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# PHARMACY REGISTRATION BOARD OF WESTERN AUSTRALIA

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## **Guidelines for the Ownership of Pharmacy Business**

The Pharmacy Registration Board of Western Australia is established under the Pharmacy Act 2010 (the Act) and is the successor in law to the Pharmaceutical Council of Western Australia. It is responsible for administration of the Act which provides for the regulation of pharmacy businesses.

The Act maintains the requirement that a pharmacy business be carried on from premises that are registered by the Board.

For the first time in Western Australia, in addition to a pharmacy business being owned by a pharmacist, it can now also be owned by other legal entities including a pharmacist controlled company.

### **Registration of Premises as a Pharmacy**

The Act provides that a pharmacy business can only be carried on at registered premises.

Section 42 of the Act provides for applications for registration of premises as a pharmacy. Regulation 4 of the Pharmacy Regulations 2010 lists the documents and other information to accompany an application for registration of premises.

In considering an application for registration of pharmacy premises, the Board must ensure that the premises comply with the minimum standards of fitness for the competent and safe practice of pharmacy referred to in Schedule 1 of the Pharmacy Regulations 2010 and any other requirements that are prescribed.

(NB. The registration of pharmacists and the handling of notifications about the performance or impairment of pharmacists and students is the responsibility of the Pharmacy Board of Australia which is supported by the Australian Health Practitioner Regulation Agency.)

### **Ownership and Proprietary Interest in a Pharmacy Business**

Section 54 of the Act provides that the only persons who can own or hold a proprietary interest in a pharmacy business are:

- (a) a pharmacist; or
- (b) a person who is a partner in a partnership that carries on the business and in which every partner is either —
  - (i) a pharmacist; or
  - (ii) a close family member of a partner who is a pharmacist;

- or
- (c) a pharmacist controlled company; or
  - (d) a friendly society; or
  - (e) the preserved company.

A pharmacist controlled company is defined as a company within the meaning of the Corporations Act:

- (a) in which
    - (i) at least one director is a pharmacist; and
    - (ii) every director is either a pharmacist or a close family member of a pharmacist who is a director;
- and
- (b) where each holder of shares, or of a beneficial or legal interest in shares, in the company is a pharmacist or a close family member of such a pharmacist; and
  - (c) in which a pharmacist is, or pharmacists are, entitled to control the exercise of more than 50% of the voting power —
    - (i) at meetings of the directors of the company; or
    - (ii) attached to voting shares issued by the company.

A close family member is defined as:

- A spouse, de facto partner, child or parent of the pharmacist;
- Another family member in a relationship with the pharmacist prescribed by the regulations for the purpose of this definition.

At the date of this guideline, there are no other family members prescribed by regulation.

To give effect to the intent of the ownership and proprietary interest provisions of the Act, where a pharmacist controlled company acts as trustee for a trust, the beneficiaries of the trust must be limited to:

- a pharmacist; or
- a pharmacist and his or her close family member; or
- a pharmacist controlled company; or
- eligible trust.

An eligible trust is a trust which may be a beneficiary of another trust by reason of the General Beneficiaries of the first trust having the sole interest in that trust.

No application for registration of premises as a pharmacy by a pharmacist controlled company (as trustee or otherwise) will be approved without a copy of the Constitution and/or Trust Deed accompanying the application.

The Board also seeks the inclusion in any Constitution or Trust Deed words to the effect:

- Any amendment to this Constitution/Trust Deed where the effect of the amendment is to allot additional shares, allot separate classes of shares, or in any other way enlarge the shareholders or the class of beneficiaries will require the approval of the Pharmacy Registration Board of Western Australia.

The Board strongly recommends that any person contemplating applying for registration of premises as a pharmacy obtain legal advice to ensure any company's constitution or trust deed for a pharmacy trust does not contravene the provisions of the Act.

### **Limit on Ownership of Pharmacy Business**

Section 55 of the Act states that a pharmacist must not own, or hold a proprietary interest in, more than four pharmacy businesses at any one time. Further, a close family member of a pharmacist must not hold a proprietary interest in more than four pharmacy businesses at any one time.

### **Service Companies**

Pharmacists who engage companies or other entities to provide services to a pharmacy business may do so provided:

- (a) the company does not have any proprietary interest in the pharmacy business; and
- (b) there is a written agreement, contract, memorandum of understanding or other document between the parties setting out the details of the services and how they are paid for; and
- (c) any documentation is made available for inspection by the Board at any reasonable time.

Service companies should be aware that Section 3 of the Act provides that a person will be taken to hold a proprietary interest in a pharmacy business if:

- (a) the person is a party to an arrangement of a kind prescribed by the regulations; or
- (b) the person, in the course of carrying on a business, provides a benefit to another for which the person is entitled to receive the profits or income, or a share in the profits or income, of a pharmacy business; or
- (c) the person has, under a franchise or other commercial arrangement (for example, leases), a right to receive consideration that varies according to the profits or income of a pharmacy business.

At present there are no prescribed arrangements.

If the service company maintains customer accounts on behalf of the pharmacy or provides computer services, the pharmacist must not supply the company with any information about a person's medication or other health issues.

### **Appointment of pharmacist with overall responsibility**

In accordance with the Act, the person in whose name the pharmacy is registered or the pharmacist that has overall responsibility for the pharmacy business is taken to have overall responsibility for the pharmacy business carried on at the pharmacy. If the person under whose name a pharmacy is registered is not a pharmacist (such as in the case of a company or trust) then that person must appoint a pharmacist to have overall responsibility for the pharmacy business carried on at the pharmacy premises.

The details of the responsible pharmacist must be provided to the Board within 7 days.

The pharmacist who has overall responsibility is responsible for the conduct of the pharmacy business including:

- (a) ensuring compliance with statutory obligations and ethical standards;
- (b) the general security of the premises;
- (c) ensuring the correct supervision of staff;
- (d) ensuring that in his or her absence, another pharmacist is in charge for the time being;
- (e) the maintenance at the premises of the required references and equipment;
- (f) the premises and all fixtures and fittings at the premises are in a safe, clean and hygienic condition and in good repair; and
- (g) maintenance of a record of all prescriptions dispensed at, or from, the pharmacy, ensuring such records are secured safely, are dealt with in a confidential manner and are retained for a period of 24 months.