



MINNESOTA BOARD OF MEDICAL PRACTICE

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The Minnesota Legislature enacted a law making it unlawful for physicians and certain physician assistants to dispense certain legend drugs for profit after July 31, 1990 unless a statement has been filed with the Board of Medical Practice. **This law refers only to drugs that are: 1) to be administered orally; 2) ordinarily dispensed by pharmacists; and 3) not vaccines.** A legend drug is a non-over-the-counter drug which federal law prohibits dispensing without prescription. Profit is defined as: 1) the amount received by a physician (or physician assistant, if delegated) over and above the acquisition cost for pre-packaged drugs or 2) the amount received by a physician (or physician assistant, I delegated) over and above the acquisition cost plus the cost of compounding, packaging, or other treatment for drugs which are not pre-packaged. **If you dispense legend drugs for profit, please complete this form and return.**

Full legal Name _____
Street Address _____
City _____ State _____ Zip _____
License Number _____ Phone Number _____

I dispense legend drugs for profit under the following general circumstances (i.e. what will physician's or physician assistant's role be and what will be the role of other personnel in dispensing prescriptions):

The types of legend drugs I generally dispense are:

- | | |
|--|--|
| <input type="checkbox"/> Antihistamines | <input type="checkbox"/> Non-steroidal anti-inflammatory |
| <input type="checkbox"/> Anti-microbials | <input type="checkbox"/> Anabolic steroids/growth hormones |
| <input type="checkbox"/> Anti-neoplastic agents | <input type="checkbox"/> Ampehtamines & other stimulants |
| <input type="checkbox"/> Anti-Parkinsonian drugs | <input type="checkbox"/> Barbiturates |
| <input type="checkbox"/> Blood modifiers | <input type="checkbox"/> Benzodiazepines |
| <input type="checkbox"/> Gastrointestinals | <input type="checkbox"/> Opioids |
| <input type="checkbox"/> Muscle relaxants | <input type="checkbox"/> Other controlled substances |
| <input type="checkbox"/> Oral contraceptives | <input type="checkbox"/> Other (specify) _____ |
| <input type="checkbox"/> Respiratory agents | _____ |

I certify that the information provided is accurate and correct.

Signature

Date

Minn. Stat. §151.37 LEGEND DRUGS, WHO MAY PRESCRIBE, POSSESS.

Subdivision 1. **Prohibition.** Except as otherwise provided in this chapter, it shall be unlawful for any person to have in possession, or to sell, give away, barter, exchange, or distribute a legend drug.

Subd. 2. **Prescribing and filing.** (a) A licensed practitioner in the course of professional practice only, may prescribe, administer, and dispense a legend drug, and may cause the same to be administered by a nurse, a physician assistant, or medical student or resident under the practitioner's direction and supervision, and may cause a person who is an appropriately certified, registered, or licensed health care professional to prescribe, dispense, and administer the same within the expressed legal scope of the person's practice as defined in Minnesota Statutes. A licensed practitioner may prescribe a legend drug, without reference to a specific patient, by directing a nurse, pursuant to section [148.235, subdivisions 8 and 9](#), physician assistant, or medical student or resident to adhere to a particular practice guideline or protocol when treating patients whose condition falls within such guideline or protocol, and when such guideline or protocol specifies the circumstances under which the legend drug is to be prescribed and administered. An individual who verbally, electronically, or otherwise transmits a written, oral, or electronic order, as an agent of a prescriber, shall not be deemed to have prescribed the legend drug. This paragraph applies to a physician assistant only if the physician assistant meets the requirements of section [147A.18](#).

(b) A licensed practitioner that dispenses for profit a legend drug that is to be administered orally, is ordinarily dispensed by a pharmacist, and is not a vaccine, must file with the practitioner's licensing board a statement indicating that the practitioner dispenses legend drugs for profit, the general circumstances under which the practitioner dispenses for profit, and the types of legend drugs generally dispensed. It is unlawful to dispense legend drugs for profit after July 31, 1990, unless the statement has been filed with the appropriate licensing board. For purposes of this paragraph, "profit" means (1) any amount received by the practitioner in excess of the acquisition cost of a legend drug for legend drugs that are purchased in prepackaged form, or (2) any amount received by the practitioner in excess of the acquisition cost of a legend drug plus the cost of making the drug available if the legend drug requires compounding, packaging, or other treatment. The statement filed under this paragraph is public data under section [13.03](#). This paragraph does not apply to a licensed doctor of veterinary medicine or a registered pharmacist. Any person other than a licensed practitioner with the authority to prescribe, dispense, and administer a legend drug under paragraph (a) shall not dispense for profit. To dispense for profit does not include dispensing by a community health clinic when the profit from dispensing is used to meet operating expenses.

Subd. 2a. **Delegation.** A supervising physician may delegate to a physician assistant who is registered with the Board of Medical Practice and certified by the National Commission on Certification of Physician Assistants and who is under the supervising physician's supervision, the authority to prescribe, dispense, and administer legend drugs and medical devices, subject to the requirements in chapter 147A and other requirements established by the Board of Medical Practice in rules.

2008 Minnesota Statutes

Resources

147.091 GROUNDS FOR DISCIPLINARY ACTION.

Subdivision 1. Grounds listed.

The board may refuse to grant a license, may refuse to grant registration to perform interstate telemedicine services, or may impose disciplinary action as described in section [147.141](#) against any physician. The following conduct is prohibited and is grounds for disciplinary action:

....

(p) Fee splitting, including without limitation:

(1) paying, offering to pay, receiving, or agreeing to receive, a commission, rebate, or remuneration, directly or indirectly, primarily for the referral of patients or the prescription of drugs or devices;

(2) dividing fees with another physician or a professional corporation, unless the division is in proportion to the services provided and the responsibility assumed by each professional and the physician has disclosed the terms of the division;

(3) referring a patient to any health care provider as defined in sections [144.291](#) to [144.298](#) in which the referring physician has a "financial or economic interest," as defined in section [144.6521](#), [subdivision 3](#), unless the physician has disclosed the physician's financial or economic interest in accordance with section [144.6521](#); and

(4) dispensing for profit any drug or device, unless the physician has disclosed the physician's own profit interest.

The physician must make the disclosures required in this clause in advance and in writing to the patient and must include in the disclosure a statement that the patient is free to choose a different health care provider. This clause does not apply to the distribution of revenues from a partnership, group practice, nonprofit corporation, or professional corporation to its partners, shareholders, members, or employees if the revenues consist only of fees for services performed by the physician or under a physician's direct supervision, or to the division or distribution of prepaid or capitated health care premiums, or fee-for-service withhold amounts paid under contracts established under other state law.

Minnesota Rules
Chapter 5620
Fee Splitting

5620.0100	PURPOSE.
5620.0110	DEFINITIONS.
5620.0120	INCORPORATION BY REFERENCE OF CRITERIA TO DEFINE DEVICE.
5620.0130	DISCLOSURE REQUIREMENTS AND FORMATS.
5620.0140	EVIDENCE OF DISCLOSURE.
5620.0150	DISCLOSURE OF PROPRIETARY INFORMATION.
5620.0160	DIVISION OF FEES.

5620.0100 PURPOSE.

The purpose of Minnesota Statutes, section [147.091](#), subdivision 1, paragraph (p), and parts [5620.0110](#) to [5620.0160](#) is to protect consumers against medical-economic arrangements, practices, and relationships by physicians that unnecessarily increase the cost of health care to consumers, restrict consumer access to goods and services, and otherwise present harm to consumer interests. The board shall comply with Minnesota Statutes, section [147.091](#), subdivision 1, paragraph (p), and parts [5620.0110](#) to [5620.0160](#) in evaluating complaints received by the board relating to medical-economic arrangements, practices, or relationships among health care providers.

Statutory Authority: MS s [147.01](#)

History: 14 SR 1774

Posted: May 13, 1997

5620.0110 DEFINITIONS.

Subpart 1. **Scope.** As used in Minnesota Statutes, section [147.091](#), subdivision 1, paragraph (p), the following terms have the meanings given them.

Subp. 2. **Device.** "Device" means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, or other similar or related article including a component, part, or accessory, that as a completely assembled article exceeds \$99 in cost and is:

A. recognized in the official United States Pharmacopoeia and National Formulary and its supplements;

B. intended for use in diagnosing disease or other conditions, or in curing, mitigating, treating, or

preventing disease in a person;

C. intended to affect the structure or function of the body of a person, and that does not achieve any of its principal intended purposes through chemical action within or on the body of a person and is not dependent upon being metabolized for the achievement of any of its principal intended purposes; or

D. restricted under federal law to sale by or on the order of a licensed practitioner.

Nondurable medical equipment, meaning a supply or piece of equipment that is used to treat a health condition and cannot be reused, is excluded from this definition of device.

Subp. 3. **Drugs.** "Drugs" has the meaning in part [5600.0100](#), subpart 8.

Subp. 4. **Financial interest.** "Financial interest" means an asset that is directly owned or controlled by an individual or business and that has the potential to produce a monetary return.

Financial interest does not include the ownership of a building by a physician where space is leased to an individual or organization at the prevailing rate in a straight lease agreement or any interest held by a physician in a publicly traded stock.

Subp. 5. **Profit interest.** "Profit interest" means a financial amount received by the physician that exceeds the acquisition cost of a drug or device plus the cost of having the drug or device available.

Subp. 6. **Significant financial interest.** "Significant financial interest" means any financial interest as defined in subpart 4 that is equal to or greater than five percent of the whole or \$5,000, whichever is the lesser amount.

Statutory Authority: MS s [147.01](#)

History: 14 SR 1774

Posted: May 13, 1997

5620.0120 INCORPORATION BY REFERENCE OF CRITERIA TO DEFINE DEVICE.

The most recent edition of the United States Pharmacopoeia and National Formulary and its supplements are incorporated by reference. The publication is issued by the United States Pharmacopoeial Convention, Inc., 12601 Twinbrook Parkway, Rockville, Maryland, 20852. It is available for inspection and copying through the Minitex interlibrary loan system. The publication is subject to change.

Statutory Authority: MS s [147.01](#)

History: 14 SR 1774

Posted: May 13, 1997

5620.0130 DISCLOSURE REQUIREMENTS AND FORMATS.

Subpart 1. **Written disclosure required.** The disclosure requirements in Minnesota Statutes, section [147.091](#), subdivision 1, paragraph (p), are met if the written disclosure is made before a referral. The written disclosure must reasonably apprise the patient or patient's guardian of the physician's financial and profit interest in the individual or entity to which the physician is making the referral, and contain a statement that the patient is free to choose providers other than the one recommended by the physician. The written disclosure must consist of one of the formats in items A to D.

A. The posting of a conspicuous sign in an area that is likely to be seen by the patients and patients' guardians who use the physician's facility.

B. The incorporation of a conspicuous written notice in existing office documents used by the physician. Office documents may include, but are not limited to, prescription sheets, office information or policy booklets, referral forms, and any similar regularly distributed information handout.

C. The use of a written disclosure document that is given to a patient or patient's guardian for review. A copy of the document must be provided to the patient or patient's guardian.

D. A combination of the written disclosure formats described in items A to C.

Subp. 2. **Unwritten disclosure; when allowed.** A nonwritten disclosure format may be used to satisfy the disclosure requirements of Minnesota Statutes, section [147.091](#), subdivision 1, paragraph (p), when necessary to accommodate the physical condition of a patient or the patient's guardian that makes use of written disclosure alone unworkable.

Subp. 3. **Information must be updated.** The disclosure information shall be updated to show any change in the circumstances regarding the physician's financial or profit interest.

Statutory Authority: MS s [147.01](#)

History: 14 SR 1774

Posted: May 13, 1997

5620.0140 EVIDENCE OF DISCLOSURE.

When the board investigates a violation of Minnesota Statutes, section [147.091](#), subdivision 1, paragraph (p), the burden of proof is on the physician investigated to show evidence the physician complied with disclosure requirements in part [5620.0130](#).

Statutory Authority: MS s [147.01](#)

History: 14 SR 1774

Posted: May 13, 1997

5620.0150 DISCLOSURE OF PROPRIETARY INFORMATION.

Specific contract terms or similar proprietary information relating to a physician's financial and profit interest is not required to be part of the information provided in a disclosure under part [5620.0130](#).

Statutory Authority: MS s [147.01](#)

History: 14 SR 1774

Posted: May 13, 1997

5620.0160 DIVISION OF FEES.

In reviewing a division of fees as described in Minnesota Statutes, section [147.091](#), subdivision 1, paragraph (p), clause (2), the board may consider, but is not limited to, the following factors regarding the reasonableness of a proportional division of fees:

- A. the value of professional services;
- B. overhead costs;
- C. time and distance traveled; and
- D. the availability of the service or product elsewhere in the local trade area.

Statutory Authority: MS s [147.01](#)

History: 14 SR 1774