientific pursuits, which application shall be dated, signed, and sworn to by the purchaser.

All applications required by this section shall state clearly and specifically the kind and quantity of alcohol required and the use to which it is to be put by the person purchasing it, and that the person will not use any of the alcohol procured for any other use than that stated in the application.

All prescriptions and applications required by this section shall be canceled as soon as filled by the person filling the same, by having "canceled" plainly written or stamped thereon and signed and dated by the person who filled the same, and shall be kept open to public inspection. No person shall furnish alcohol more than once on any such prescription or application.

Each holder of such a permit shall register in an alphabetically arranged book, kept exclusively for that purpose, all prescriptions of physicians and dentists, in the following order: the name of the physician or dentist, the name of the person prescribed for, the quantity and kind of alcohol, and the use for which prescribed.

The person making the sale shall indorse upon the prescription the date upon which it was filled and the person's own name. Each such holder shall keep a record of applications, showing the date of each, by whom made, the quantity and kind of alcohol supplied, and when, where, and for what purpose and by whom such alcohol was to be used. Each applicant shall certify to the same by signing the applicant's name in such record book. Such book shall be open at all times during business hours to the inspection of the division.

Any ~~registered~~ licensed pharmacist or ~~assistant pharmacist~~ pharmacy intern may administer the oath required by this section.

Sec. 4506.01. As used in this chapter:

(A) "Alcohol concentration" means the concentration of alcohol in a person's blood, breath, or urine. When expressed as a percentage, it means grams of alcohol per the following:

- (1) One hundred milliliters of blood;
- (2) Two hundred ten liters of breath;
- (3) One hundred milliliters of urine.

(B) "School bus" has the same meaning as in section 4511.01 of the Revised Code.

(C) "Commercial driver's license" means a license issued in accordance with this chapter that authorizes an individual to drive a commercial motor vehicle.

(D) "Commercial driver license information system" means the information system established pursuant to the requirements of the "Commercial Motor Vehicle Safety Act of 1986," 100 Stat. 3207-171, 49 U.S.C.A. App. 2701.

(E) "Commercial motor vehicle" means any motor vehicle designed or used to transport persons or property that meets any of the following qualifications:

(1) Any combination of vehicles with a combined gross vehicle weight rating of twenty-six thousand one pounds or more, provided the gross vehicle weight rating of the vehicle or vehicles being towed is in excess of ten thousand pounds;

(2) Any single vehicle with a gross vehicle weight rating of twenty-six thousand one pounds or more, or any such vehicle towing a vehicle having a

gross vehicle weight rating that is not in excess of ten thousand pounds;

(3) Any single vehicle or combination of vehicles that is not a class A or class B vehicle, but that either is designed to transport sixteen or more passengers including the driver, or is placarded for hazardous materials;

(4) Any school bus with a gross vehicle weight rating of less than twenty-six thousand one pounds that is designed to transport fewer than sixteen passengers including the driver;

(5) Is transporting hazardous materials for which placarding is required by regulations adopted under the "Hazardous Materials Transportation Act," 88 Stat. 2156 (1975), 49 U.S.C.A. 1801, as amended;

(6) Any single vehicle or combination of vehicles that is designed to be operated and to travel on a public street or highway and is considered by the federal highway administration to be a commercial motor vehicle, including, but not limited to, a motorized crane, a vehicle whose function is to pump cement, a rig for drilling wells, and a portable crane.

(F) "Controlled substance" means all of the following:

(1) Any substance classified as a controlled substance under the "Controlled Substances Act," 80 Stat. 1242 (1970), 21 U.S.C.A. 802(6), as amended;

(2) Any substance included in schedules I through V of 21 C.F.R. part 1308, as amended;

(3) Any drug of abuse.

(G) "Conviction" means an unvacated adjudication of guilt or a determination that a person has violated or failed to comply with the law in a court of original jurisdiction, an unvacated forfeiture of bail or collateral deposited to secure the person's appearance in court, the payment of a fine or court cost, or violation of a condition of release without bail, regardless of whether or not the penalty is rebated, suspended, or probated.

(H) "Disqualification" means withdrawal of the privilege to drive a commercial motor vehicle.

(I) "Drive" means to drive, operate, or be in physical control of a motor vehicle.

(J) "Driver" means any person who drives, operates, or is in physical control of a commercial motor vehicle or is required to have a commercial driver's license.

(K) "Driver's license" means a license issued by the bureau of motor vehicles that authorizes an individual to drive.

(L) "Drug of abuse" means any controlled substance, dangerous drug as defined in section ~~4729.02~~ 4729.01 of the Revised Code, or over-the-counter medication that, when taken in quantities exceeding the recommended

dosage, can result in impairment of judgment or reflexes.

(M) "Employer" means any person, including the federal government, any state, and a political subdivision of any state, that owns or leases a commercial motor vehicle or assigns a person to drive such a motor vehicle.

(N) "Endorsement" means an authorization on a person's commercial driver's license that is required to permit the person to operate a specified type of commercial motor vehicle.

(O) "Felony" means any offense under federal or state law that is punishable by death or specifically classified as a felony under the law of this state, regardless of the penalty that may be imposed.

(P) "Foreign jurisdiction" means any jurisdiction other than a state.

(Q) "Gross vehicle weight rating" means the value specified by the manufacturer as the maximum loaded weight of a single or a combination vehicle. The gross vehicle weight rating of a combination vehicle is the gross vehicle weight rating of the power unit plus the gross vehicle weight rating of each towed unit.

(R) "Hazardous materials" means materials identified as such under regulations adopted under the "Hazardous Materials Transportation Act," 88 Stat. 2156 (1975), 49 U.S.C.A. 1801, as amended.

(S) "Motor vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(T) "Out-of-service order" means a temporary prohibition against driving a commercial motor vehicle issued under this chapter or a similar law of another state or of a foreign jurisdiction.

(U) "Residence" means any person's residence determined in accordance with standards prescribed in rules adopted by the registrar.

(V) "Temporary residence" means residence on a temporary basis as determined by the registrar in accordance with standards prescribed in rules adopted by the registrar.

(W) "Serious traffic violation" means a conviction arising from the operation of a commercial motor vehicle that involves any of the following:

(1) A single charge of any speed that is in excess of the posted speed limit by an amount specified by the United States secretary of transportation and that the director of public safety designates as such by rule;

(2) Violation of section 4511.20, 4511.201, or 4511.202 of the Revised Code or any similar ordinance or resolution, or of any similar law of another state or political subdivision of another state;

(3) Violation of a law of this state or an ordinance or resolution relating to traffic control, other than a parking violation, or of any similar law of another state or political subdivision of another state, that results in a fatal

accident;

(4) Violation of any other law of this state or an ordinance or resolution relating to traffic control, other than a parking violation, that is determined to be a serious traffic violation by the United States secretary of transportation and the director designates as such by rule.

(X) "State" means a state of the United States and includes the District of Columbia.

(Y) "Tank vehicle" means any commercial motor vehicle that is designed to transport any liquid or gaseous materials within a tank that is either permanently or temporarily attached to the vehicle or its chassis, but does not include any portable tank having a rated capacity of less than one thousand gallons.

(Z) "United States" means the fifty states and the District of Columbia.

(AA) "Vehicle" has the same meaning as in section 4511.01 of the Revised Code.

(BB) "Peace officer" has the same meaning as in section 2935.01 of the Revised Code.

Sec. 4723.28. As used in this section, "dangerous drug" and "prescription" have the same meanings as in section ~~4729.02~~ 4729.01 of the Revised Code.

(A) The board of nursing, pursuant to an adjudication conducted under Chapter 119. of the Revised Code and by a vote of a quorum, may revoke or may refuse to grant a license or certificate to a person found by the board to have committed fraud in passing the examination or to have committed fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board.

(B) The board of nursing, pursuant to an adjudication conducted under Chapter 119. of the Revised Code and by a vote of a quorum, may impose one or more of the following sanctions: deny, revoke permanently, suspend, or place restrictions on any license or certificate issued by the board; reprimand or otherwise discipline a holder of a license or certificate; or impose a fine of not more than five hundred dollars per violation. The sanctions may be imposed for any of the following:

(1) Denial, revocation, suspension, or restriction of a license to practice nursing, for any reason other than a failure to renew, in another state or jurisdiction; or denial, revocation, suspension, or restriction of a license to practice a health care occupation other than nursing, for any reason other than a failure to renew, in Ohio or another state or jurisdiction;

(2) Engaging in the practice of nursing, having failed to renew a license issued under this chapter, or while a license is under suspension;

(3) Conviction of, a plea of guilty to, or a judicial finding of guilt of a misdemeanor committed in the course of practice;

(4) Conviction of, a plea of guilty to, or a judicial finding of guilt of any felony or of any crime involving gross immorality or moral turpitude;

(5) Selling, giving away, or administering drugs for other than legal and legitimate therapeutic purposes; or conviction of, a plea of guilty to, or a judicial finding of guilt of violating any municipal, state, county, or federal drug law;

(6) Conviction of, a plea of guilty to, or a judicial finding of guilt of an act in another jurisdiction that would constitute a felony or a crime of moral turpitude in Ohio;

(7) Conviction of, a plea of guilty to, or a judicial finding of guilt of an act in the course of practice in another jurisdiction that would constitute a misdemeanor in Ohio;

(8) Self-administering or otherwise taking into the body any dangerous drug in any way not in accordance with a legal, valid prescription;

(9) Habitual indulgence in the use of controlled substances, other habit-forming drugs, or alcohol or other chemical substances to an extent that impairs ability to practice;

(10) Impairment of the ability to practice according to acceptable and prevailing standards of safe nursing care because of habitual or excessive use of drugs, alcohol, or other chemical substances that impair the ability to practice;

(11) Impairment of the ability to practice according to acceptable and prevailing standards of safe nursing care because of a physical or mental disability;

(12) Assaulting or causing harm to a patient or depriving a patient of the means to summon assistance;

(13) Obtaining or attempting to obtain money or anything of value by intentional misrepresentation or material deception in the course of practice;

(14) Adjudication by a probate court that the license applicant or license holder is mentally ill or mentally incompetent. The board may restore the license upon adjudication by a probate court of the person's restoration to competency or upon submission to the board of other proof of competency.

(15) The suspension or termination of employment by the department of defense or the veterans administration of the United States for any act that violates or would violate this chapter;

(16) Violation of this chapter or any rules adopted under it;

(17) Violation of any restrictions placed on a license by the board;

(18) Failure to use universal blood and body fluid precautions

ablished by rules adopted under section 4723.07 of the Revised Code;

(19) Failure to practice in accordance with acceptable and prevailing standards of safe nursing care;

(20) In the case of a registered nurse, engaging in activities that exceed the practice of nursing as a registered nurse under section 4723.02 of the Revised Code;

(21) In the case of a licensed practical nurse, engaging in activities that exceed the practice of nursing as a licensed practical nurse under section 4723.02 of the Revised Code;

(22) Aiding and abetting in the unlicensed practice of nursing;

(23) In the case of a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, or a registered nurse approved as an advanced practice nurse under section 4723.55 of the Revised Code, either of the following:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers such nursing services, would otherwise be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider;

(b) Advertising that the nurse will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers such nursing services, would otherwise be required to pay.

(24) Failure to comply with the terms and conditions of participation in the alternative program for chemically dependent nurses created by section 4723.35 of the Revised Code;

(25) In the case of a certified registered nurse anesthetist, clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner:

(a) Engaging in activities that exceed those permitted for the nurse's nursing specialty under section 4723.43 of the Revised Code;

(b) Failure to meet the quality assurance standards established under section 4723.07 of the Revised Code.

(26) In the case of a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner, failure to maintain a standard care arrangement in accordance with section 4723.431 of the Revised Code or to practice in accordance with the standard care arrangement.

(C) If a criminal action is brought against a license holder for an act or crime described in divisions (B)(3) to (7) of this section and the action is dismissed by the trial court other than on the merits, the board shall hold an adjudication hearing to determine whether the license holder committed the

act on which the action was based. If the board determines on the basis of the hearing that the license holder committed the act, or if the license holder fails to participate in the hearing, the board may take action as though the license holder had been convicted of the act.

If the board takes action on the basis of a conviction, plea of guilty, or a judicial determination of guilt as described in divisions (B)(3) to (7) of this section that is overturned on appeal, the license holder may, on exhaustion of the appeal process, petition the board for reconsideration of its action. On receipt of the petition and supporting court documents, the board shall temporarily rescind its action. If the board determines that the decision on appeal was a decision on the merits, it shall permanently rescind its action. If the board determines that the decision on appeal was not a decision on the merits, it shall hold an adjudicatory hearing to determine whether the license holder committed the act on which the original conviction, plea, or judicial determination was based. If the board determines on the basis of the hearing that the license holder committed such act, or if the license holder does not request a hearing, the board shall reinstate its action; otherwise, the board shall permanently rescind its action.

Notwithstanding the provision of division (C)(2) of section 2953.32 of the Revised Code specifying that if records pertaining to a criminal case are sealed under that section the proceedings in the case shall be deemed not to have occurred, sealing of the records of a conviction on which the board has based an action under this section shall have no effect on the board's action or any sanction imposed by the board under this section.

(D) In enforcing division (B) of this section, the board may compel any individual licensed by this chapter or who has applied for licensure to submit to a mental or physical examination, or both, as required by the board and at the expense of the individual. Failure of any individual to submit to a mental or physical examination when directed constitutes an admission of the allegations, unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds that an individual is impaired, the board shall require the individual to submit to care, counseling, or treatment approved or designated by the board, as a condition for initial, continued, reinstated, or renewed licensure to practice. The individual shall be afforded an opportunity to demonstrate to the board that the individual can resume the individual's occupation in compliance with acceptable and prevailing standards under the provisions of the individual's license. For the purpose of this section, any individual who is licensed by this chapter or makes application for licensure shall be

deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged communication.

(E) The board shall investigate evidence that appears to show that any person has violated any provision of this chapter or any rule of the board. Any person may report to the board any information the person may have that appears to show a violation of any provision of this chapter or rule of the board. In the absence of bad faith, any person who reports such information or who testifies before the board in any adjudication conducted under Chapter 119. of the Revised Code shall not be liable for civil damages as a result of the report or testimony.

Information received by the board pursuant to an investigation is confidential and not subject to discovery in any civil action, except that the board may disclose information to law enforcement officers and government entities investigating a person licensed by the board. No law enforcement officer or government entity with knowledge of any information disclosed by the board pursuant to this division shall divulge the information to any other person or government entity except for the purpose of an adjudication by a court or licensing or registration board or officer to which the person to whom the information relates is a party.

If the investigation requires a review of patient records, the investigation and proceeding shall be conducted in such a manner as to protect patient confidentiality.

All hearings and investigations of the board shall be considered civil actions for the purposes of section 2305.251 of the Revised Code.

The hearings of the board shall be conducted in accordance with Chapter 119. of the Revised Code. The board may appoint a hearing examiner as provided in section 119.09 to conduct any hearing the board is empowered to hold under Chapter 119. of the Revised Code.

In the absence of fraud or bad faith, neither the board nor any current or former members, agents, representatives, or employees of the board shall be held liable in damages to any person as the result of any act, omission, proceeding, conduct, or decision related to their official duties undertaken or performed pursuant to this chapter. If a current or former member, agent, representative, or employee requests the state to defend the individual against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to the individual's official duties, if the request is made in writing at a reasonable time before trial, and if the individual requesting defense cooperates in good faith in the defense of the claim or

action, the state shall provide and pay for such defense and shall pay any resulting judgment, compromise, or settlement. At no time shall the state pay that part of a claim or judgment that is for punitive or exemplary damages.

(F) Any action taken by the board under this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the person may be reinstated to practice.

(G) No unilateral surrender of a license issued under this chapter shall be effective unless accepted by majority vote of the board. No application for a license issued under this chapter may be withdrawn without a majority vote of the board.

(H) Notwithstanding division (B)(23) of this section, sanctions shall not be imposed against any licensee who waives deductibles and copayments:

(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. The consent shall be made available to the board upon request.

(2) For professional services rendered to any other person licensed pursuant to this chapter to the extent allowed by this chapter and the rules of the board.

Sec. 4725.01. As used in this chapter:

(A)(1) The "practice of optometry" means the application of optical principles, through technical methods and devices, in the examination of human eyes for the purpose of ascertaining departures from the normal, measuring their functional powers, adapting optical accessories for the aid thereof, and detecting ocular abnormalities that may be evidence of disease, pathology, or injury.

(2) In the case of a licensed optometrist who holds a topical ocular pharmaceutical agents certificate, the "practice of optometry" has the same meaning as in division (A)(1) of this section, except that it also includes administering topical ocular pharmaceutical agents for the purposes set forth in division (A)(1) of this section.

(3) In the case of a licensed optometrist who holds a therapeutic pharmaceutical agents certificate, the "practice of optometry" has the same meaning as in divisions (A)(1) and (2) of this section, except that it also includes employing, applying, administering, and prescribing instruments, devices, procedures other than invasive procedures, and therapeutic pharmaceutical agents for the following purposes:

(a) Examination, investigation, diagnosis, or prevention of any disease,

injury, or other abnormal condition of the visual system;

(b) Treatment or cure of any disease, injury, or other abnormal condition of the anterior segment of the human eye.

(B) "Topical ocular pharmaceutical agents" means:

(1) Proparacaine hydrochloride in a potency not exceeding five-tenths of one per cent ophthalmic solution;

(2) Benoxinate hydrochloride in a potency not exceeding four-tenths of one per cent ophthalmic solution;

(3) Phenylephrine hydrochloride in a potency not exceeding two and five-tenths per cent ophthalmic solution;

(4) Hydroxyamphetamine hydrobromide in a potency not exceeding one per cent ophthalmic solution;

(5) Tropicamide in a potency not exceeding one per cent ophthalmic solution;

(6) Cyclopentolate in a potency not exceeding one per cent ophthalmic solution;

(7) Any other topical ocular pharmaceutical agents if the primary indications for their use are consistent with the purposes set forth in division (A)(1) of this section, their new drug application is approved by and the potency in which they may be used for evaluative purposes has been established by the federal food and drug administration after January 1, 1983, and their use for the purposes set forth in division (A)(1) of this section has been approved by rule of the state board of optometry.

(C) "Therapeutic pharmaceutical agent" means a topical ocular pharmaceutical agent or any of the following drugs or dangerous drugs, as defined in section ~~4729.02~~ 4729.01 of the Revised Code, that is used for examination, investigation, diagnosis, or prevention of disease, injury, or other abnormal condition of the visual system or for treatment or cure of disease, injury, or other abnormal condition of the anterior segment of the human eye and is an anti-microbial, anti-allergy, anti-glaucoma, topical anti-inflammatory, or cycloplegic agent, or an analgesic:

(1) A topical ophthalmic preparation;

(2) Oral dosage of any of the following drugs:

(a) Acetazolamide;

(b) Astemizole;

(c) Dichlorphenamide;

(d) Diphenhydramine;

(e) Glycerin in a fifty per cent solution;

(f) Isosorbide in a forty-five per cent solution;

(g) Methazolamide;

- (h) Analgesics that may be legally sold without prescription;
- (i) Terfenadine;
- (j) Ampicillin in a two hundred fifty milligram or five hundred milligram dosage;
- (k) Cefaclor in a two hundred fifty milligram or five hundred milligram dosage;
- (l) Cephalexin in a two hundred fifty milligram or five hundred milligram dosage;
- (m) Dicloxacillin in a two hundred fifty milligram or five hundred milligram dosage;
- (n) Doxycycline in a fifty milligram or one hundred milligram dosage;
- (o) Erythromycin in a two hundred fifty milligram, three hundred and thirty-three milligram, or five hundred milligram dosage;
- (p) Penicillin VK in a two hundred fifty milligram or five hundred milligram dosage;
- (q) Tetracycline in a two hundred fifty milligram or five hundred milligram dosage.

(3) Any other oral dosage of a drug or dangerous drug that is listed by rule adopted by the state board of optometry under section 4725.04 of the Revised Code.

(D) "Invasive procedure" means any procedure that involves cutting or otherwise infiltrating human tissue by mechanical means including surgery, laser surgery, ionizing radiation, therapeutic ultrasound, administering medication by injection, or the removal of intraocular foreign bodies.

(E) "Visual system" means the human eye and its accessory or subordinate anatomical parts.

(F) "Certificate of licensure" means a certificate issued by the state board of optometry under section 4725.09 of the Revised Code authorizing the holder to practice optometry as provided in division (A)(1) of this section.

(G) "Topical ocular pharmaceutical agents certificate" means a certificate issued by the state board of optometry under section 4725.09 of the Revised Code authorizing the holder to practice optometry as provided in division (A)(2) of this section.

(H) "Therapeutic pharmaceutical agents certificate" means a certificate issued by the state board of optometry under division (A)(3) or (4) of section 4725.09 of the Revised Code authorizing the holder to practice optometry as provided in division (A)(3) of this section.

Sec. ~~4729.02~~ 4729.01. As used in this chapter:

(A) "Pharmacy," except when used in a context that refers to the

ctice of pharmacy, means any area, room, rooms, place of business, department, or portion of any of the foregoing; where ~~prescriptions are filled or where drugs, dangerous drugs, or poisons are compounded, sold, offered, or displayed for sale, dispensed, or distributed to the public~~ the practice of pharmacy is conducted.

(B) ~~To~~ "practice of pharmacy" means ~~to interpret providing pharmacist care requiring specialized knowledge, judgment, and skill derived from the principles of biological, chemical, behavioral, social, pharmaceutical, and clinical sciences. As used in this division, "pharmacist care" includes the following:~~

(1) Interpreting prescriptions, to compound or dispense;

(2) Compounding or dispensing drugs, dangerous drugs, and poisons, and dispensing drug therapy related devices that under the "Federal Food, Drug, and Cosmetic Act" must be labeled for sale only on the order of a practitioner; to participate in drug selection pursuant to Chapter 3715, and section 4729.38 of the Revised Code; and to participate with practitioners in reviews of drug utilization;

~~(C)~~(3) Counseling individuals with regard to their drug therapy, recommending drug therapy related devices, and assisting in the selection of drugs and appliances for treatment of common diseases and injuries and providing instruction in the proper use of the drugs and appliances;

(4) Performing drug regimen reviews with individuals by discussing all of the drugs that the individual is taking and explaining the interactions of the drugs;

(5) Performing drug utilization reviews with licensed health professionals authorized to prescribe drugs when the pharmacist determines that an individual with a prescription has a drug regimen that warrants additional discussion with the prescriber;

(6) Advising an individual and the health care professionals treating an individual with regard to the individual's drug therapy;

(7) Acting pursuant to a consult agreement with a physician authorized under Chapter 4731, of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery, if an agreement has been established with the physician.

(C) "Compounding" means the preparation, mixing, assembling, packaging, and labeling of one or more drugs in any of the following circumstances:

(1) Pursuant to a prescription issued by a licensed health professional authorized to prescribe drugs;

(2) Pursuant to the modification of a prescription made in accordance

with a consult agreement:

(3) As an incident to research, teaching activities, or chemical analysis;

(4) In anticipation of prescription drug orders based on routine, regularly observed dispensing patterns.

(D) "Consult agreement" means an agreement to manage an individual's drug therapy that has been entered into by a pharmacist and a physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery.

(E) "Drug" means:

(1) Any article recognized in the ~~official~~ United States ~~pharmacoepia,~~ pharmacopoeia and national formulary, or any supplement to them, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans or ~~other~~ animals;

(2) Any other article intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in ~~man~~ humans or ~~other~~ animals;

(3) Any article, other than food, intended to affect the structure or any function of the body of ~~man~~ humans or ~~other~~ animals;

(4) Any article intended for use as a component of any article specified in division (C)(1), (2), or (3) of this section; but does not include devices or their components, parts, or accessories.

~~(D)~~(F) "Dangerous drug" means any of the following:

(1) Any drug to which either of the following applies:

(a) Under the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended, the drug is required to bear a label containing the legend "Caution: Federal law prohibits dispensing without prescription" or "Caution: Federal law restricts this drug to use by or on the order of a licensed veterinarian" or any similar restrictive statement, or the drug may be dispensed only upon a prescription;

(b) Under Chapter 3715. or 3719. of the Revised Code, the drug may be dispensed only upon a prescription;

(2) Any drug that contains a schedule V controlled substance and that is exempt from Chapter 3719. of the Revised Code or to which that chapter does not apply;

(3) Any drug intended for administration by injection into the human body other than through a natural orifice of the human body.

~~(E)~~(G) "Federal drug abuse control laws" has the same meaning as in section 3719.01 of the Revised Code.

~~(F)~~ "Federal Food, Drug, and Cosmetic Act," means the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C. 301, as amended.

~~(G)~~(H) "Prescription" means an a written, electronic, or oral order for

drugs or combinations or mixtures of drugs to be used by a particular individual or for treating a particular animal, written or signed issued by a practitioner or transmitted by a practitioner to a pharmacist by word of mouth, telephone, telegraph, or other means of communication and recorded in writing by the pharmacist licensed health professional authorized to prescribe drugs.

~~(H)~~(I) "Practitioner Licensed health professional authorized to prescribe drugs" or "prescriber" means any of the following:

(1) A person an individual who is licensed pursuant to Chapter 4715., 4725., 4731., or 4741. of the Revised Code and authorized by law to write prescriptions for drugs or prescribe drugs or dangerous drugs;

(2) A professional association, as defined in section 1785.01 of the Revised Code, organized by an individual who is, or a group of individuals who are, licensed pursuant to Chapter 4715., 4725., 4731., or 4741. of the Revised Code and authorized by law to write prescriptions for drugs or dangerous drugs, or a corporation for profit formed under Chapter 1701. of the Revised Code by an individual or group of individuals so licensed and authorized;

(3) A partnership of individuals who are licensed pursuant to Chapter 4715., 4725., 4731., or 4741. of the Revised Code and authorized by law to write prescriptions for drugs or dangerous drugs;

(4) A limited liability company formed under Chapter 1705. of the Revised Code for the purpose of rendering a professional service covered by Chapter 4715., 4725., 4731., or 4741. of the Revised Code, the members, employees, other agents, and, if applicable, managers of which are licensed or otherwise legally authorized to render the covered professional service in this state and are authorized by law to write prescriptions for drugs or dangerous drugs;

(5) or drug therapy related devices in the course of the individual's professional practice, including only the following:

(1) A dentist licensed under Chapter 4715. of the Revised Code;

(2) An advanced practice nurse authorized approved under section 4723.56 of the Revised Code to prescribe drugs and therapeutic devices;

(3) An optometrist licensed under Chapter 4725. of the Revised Code to practice optometry under a therapeutic pharmaceutical agents certificate;

(4) A physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery, osteopathic medicine and surgery, or podiatry;

(5) A veterinarian licensed under Chapter 4741. of the Revised Code.

~~(I)~~ "Poison" means any drug, chemical, or preparation likely to be

~~deleterious or destructive to adult human life in quantities of four grams or less.~~

(J) "Sale" and "sell" include delivery, transfer, barter, exchange, or gift, or offer therefor, and each such transaction made by any person, whether as principal proprietor, agent, or employee.

(K) "Wholesale sale" and "sale at wholesale" mean any sale in which the purpose of the purchaser is to resell the article purchased or received by the purchaser.

(L) "Retail sale" and "sale at retail" mean any sale other than a wholesale sale or sale at wholesale.

(M) "Retail seller" means any person that sells any dangerous drug to consumers without assuming control over and responsibility for its administration. Mere advice or instructions regarding administration do not constitute control or establish responsibility.

(N) "Price information" means the price charged for a prescription for a particular drug product and, in an easily understandable manner, all of the following:

(1) The proprietary name of the drug product;

(2) The established (generic) name of the drug product;

(3) The strength of the drug product if the product contains a single active ingredient or if the drug product contains more than one active ingredient and a relevant strength can be associated with the product without indicating each active ingredient. The established name and quantity of each active ingredient are required if such a relevant strength cannot be so associated with a drug product containing more than one ingredient.

(4) The dosage form;

(5) The price charged for a specific quantity of the drug product. The stated price shall include all charges to the consumer, including, but not limited to, the cost of the drug product, professional fees, handling fees, if any, and a statement identifying professional services routinely furnished by the pharmacy. Any mailing fees and delivery fees may be stated separately without repetition. The information shall not be false or misleading.

(O) "Wholesale distributor of dangerous drugs" means a person engaged in the sale of dangerous drugs at wholesale and includes any agent or employee of such a person authorized by the person to engage in the sale of dangerous drugs at wholesale.

(P) "Manufacturer of dangerous drugs" means a person, other than a pharmacist, who manufactures dangerous drugs and who is engaged in the sale of those dangerous drugs within this state.

(Q) "Terminal distributor of dangerous drugs" means a person, ~~other~~

~~n a practitioner~~, who is engaged in the sale of dangerous drugs at retail, or any person, other than a wholesale distributor or a pharmacist, who has ~~in the person's~~ possession, custody, or control of dangerous drugs for any purpose other than for ~~the~~ that person's own use and consumption, and includes pharmacies, hospitals, nursing homes, and laboratories and all other persons who procure dangerous drugs for sale or other distribution by or under the supervision of a pharmacist or ~~medical practitioner~~ licensed health professional authorized to prescribe drugs.

(R) "Promote to the public" means disseminating a representation to the public in any manner or by any means, other than by labeling, for the purpose of inducing, or that is likely to induce, directly or indirectly, the purchase of a dangerous drug at retail.

(S) "Person" includes any individual, partnership, association, limited liability company, or corporation, the state, any political subdivision of the state, and any district, department, or agency of the state or its political subdivisions.

(T) "Finished dosage form" has the same meaning as in ~~division (A)(17)~~ of section 3715.01 of the Revised Code.

~~(U) As used in section 4729.38 of the Revised Code, "manufacturer" means a person who manufactures, as defined in division (A)(18) of section 3715.01 of the Revised Code.~~

~~(V)~~ "Generically equivalent drug" has the same meaning as in ~~division (A)(20)~~ of section 3715.01 of the Revised Code.

~~(W)(V)~~ "Animal shelter" means a facility operated by a humane society or any society organized under Chapter 1717. of the Revised Code or a dog pound operated pursuant to Chapter 955. of the Revised Code.

~~(X)(W)~~ "Food" has the same meaning as in section 3715.01 of the Revised Code.

Sec. ~~4729.01~~ 4729.02. There shall be a state board of pharmacy, consisting of nine members, eight of whom shall be pharmacists ~~registered~~ licensed under this chapter, representing to the extent practicable various phases of the practice of pharmacy, and one of whom shall be a public member at least sixty years of age. Members shall be appointed by the governor with the advice and consent of the senate. Terms of office shall be for four years, commencing on the first day of July and ending on the thirtieth day of June. The Ohio ~~state pharmaceutical~~ pharmacists association may annually submit to the governor the names of not less than five pharmacists ~~registered~~ licensed under this chapter, and from the names submitted or from others, at ~~his~~ the governor's discretion, the governor each year shall ~~appoint two members of the board, except that the governor shall~~

~~appoint three members of the board in 1991 and every four years thereafter~~ make appointments to the board. Each member shall hold office from the date of ~~his~~ appointment until the end of the term for which ~~he~~ the member was appointed. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which ~~his~~ the predecessor was appointed shall hold office for the remainder of such term. Any member shall continue in office subsequent to the expiration date of ~~his~~ the member's term until ~~his~~ a successor takes office, or until a period of sixty days has elapsed, whichever occurs first.

No member of the board shall be reappointed to the board more than once.

Sec. 4729.03. The state board of pharmacy shall organize by electing a president and a vice-president who are members of the board. The president shall preside over the meetings of the board, but shall not vote upon matters determined by the board, except in the event of a tie vote, in which case the president shall vote. The board shall also employ an executive director who is a ~~registered licensed~~ registered licensed pharmacist in good standing in ~~his profession and who is not the practice of pharmacy in this state~~. The person employed shall not be a member of the board. Each of the officers elected shall serve for a term of one year. The members of the board shall receive an amount fixed pursuant to division (J) of section 124.15 of the Revised Code for each day employed in the discharge of their official duties and their necessary expenses while engaged therein.

Sec. 4729.06. The state board of pharmacy shall keep a record of its proceedings and a register of all persons to whom identification cards and ~~certificates~~ licenses have been granted as pharmacists or pharmacy interns, together with each renewal and suspension or revocation of an identification card and ~~certificate~~ license. The books and registers of the board shall be prima-facie evidence of the matters therein recorded. The president and executive director of the board may administer oaths.

A statement signed by the executive director to which is affixed the official seal of the board to the effect that it appears from the records of the board that ~~no such~~ the board has not issued an identification card and ~~certificate~~ license to practice pharmacy, or any of its branches, ~~in the state has been issued to any such~~ the person specified therein in the statement, or that an identification card and ~~certificate~~ license, if issued, has been revoked or suspended, shall be received as prima-facie evidence of the record of ~~such~~ the board in any court or before any officer of this state.

Sec. 4729.07. An individual desiring to be ~~registered licensed~~ registered licensed as a pharmacist shall file with the executive director of the state board of

pharmacy a verified application giving such information as the board requires, and appear before the board to take an examination to determine fitness to practice pharmacy. Examinations of those applying for ~~registration~~ licensure as pharmacists shall be held at such times, during each year, and at such places as the board determines. The board may make use of all or any part of the licensure examination of the national association of boards of pharmacy or any other national standardized pharmacy examination that it considers appropriate to perform its duties under this section. The board may require applicants for licensure by examination to purchase the examination and any related materials from the organization providing it.

Sec. 4729.08. Every applicant for examination and ~~registration~~ licensure as a pharmacist shall:

(A) Be at least eighteen years of age;

(B) Be of good moral character and habits;

(C) Have obtained a degree in pharmacy from a program that has been recognized and approved by the state board of pharmacy, except that graduates of schools or colleges of pharmacy that are located outside the United States and have not demonstrated that the standards of their programs are at least equivalent to programs recognized and approved by the board shall be required to pass an equivalency examination recognized and approved by the board and to establish written and oral proficiency in English.

(D) Have satisfactorily completed at least the minimum requirements for pharmacy internship as outlined by the board.

If the board is satisfied that the applicant meets the foregoing requirements and if the applicant passes the examination required under section 4729.07 of the Revised Code, the board shall issue to the applicant a ~~certificate of registration~~ license and an identification card authorizing ~~him~~ the individual to practice pharmacy.

Sec. 4729.09. The state board of pharmacy may ~~register~~ license an individual as a pharmacist without examination and issue ~~him a certificate of such registration and~~ an identification card to the pharmacist if ~~such the~~ the individual:

(A) Holds a ~~certificate~~ license in good standing to practice pharmacy under the laws of another state, has successfully completed an examination for ~~registration~~ licensure in the other state, and in the opinion of the board, ~~such the~~ the examination was at least as thorough as that required by the board at the time ~~such the~~ the individual took the examination;

(B) Is of good moral character and habit;

(C) Has filed with the ~~board~~ licensing body of the other state ~~with which~~

~~he holds a certificate of good standing~~ at least the credentials or the equivalent as ~~where then~~ that were required by ~~the Ohio board for registration as~~ this state at the time the individual was licensed a pharmacist.

The board shall not issue any identification card or ~~certificate~~ license to ~~such an~~ individual licensed in another state if the state in which ~~such the~~ individual is ~~registered~~ licensed does not reciprocate by granting ~~certificates~~ licenses to practice pharmacy to persons holding valid ~~certificates to practice pharmacy in Ohio issued~~ licenses received through examination by the state board of pharmacy ~~of Ohio~~.

Sec. 4729.11. The state board of pharmacy shall establish a pharmacy internship program for the purpose of providing the practical experience necessary ~~for registration to practice~~ as a pharmacist. Any individual who desires to become a pharmacy intern shall apply for ~~registration~~ licensure to the board, and shall be issued an identification card and ~~certificate of registration~~ license as a pharmacy intern if in the opinion of the board the applicant is actively pursuing an educational program in preparation for ~~registration~~ licensure as a pharmacist and meets the other requirements as determined by the board. ~~Such An~~ identification card and ~~certificate of registration~~ license shall be valid until the next annual renewal date and shall be renewed only if the intern is meeting the requirements and ~~regulations~~ rules of the board.

The state board of pharmacy may appoint a director of pharmacy internship who is a ~~registered~~ licensed pharmacist and who is not directly or indirectly connected with a school or college of pharmacy or department of pharmacy of a university. The

~~The~~ director of pharmacy internship shall be responsible to the board for the operation and direction of the pharmacy internship program established by the board under this section, and for such other duties as the board may assign.

Sec. 4729.12. ~~The An~~ identification card issued by the state board of pharmacy ~~shall issue an identification card to each registered pharmacist or pharmacy intern, which shall entitle~~ under section 4729.08 Of the Revised Code entitles the individual to whom it is issued to practice as a pharmacist or as a pharmacy intern in this state until the next annual renewal date.

Identification cards shall be renewed annually on the fifteenth day of September, according to the standard renewal procedure of ~~sections 4745.01 to 4745.03~~ Chapter 4745, of the Revised Code.

Each pharmacist and pharmacy intern shall ~~have his~~ carry the identification card or renewal identification card ~~on his person~~ while engaged in the practice of pharmacy ~~and his certificate of registration~~. The

license shall be conspicuously exposed at the principal place where ~~he~~ the pharmacist or pharmacy intern practices pharmacy.

~~If a~~ A pharmacist or pharmacy intern who desires to continue in the practice of ~~his profession,~~ he pharmacy shall file with the board an application in such form and containing such data as the board may require for renewal of an identification card. If the board finds that the ~~applicant has been registered and that such registration~~ applicant's card has not been revoked or placed under suspension; and that ~~he~~ the applicant has paid the renewal fee, has continued ~~his~~ pharmacy education in accordance with the rules of the board, and is entitled to continue in the practice of pharmacy, the board shall issue a renewal identification card to the applicant.

When an identification card has lapsed for more than sixty days but application is made within three years after the expiration of the card, the applicant shall be issued a renewal identification card without further examination if ~~he~~ the applicant meets the requirements of this section and pays the fee designated under division (E) of section 4729.15 of the Revised Code.

Sec. 4729.13. ~~If a registered~~ A pharmacist who fails to make application to the state board of pharmacy for a renewal identification card within a period of three years from the expiration of ~~his~~ the identification card, ~~he~~ must pass an examination for registration; except that a ~~person who has been registered under the laws of this state and after the expiration of his pharmacist whose~~ registration has expired, but who has continually practiced pharmacy in another state under a certificate license issued by the authority of ~~such~~ that state, may obtain a renewal identification card upon payment to the executive director of the board the fee designated under division (F) of section 4729.15 of the Revised Code.

Sec. 4729.14. A replacement certificate license or identification card may be issued a person registered with the state board of pharmacy as a pharmacist or as a pharmacy intern whose certificate license or identification card has been lost or destroyed, upon condition that the applicant by affidavit sets forth the facts concerning the loss or destruction of ~~his certificate~~ the previously issued license or identification card.

Sec. 4729.15. The state board of pharmacy shall charge the following fees:

(A) For applying for ~~registration~~ a license to practice as a pharmacist, an amount adequate to cover all rentals, compensation for proctors, and other expenses of the board related to examination except the expenses of procuring and grading the examination, which fee shall not be returned if the applicant fails to pass the examination;

(B) For the examination of an applicant for ~~registration~~ licensure as a pharmacist, an amount adequate to cover any expenses to the board of procuring and grading the examination or any part thereof, which fee shall not be returned if the applicant fails to pass the examination;

(C) For issuing a ~~certificate of registration~~ license and an identification card to an individual who passes the examination described in section 4729.07 of the Revised Code, an amount that is adequate to cover the expense;

(D) For ~~the renewal application fee of~~ a pharmacist applying for renewal of an identification card within sixty days after the expiration date, ninety-seven dollars and fifty cents, which fee shall not be returned if the applicant fails to qualify for renewal;

(E) For ~~the renewal application fee of~~ a pharmacist applying for renewal of an identification card that has lapsed for more than sixty days, but for less than three years, one hundred thirty-five dollars, which fee shall not be returned if the applicant fails to qualify for renewal;

(F) For ~~the renewal application fee of~~ a pharmacist applying for renewal of an identification card that has lapsed for more than three years, three hundred thirty-seven dollars and fifty cents, which fee shall not be returned if the applicant fails to qualify for renewal;

(G) For ~~the application fee of an applicant for registration as a pharmacist, certificate of registration,~~ applying for a license and identification card, on presentation of a ~~certificate~~ pharmacist license granted by another state, three hundred thirty-seven dollars and fifty cents, which fee shall not be returned if the applicant fails to qualify for ~~registration~~ licensure.

(H) For ~~the application fee for registration a license and identification card to practice as a pharmacy intern, certificate of registration, and identification card,~~ twenty-two dollars and fifty cents, which fee shall not be returned if the applicant fails to qualify for ~~registration~~ licensure;

(I) For the renewal ~~application fee of~~ a pharmacy intern ~~for an~~ identification card, twenty-two dollars and fifty cents, which fee shall not be returned if the applicant fails to qualify for renewal;

(J) For issuing a replacement ~~certificate~~ license to a pharmacist, twenty-two dollars and fifty cents;

(K) For issuing a replacement ~~certificate~~ license to a pharmacy intern, seven dollars and fifty cents;

(L) For issuing a replacement identification card to a pharmacist, thirty-seven dollars and fifty cents, or pharmacy intern, seven dollars and fifty cents;

(M) For certifying ~~registration~~ licensure and grades for reciprocal ~~registration~~ licensure, ten dollars;

(N) For making copies of any application, affidavit, or other document filed in the state board of pharmacy office, an amount fixed by the board that is adequate to cover the expense, except that for copies required by federal or state agencies or law enforcement officers for official purposes, no charge need be made;

(O) For certifying and affixing the seal of the board, an amount fixed by the board that is adequate to cover the expense, except that for certifying and affixing the seal of the board to a document required by federal or state agencies or law enforcement officers for official purposes, no charge need be made;

(P) For each copy of a book or pamphlet that includes laws administered by the state board of pharmacy, rules adopted by the board, and chapters of the Revised Code with which the board is required to comply, an amount fixed by the board that is adequate to cover the expense of publishing and furnishing the book or pamphlet.

Sec. 4729.16. (A) The state board of pharmacy, after notice and hearing in accordance with Chapter 119. of the Revised Code, may revoke, suspend, place on probation, or refuse to grant or renew an identification card ~~under this chapter~~, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense, or in the case of a violation of a section of the Revised Code that does not bear a penalty, a monetary penalty or forfeiture of not more than five hundred dollars, if the board finds a pharmacist or pharmacy intern:

(1) Guilty of a felony or gross immorality;

(2) Guilty of dishonesty or unprofessional conduct in the practice of pharmacy;

(3) Addicted to or abusing liquor or drugs or impaired physically or mentally to such a degree as to render ~~him~~ the pharmacist or pharmacy intern unfit to practice pharmacy;

(4) Has been convicted of a misdemeanor related to, or committed in, the practice of pharmacy;

(5) Guilty of willfully violating, conspiring to violate, attempting to violate, or aiding and abetting the violation of any of the provisions of this chapter, sections 3715.52 to 3715.72 Of the Revised Code, or Chapter 2925., or 3719., ~~or 4729.~~ of the Revised Code;

(6) Guilty of permitting anyone other than a pharmacist or pharmacy intern to practice pharmacy;

(7) Guilty of knowingly lending ~~his~~ the pharmacist's or pharmacy

intern's name to an illegal practitioner of pharmacy or having professional connection with an illegal practitioner of pharmacy; ~~or~~

(8) Guilty of dividing or agreeing to divide remuneration made in the practice of pharmacy with any other individual, including, but not limited to, ~~a practitioner~~ any licensed health professional authorized to prescribe drugs or any owner, manager, or employee of a health care facility, residential care facility, or nursing home;

(9) Has violated the terms of a consult agreement entered into pursuant to section 4729.39 Of the Revised Code.

(B) Any individual whose identification card is revoked, suspended, or refused, shall return ~~his~~ the identification card and ~~certificate of registration license~~ to the offices of the state board of pharmacy within ten days after receipt of notice of such action.

(C) As used in this section:

"Unprofessional conduct in the practice of pharmacy" includes any of the following:

(1) Advertising or displaying signs that promote dangerous drugs to the public in a manner that is false or misleading;

(2) ~~The~~ Except as provided in section 4729.281 Of the Revised Code, the sale of any drug for which a prescription ~~from a practitioner~~ is required, without having received a prescription for the drug;

(3) Willfully and knowingly filling prescriptions or selling drugs for false or forged prescriptions;

(4) Willfully and knowingly failing to maintain complete and accurate records of all controlled substances received or dispensed in compliance with federal laws and regulations and state laws and rules;

(5) Obtaining any remuneration by fraud, misrepresentation, or deception;

(6) Obtaining or attempting to obtain a license issued under this chapter or Chapter 3715. ~~or 4729.~~ of the Revised Code from the state board of pharmacy by fraud, misrepresentation, or deception;

~~(7) Waiving the payment of all or any part of a deductible or copayment that an individual, pursuant to a health insurance or health care policy, contract, or plan that covers pharmaceutical services, would otherwise be required to pay for the services if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider.~~

~~(8) Advertising that a pharmacy, pharmacist, or pharmacist intern will waive the payment of all or any part of a deductible or copayment that an individual, pursuant to a health insurance or health care policy, contract, or~~

~~plan that covers pharmaceutical services, would otherwise be required to pay for the services.~~

~~(D) Notwithstanding divisions (C)(7) and (8) of this section, sanctions shall not be imposed against any licensee who waives deductibles and copayments:~~

~~(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copays shall be made only with the full knowledge and consent of the plan purchaser, payer, and third party administrator. Such consent shall be made available to the board upon request.~~

~~(2) For professional services rendered to any other person licensed pursuant to this chapter to the extent allowed by this chapter and the rules of the board.~~

Sec. 4729.25. (A) The state board of pharmacy shall enforce, or cause to be enforced, this chapter. If it has information that ~~such sections have~~ any provision of this chapter has been violated, it shall investigate the matter, and take such action as it considers appropriate in accordance with its rules ~~made and published pursuant to~~ adopted under section 4729.26 of the Revised Code. With regard to violations of sections 4729.51 to 4729.62 Of the Revised Code, the board's actions also shall be taken in accordance with section 4729.63 Of the Revised Code.

(B) Nothing in this chapter shall be construed to require the state board of pharmacy to enforce minor violations of this chapter if the board determines that the public interest is adequately served by a notice or warning to the alleged offender.

Sec. 4729.26. The state board of pharmacy ~~is empowered to make such~~ may adopt rules and regulations, ~~subject to and~~ in accordance with ~~sections 119.01 to 119.13, inclusive, Chapter 119.~~ sections 119.01 to 119.13, inclusive, Chapter 119. of the Revised Code, not inconsistent with the law, ~~pertaining to the practice of pharmacy~~ as may be necessary to carry out the ~~purpose~~ purposes of and ~~TO enforce sections 4729.01 to 4729.37, inclusive, of the Revised Code~~ the provisions of this chapter pertaining to the practice of pharmacy. ~~Such~~ The rules and regulations shall be published and ~~distributed~~ made available by the board to each of its licensees pharmacist licensed under this chapter.

Sec. 4729.27. A person not a ~~registered~~ pharmacist, who owns, manages, or conducts a pharmacy as ~~defined in section 4729.02 of the Revised Code,~~ shall ~~have in his employ;~~ be in full and actual charge of such pharmacy, ~~a pharmacist registered under the laws of this state.~~ Any ~~registered~~ pharmacist; who owns, manages, or conducts a pharmacy shall be personally in full and actual charge of ~~such~~ the pharmacy,

or shall ~~have in his~~ employ another pharmacist to be in full and actual charge of such the pharmacy, a pharmacist registered under the laws of this state.

Sec. 4729.28. No person who is not a ~~registered~~ pharmacist or a pharmacy intern under the personal supervision of a ~~registered~~ pharmacist shall compound, dispense, or sell ~~drugs, dangerous drugs, and poisons~~ or otherwise engage in the practice of pharmacy.

Sec. 4729.281. (A) A pharmacist may dispense or sell a dangerous drug, other than a schedule ii controlled substance as defined in section 3719.01 of the Revised Code, without a written or oral prescription from a licensed health professional authorized to prescribe drugs if all of the following conditions are met:

(1) the pharmacy at which The pharmacist works has a record of a prescription for the drug in the name of the patient who is requesting it, but The prescription does not provide for a refill or the time permitted by rules adopted by the state board of pharmacy for providing refills has elapsed.

(2) The pharmacist is unable to obtain authorization to refill the prescription from the health care professional who issued the prescription or another health professional responsible for the patient's care.

(3) In the exercise of the pharmacist's professional judgment:

(a) The drug is essential to sustain the life of the patient or continue therapy for a chronic condition of the patient.

(b) Failure to dispense or sell the drug to the patient could result in harm to the health of the patient.

(4) The amount of the drug that is dispensed or sold under this section does not exceed a seventy-two hour supply as provided in the prescription.

(B) A pharmacist who dispenses or sells a drug under this section shall do all of the following:

(1) For one year after the date of dispensing or sale, maintain a record in accordance with this chapter of the drug dispensed or sold, including the name and address of the patient and the individual receiving the drug, if the individual receiving the drug is not the patient, the amount dispensed or sold, and the original prescription number;

(2) Notify the health professional who issued the prescription described in division (A)(1) of this section OR ANOTHER HEALTH PROFESSIONAL RESPONSIBLE FOR THE PATIENT'S CARE NOT LATER THAN SEVENTY-TWO HOURS AFTER THE DRUG IS SOLD OR DISPENSED;

(3) If applicable, obtain authorization for additional dispensing from one of the health professionals described in division (B)(2) of this section.

(C) A pharmacist who dispenses or sells a drug under this SECTION MAY DO SO ONCE FOR EACH PRESCRIPTION DESCRIBED IN DIVISION (A)(1) OF THIS SECTION.

Sec. 4729.29. (A) ~~As used in this section:~~

~~(1) "Dentist" means a person licensed under Chapter 4715. of the Revised Code to practice dentistry.~~

~~(2) "Optometrist" means a person who is licensed to practice optometry and holds a valid therapeutic pharmaceutical agents certificate issued under Chapter 4725. of the Revised Code.~~

~~(3) "Physician" means a person holding a valid certificate issued under Chapter 4731. of the Revised Code authorizing the person to practice medicine and surgery, osteopathic medicine and surgery, or podiatry.~~

~~(4) "Veterinarian" means a person licensed under Chapter 4741. of the Revised Code to practice veterinarian medicine.~~

~~(5) "Advanced practice nurse" means an individual approved under section 4723.56 of the Revised Code to prescribe drugs and therapeutic devices.~~

~~(B) Divisions (A) and (B) of section 4729.02 4729.01 and sections 4729.26, 4729.27, and section 4729.28 of the Revised Code do not do either of the following:~~

~~(1) Apply to a dentist, optometrist, physician, veterinarian, or advanced practice nurse; licensed health professional authorized to prescribe drugs or prevent dentists, optometrists, physicians, or veterinarians a prescriber from personally supplying their furnishing the prescriber's patients with such drugs as to the dentist, optometrist, physician, or veterinarian, within the prescriber's scope of professional practice, that seem proper; or prevent an advanced practice nurse from personally supplying drugs and therapeutic devices in accordance with section 4723.561 of the Revised Code to the prescriber.~~

~~(2) Apply to the sale of oxygen, peritoneal dialysis solutions, or the sale of proprietary drugs or medicines that are not dangerous drugs by a retail dealer, in original packages when labeled as required by the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, as amended.~~

(B) When a prescriber personally furnishes drugs to a patient pursuant to division (A)(1) of this section, the prescriber shall ensure that the drugs are labeled and packaged in accordance with state and federal drug laws and any rules and regulations adopted pursuant to those laws. Records of purchase and disposition of all drugs personally furnished to patients shall be maintained by the prescriber in accordance with state and federal drug

statutes and any rules adopted pursuant to those statutes.

(C) Nothing in this chapter prohibits a person who is certified to administer topical ocular pharmaceutical agents under Chapter 4725. of the Revised Code from purchasing, possessing, or administering topical ocular pharmaceutical agents in accordance with Chapter 4725. of the Revised Code.

Sec. 4729.30. Sections 4729.27 and 4729.28 of the Revised Code shall not prohibit a person from selling Paris green and other materials or compounds used exclusively for spraying and disinfecting when put up in bottles or boxes, bearing the name of a ~~registered~~ licensed pharmacist or wholesale dealer, and labeled as required by section 3719.33 of the Revised Code or apply to or interfere with the exclusively wholesale business of a dealer.

Sec. 4729.36. (A) No place except a pharmacy licensed as a terminal distributor of dangerous drugs and no person except a licensed pharmacist shall display any sign or advertise in any fashion, using the words "pharmacy," "drugs," "drug store," "drug store supplies," "pharmacist," "druggist," "pharmaceutical chemist," "apothecary," "drug sundries," "medicine," or any of these words or their equivalent, in any manner.

(B) A pharmacy ~~or pharmacist~~ making retail sales may advertise by name or therapeutic class the availability for sale ~~of~~ or dispensing of any dangerous drug provided ~~such that the~~ such that the advertising includes the price information ~~as defined specified in the definition of that term in division (N)~~ of section ~~4729.02~~ 4729.01 of the Revised Code.

Sec. 4729.37. A copy of an original prescription may only be filled in accordance with the rules and regulations adopted by the state board of pharmacy.

Prescriptions received electronically or by word of mouth, telephone, telegraph, or other means of communication shall be recorded in writing by the pharmacist and the record so made by the pharmacist shall constitute the original prescription to be filled by the pharmacist. All prescriptions shall be preserved on file at the pharmacy for a period of three years, subject to inspection by the proper officers of the law.

Sec. 4729.38. (A) Unless instructed otherwise by the person receiving the drug pursuant to the prescription, a pharmacist filling a prescription for a drug prescribed by its brand name may select a generically equivalent drug, as defined in section 3715.01 of the Revised Code, subject to the following conditions:

(1) The pharmacist shall not select a generically equivalent drug if the prescriber handwrites "dispense as written," or "D.A.W.," on the written

scription, or, when ordering a prescription electronically or orally, the prescriber specifies that the prescribed drug is medically necessary. These designations shall not be preprinted or stamped on the prescription. Division (A)(1) of this section does not preclude a reminder of the procedure required to prohibit the selection of a generically equivalent drug from being preprinted on the prescription.

(2) The pharmacist shall not select a generically equivalent drug unless its price to the ~~purchaser~~ patient is less than or equal to the price of the prescribed drug, ~~and shall pass on as a savings to the purchaser, other than the state medical assistance program, the full amount of the retail price difference between the prescribed brand name drug and the generically equivalent drug. The amount paid for the generic drug under the state medical assistance program shall be as provided by federal regulation.~~

(3) The pharmacist, or the pharmacist's agent, assistant, or employee shall inform the ~~person receiving the drug pursuant to the prescription of the selection of~~ patient or the patient's agent if a ~~lower cost~~ generically equivalent drug is available at a lower or equal cost, ~~of the price difference between the brand name drug and the generically equivalent drug~~, and of the person's right to refuse the drug selected. Division (A)(3) of this section does not apply to any:

(a) Prescription that is billed to any agency, division, or department of this state which will reimburse the pharmacy;

(b) Prescriptions for patients of a hospital, nursing home, or similar patient care facility.

(B) Unless the prescriber instructs otherwise, the label for every drug dispensed shall include the drug's brand name, if any, or its generic name and the name of the distributor, using abbreviations if necessary. ~~A pharmacist shall indicate on the container or its label the notation "generic substitution made" when~~ When dispensing at retail a generically equivalent drug for the brand name drug prescribed, ~~and shall verbally notify the recipient that a generic substitution has been made. This requirement shall be~~ the pharmacist shall indicate on the drug's label or container that a generic substitution was made. The labeling requirements established by this division are in addition to all other labeling requirements of Chapter 3715. of the Revised Code.

(C) A pharmacist who selects a generically equivalent drug pursuant to this section assumes no greater liability for selecting the dispensed drug than would be incurred in filling a prescription for a drug prescribed by its brand name.

(D) The failure of a prescriber to restrict a prescription by specifying

"dispense as written," or "D.A.W.," pursuant to division (A)(1) of this section shall not constitute evidence of the prescriber's negligence unless the prescriber had reasonable cause to believe that the health condition of the patient for whom the drug was intended warranted the prescription of a specific brand name drug and no other. No ~~licensed~~ prescriber shall be liable for civil damages or in any criminal prosecution arising from the interchange of a generically equivalent drug for a prescribed brand name drug by a pharmacist, unless the prescribed brand name drug would have reasonably caused the same loss, damage, injury, or death.

~~(E) Each terminal distributor shall prepare a list of generic and brand name drug products which may be selected as the drug product of choice. In compiling the list of generic and brand name drug products, the distributor shall rely on the drug product research, testing, information, and lists compiled by other pharmacies, states, the United States department of health and human services, and any other source which the distributor considers reliable. The list shall be available for review in the pharmacy on request of the public, the state board of pharmacy, or any practitioner. This list shall be revised following each addition, deletion, or modification. No drug interchange shall be made by a pharmacist unless the drug to be interchanged is on this list.~~

Sec. 4729.381. No licensed pharmacist shall be liable for civil damages or in any criminal prosecution arising from the dispensing of a drug based upon a formulary established by ~~a practitioner in~~ a hospital, a health insuring corporation, ~~or a long-term care facility, or the department of rehabilitation and corrections~~ and requiring the pharmacist to dispense the particular drug.

Sec. 4729.39. (A) A pharmacist may enter into a consult agreement with a physician authorized under Chapter 4731. of the Revised Code to practice medicine and surgery or osteopathic medicine and surgery. Under a consult agreement, a pharmacist is authorized to manage an individual's drug therapy, but only to the extent specified in the agreement by the individual's physician and to the extent specified in this section and the rules adopted under this section.

A separate consult agreement must be entered into for each individual whose drug therapy is to be managed by a pharmacist. A consult agreement applies only to the particular diagnosis for which a physician prescribed an individual's drug therapy. If a different diagnosis is made for the individual, the pharmacist and physician must enter into a new or additional consult agreement.

Management of an individual's drug therapy by a pharmacist under a consult agreement may include monitoring and modifying a prescription that

has been issued for the individual. Except as provided in section 4729.38 of the Revised Code for the selection of generically equivalent drugs, management of an individual's drug therapy by a pharmacist under a consult agreement shall not include dispensing a drug that has not been prescribed by the physician.

Each consult agreement shall be in writing, except that a consult agreement may be entered into verbally if it is immediately reduced to writing. A consult agreement may not be implemented until it has been signed by the pharmacist, the physician, and the individual whose drug therapy will be managed or another person who has the authority to provide consent to treatment on behalf of the individual. The physician shall specify in the agreement the extent to which the pharmacist is authorized to manage the drug therapy of the individual specified in the agreement. The physician shall include in the individual's medical record the fact that a consult agreement has been entered into with a pharmacist.

Prior to commencing any action to manage an individual's drug therapy under a consult agreement, the pharmacist shall make reasonable attempts to contact and confer with the physician who entered into the consult agreement with the pharmacist. a pharmacist may commence an action to manage an individual's drug therapy prior to conferring with the physician, but shall immediately cease the action that was commenced if the pharmacist has not conferred with the physician within forty-eight hours.

A pharmacist acting under a consult agreement shall maintain a record of each action taken to manage an individual's drug therapy. The pharmacist shall send to the individual's physician a written report of all actions taken to manage the individual's drug therapy at INTERVALS the physician shall specify when entering into the agreement. The physician shall include the pharmacist's report in the medical records the physician maintains for the individual.

A consult agreement may be terminated by either the pharmacist or physician who entered into the agreement. By withdrawing consent, the individual whose drug therapy is being managed or the individual who consented to the treatment on behalf of the individual may terminate a consult agreement. the pharmacist or physician who receives the individual's withdrawal of consent shall provide written notice to the opposite party. a pharmacist or physician who terminates a consult agreement shall provide written notice to the opposite party and to the individual who consented to treatment under the agreement. The termination of a consult agreement shall be recorded by the pharmacist and physician in the records they maintain on the individual being treated.

The authority of a pharmacist to manage an individual's drug therapy under a consult agreement does not permit the pharmacist to manage drug therapy prescribed by any other physician or to manage an individual's drug therapy in a hospital or health care facility at which the pharmacist is not authorized to practice.

(B) The state board of pharmacy, in consultation with the state medical board, shall adopt rules to be followed by pharmacists, and the state medical board, in consultation with the state board of pharmacy, shall adopt rules to be followed by physicians, that establish standards and procedures for entering into a consult agreement and managing an individual's drug therapy under a consult agreement. The boards shall specify in the rules any categories of drugs or types of diseases for which a consult agreement may not be established. Either board may adopt any other rules it considers necessary for the implementation and administration of this section. All rules adopted under this division shall be adopted in accordance with Chapter 119. of the Revised Code.

Sec. 4729.51. (A) No person other than a registered wholesale distributor of dangerous drugs shall possess for sale, sell, distribute, or deliver, at wholesale, dangerous drugs, except as follows:

(1) A pharmacist who is a licensed terminal distributor of dangerous drugs or who is employed by a licensed terminal distributor of dangerous drugs may make occasional sales of dangerous drugs at wholesale;

(2) A licensed terminal distributor of dangerous drugs having more than one establishment or place may transfer or deliver dangerous drugs from one establishment or place for which a license has been issued to the terminal distributor to another establishment or place for which a license has been issued to the terminal distributor if the license issued for each establishment or place is in effect at the time of the transfer or delivery.

(B)(1) No registered wholesale distributor of dangerous drugs shall possess for sale, or sell, at wholesale, dangerous drugs to any person other than the following:

(a) A ~~practitioner~~ licensed health professional authorized to prescribe drugs;

(b) A registered wholesale distributor of dangerous drugs;

(c) A manufacturer of dangerous drugs;

(d) A licensed terminal distributor of dangerous drugs, subject to division (B)(2) of this section;

(e) Carriers or warehousemen for the purpose of carriage or storage;

(f) Terminal or wholesale distributors of dangerous drugs who are not engaged in the sale of dangerous drugs within this state;

~~(g) An optometrist licensed under Chapter 4725. of the Revised Code who is certified to administer topical ocular pharmaceutical agents under that chapter for the purposes authorized by that chapter;~~

~~(h) An individual who holds a current license, certificate, or registration issued under Title 47 of the Revised Code and has been certified to conduct diabetes education by a national certifying body specified in rules adopted by the state board of pharmacy under section 4729.68 of the Revised Code, but only with respect to insulin that will be used for the purpose of diabetes education and only if diabetes education is within the individual's scope of practice under statutes and rules regulating the individual's profession.~~

(2) No registered wholesale distributor of dangerous drugs shall possess dangerous drugs for sale at wholesale, or sell such drugs at wholesale, to a licensed terminal distributor of dangerous drugs, except to:

(a) A terminal distributor who has a category I license, only dangerous drugs described in category I, as defined in division (A)(1) of section 4729.54 of the Revised Code;

(b) A terminal distributor who has a category II license, only dangerous drugs described in category I and category II, as defined in divisions (A)(1) and (2) of section 4729.54 of the Revised Code;

(c) A terminal distributor who has a category III license, dangerous drugs described in category I, category II, and category III, as defined in divisions (A)(1), (2), and (3) of section 4729.54 of the Revised Code;

(d) A terminal distributor who has a limited category I, II, or III license, only the dangerous drugs specified in the certificate furnished by the terminal distributor in accordance with section 4729.60 of the Revised Code.

(C)(1) Except as provided in division (C)(4) of this section, no person shall sell, at retail, dangerous drugs.

(2) Except as provided in division (C)(4) of this section, no person shall possess for sale, at retail, dangerous drugs.

(3) Except as provided in division (C)(4) of this section, no person shall possess dangerous drugs.

(4) Divisions (C)(1), (2), and (3) of this section do not apply to a registered wholesale distributor of dangerous drugs, a licensed terminal distributor of dangerous drugs, a practitioner, or a person who possesses, or possesses for sale or sells, at retail, a dangerous drug in accordance with Chapters 3719., 4715., 4725., 4729., 4731., and 4741. or section 4723.56 of the Revised Code.

Divisions (C)(1), (2), and (3) of this section do not apply to an individual who holds a current license, certificate, or registration issued

under Title 47 of the Revised Code and has been certified to conduct diabetes education by a national certifying body specified in rules adopted by the state board of pharmacy under section 4729.68 of the Revised Code, but only to the extent that the individual possesses insulin or personally supplies insulin solely for the purpose of diabetes education and only if diabetes education is within the individual's scope of practice under statutes and rules regulating the individual's profession.

(D) No licensed terminal distributor of dangerous drugs shall purchase for the purpose of resale dangerous drugs from any person other than a registered wholesale distributor of dangerous drugs, except as follows:

(1) A licensed terminal distributor of dangerous drugs may make occasional purchases of dangerous drugs for resale from a pharmacist who is a licensed terminal distributor of dangerous drugs or who is employed by a licensed terminal distributor of dangerous drugs;

(2) A licensed terminal distributor of dangerous drugs having more than one establishment or place may transfer or receive dangerous drugs from one establishment or place for which a license has been issued to the terminal distributor to another establishment or place for which a license has been issued to the terminal distributor if the license issued for each establishment or place is in effect at the time of the transfer or receipt.

(E) No licensed terminal distributor of dangerous drugs shall engage in the sale or other distribution of dangerous drugs at retail or maintain possession, custody, or control of dangerous drugs for any purpose other than the distributor's personal use or consumption, at any establishment or place other than that or those described in the license issued by the board of pharmacy to such terminal distributor.

~~(F) Nothing in this section shall do either of the following:~~

~~(1) Require a person engaged solely in the sale or other distribution, at wholesale, of drugs and supplies for veterinary use only, to be registered under sections 4729.50 to 4729.66 of the Revised Code;~~

~~(2) Prohibit the purchase or sale, at wholesale, of drugs and supplies for veterinary use only by a person engaged solely in the distribution of drugs and supplies for veterinary use only.~~

~~(G) Nothing in this section shall be construed to interfere with the performance of official duties by any law enforcement official authorized by municipal, county, state, or federal law to collect samples of any drug, regardless of its nature or in whose possession it may be.~~

Sec. 4729.52. (A) A person desiring to be registered as a wholesale distributor of dangerous drugs shall file with the executive director of the state board of pharmacy a verified application containing such information

as the board requires of the applicant relative to the qualifications ~~for to be registered as~~ a wholesale distributor of dangerous drugs set forth in section 4729.53 of the Revised Code and the rules adopted ~~pursuant thereto under that section~~. The board shall register as a wholesale distributor of dangerous drugs each ~~person who has submitted an application therefor and~~ applicant who has paid the required registration fee, if the board determines that the applicant meets the qualifications ~~for to be registered as~~ a wholesale distributor of dangerous drugs set forth in section 4729.53 of the Revised Code and the rules adopted ~~pursuant thereto under that section~~.

(B) The board may register and issue to a ~~nonresident~~ person who does not reside in this state a registration certificate as a wholesale distributor of dangerous drugs if the person possesses a current and valid wholesale distributor of dangerous drugs registration certificate or license issued by another state that has qualifications for licensure or registration comparable to the registration requirements in this state and pays the required registration fee.

(C) All registration certificates issued pursuant to this section are effective for a period of twelve months from the first day of July of each year. A registration certificate shall be renewed annually by the board for a like period, pursuant to this section and the standard renewal procedure of Chapter 4745. of the Revised Code. A person desiring to renew a registration certificate shall submit an application for renewal and pay the required renewal fee before the first day of July each year.

(D) Each registration certificate and its application shall describe not more than one establishment or place where the registrant or applicant may engage in the sale of dangerous drugs at wholesale. No registration certificate shall authorize or permit the wholesale distributor of dangerous drugs named therein to engage in the sale of drugs at wholesale or to maintain possession, custody, or control of dangerous drugs for any purpose other than for the registrant's own use and consumption at any establishment or place other than that described in the certificate.

(E)(1) The registration fee is one hundred fifty dollars and shall accompany each application for registration. The registration renewal fee is one hundred fifty dollars and shall accompany each renewal application.

~~(2)~~ A registration certificate that has not been renewed in any year by the first day of August may be reinstated upon payment of the renewal fee and a penalty ~~fee~~ of fifty-five dollars.

(2) Renewal fees and penalties assessed under ~~divisions~~ division (E)(1) ~~and (2)~~ of this section shall not be returned if the applicant fails to qualify for renewal.

(F) The registration of any person as a wholesale distributor of dangerous drugs subjects the person and the person's agents and employees to the jurisdiction of the board and to the laws of this state for the purpose of the enforcement of this chapter and the rules of the board. However, the filing of an application for registration as a wholesale distributor of dangerous drugs by, or on behalf of, any person or the registration of any person as a wholesale distributor of dangerous drugs shall not, of itself, constitute evidence that the person is doing business within this state.

Sec. 4729.54. (A) As used in this section:

(1) "Category I" means single-dose injections of intravenous fluids, including saline, Ringer's lactate, five per cent dextrose and distilled water, and other intravenous fluids or parenteral solutions included in this category by rule of the board of pharmacy, that have a volume of one hundred milliliters or more and that contain no added substances, or single-dose injections of epinephrine to be administered pursuant to sections 4765.38 and 4765.39 of the Revised Code.

(2) "Category II" means any dangerous drug that is not included in category I or III.

(3) "Category III" means any controlled substance that is contained in schedule I, II, III, IV, or V.

(4) "Emergency medical service organization" has the same meaning as in section 4765.01 of the Revised Code.

(5) "Person" includes an emergency medical service organization.

(6) "Schedule I, schedule II, schedule III, schedule IV, and schedule V" mean controlled substance schedules I, II, III, IV, and V, respectively, as established pursuant to section 3719.41 of the Revised Code and as amended.

(B) A person who desires to be licensed as a terminal distributor of dangerous drugs shall file with the executive director of the board of pharmacy a verified application that contains the following:

(1) Information that the board requires relative to the qualifications of a terminal distributor of dangerous drugs set forth in section 4729.55 of the Revised Code;

(2) A statement that the person wishes to be licensed as a category I, category II, category III, limited category I, limited category II, or limited category III terminal distributor of dangerous drugs;

(3) If the person wishes to be licensed as a limited category I, limited category II, or limited category III terminal distributor of dangerous drugs, a notarized list of the dangerous drugs that the person wishes to possess, have custody or control of, and distribute, which list shall also specify the

purpose for which those drugs will be used and their source;

(4) If the person is an emergency medical service organization, the information that is specified in division (C)(1) of this section;

(5) Except for an emergency medical service organization, the identity of the one establishment or place at which the person intends to engage in the sale or other distribution of dangerous drugs at retail, and maintain possession, custody, or control of dangerous drugs for purposes other than the person's own use or consumption.

(C)(1) An emergency medical service organization that wishes to be licensed as a terminal distributor of dangerous drugs shall list in its application for licensure the following additional information:

(a) The units under its control that the organization determines will possess dangerous drugs for the purpose of administering emergency medical services in accordance with Chapter 4765. of the Revised Code;

(b) With respect to each such unit, whether the dangerous drugs that the organization determines the unit will possess are in category I, II, or III.

(2) An emergency medical service organization that is licensed as a terminal distributor of dangerous drugs shall file a new application for such licensure if there is any change in the number, or location of, any of its units or any change in the category of the dangerous drugs that any unit will possess.

(3) A unit listed in an application for licensure pursuant to division (C)(1) of this section may obtain the dangerous drugs it is authorized to possess from its emergency medical service organization or, on a replacement basis, from a hospital pharmacy. If units will obtain dangerous drugs from a hospital pharmacy, the organization shall file, and maintain in current form, the following items with the pharmacist who is responsible for the hospital's terminal distributor of dangerous drugs license:

(a) A copy of its standing orders or protocol;

(b) A list of the personnel employed or used by the organization to provide emergency medical services in accordance with Chapter 4765. of the Revised Code, who are authorized to possess the drugs, which list also shall indicate the personnel who are authorized to administer the drugs.

(D) Each emergency medical service organization that applies for a terminal distributor of dangerous drugs license shall submit with its application the following:

(1) A notarized copy of its standing orders or protocol, which orders or protocol shall be signed by a physician and specify the dangerous drugs that its units may carry, expressed in standard dose units;

(2) A list of the personnel employed or used by the organization to

provide emergency medical services in accordance with Chapter 4765. of the Revised Code.

An emergency medical service organization that is licensed as a terminal distributor shall notify the board immediately of any changes in its standing orders or protocol.

(E) There shall be six categories of terminal distributor of dangerous drugs licenses, which categories shall be as follows:

(1) Category I license. A person who obtains this license may possess, have custody or control of, and distribute only the dangerous drugs described in category I.

(2) Limited category I license. A person who obtains this license may possess, have custody or control of, and distribute only the dangerous drugs described in category I that were listed in the application for licensure.

(3) Category II license. A person who obtains this license may possess, have custody or control of, and distribute only the dangerous drugs described in category I and category II.

(4) Limited category II license. A person who obtains this license may possess, have custody or control of, and distribute only the dangerous drugs described in category I or category II that were listed in the application for licensure.

(5) Category III license. A person who obtains this license may possess, have custody or control of, and distribute the dangerous drugs described in category I, category II, and category III.

(6) Limited category III license. A person who obtains this license may possess, have custody or control of, and distribute only the dangerous drugs described in category I, category II, or category III that were listed in the application for licensure.

(F) Except for an application made on behalf of an animal shelter, if an applicant for licensure as a limited category I, II, or III terminal distributor of dangerous drugs intends to administer dangerous drugs to a person or animal, the applicant shall submit, with the application, a notarized copy of its protocol or standing orders, which protocol or orders shall be signed by a ~~practitioner~~ licensed health professional authorized to prescribe drugs, specify the dangerous drugs to be administered, and list personnel who are authorized to administer the dangerous drugs in accordance with federal law or the law of this state. An application made on behalf of an animal shelter shall include a notarized list of the dangerous drugs to be administered to animals and the personnel who are authorized to administer the drugs to animals in accordance with section 4729.532 of the Revised Code. After obtaining a terminal distributor license, a licensee shall notify the board

immediately of any changes in its protocol or standing orders, or in such personnel.

(G) ~~Each~~ (1) Except as provided in division (G)(2) of this section, each applicant for licensure as a terminal distributor of dangerous drugs shall submit, with the application, a license fee determined as follows:

~~(1)~~(a) For a category I or limited category I license, forty-five dollars;

~~(2)~~(b) For a category II or limited category II license, one hundred twelve dollars and fifty cents;

~~(3)~~(c) For a category III or limited category III license, one hundred fifty dollars.

(2) FOR A PROFESSIONAL ASSOCIATION, CORPORATION, PARTNERSHIP, OR LIMITED LIABILITY COMPANY ORGANIZED FOR THE PURPOSE OF PRACTICING VETERINARY MEDICINE, THE FEE SHALL BE FIVE DOLLARS.

Fees assessed under divisions (G)(1) ~~to (3)~~ and (2) of this section shall not be returned if the applicant fails to qualify for registration.

(H)(1) The board shall issue a terminal distributor of dangerous drugs license to each person who submits an application for such licensure in accordance with this section, pays the required license fee, is determined by the board to meet the requirements set forth in section 4729.55 of the Revised Code, and satisfies any other applicable requirements of this section.

(2) The license of a person other than an emergency medical service organization shall describe the one establishment or place at which the licensee may engage in the sale or other distribution of dangerous drugs at retail and maintain possession, custody, or control of dangerous drugs for purposes other than the licensee's own use or consumption. The one establishment or place shall be that which is described in the application for licensure.

No such license shall authorize or permit the terminal distributor of dangerous drugs named in it to engage in the sale or other distribution of dangerous drugs at retail or to maintain possession, custody, or control of dangerous drugs for any purpose other than the distributor's own use or consumption, at any establishment or place other than that described in the license, except that an agent or employee of an animal shelter may possess and use dangerous drugs in the course of business as provided in division (D) of section 4729.532 of the Revised Code.

(3) The license of an emergency medical service organization shall cover and describe all the units of the organization listed in its application for licensure.

(4) The license of every terminal distributor of dangerous drugs shall indicate, on its face, the category of licensure. If the license is a limited category I, II, or III license, it shall specify, and shall authorize the licensee to possess, have custody or control of, and distribute only, the dangerous drugs that were listed in the application for licensure.

(I) All licenses issued pursuant to this section shall be effective for a period of twelve months from the first day of January of each year. A license shall be renewed by the board for a like period, annually, according to the provisions of this section, and the standard renewal procedure of Chapter 4745. of the Revised Code. A person who desires to renew a license shall submit an application for renewal and pay the required fee on or before the thirty-first day of December each year. The fee required for the renewal of a license shall be the same as the fee paid for the license being renewed, and shall accompany the application for renewal.

A license that has not been renewed during December in any year and by the first day of February of the following year may be reinstated only upon payment of the required renewal fee and a penalty fee of fifty-five dollars.

(J)(1) No emergency medical service organization that is licensed as a terminal distributor of dangerous drugs shall fail to comply with division (C)(2) or (3) of this section.

(2) No emergency medical service organization that is licensed as a terminal distributor of dangerous drugs shall fail to comply with division (D) of this section.

(3) No licensed terminal distributor of dangerous drugs shall possess, have custody or control of, or distribute dangerous drugs that the terminal distributor is not entitled to possess, have custody or control of, or distribute by virtue of its category of licensure.

(4) No licensee that is required by division (F) of this section to notify the board of changes in its protocol or standing orders, or in personnel, shall fail to comply with that division.

Sec. 4729.55. ~~(A) As used in this section:~~

~~(1) "Dentist" means a person licensed under Chapter 4715. of the Revised Code to practice dentistry.~~

~~(2) "Optometrist" means a person who is licensed to practice optometry and holds a valid therapeutic pharmaceutical agents certificate issued under Chapter 4725. of the Revised Code.~~

~~(3) "Physician" means a person holding a valid certificate issued under Chapter 4731. of the Revised Code authorizing the person to practice medicine and surgery, osteopathic medicine and surgery, or podiatry.~~

~~(4) "Veterinarian" means a person licensed under Chapter 4741. of the Revised Code to practice veterinary medicine.~~

~~(5) "Advanced practice nurse" means an individual approved under section 4723.56 of the Revised Code to prescribe drugs and therapeutic devices.~~

~~(B)~~ No license shall be issued to an applicant for licensure as a terminal distributor of dangerous drugs unless the applicant has furnished satisfactory proof to the board of pharmacy that:

~~(1)(A)~~ The applicant is equipped as to land, buildings, and equipment to properly carry on the business of a terminal distributor of dangerous drugs within the category of licensure approved by the board.

~~(2)(B)~~ A pharmacist, ~~dentist, optometrist, physician, veterinarian, advanced practice nurse~~ licensed health professional authorized to prescribe drugs, animal shelter licensed with the state board of pharmacy under section 4729.531 of the Revised Code, or a laboratory as defined in ~~division (N) of section 3719.01 of the Revised Code~~ shall will maintain supervision and control over the possession and custody of dangerous drugs that may be acquired by or on behalf of the applicant.

~~(3)(C)~~ Adequate safeguards are assured to prevent the sale or other distribution of dangerous drugs by any person other than a pharmacist; ~~dentist, optometrist, physician, veterinarian, or advanced practice nurse~~ licensed health professional authorized to prescribe drugs.

~~(4)(D)~~ If the applicant, or any agent or employee of the applicant, has been found guilty of violating section 4729.51 of the Revised Code, the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the federal ~~narcotic law, sections 3715.01 to 3715.72~~ drug abuse control laws, Chapter 2925., 3715., 3719., or 4729. of the Revised Code, or any rule of the board, adequate safeguards are assured to prevent the recurrence of the violation.

~~(5)(E)~~ In the case of an applicant who is a food processor or retail seller of food, the applicant ~~shall~~ will maintain supervision and control over the possession and custody of nitrous oxide.

~~(6)(F)~~ In the case of an applicant who is a retail seller of oxygen in original packages labeled as required by the "Federal Food, Drug, and Cosmetic Act," the applicant ~~shall~~ will maintain supervision and control over the possession, custody, and retail sale of the oxygen.

~~(7)(G)~~ If the application is made on behalf of an animal shelter, ~~that~~ at least one of the agents or employees of the animal shelter is certified in compliance with section 4729.532 of the Revised Code.

~~(8)(H)~~ In the case of an applicant who is a retail seller of peritoneal

dialysis solutions in original packages labeled as required by the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, the applicant ~~shall~~ will maintain supervision and control over the possession, custody, and retail sale of the peritoneal dialysis solutions.

Sec. 4729.57. (A) The state board of pharmacy may suspend, revoke, or refuse to renew any license issued to a terminal distributor of dangerous drugs pursuant to section 4729.54 of the Revised Code, or may impose a monetary penalty or forfeiture not to exceed in severity any fine designated under the Revised Code for a similar offense or one thousand dollars if the acts committed have not been classified as an offense by the Revised Code, for any of the following causes:

(1) Making any false material statements in an application for a license as a terminal distributor of dangerous drugs;

(2) Violating any rule of the board;

(3) Violating any provision of this chapter;

(4) Violating any provision of the "Federal Food, Drug, and Cosmetic Act," 52 Stat. 1040 (1938), 21 U.S.C.A. 301, or Chapter 3715. of the Revised Code;

(5) Violating any provision of the federal ~~narcotic law~~ drug abuse control laws or Chapter 2925. or 3719. of the Revised Code;

(6) Falsely or fraudulently promoting to the public a dangerous drug, except that nothing in this division prohibits a terminal distributor of dangerous drugs from furnishing information concerning a dangerous drug to a ~~practitioner~~ health care provider or another licensed terminal distributor;

(7) Ceasing to satisfy the qualifications of a terminal distributor of dangerous drugs set forth in section 4729.55 of the Revised Code;

(8) Except as provided in division (B) of this section:

(a) Waiving the payment of all or any part of a deductible or copayment that an individual, pursuant to a health insurance or health care policy, contract, or plan that covers the services provided by a terminal distributor of dangerous drugs, would otherwise be required to pay for the services if the waiver is used as an enticement to a patient or group of patients to receive pharmacy services from that terminal distributor;

(b) Advertising that the terminal distributor will waive the payment of all or any part of a deductible or copayment that an individual, pursuant to a health insurance or health care policy, contract, or plan that covers the pharmaceutical services, would otherwise be required to pay for the services.

(B) Sanctions shall not be imposed under division (A)(8) of this section against any terminal distributor of dangerous drugs that waives deductibles

and copayments as follows:

(1) In compliance with a health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the board on request.

(2) For professional services rendered to any other person licensed pursuant to this chapter to the extent allowed by this chapter and the rules of the board.

~~(B)~~(C)(1) Upon the suspension or revocation of a license issued to a terminal distributor of dangerous drugs or the refusal by the board to renew such a license, the distributor shall immediately surrender ~~his~~ the license to the board.

(2) The board may place under seal all dangerous drugs that are owned by or in the possession, custody, or control of a terminal distributor at the time ~~his~~ the license is suspended or revoked or at the time the board refuses to renew ~~his~~ the license. Except as otherwise provided in this division, dangerous drugs so sealed shall not be disposed of, until appeal rights under Chapter 119. of the Revised Code have expired or an appeal filed pursuant to that chapter has been determined.

The court involved in an appeal filed pursuant to Chapter 119. of the Revised Code may order the board, during the pendency of the appeal, to sell sealed dangerous drugs that are perishable. The proceeds of such a sale shall be deposited with that court.

Sec. 4729.59. The ~~secretary~~ executive director of the state board of pharmacy shall maintain a register of the names, addresses, and the date of registration of those persons to whom a registration certificate has been issued pursuant to section 4729.52 of the Revised Code and those persons to whom a license has been issued pursuant to section 4729.54 of the Revised Code. ~~Such~~ The register shall be the property of the board and shall be open for public examination and inspection at all reasonable times, as the board may direct.

The board shall publish or make available to registered wholesale distributors and licensed terminal distributors of dangerous drugs, annually, and at such other times and in such manner as the board shall ~~by regulation~~ prescribe, a roster setting forth the names and addresses of those persons who have been registered by the board pursuant to section 4729.52 of the Revised Code and those persons who have been licensed pursuant to section 4729.54 of the Revised Code, those persons whose licenses or registration certificates have been suspended, revoked, or surrendered, and those persons

whose licenses or registration certificates have not been renewed.

A written statement signed and verified by the ~~secretary~~ executive director of the board in which it is stated that after diligent search of the register no record or entry of the issuance of a license or registration certificate to a person is found is admissible in evidence and constitutes presumptive evidence of the fact that ~~such~~ the person is not a licensed terminal distributor or is not a registered wholesale distributor of dangerous drugs.

Sec. 4729.60. (A) Before a registered wholesale distributor of dangerous drugs may sell dangerous drugs at wholesale to any person other than a ~~practitioner~~ licensed health professional authorized to prescribe drugs, a registered wholesale distributor of dangerous drugs, a manufacturer of dangerous drugs, a carrier or a ~~warehouseman~~ warehouse but only for the purpose of carriage or storage, or a terminal distributor of dangerous drugs who is not engaged in the sale of dangerous drugs within this state, such wholesale distributor shall obtain from the purchaser and the purchaser shall furnish to the wholesale distributor a certificate indicating that the purchaser is a licensed terminal distributor of dangerous drugs. The certificate shall be in the form that the state board of pharmacy shall prescribe ~~by regulation~~, and shall set forth the name of the licensee, the number of the license, a description of the place or establishment or each place or establishment for which the license was issued, the category of licensure, and, if the license is a limited category I, II, or III license, the dangerous drugs that the licensee is authorized to possess, have custody or control of, and distribute.

If no certificate is obtained or furnished before ~~such~~ a sale is made, it shall be presumed that ~~such~~ the sale of dangerous drugs by the wholesale distributor is in violation of division (B) of section 4729.51 of the Revised Code and ~~such~~ the purchase of dangerous drugs by the purchaser is in violation of division (C) of section 4729.51 of the Revised Code. If a registered wholesale distributor of dangerous drugs obtains or is furnished ~~such~~ a certificate from a terminal distributor of dangerous drugs and relies on ~~such~~ the certificate in selling dangerous drugs at wholesale to ~~such~~ the terminal distributor of dangerous drugs, ~~such~~ the wholesale distributor of dangerous drugs shall be deemed not to have violated division (B) of section 4729.51 of the Revised Code in making ~~such~~ the sale.

(B) Before a licensed terminal distributor of dangerous drugs may purchase dangerous drugs at wholesale, ~~such~~ the terminal distributor shall obtain from the seller and the seller shall furnish to the terminal distributor the number of the seller's registration certificate to engage in the sale of dangerous drugs at wholesale.

If no registration number is obtained or furnished before ~~such~~ a purchase is made, it shall be presumed that ~~such~~ the purchase of dangerous drugs by the terminal distributor is in violation of division (D) of section 4729.51 of the Revised Code and ~~such~~ the sale of dangerous drugs by the seller is in violation of division (A) of section 4729.51 of the Revised Code. If a licensed terminal distributor of dangerous drugs obtains or is furnished a registration number from a wholesale distributor of dangerous drugs and relies on ~~such~~ the registration number in purchasing dangerous drugs at wholesale from ~~such~~ the wholesale distributor of dangerous drugs, ~~such~~ the terminal distributor shall be deemed not to have violated division (D) of section 4729.51 of the Revised Code in making ~~such~~ the purchase.

Sec. 4729.63. ~~Except as provided in division (B) of section 4729.25 of the Revised Code, the~~ If the state board of pharmacy shall enforce, or cause to be enforced, has information that sections 4729.51 to 4729.62 of the Revised Code. ~~If it has information that such sections have been violated,~~ it shall investigate the matter and upon probable cause appearing file a complaint in an appropriate court for prosecution of the offender. The

~~The~~ attorney general, prosecuting attorney, or city director of law to whom the board reports any violation of sections 4729.51 to 4729.62 of the Revised Code shall cause appropriate proceedings to be instituted in the proper court without delay and to be prosecuted in the manner provided by law.

Sec. 4729.66. ~~The~~ In addition to the rules it adopts for the practice of pharmacy under section 4729.26 Of the Revised Code, the state board of pharmacy may make such adopt rules and regulations, subject to and in accordance with sections 119.01 to 119.13, inclusive, Chapter 119. of the Revised Code, not inconsistent with the law, as may be necessary to carry out the purposes of and to enforce the provisions of this chapter pertaining to the purchase for resale, possession for sale, sale, and other distribution of dangerous drugs as may be necessary to carry out the purposes of and enforce sections 4729.51 to 4729.62, inclusive, of the Revised Code.

Sec. 4729.67. On receipt of a notice pursuant to section 2301.373 of the Revised Code, the state board of pharmacy shall comply with that section with respect to a license, identification card, or certificate of registration issued pursuant to this chapter.

Sec. 4731.052. (A) As used in this section:

(1) "Dangerous drug" has the same meaning as in section ~~4729.02~~ 4729.01 of the Revised Code.

(2) "Intractable pain" means a state of pain that is determined, after reasonable medical efforts have been made to relieve the pain or cure its

cause, to have a cause for which no treatment or cure is possible or for which none has been found.

(3) "Physician" means an individual authorized under this chapter to practice medicine and surgery or osteopathic medicine and surgery.

(B) The state medical board shall adopt rules in accordance with Chapter 119. of the Revised Code that establish standards and procedures to be followed by physicians in the diagnosis and treatment of intractable pain, including standards for managing intractable pain by prescribing, ~~dispensing~~ personally furnishing, or administering dangerous drugs in amounts or combinations that may not be appropriate when treating other medical conditions. In developing the rules, the board shall consult with and permit review by physicians who are experienced in the diagnosis and treatment of intractable pain.

(C) When a physician diagnoses an individual as having intractable pain, the physician may treat the pain by managing it with dangerous drugs in amounts or combinations that may not be appropriate when treating other medical conditions. The physician's diagnosis shall be made after having the individual evaluated by one or more other physicians who specialize in the treatment of the area, system, or organ of the body perceived as the source of the pain. The physician's diagnosis and treatment decisions shall be made according to accepted and prevailing standards for medical care. The physician shall maintain a record of all of the following:

(1) Medical history and physical examination of the individual;

(2) The diagnosis of intractable pain, including signs, symptoms, and causes;

(3) The plan of treatment proposed, the patient's response to treatment, and any modification to the plan of treatment;

(4) The dates on which dangerous drugs were prescribed, ~~dispensed~~ furnished, or administered, the name and address of the individual to or for whom the dangerous drugs were prescribed, dispensed, or administered, and the amounts and dosage forms for the dangerous drugs prescribed, ~~dispensed~~ furnished, or administered;

(5) A copy of the report made by the physician or the physician to whom referral for evaluation was made under this division.

(D) A physician who treats intractable pain by managing it with dangerous drugs is not subject to disciplinary action by the board under section 4731.22 of the Revised Code solely because the physician treated the intractable pain with dangerous drugs. The physician is subject to disciplinary action only if the dangerous drugs are not prescribed, furnished, or administered, ~~or dispensed~~ in accordance with this section and the rules

adopted under it.

Sec. 4731.22. (A) The state medical board, pursuant to an adjudication under Chapter 119. of the Revised Code and by a vote of not fewer than six of its members, may revoke or may refuse to grant a certificate to a person found by the board to have committed fraud in passing the examination or to have committed fraud, misrepresentation, or deception in applying for or securing any license or certificate issued by the board.

(B) The board, pursuant to an adjudication under Chapter 119. of the Revised Code and by a vote of not fewer than six members, shall, to the extent permitted by law, limit, revoke, or suspend a certificate, refuse to register or refuse to reinstate an applicant, or reprimand or place on probation the holder of a certificate for one or more of the following reasons:

(1) Permitting one's name or one's certificate of registration to be used by a person, group, or corporation when the individual concerned is not actually directing the treatment given;

(2) Failure to use reasonable care discrimination in the administration of drugs, or failure to employ acceptable scientific methods in the selection of drugs or other modalities for treatment of disease;

(3) Selling, ~~prescribing~~, giving away, ~~personally furnishing, prescribing,~~ or administering drugs for other than legal and legitimate therapeutic purposes or a plea of guilty to, or a judicial finding of guilt of, a violation of any federal or state law regulating the possession, distribution, or use of any drug;

(4) Willfully betraying a professional confidence. For purposes of this division, "willfully betraying a professional confidence" does not include the making of a report of an employee's use of a drug of abuse, or a report of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code, and nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(5) Soliciting patients or publishing a false, fraudulent, deceptive, or misleading statement.

As used in this division, "false, fraudulent, deceptive, or misleading statement" means a statement that includes a misrepresentation of fact, is likely to mislead or deceive because of a failure to disclose material facts, is intended or is likely to create false or unjustified expectations of favorable

results, or includes representations or implications that in reasonable probability will cause an ordinarily prudent person to misunderstand or be deceived.

(6) A departure from, or the failure to conform to, minimal standards of care of similar practitioners under the same or similar circumstances, whether or not actual injury to a patient is established;

(7) Representing, with the purpose of obtaining compensation or other advantage for self or for any other person, that an incurable disease or injury, or other incurable condition, can be permanently cured;

(8) The obtaining of, or attempting to obtain, money or anything of value by fraudulent misrepresentations in the course of practice;

(9) A plea of guilty to, or a judicial finding of guilt of, a felony;

(10) Commission of an act that constitutes a felony in this state regardless of the jurisdiction in which the act was committed;

(11) A plea of guilty to, or a judicial finding of guilt of, a misdemeanor committed in the course of practice;

(12) Commission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act was committed in the course of practice;

(13) A plea of guilty to, or a judicial finding of guilt of, a misdemeanor involving moral turpitude;

(14) Commission of an act that constitutes a misdemeanor in this state regardless of the jurisdiction in which the act was committed, if the act involves moral turpitude;

(15) Violation of the conditions of limitation placed by the board upon a certificate to practice or violation of the conditions of limitation upon which a limited or temporary registration or certificate to practice is issued;

(16) Failure to pay license renewal fees specified in this chapter;

(17) Engaging in the division of fees for referral of patients, or the receiving of a thing of value in return for a specific referral of a patient to utilize a particular service or business;

(18)(a) Subject to section 4731.226 of the Revised Code, violation of any provision of a code of ethics of the American medical association, the American osteopathic association, the American podiatric medical association, or any other national professional organizations as are determined, by rule, by the state medical board. The state medical board shall obtain and keep on file current copies of the codes of ethics of the various national professional organizations. The practitioner whose certificate is being suspended or revoked shall not be found to have violated any provision of a code of ethics of an organization not appropriate to the

practitioner's profession.

(b) For purposes of this division, a "provision of a code of ethics of a national professional organization" does not include any provision of a code of ethics of a specified national professional organization that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code, and nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(19) Inability to practice according to acceptable and prevailing standards of care by reason of mental illness or physical illness, including, but not limited to, physical deterioration that adversely affects cognitive, motor, or perceptive skills. In enforcing this division, the board, upon a showing of a possible violation, may compel any individual licensed or certified to practice by this chapter or who has applied for licensure or certification pursuant to this chapter to submit to a mental or physical examination, or both, as required by and at the expense of the board. Failure of any individual to submit to a mental or physical examination when directed constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board finds a physician unable to practice because of the reasons set forth in this division, the board shall require the physician to submit to care, counseling, or treatment by physicians approved or designated by the board, as a condition for initial, continued, reinstated, or renewed licensure to practice. An individual licensed by this chapter affected under this division shall be afforded an opportunity to demonstrate to the board that the individual can resume practice in compliance with acceptable and prevailing standards under the provisions of the individual's certificate. For the purpose of this division, any individual licensed or certified to practice by this chapter accepts the privilege of practicing in this state and, by so doing or by the making and filing of a registration or application to practice in this state, shall be deemed to have given consent to submit to a mental or physical examination when directed to do so in writing by the board, and to have waived all objections to the admissibility of testimony or examination reports that constitute a privileged

ommunication.

(20) Except as provided in division (B)(27) of this section and section 4731.225 of the Revised Code, and subject to section 4731.226 of the Revised Code, violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provisions of this chapter or any rule promulgated by the board. This division does not apply to a violation or attempted violation of, assisting in or abetting the violation of, or a conspiracy to violate, any provision of this chapter or any rule promulgated by the board that would preclude the making of a report by a physician of an employee's use of a drug of abuse, or of a condition of an employee other than one involving the use of a drug of abuse, to the employer of the employee as described in division (B) of section 2305.33 of the Revised Code, and nothing in this division affects the immunity from civil liability conferred by that section upon a physician who makes either type of report in accordance with division (B) of that section. As used in this division, "employee," "employer," and "physician" have the same meanings as in section 2305.33 of the Revised Code.

(21) The violation of any abortion rule adopted by the public health council pursuant to section 3701.341 of the Revised Code;

(22) The limitation, revocation, or suspension by another state of a license or certificate to practice issued by the proper licensing authority of that state, the refusal to license, register, or reinstate an applicant by that authority, the imposition of probation by that authority, or the issuance of an order of censure or other reprimand by that authority for any reason, other than nonpayment of fees;

(23) The violation of section 2919.12 of the Revised Code or the performance or inducement of an abortion upon a pregnant woman with actual knowledge that the conditions specified in division (B) of section 2317.56 of the Revised Code have not been satisfied or with a heedless indifference as to whether those conditions have been satisfied, unless an affirmative defense as specified in division (H)(2) of that section would apply in a civil action authorized by division (H)(1) of that section;

(24) The revocation, suspension, restriction, reduction, or termination of clinical privileges by the department of defense, or the veterans administration of the United States, for any act or acts that also would constitute a violation of this chapter;

(25) Termination or suspension from medicare or medicaid programs by the department of health and human services or other responsible agency for any act or acts that also would constitute a violation of division (B)(2), (3), (6), (8), or (19) of this section;

(26) Impairment of ability to practice according to acceptable and prevailing standards of care because of habitual or excessive use or abuse of drugs, alcohol, or other substances that impair ability to practice.

For the purposes of this division, any individual licensed or certified under this chapter accepts the privilege of practicing in this state subject to supervision by the board. By filing a registration or application for licensure or by holding a license or certificate under this chapter, an individual shall be deemed to have given consent to submit to a mental or physical examination when ordered to do so by the board in writing, and to have waived all objections to the admissibility of testimony or examination reports that constitute privileged communications.

If it has reason to believe that any individual licensed or certified under this chapter or any applicant for a license or certification suffers such impairment, the board may compel the individual to submit to a mental or physical examination, or both. The examination shall be at the expense of the board. Any mental or physical examination required under this division shall be undertaken by a treatment provider or physician who is qualified to conduct the examination and who is chosen by the board.

Failure of the individual to submit to a mental or physical examination ordered by the board constitutes an admission of the allegations against the individual unless the failure is due to circumstances beyond the individual's control, and a default and final order may be entered without the taking of testimony or presentation of evidence. If the board determines that the individual's ability to practice is impaired, the board shall suspend the individual's certificate or deny the individual's application and shall require the individual, as a condition for initial, continued, reinstated, or renewed licensure to practice, to submit to treatment.

Before being eligible to apply for reinstatement of a license suspended under this division, the practitioner shall demonstrate to the board that the practitioner can resume practice in compliance with acceptable and prevailing standards of care under the provisions of the practitioner's certificate. The demonstration shall include, but shall not be limited to, the following:

(a) Certification from a treatment provider approved under section 4731.25 of the Revised Code that the practitioner has successfully completed any required inpatient treatment;

(b) Evidence of continuing full compliance with an aftercare contract or consent agreement;

(c) Two written reports indicating that the individual's ability to practice has been assessed and that the individual has been found capable of

practicing according to acceptable and prevailing standards of care. The reports shall be made by individuals or providers approved by the board for making the assessments and shall describe the basis for this determination.

The board may reinstate a license suspended under this division after that demonstration and after the individual has entered into a written consent agreement.

When the impaired practitioner resumes practice after reinstatement of the practitioner's license, the board shall require continued monitoring of the practitioner, which shall include, but not be limited to, compliance with the written consent agreement entered into before reinstatement or with conditions imposed by board order after a hearing, and, upon termination of the consent agreement, submission to the board for at least two years of annual written progress reports made under penalty of perjury stating whether the practitioner has maintained sobriety.

(27) A second or subsequent violation of section 4731.66 or 4731.69 of the Revised Code;

(28) Except as provided in division (J) of this section:

(a) Waiving the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the practitioner's services, otherwise would be required to pay if the waiver is used as an enticement to a patient or group of patients to receive health care services from that provider;

(b) Advertising that the practitioner will waive the payment of all or any part of a deductible or copayment that a patient, pursuant to a health insurance or health care policy, contract, or plan that covers the practitioner's services, otherwise would be required to pay.

(29) Failure to use universal blood and body fluid precautions established by rules adopted under section 4731.051 of the Revised Code;

(30) Failure of a collaborating physician to perform the responsibilities agreed to by the physician in the protocol established between the physician and an advanced practice nurse in accordance with section 4723.56 of the Revised Code;

(31) Failure to provide notice to, and receive acknowledgment of the notice from, a patient when required by section 4731.143 of the Revised Code prior to providing nonemergency professional services, or failure to maintain that notice in the patient's file;

(32) Failure of a physician supervising a physician assistant to maintain supervision in accordance with the requirements of Chapter 4730. of the Revised Code and the rules adopted under that chapter;

(33) Failure of a physician or podiatrist to maintain a standard care

arrangement with a clinical nurse specialist, certified nurse-midwife, or certified nurse practitioner with whom the physician or podiatrist is in collaboration pursuant to section 4731.27 of the Revised Code and practice in accordance with the arrangement;

(34) Failure to comply with the terms of a consult agreement entered into with a pharmacist pursuant to section 4729.39 of the Revised Code.

For purposes of divisions (B)(10), (12), and (14) of this section, the commission of the act may be established by a finding by the board, pursuant to an adjudication under Chapter 119. of the Revised Code, that the applicant or certificate holder committed the act. The board does not have jurisdiction under those divisions if the trial court renders a final judgment in the certificate holder's favor and that judgment is based upon an adjudication on the merits. The board has jurisdiction under those divisions if the trial court issues an order of dismissal upon technical or procedural grounds.

The sealing of conviction records shall have no effect upon a prior board order entered under this section or upon the board's jurisdiction to take action under this section if a notice of an opportunity for a hearing has been issued based upon a conviction, plea of guilty, or judicial finding of guilt prior to the court order.

(C)(1) The board shall investigate evidence that appears to show that any person has violated any provision of this chapter or any rule adopted under it. Any person may report to the board in a signed writing any information that the person may have that appears to show a violation of any provision of this chapter or any rule adopted under it. In the absence of bad faith, any person who reports information of that nature or who testifies before the board in any adjudication hearing conducted under Chapter 119. of the Revised Code shall not be liable in damages in a civil action as a result of the report or testimony.

Each complaint or allegation of a violation received by the board shall be assigned a case number and shall be recorded by the board. Information received by the board pursuant to an investigation shall be confidential and not subject to discovery in any civil action.

Investigations of alleged violations of this chapter or any rule adopted under it shall be supervised by the supervising member elected by the board in accordance with section 4731.02 of the Revised Code and by the secretary as provided in section 4731.39 of the Revised Code. The president may designate another member of the board to supervise the investigation in place of the supervising member. No member of the board who supervises the investigation of a case shall participate in further adjudication of the

case.

For the purpose of investigation of a possible violation of division (B)(3), (8), (9), (11), or (15) of this section, the board may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony.

In investigating possible violations of all remaining divisions of this section and sections of this chapter or any rule adopted under this chapter, the board also may administer oaths, order the taking of depositions, issue subpoenas, and compel the attendance of witnesses and production of books, accounts, papers, records, documents, and testimony. However, in those instances, other than for patient records provided to the board pursuant to the reporting provisions of division (A) of section 4731.224 of the Revised Code, a subpoena for patient record information shall not be issued without consultation with the attorney general's office and approval of the secretary of the board, the supervising member, and a member of the board who holds a certificate issued under this chapter authorizing the practice of medicine and surgery, osteopathic medicine and surgery, or podiatry. Before issuance of a subpoena of that nature, the three board members shall determine whether there is probable cause to believe that the complaint filed alleges a violation of this chapter or any rule adopted under it and that the records sought are relevant to the alleged violation and material to the investigation. Those records must cover a reasonable period of time surrounding the alleged violation. Upon failure to comply with any subpoena issued by the board and after reasonable notice to the person being subpoenaed, the board may move for an order compelling the production of persons or records pursuant to the Rules of Civil Procedure. Each officer who serves a subpoena of that nature shall receive the same fees as a sheriff, and each witness who appears, in obedience to a subpoena, before the board, shall receive the fees and mileage provided for witnesses in civil cases in the courts of common pleas.

All hearings and investigations of the board shall be considered civil actions for the purposes of section 2305.251 of the Revised Code.

The board shall conduct all investigations and proceedings in a manner that protects patient confidentiality. The board shall not make public names or other identifying information about patients unless proper consent is given or a waiver of the patient privilege exists under division (B) of section 2317.02 of the Revised Code, except that no consent or waiver of that nature is required if the board possesses reliable and substantial evidence that no bona fide physician-patient relationship exists.

(2) In the absence of fraud or bad faith, neither the board, nor any current or former member, agent, representative, or employee of the board, nor any provider of educational and assessment services selected by the board for the quality intervention program shall be held liable in damages to any person as the result of any act, omission, proceeding, conduct, or decision related to official duties undertaken or performed pursuant to this chapter. If a current or former member, agent, representative, or employee of the board or a provider of educational and assessment services selected by the board for the quality intervention program requests the state to defend against any claim or action arising out of any act, omission, proceeding, conduct, or decision related to the person's official duties, if the request is made in writing at a reasonable time before trial, and if the person requesting defense cooperates in good faith in the defense of the claim or action, the state shall provide and pay for the defense and shall pay any resulting judgment, compromise, or settlement. At no time shall the state pay that part of a claim or judgment that is for punitive or exemplary damages.

(3) On a quarterly basis, the board shall prepare a report that documents the disposition of all cases during the preceding three months. The report shall contain the following information for each case with which the board has completed its activities:

- (a) The case number assigned to the complaint or alleged violation pursuant to division (C)(1) of this section;
- (b) The type of license or certificate to practice, if any, held by the individual against whom the complaint is directed;
- (c) A description of the allegations contained in the complaint;
- (d) The disposition of the case.

The report shall state how many cases are still pending and shall be prepared in a manner that protects the identity of each person involved in each case. The report shall be a public record under section 149.43 of the Revised Code.

(D) If the secretary and supervising member determine that there is clear and convincing evidence that a certificate holder has violated division (B) of this section and that the certificate holder's continued practice presents a danger of immediate and serious harm to the public, they may recommend that the board suspend the certificate holder's certificate without a prior hearing. Written allegations shall be prepared for consideration by the board members.

The board, upon review of those allegations and by a vote of not fewer than six of its members, excluding the secretary and supervising member,

may suspend a certificate without a prior hearing. A telephone conference call may be utilized for reviewing the allegations and taking the vote.

The board shall issue a written order of suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. The order shall not be subject to suspension by the court during pendency of any appeal filed under section 119.12 of the Revised Code. If the certificate holder requests an adjudicatory hearing by the board, the date set for that hearing shall be within fifteen days, but not earlier than seven days, after the certificate holder has requested a hearing, unless otherwise agreed to by both the board and the certificate holder.

Any summary suspension imposed under this division shall remain in effect, unless reversed on appeal, until a final adjudicative order issued by the board pursuant to this section and Chapter 119. of the Revised Code becomes effective. The board shall issue its final adjudicative order within sixty days after completion of its hearing. A failure to issue the order within sixty days shall result in dissolution of the summary suspension order but shall not invalidate any subsequent, final adjudicative order.

(E) If the board takes action under division (B)(9), (11), or (13) of this section and the conviction, judicial finding of guilt, or guilty plea is overturned on appeal, upon exhaustion of the criminal appeal, a petition for reconsideration of the order may be filed with the board along with appropriate court documents. Upon receipt of a petition of that nature and supporting court documents, the board shall reinstate the petitioner's certificate. The board may then hold an adjudication to determine whether the applicant or certificate holder committed the act in question. Notice of an opportunity for a hearing shall be given in accordance with Chapter 119. of the Revised Code. If the board finds, pursuant to an adjudication held under this division, that the applicant or certificate holder committed the act or if no hearing is requested, the board may order any of the sanctions identified under division (B) of this section. The board does not have jurisdiction under division (B)(10), (12), or (14) of this section if the trial court renders a final judgment in the certificate holder's favor and that judgment is based upon an adjudication on the merits. The board has jurisdiction under those divisions if the trial court issues an order of dismissal upon technical or procedural grounds.

(F) The certificate or license issued to an individual under this chapter and the individual's practice in this state are automatically suspended as of the date the individual pleads guilty to, is found by a judge or jury to be guilty of, or is subject to a judicial finding of eligibility for treatment in lieu of conviction for either of the following:

(1) In this state, aggravated murder, murder, voluntary manslaughter, felonious assault, kidnapping, rape, sexual battery, gross sexual imposition, aggravated arson, aggravated robbery, or aggravated burglary;

(2) In another jurisdiction, any criminal offense substantially equivalent to those specified in division (F)(1) of this section.

Continued practice after suspension of the individual's certificate or license shall be considered practicing without a certificate or license. The board shall notify the individual subject to the suspension by certified mail or in person in accordance with section 119.07 of the Revised Code. If an individual whose certificate or license is suspended under this division fails to make a timely request for an adjudicatory hearing, the board shall enter a final order revoking the certificate or license.

(G) If the board is required by Chapter 119. of the Revised Code to give notice of an opportunity for a hearing and if the applicant or certificate holder does not timely request a hearing in accordance with section 119.07 of the Revised Code, the board is not required to hold a hearing, but may adopt, by a vote of not fewer than six of its members, a final order that contains the board's findings. In that final order, the board may order any of the sanctions identified under division (B) of this section.

(H) Any action taken by the board under division (B) of this section resulting in a suspension from practice shall be accompanied by a written statement of the conditions under which the certificate holder may be reinstated to practice. The board shall adopt rules governing conditions to be imposed for reinstatement. Reinstatement of a certificate suspended pursuant to division (B) of this section requires an affirmative vote of not fewer than six members of the board.

(I) Notwithstanding any other provision of the Revised Code, no surrender of a license or certificate issued under this chapter shall be effective unless or until accepted by the board. Reinstatement of a certificate surrendered to the board requires an affirmative vote of not fewer than six members of the board.

Notwithstanding any other provision of the Revised Code, no application for a license or certificate made under the provisions of this chapter may be withdrawn without approval of the board.

(J) Sanctions shall not be imposed under division (B)(28) of this section against any person who waives deductibles and copayments as follows:

(1) In compliance with the health benefit plan that expressly allows such a practice. Waiver of the deductibles or copayments shall be made only with the full knowledge and consent of the plan purchaser, payer, and third-party administrator. Documentation of the consent shall be made available to the

board upon request.

(2) For professional services rendered to any other person authorized to practice pursuant to this chapter, to the extent allowed by this chapter and rules adopted by the board.

(K) Under the board's investigative duties described in this section and subject to division (C) of this section, the board shall develop and implement a quality intervention program designed to improve physicians' clinical and communication skills through remedial education. In developing and implementing the quality intervention program, the board may do all of the following:

(1) Offer in appropriate cases as determined by the board an educational and assessment program to physicians pursuant to an investigation the board conducts under this section;

(2) Select providers of educational and assessment services for physicians, including a quality intervention program panel of case reviewers;

(3) Refer physicians to educational and assessment service providers and approve individual educational programs recommended by those providers. The board shall monitor the progress of each physician undertaking an educational program of that nature.

(4) Determine successful completion of an educational program undertaken by a referred physician and require further monitoring of a physician or other action that the board determines to be appropriate;

(5) Adopt rules in accordance with Chapter 119. of the Revised Code to further implement the quality intervention program.

A physician who participates in an individual educational program pursuant to this division shall pay the financial obligations arising from that educational program.

Sec. 4741.22. The state veterinary medical licensing board may refuse to issue or renew a license, registration, or temporary permit to or of any applicant who, and may issue a reprimand to, suspend or revoke the license, registration, or the temporary permit of, or impose a civil penalty pursuant to this section upon any person licensed to practice veterinary medicine or any person registered as a registered veterinary technician who:

(A) In the conduct of the person's practice does not conform to the rules of the board governing proper, humane, sanitary, and hygienic methods to be used in the care and treatment of animals;

(B) Uses fraud, misrepresentation, or deception in completing the examination conducted by the board;

(C) Is found to be physically or psychologically addicted to alcohol or

an illegal or controlled substance, as defined in ~~division (D)~~ of section 3719.01 of the Revised Code, to such a degree as to render the person unfit to practice veterinary medicine;

(D) Directly or indirectly employs or lends the person's services to a solicitor for the purpose of obtaining patients;

(E) Obtains a fee on the assurance that an incurable disease can be cured;

(F) Advertises in a manner that violates section 4741.21 of the Revised Code;

(G) Has professional association with or lends the person's name to any unlicensed person, association, or organization for the purpose of obtaining patients;

(H) Divides fees or charges or has any arrangement to share fees or charges with any other person, except on the basis of services performed;

(I) Sells any biologic containing living, dead, or sensitized organisms or products of those organisms, except in a manner that the board by rule has prescribed;

(J) Is convicted of any felony or crime involving moral turpitude;

(K) Is convicted of any violation of section 959.13 of the Revised Code;

(L) Is convicted of a felony drug abuse offense, as defined in section 2925.01 of the Revised Code;

(M) Swears falsely in any affidavit required to be made by ~~him~~ the person in the course of ~~his~~ the practice of veterinary medicine;

(N) Fails to report promptly to the proper official any known reportable disease;

(O) Fails to report promptly vaccinations or the results of tests when required to do so by law or rule;

(P) Has been adjudicated incompetent for the purpose of holding the license or permit by a court, as provided in section 5122.301 of the Revised Code, and has not been restored to legal capacity for that purpose;

(Q) Permits a person who is not a licensed veterinarian, a veterinary student extern, or a registered veterinary technician to engage in work or perform duties in violation of this chapter;

(R) Is guilty of gross incompetence;

(S) Has had a license to practice veterinary medicine or a license, registration, or certificate to engage in activities as a registered veterinary technician revoked, suspended, or acted against by disciplinary action by an agency similar to this board of another state, territory, or country or the District of Columbia;

(T) Is or has practiced with a revoked, suspended, inactive, expired, or

terminated license or registration;

(U) Represents self as a specialist unless certified as a specialist by the board;

(V) In the person's capacity as a veterinarian or registered veterinary technician makes or files a report, health certificate, vaccination certificate, or other document that the person knows is false or negligently or intentionally fails to file a report or record required by any applicable state or federal law;

(W) Fails to use reasonable care in the administration of drugs, as defined in ~~division (C) of section 4729.02~~ 4729.01 of the Revised Code, or acceptable scientific methods in the selection of those drugs or other modalities for treatment of a disease or in conduct of surgery;

(X) Makes available a dangerous drug, as defined in ~~division (D) of section 4729.02~~ 4729.01 of the Revised Code, to any person other than for the specific treatment of an animal patient;

(Y) Refuses to permit a board investigator or the board's designee to inspect the person's business premises during regular business hours;

(Z) Violates any order of the board or fails to comply with a subpoena of the board;

(AA) Fails to maintain medical records as required by rule of the board.

Before the board may revoke, deny, refuse to renew, or suspend a license, registration, or temporary permit or otherwise discipline the holder of a license, registration, or temporary permit, the executive secretary shall file written charges with the board. The board shall conduct a hearing on the charges as provided in Chapter 119. of the Revised Code.

If the board, after a hearing conducted pursuant to Chapter 119. of the Revised Code, revokes, refuses to renew, or suspends a license, registration, or temporary permit or otherwise disciplines the holder of a license, registration, or temporary permit for a violation of this section, section 4741.23 or 4741.28, division (C) or (D) of section 4741.19, or division (B), (C), or (D) of section 4741.21 of the Revised Code, the board may impose a civil penalty upon the holder of the license, permit, or registration of not less than fifty dollars or more than two hundred fifty dollars for a first offense and not less than two hundred fifty dollars or more than one thousand dollars for each subsequent offense. In addition to the civil penalty and any other penalties imposed pursuant to this chapter, the board may assess any holder of a license, permit, or registration the costs of the hearing conducted under this section if the board determines that the holder has violated any provision for which the board may impose a civil penalty under this section.

Sec. 5123.193. (A) As used in this section:

(1) "Health care professional" ~~means any of the following:~~

~~(a) A dentist who holds a valid license issued under Chapter 4715. of the Revised Code;~~

~~(b) A registered nurse or licensed practical nurse who holds a valid license issued under Chapter 4723. of the Revised Code;~~

~~(c) An advanced practice nurse approved pursuant to section 4723.56 of the Revised Code;~~

~~(d) An optometrist who holds a valid license issued under Chapter 4725. of the Revised Code;~~

~~(e) A physician who holds a valid certificate issued under Chapter 4731. of the Revised Code authorizing the practice of medicine and surgery, osteopathic medicine and surgery, or podiatry;~~

~~(f) A practitioner of a limited branch of medicine who holds a valid certificate issued under Chapter 4731. of the Revised Code;~~

~~(g) A respiratory care professional who holds a valid license issued under Chapter 4761. has the same meaning as in section 5126.35 of the Revised Code.~~

(2) "ICF/MR" means an intermediate care facility for the mentally retarded.

(3) "ICF/MR worker" means a person who is employed by an ICF/MR, provides services pursuant to a contract with an ICF/MR, or provides services as a volunteer in an ICF/MR, except that "ICF/MR worker" does not include a health care professional acting within the scope of a professional license or certificate.

(B)(1) Except as provided in division (B)(2) of this section, this section applies to each ICF/MR with fifteen or fewer resident beds that is licensed as a residential facility by the department of mental retardation and developmental disabilities under section 5123.19 of the Revised Code and certified by the director of health as being in compliance with applicable standards for such facilities for purposes of the medical assistance program operated under Chapter 5111. of the Revised Code. This section also applies to periods during which such a facility's residents are being transported in a vehicle operated by the facility or by a person or government entity under contract with the facility and periods during which residents are participating in a field trip sponsored by the facility.

This section does not apply to an ICF/MR with more than fifteen resident beds or other types of residential facilities licensed by the department of mental retardation and developmental disabilities under section 5123.19 of the Revised Code.

(2) This section does not apply to an ICF/MR operated by a county

board of mental retardation and developmental disabilities. An ICF/MR operated by a county board with fewer than seventeen resident beds is subject to the policy adopted by the board under section 5126.351 of the Revised Code.

(C)(1) Each ICF/MR subject to this section shall adopt a written policy on whether it will permit ICF/MR workers to give oral or apply topical medications to residents of the ICF/MR. The facility shall adopt a policy that is consistent with section 4723.61 of the Revised Code and the rules adopted by the board of nursing under that section. Each policy adopted shall specify one of the following:

(a) Except in an emergency, ICF/MR workers shall neither give oral nor apply topical medications to a resident of the facility;

(b) An ICF/MR worker specified by the facility may be permitted to give oral or apply topical medications to residents if the task is delegated by a nurse and the worker acts in accordance with this section and the rules adopted under section 4723.61 of the Revised Code.

(2) The policy does not apply to any employee or volunteer who is a health care professional, as long as the professional is acting within the scope of ~~his~~ the professional's profession. The policy applies to oral and topical medications that are drugs, as described in section ~~4729.02~~ 4729.01 of the Revised Code and have been prescribed by a health care professional authorized by law to prescribe drugs. For purposes of the policy, oral medications include those that can be ingested through either the mouth or a stable gastric tube.

(D)(1) An ICF/MR that adopts a policy under which its ICF/MR workers may be permitted to give oral or apply topical medications shall employ or contract with a registered nurse to implement the policy.

(2) The facility shall specify the ICF/MR workers who may be permitted to give or apply medications. Specification may be made by naming individual workers or by designating groups of workers according to their position, training, or other qualifications. The facility may permit a worker to give or apply medications only if all of the following apply:

(a) The worker has successfully completed the training requirements specified in division (E) of this section;

(b) Authority to give oral or apply topical medications for a particular resident has been delegated to the worker by a nurse in accordance with the rules adopted under section 4723.61 of the Revised Code;

(c) The facility determines there is no statement on the state nurse aide registry created under section 3721.32 of the Revised Code indicating that worker has been the subject of a finding of abuse or neglect of a long-term

care facility resident or the misappropriation of such a resident's property;

(d) The facility determines the worker has not been convicted of or pleaded guilty to any felony that is related to drugs or the abuse of an individual. A worker's criminal background may be determined by requesting information from the bureau of criminal identification and investigation pursuant to division (E) of section 109.57 of the Revised Code. If a worker is convicted of or pleads guilty to a felony after ~~his~~ the criminal background has been determined, the worker shall immediately notify the ICF/MR.

(3) An ICF/MR worker may give oral or apply topical medications to residents only if all of the following apply:

(a) The worker has successfully completed the training requirements specified in division (E) of this section;

(b) The authority to give oral or apply topical medications for a particular resident has been delegated to the worker by a nurse in accordance with the rules adopted under section 4723.61 of the Revised Code;

(c) The medication to be given or applied is received by the worker in the container in which it was dispensed by a pharmacist or the prescribing health care professional;

(d) The worker complies with all applicable requirements established under this section and the rules adopted under section 4723.61 of the Revised Code.

(4) A registered nurse or licensed practical nurse may delegate to an ICF/MR worker specified by the facility authority to give oral or apply topical medications, except that a licensed practical nurse may delegate the authority only if the nurse has successfully completed a course in medication administration approved by the board of nursing and is acting at the direction of a registered nurse. Delegation may occur only after the nurse delegating the authority or another nurse authorized to delegate the authority has completed an assessment of the conditions at the facility that pertain to the delegation. Delegation may occur only if the assessment indicates that the requirements established by this section and the rules adopted under section 4723.61 of the Revised Code have been met.

(a) The assessments shall include an assessment of all of the following:

(i) The residents who need medication and the types of nursing care they require as it relates to their need for medication;

(ii) The amount and nature of any assessments of residents performed by other health care professionals;

(iii) The training and skills of the ICF/MR workers who will receive the

delegated authority to give oral or apply topical medications.

(b) With regard to the assessment of a resident, the following apply:

(i) A nurse shall repeat the assessment if there is a change in the resident's health status;

(ii) A nurse is not required to repeat those parts of the assessment that have been completed by the facility to comply with federal regulations that require comprehensive functional assessments or nursing health status reviews, if the facility makes the information from those assessments available to the nurse and the nurse determines that the information is current, valid, and accurate.

(5)(a) A nurse may delegate to the ICF/MR workers specified by the facility authority to give oral or apply topical medications only if all of the following information is available to the nurse:

(i) The name of the resident to receive the medication;

(ii) The name of the medication and the dosage to be given or applied;

(iii) The time or intervals at which the medication is to be given or applied;

(iv) The date the medication is to begin and cease;

(v) Any special instructions for handling, giving, or applying the medication, including instructions for maintaining sterile conditions and appropriate storage;

(vi) Indication of any severe adverse reactions to the medication that should be reported to the health care professional who prescribed the medication and any other procedures that should be followed in an emergency;

(vii) One or more telephone numbers at which the health care professional who prescribed the medication can be reached in an emergency and the telephone number of another health care professional who should be contacted if the prescribing professional cannot be located.

(b) The information must be received from one or more health care professionals acting within the scope of their professions, unless the information is provided by the ICF/MR from records it maintains to comply with federal regulations regarding standard drug regimen reviews and the nurse determines that the information from the facility is current, valid, and accurate.

(6) An ICF/MR worker to whom a nurse has delegated authority to give oral or apply topical medications shall perform those tasks only pursuant to the direction and supervision of a nurse who is authorized to delegate the authority. The direction and supervision may be provided on-site or, pursuant to some means of telecommunication, off-site. The nurse shall

direct and supervise the ICF/MR worker in accordance with standards established by the board of nursing in rules adopted under section 4723.61 of the Revised Code.

(E)(1) Except as provided in division (E)(4) of this section, to be eligible to give oral or apply topical medications pursuant to division (D) of this section, an ICF/MR worker must successfully complete a medication course for ICF/MR workers that has been approved as meeting the standards established for such courses by the board of nursing in rules adopted under section 4723.61 of the Revised Code. To be eligible to take the medication course, the worker must meet the eligibility standards established in rules adopted under section 4723.61 of the Revised Code.

The medication course for ICF/MR workers shall consist of the following units of instruction:

(a) A core module consisting of at least ten hours of instruction that covers general information about medication administration, except that the course instructor may waive any portion of the module if the worker provides documentation that ~~he~~ the worker has successfully completed training in the portion that would be waived and the instructor determines that the worker's knowledge in that area is current and adequate;

(b) Three practical modules that correlate with the medications the worker will be giving or applying, each consisting of at least five hours of instruction. A separate module shall be completed in each of the following areas: oral medication; topical medication; and eye, ear, and nose drops and ointments.

(2) Successful completion of the medication course for ICF/MR workers may be achieved only by doing both of the following:

(a) Receiving a score of at least eighty per cent on the final written examination of the core module;

(b) Completing five successful demonstrations of giving or applying medications in each of the three practical modules. To be considered successful, each demonstration must consist of performing the whole process of giving or applying a medication, including all hand washing and record keeping requirements. The demonstrations shall be supervised by a registered nurse or a licensed practical nurse who has successfully completed a course in medication administration approved by the board of nursing and is acting at the direction of a registered nurse.

(3) To remain eligible to give oral and apply topical medications, an ICF/MR worker shall, beginning one year after the successful completion of initial training, annually complete at least four contact hours of training related to medication that meets the standards established by the board of

nursing in rules adopted under section 4723.61 of the Revised Code. The training shall be arranged by a nurse and may occur in the ICF/MR.

(4) An ICF/MR worker who, on or before the effective date of this section, successfully completed the training program described in the "program manual for implementation of the medication administration by unlicensed personnel in ICF/MR group homes of 15 beds or less," as developed by the departments of health and mental retardation and developmental disabilities, is not required to complete the medication course for ICF/MR workers as a condition of being eligible to give oral or apply topical medications pursuant to division (D) of this section. Such a worker is subject to all other requirements of this section, including the annual completion of at least four contact hours of training related to medication. The annual training requirement begins for such a worker one year after the effective date of this section.

(F) An ICF/MR worker who is authorized under division (D) of this section to give or apply medication is not liable for any injury caused by the medication if both of the following apply:

- (1) The worker gave or applied the medication in accordance with the methods that were taught in training completed pursuant to this section;
- (2) The worker did not act in a manner that constitutes wanton or reckless misconduct.

(G) Any individual or entity, including the board of nursing, may file a complaint with the department of mental retardation and developmental disabilities regarding the performance by or qualifications of a person who gives oral or applies topical medications pursuant to this section.

(H)(1) The department of mental retardation and developmental disabilities shall adopt rules establishing the following:

- (a) Procedures the department will follow to correct violations of this section;
- (b) A process for accepting and acting on complaints made by the board of nursing or any other person or entity regarding the performance or qualifications of an ICF/MR worker to give oral or apply topical medications.

(2) The department shall adopt initial rules not later than ninety days after the effective date of this section. The rules shall be adopted in accordance with Chapter 119. of the Revised Code and shall be consistent with any applicable requirements established in rules adopted by the board of nursing under section 4723.61 of the Revised Code.

(I) This section does not require an ICF/MR worker to give oral or apply topical medications unless such a requirement is established by the facility's

policy adopted under division (B) of this section.

Sec. 5126.35. As used in this section and in sections 5126.351 to 5126.356 of the Revised Code:

(A) "County board client" means a person enrolled in a program offered by a county board of mental retardation and developmental disabilities or receiving services from a county board.

(B) "County board worker" means a person who is employed by a county board of mental retardation and developmental disabilities or provides services to county board clients either as a volunteer or pursuant to a contract with the board, except that "county board worker" does not include a health care professional acting within the scope of his professional license or certificate.

(C) "Delegated nursing task" means a task that is within the scope of practice of a nurse as determined pursuant to Chapter 4723. of the Revised Code and is delegated by a nurse to a county board worker pursuant to a policy adopted by a county board under section 5126.351 of the Revised Code.

(D) "Health care professional" means any of the following:

(1) A dentist who holds a valid license issued under Chapter 4715. of the Revised Code;

(2) A registered or licensed practical nurse who holds a valid license issued under Chapter 4723. of the Revised Code;

(3) An optometrist who holds a valid license issued under Chapter 4725. of the Revised Code;

(4) A pharmacist who holds a valid license issued under Chapter 4729. of the Revised Code;

(5) A doctor of medicine or osteopathic medicine, podiatrist, or a practitioner of a limited branch of medicine who holds a valid certificate issued under Chapter 4731. of the Revised Code;

(6) A physician's assistant for whom a physician holds a valid certificate of registration issued under section 4730.04 of the Revised Code;

(7) An occupational therapist or occupational therapy assistant or a physical therapist or physical therapy assistant who holds a valid license issued under Chapter 4755. of the Revised Code;

(8) A respiratory care professional who holds a valid license issued under Chapter 4761. of the Revised Code.

(E) "Nurse" means a registered nurse or licensed practical nurse who holds a valid license issued under Chapter 4723. of the Revised Code.

(F) "Prescribed medication" means a drug described in section ~~4729.02~~ 4729.01 of the Revised Code that is to be taken orally or applied topically

pursuant to the instructions of a health care professional who is authorized by law to prescribe drugs.

Sec. 5739.02. For the purpose of providing revenue with which to meet the needs of the state, for the use of the general revenue fund of the state, for the purpose of securing a thorough and efficient system of common schools throughout the state, for the purpose of affording revenues, in addition to those from general property taxes, permitted under constitutional limitations, and from other sources, for the support of local governmental functions, and for the purpose of reimbursing the state for the expense of administering this chapter, an excise tax is hereby levied on each retail sale made in this state.

(A) The tax shall be collected pursuant to the schedules in section 5739.025 of the Revised Code.

The tax applies and is collectible when the sale is made, regardless of the time when the price is paid or delivered.

In the case of a sale, the price of which consists in whole or in part of rentals for the use of the thing transferred, the tax, as regards such rentals, shall be measured by the installments thereof.

In the case of a sale of a service defined under division (MM) or (NN) of section 5739.01 of the Revised Code, the price of which consists in whole or in part of a membership for the receipt of the benefit of the service, the tax applicable to the sale shall be measured by the installments thereof.

(B) The tax does not apply to the following:

(1) Sales to the state or any of its political subdivisions, or to any other state or its political subdivisions if the laws of that state exempt from taxation sales made to this state and its political subdivisions;

(2) Sales of food for human consumption off the premises where sold;

(3) Sales of food sold to students only in a cafeteria, dormitory, fraternity, or sorority maintained in a private, public, or parochial school, college, or university;

(4) Sales of newspapers, and of magazine subscriptions shipped by second class mail, and sales or transfers of magazines distributed as controlled circulation publications;

(5) The furnishing, preparing, or serving of meals without charge by an employer to an employee provided the employer records the meals as part compensation for services performed or work done;

(6) Sales of motor fuel upon receipt, use, distribution, or sale of which in this state a tax is imposed by the law of this state, but this exemption shall not apply to the sale of motor fuel on which a refund of the tax is allowable under section 5735.14 of the Revised Code; and the tax commissioner may

deduct the amount of tax levied by this section applicable to the price of motor fuel when granting a refund of motor fuel tax pursuant to section 5735.14 of the Revised Code and shall cause the amount deducted to be paid into the general revenue fund of this state;

(7) Sales of natural gas by a natural gas company, of electricity by an electric company, of water by a water-works company, or of steam by a heating company, if in each case the thing sold is delivered to consumers through wires, pipes, or conduits, and all sales of communications services by a telephone or telegraph company, all terms as defined in section 5727.01 of the Revised Code;

(8) Casual sales by a person, or auctioneer employed directly by the person to conduct such sales, except as to such sales of motor vehicles, watercraft or outboard motors required to be titled under section 1548.06 of the Revised Code, watercraft documented with the United States coast guard, snowmobiles, all-purpose vehicles as defined in section 4519.01 of the Revised Code, and manufactured homes;

(9) Sales of services or tangible personal property, other than motor vehicles and manufactured homes, by churches or by nonprofit organizations operated exclusively for charitable purposes as defined in division (B)(12) of this section, provided that the number of days on which such tangible personal property or services, other than items never subject to the tax, are sold does not exceed six in any calendar year. If the number of days on which such sales are made exceeds six in any calendar year, the church or organization shall be considered to be engaged in business and all subsequent sales by it shall be subject to the tax. In counting the number of days, all sales by groups within a church or within an organization shall be considered to be sales of that church or organization, except that sales made by separate student clubs and other groups of students of a primary or secondary school, and sales made by a parent-teacher association, booster group, or similar organization that raises money to support or fund curricular or extracurricular activities of a primary or secondary school, shall not be considered to be sales of such school, and sales by each such club, group, association, or organization shall be counted separately for purposes of the six-day limitation. This division does not apply to sales by a noncommercial educational radio or television broadcasting station.

(10) Sales not within the taxing power of this state under the Constitution of the United States;

(11) The transportation of persons or property, unless the transportation is by a private investigation and security service;

(12) Sales of tangible personal property or services to churches, to

organizations exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986, and to any other nonprofit organizations operated exclusively for charitable purposes in this state, no part of the net income of which inures to the benefit of any private shareholder or individual, and no substantial part of the activities of which consists of carrying on propaganda or otherwise attempting to influence legislation; sales to offices administering one or more homes for the aged or one or more hospital facilities exempt under section 140.08 of the Revised Code; and sales to organizations described in division (D) of section 5709.12 of the Revised Code.

"Charitable purposes" means the relief of poverty; the improvement of health through the alleviation of illness, disease, or injury; the operation of an organization exclusively for the provision of professional, laundry, printing, and purchasing services to hospitals or charitable institutions; the operation of a home for the aged, as defined in section 5701.13 of the Revised Code; the operation of a radio or television broadcasting station that is licensed by the federal communications commission as a noncommercial educational radio or television station; the operation of a nonprofit animal adoption service or a county humane society; the promotion of education by an institution of learning that maintains a faculty of qualified instructors, teaches regular continuous courses of study, and confers a recognized diploma upon completion of a specific curriculum; the operation of a parent teacher association, booster group, or similar organization primarily engaged in the promotion and support of the curricular or extracurricular activities of a primary or secondary school; the operation of a community or area center in which presentations in music, dramatics, the arts, and related fields are made in order to foster public interest and education therein; the production of performances in music, dramatics, and the arts; or the promotion of education by an organization engaged in carrying on research in, or the dissemination of, scientific and technological knowledge and information primarily for the public.

Nothing in this division shall be deemed to exempt sales to any organization for use in the operation or carrying on of a trade or business, or sales to a home for the aged for use in the operation of independent living facilities as defined in division (A) of section 5709.12 of the Revised Code.

(13) Building and construction materials and services sold to construction contractors for incorporation into a structure or improvement to real property under a construction contract with this state or a political subdivision thereof, or with the United States government or any of its agencies; building and construction materials and services sold to

construction contractors for incorporation into a structure or improvement to real property that are accepted for ownership by this state or any of its political subdivisions, or by the United States government or any of its agencies at the time of completion of such structures or improvements; building and construction materials sold to construction contractors for incorporation into a horticulture structure or livestock structure for a person engaged in the business of horticulture or producing livestock; building materials and services sold to a construction contractor for incorporation into a house of public worship or religious education, or a building used exclusively for charitable purposes under a construction contract with an organization whose purpose is as described in division (B)(12) of this section; building and construction materials sold for incorporation into the original construction of a sports facility under section 307.696 of the Revised Code; and building and construction materials and services sold to a construction contractor for incorporation into real property outside this state if such materials and services, when sold to a construction contractor in the state in which the real property is located for incorporation into real property in that state, would be exempt from a tax on sales levied by that state;

(14) Sales of ships or vessels or rail rolling stock used or to be used principally in interstate or foreign commerce, and repairs, alterations, fuel, and lubricants for such ships or vessels or rail rolling stock;

(15) Sales to persons engaged in any of the activities mentioned in division (E)(2) or (9) of section 5739.01 of the Revised Code, to persons engaged in making retail sales, or to persons who purchase for sale from a manufacturer tangible personal property that was produced by the manufacturer in accordance with specific designs provided by the purchaser, of packages, including material and parts for packages, and of machinery, equipment, and material for use primarily in packaging tangible personal property produced for sale by or on the order of the person doing the packaging, or sold at retail. "Packages" includes bags, baskets, cartons, crates, boxes, cans, bottles, bindings, wrappings, and other similar devices and containers, and "packaging" means placing therein.

(16) Sales of food to persons using food stamp coupons to purchase the food. As used in division (B)(16) of this section, "food" has the same meaning as in the "Food Stamp Act of 1977," 91 Stat. 958, 7 U.S.C. 2012, as amended, and federal regulations adopted pursuant to that act.

(17) Sales to persons engaged in farming, agriculture, horticulture, or floriculture, of tangible personal property for use or consumption directly in the production by farming, agriculture, horticulture, or floriculture of other tangible personal property for use or consumption directly in the production

of tangible personal property for sale by farming, agriculture, horticulture, or floriculture; or material and parts for incorporation into any such tangible personal property for use or consumption in production; and of tangible personal property for such use or consumption in the conditioning or holding of products produced by and for such use, consumption, or sale by persons engaged in farming, agriculture, horticulture, or floriculture, except where such property is incorporated into real property;

(18) Sales of drugs dispensed by a ~~registered~~ licensed pharmacist upon the order of a ~~practitioner licensed~~ health professional authorized to prescribe, dispense, and administer drugs to a human being in the course of ~~the professional practice, as defined in section 4729.01 Of the Revised Code;~~ insulin as recognized in the official United States pharmacopoeia; urine and blood testing materials when used by diabetics or persons with hypoglycemia to test for glucose or acetone; hypodermic syringes and needles when used by diabetics for insulin injections; epoetin alfa when purchased for use in the treatment of persons with end-stage renal disease; hospital beds when purchased for use by persons with medical problems for medical purposes; and oxygen and oxygen-dispensing equipment when purchased for use by persons with medical problems for medical purposes;

(19) Sales of artificial limbs or portion thereof, breast prostheses, and other prosthetic devices for humans; braces or other devices for supporting weakened or nonfunctioning parts of the human body; wheelchairs; devices used to lift wheelchairs into motor vehicles and parts and accessories to such devices; crutches or other devices to aid human perambulation; and items of tangible personal property used to supplement impaired functions of the human body such as respiration, hearing, or elimination. No exemption under this division shall be allowed for nonprescription drugs, medicines, or remedies; items or devices used to supplement vision; items or devices whose function is solely or primarily cosmetic; or physical fitness equipment. This division does not apply to sales to a physician or medical facility for use in the treatment of a patient.

(20) Sales of emergency and fire protection vehicles and equipment to nonprofit organizations for use solely in providing fire protection and emergency services for political subdivisions of the state;

(21) Sales of tangible personal property manufactured in this state, if sold by the manufacturer in this state to a retailer for use in the retail business of the retailer outside of this state and if possession is taken from the manufacturer by the purchaser within this state for the sole purpose of immediately removing the same from this state in a vehicle owned by the purchaser;

(22) Sales of services provided by the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities, or by governmental entities of the state or any of its political subdivisions, agencies, instrumentalities, institutions, or authorities;

(23) Sales of motor vehicles to nonresidents of this state upon the presentation of an affidavit executed in this state by the nonresident purchaser affirming that the purchaser is a nonresident of this state, that possession of the motor vehicle is taken in this state for the sole purpose of immediately removing it from this state, that the motor vehicle will be permanently titled and registered in another state, and that the motor vehicle will not be used in this state;

(24) Sales to persons engaged in the preparation of eggs for sale of tangible personal property used or consumed directly in such preparation, including such tangible personal property used for cleaning, sanitizing, preserving, grading, sorting, and classifying by size; packages, including material and parts for packages, and machinery, equipment, and material for use in packaging eggs for sale; and handling and transportation equipment and parts therefor, except motor vehicles licensed to operate on public highways, used in intraplant or interplant transfers or shipment of eggs in the process of preparation for sale, when the plant or plants within or between which such transfers or shipments occur are operated by the same person. "Packages" includes containers, cases, baskets, flats, fillers, filler flats, cartons, closure materials, labels, and labeling materials, and "packaging" means placing therein.

(25)(a) Sales of water to a consumer for residential use, except the sale of bottled water, distilled water, mineral water, carbonated water, or ice;

(b) Sales of water by a nonprofit corporation engaged exclusively in the treatment, distribution, and sale of water to consumers, if such water is delivered to consumers through pipes or tubing.

(26) Fees charged for inspection or reinspection of motor vehicles under section 3704.14 of the Revised Code;

(27) Sales of solar, wind, or hydrothermal energy systems that meet the guidelines established under division (B) of section 1551.20 of the Revised Code, components of such systems that are identified under division (B) or (D) of that section, or charges for the installation of such systems or components, made during the period from August 14, 1979, through December 31, 1985;

(28) Sales to persons licensed to conduct a food service operation pursuant to section 3732.03 of the Revised Code, of tangible personal property primarily used directly for the following:

- (a) To prepare food for human consumption for sale;
 - (b) To preserve food that has been or will be prepared for human consumption for sale by the food service operator, not including tangible personal property used to display food for selection by the consumer;
 - (c) To clean tangible personal property used to prepare or serve food for human consumption for sale.
- (29) Sales of animals by nonprofit animal adoption services or county humane societies;
- (30) Sales of services to a corporation described in division (A) of section 5709.72 of the Revised Code, and sales of tangible personal property that qualifies for exemption from taxation under section 5709.72 of the Revised Code;
- (31) Sales and installation of agricultural land tile, as defined in division (B)(5)(a) of section 5739.01 of the Revised Code;
- (32) Sales and erection or installation of portable grain bins, as defined in division (B)(5)(b) of section 5739.01 of the Revised Code;
- (33) The sale, lease, repair, and maintenance of; parts for; or items attached to or incorporated in motor vehicles that are primarily used for transporting tangible personal property by a person engaged in highway transportation for hire;
- (34) Sales to the state headquarters of any veterans' organization in Ohio that is either incorporated and issued a charter by the congress of the United States or is recognized by the United States veterans administration, for use by the headquarters;
- (35) Sales to a telecommunications service vendor of tangible personal property and services used directly and primarily in transmitting, receiving, switching, or recording any interactive, two-way electromagnetic communications, including voice, image, data, and information, through the use of any medium, including, but not limited to, poles, wires, cables, switching equipment, computers, and record storage devices and media, and component parts for the tangible personal property. The exemption provided in division (B)(35) of this section shall be in lieu of all other exceptions under division (E)(2) of section 5739.01 of the Revised Code to which a telecommunications service vendor may otherwise be entitled based upon the use of the thing purchased in providing the telecommunications service.
- (36) Sales of investment metal bullion and investment coins. "Investment metal bullion" means any elementary precious metal that has been put through a process of smelting or refining, including, but not limited to, gold, silver, platinum, and palladium, and which is in such state or condition that its value depends upon its content and not upon its form.

"Investment metal bullion" does not include fabricated precious metal that has been processed or manufactured for one or more specific and customary industrial, professional, or artistic uses. "Investment coins" means numismatic coins or other forms of money and legal tender manufactured of gold, silver, platinum, palladium, or other metal under the laws of the United States or any foreign nation with a fair market value greater than any statutory or nominal value of such coins.

(37)(a) Sales where the purpose of the consumer is to use or consume the things transferred in making retail sales and consisting of newspaper inserts, catalogues, coupons, flyers, gift certificates, or other advertising material that prices and describes tangible personal property offered for retail sale.

(b) Sales to direct marketing vendors of preliminary materials such as photographs, artwork, and typesetting that will be used in printing advertising material; of printed matter that offers free merchandise or chances to win sweepstake prizes and that is mailed to potential customers with advertising material described in division (B)(37)(a) of this section; and of equipment such as telephones, computers, facsimile machines, and similar tangible personal property primarily used to accept orders for direct marketing retail sales.

(c) Sales of automatic food vending machines that preserve food with a shelf life of forty-five days or less by refrigeration and dispense it to the consumer.

For purposes of division (B)(37) of this section, "direct marketing" means the method of selling where consumers order tangible personal property by United States mail, delivery service, or telecommunication and the vendor delivers or ships the tangible personal property sold to the consumer from a warehouse, catalogue distribution center, or similar fulfillment facility by means of the United States mail, delivery service, or common carrier.

(38) Sales to a person engaged in the business of horticulture or producing livestock of materials to be incorporated into a horticulture structure or livestock structure;

(39) The sale of a motor vehicle that is used exclusively for a vanpool ridesharing arrangement to persons participating in the vanpool ridesharing arrangement when the vendor is selling the vehicle pursuant to a contract between the vendor and the department of transportation;

(40) Sales of personal computers, computer monitors, computer keyboards, modems, and other peripheral computer equipment to an individual who is licensed or certified to teach in an elementary or a

secondary school in this state for use by that individual in preparation for teaching elementary or secondary school students;

(41) Sales to a professional racing team of any of the following:

(a) Motor racing vehicles;

(b) Repair services for motor racing vehicles;

(c) Items of property that are attached to or incorporated in motor racing vehicles, including engines, chassis, and all other components of the vehicles, and all spare, replacement, and rebuilt parts or components of the vehicles; except not including tires, consumable fluids, paint, and accessories consisting of instrumentation sensors and related items added to the vehicle to collect and transmit data by means of telemetry and other forms of communication.

For the purpose of the proper administration of this chapter, and to prevent the evasion of the tax, it is presumed that all sales made in this state are subject to the tax until the contrary is established.

As used in this section, except in division (B)(16) of this section, "food" includes cereals and cereal products, milk and milk products including ice cream, meat and meat products, fish and fish products, eggs and egg products, vegetables and vegetable products, fruits, fruit products, and pure fruit juices, condiments, sugar and sugar products, coffee and coffee substitutes, tea, and cocoa and cocoa products. It does not include: spirituous or malt liquors; soft drinks; sodas and beverages that are ordinarily dispensed at bars and soda fountains or in connection therewith, other than coffee, tea, and cocoa; root beer and root beer extracts; malt and malt extracts; mineral oils, cod liver oils, and halibut liver oil; medicines, including tonics, vitamin preparations, and other products sold primarily for their medicinal properties; and water, including mineral, bottled, and carbonated waters, and ice.

(C) The levy of an excise tax on transactions by which lodging by a hotel is or is to be furnished to transient guests pursuant to this section and division (B) of section 5739.01 of the Revised Code does not prevent any of the following:

(1) A municipal corporation or township from levying an excise tax for any lawful purpose not to exceed three per cent on transactions by which lodging by a hotel is or is to be furnished to transient guests in addition to the tax levied by this section. If a municipal corporation or township repeals a tax imposed under division (C)(1) of this section and a county in which the municipal corporation or township has territory has a tax imposed under division (C) of section 5739.024 of the Revised Code in effect, the municipal corporation or township may not reimpose its tax as long as that

county tax remains in effect. A municipal corporation or township in which a tax is levied under division (B)(2) of section 351.021 of the Revised Code may not increase the rate of its tax levied under division (C)(1) of this section to any rate that would cause the total taxes levied under both of those divisions to exceed three per cent on any lodging transaction within the municipal corporation or township.

(2) A municipal corporation or a township from levying an additional excise tax not to exceed three per cent on such transactions pursuant to division (B) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(1) of this section.

(3) A county from levying an excise tax pursuant to division (A) of section 5739.024 of the Revised Code.

(4) A county from levying an excise tax not to exceed three per cent of such transactions pursuant to division (C) of section 5739.024 of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3) of this section.

(5) A convention facilities authority, as defined in division (A) of section 351.01 of the Revised Code, from levying the excise taxes provided for in division (B) of section 351.021 of the Revised Code.

(6) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (D) of section 5739.024 of the Revised Code. Such tax is in addition to any tax imposed under division (C)(3) or (4) of this section.

(7) A county from levying an excise tax not to exceed one and one-half per cent of such transactions pursuant to division (E) of section 5739.024 of the Revised Code. Such a tax is in addition to any tax imposed under division (C)(3), (4), or (6) of this section.

(D) The levy of this tax on retail sales of recreation and sports club service shall not prevent a municipal corporation from levying any tax on recreation and sports club dues or on any income generated by recreation and sports club dues.

SECTION 2. That existing sections 1337.15, 1337.16, 2133.11, 2133.12, 2305.234, 2305.25, 2305.33, 2913.02, 2913.51, 2925.01, 2925.02, 2925.03, 2925.09, 2925.11, 2925.12, 2925.14, 2925.23, 2925.50, 2927.24, 3313.713, 3701.33, 3709.161, 3715.01, 3715.03, 3715.52, 3715.53, 3715.54, 3715.55, 3715.56, 3715.57, 3715.59, 3715.63, 3715.64, 3715.65, 3715.66, 3715.69, 3715.70, 3715.71, 3715.73, 3719.01, 3719.011, 3719.05, 3719.06, 3719.07, 3719.08, 3719.09, 3719.12, 3719.121, 3719.15, 3719.172, 3719.19, 3719.30, 3719.34, 3719.35, 3719.36, 3719.42, 3719.44, 3719.61, 3719.81, 3719.99,

3729.01, 4121.443, 4301.01, 4301.69, 4303.01, 4303.21, 4303.27, 4303.34, 4506.01, 4723.28, 4725.01, 4729.01, 4729.02, 4729.03, 4729.06, 4729.07, 4729.08, 4729.09, 4729.11, 4729.12, 4729.13, 4729.14, 4729.15, 4729.16, 4729.25, 4729.26, 4729.27, 4729.28, 4729.29, 4729.30, 4729.36, 4729.37, 4729.38, 4729.381, 4729.51, 4729.52, 4729.54, 4729.55, 4729.57, 4729.59, 4729.60, 4729.63, 4729.66, 4729.67, 4731.052, 4731.22, 4741.22, 5123.193, 5126.35, and 5739.02, and sections 4729.021, 4729.261, and 4729.262 of the Revised Code are hereby repealed.

SECTION 3. The amendment of section 2305.234 of the Revised Code is not intended to supersede the earlier repeal, with delayed effective date, of that section.

SECTION 4. Section 2913.02 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 2 and Sub. H.B. 4 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. Section 2913.51 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. S.B. 2 and Sub. H.B. 4 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. Section 2925.01 of the Revised Code is presented in this act as a composite of the section as amended by Am. Sub. S.B. 143, Sub. H.B. 125, Am. Sub. S.B. 269, and Sub. S.B. 223 of the 121st General Assembly, with the new language of none of the acts shown in capital letters. Section 3719.01 of the Revised Code is presented in this act as a composite of the section as amended by both Am. Sub. H.B. 162 and Am. Sub. S.B. 269 of the 121st General Assembly, with the new language of neither of the acts shown in capital letters. This is in recognition of the principle stated in division (B) of section 1.52 of the Revised Code that such amendments are to be harmonized where not substantively irreconcilable and constitutes a legislative finding that such is the resulting version in effect prior to the effective date of this act.

Speaker _____ *of the House of Representatives.*

President _____ *of the Senate.*

Passed _____, 20____

Am. Sub. S. B. No. 66

204

Approved _____, 20____

Governor.

The section numbering of law of a general and permanent nature is complete and in conformity with the Revised Code.

Director, Legislative Service Commission.

Filed in the office of the Secretary of State at Columbus, Ohio, on the ___ day of _____, A. D. 20____.

Secretary of State.

File No. _____ Effective Date _____