

## Guidelines on responsibilities of pharmacists when practising as proprietors

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## Introduction

This guideline has been developed by the Pharmacy Board of Australia under section 39 of the *Health Practitioner Regulation National Law Act* (the National Law) as in force in each state and territory. The guideline provides guidance to pharmacists in relation to a matter of professional practice not set down in the legislation or a registration standard which can be used in proceedings under the National Law as evidence of what constitutes professional conduct or practice for the health profession.

The relevant sections of the National Law are attached.

## Who needs to use this guideline?

This guideline is developed to provide guidance to registered pharmacists or those seeking to become registered pharmacists. It applies to all registered pharmacists who own or hold a proprietary or pecuniary interest in a pharmacy business.

In addition to complying with this guideline, pharmacists are expected to maintain an awareness of the standards published by the profession, and relevant to their practice. In considering notifications (complaints) against pharmacists, the Board will have regard to relevant professional practice and quality-assurance standards, depending on the nature of the matter under consideration. Standards should be accessed on the websites of the professional bodies:

- Pharmaceutical Society of Australia (PSA)
- The Society of Hospital Pharmacists of Australia (The SHPA) and
- The Pharmacy Guild of Australia (The PGA).

*Note: As part of the agreement by the Council of Australian Governments to provide for the National Law, ownership of pharmacies, regulation of premises, inspections and related matters do not form part of the National Law, and each jurisdiction will have separate legislation and guidelines for these purposes.*

Pharmacists must comply with all legislation relevant to the practice of pharmacy in the jurisdiction where practising as proprietors.

## Summary of guideline

A registered pharmacist who is a proprietor of, or who has a pecuniary interest in a pharmacy business must maintain, and be able to demonstrate an awareness of, the manner in which that pharmacy business is being conducted and, where necessary, intervene to ensure that the practice of pharmacy is conducted in accordance with applicable laws, standards and guidelines.

## Guidelines on responsibilities of pharmacists when practising as proprietors

### Guideline

The policy of the Board is that a pharmacist who owns a pharmacy is practising pharmacy, given that ownership of a pharmacy business is a role that impacts on safe, effective delivery of services in the profession and involves use of professional skills.

The policy also applies to a pharmacist who holds a position of authority in a corporate pharmacy services provider or who acts as a pharmacy services provider as a trustee of a trust.

If the proprietor / owner or partner-in-ownership pharmacist is not the pharmacist usually in charge of that pharmacy, he or she must determine regularly how the practice of pharmacy is being conducted to be satisfied it is in accordance with any applicable state, territory or Commonwealth law applicable to the practice of pharmacy, with any relevant Pharmacy Board of Australia policies, codes, guidelines, and with good pharmacy practice. If the proprietor finds otherwise, he or she must intervene to ensure that the pharmacy business is conducted properly.

For the purposes of this guideline, determining how the pharmacy business is conducted includes:

- ensuring appropriate risk management procedures are in place
- understanding the range of goods sold and services provided at the pharmacy including non-traditional and novel goods and services; for example, teeth whitening products and pathology collection services
- ensuring that the pharmacy is resourced suitably and that staff members are trained sufficiently to sell goods and provide services
- understanding the liability associated with the sale of goods and the provision of services
- maintaining a direction over the kinds of services being provided and goods being sold, particularly those known to be subject to abuse or misuse and
- ensuring business procedures and policies established by the proprietor/s are being followed.

The vigilance of the practice described in this guideline includes regular on-site visits and regular staff meetings.

The proprietor / owner or partner-in-ownership pharmacist must ensure that procedures and policies relevant to the conduct of the pharmacy are documented and available within the pharmacy.

A proprietor / owner or partner-in-ownership of a pharmacy cannot abdicate his or her professional obligations, even if that partner is silent operationally or

present only infrequently. This applies to pharmacists who own a pharmacy, or pharmacies, in all forms of business structures.

### Definitions

**Proprietary or pecuniary interest** means a legal or beneficial interest and includes a proprietary interest as a sole proprietor, as a partner, as a director, member or shareholder of a company and as the trustee or beneficiary of a trust.

### References

A recognition of this principle is acknowledged in the decision of the Supreme Court Judge in the case of David Loewy and Sandra Loewy v The Pharmacy Board of Victoria, [1991] VSC 113 01.

**Date of issue:** 8 December 2010

**Date of review:** This guideline will be reviewed at least every three years

**Last reviewed:**

## Attachment A

### Extract from relevant provisions of the *Health Practitioner Regulation National Law Act (the National Law)* as in force in each state and territory

#### Division 3 Registration standards and codes and guidelines

##### 39 Codes and guidelines

A National Board may develop and approve codes and guidelines—

- (a) to provide guidance to the health practitioners it registers; and
- (b) about other matters relevant to the exercise of its functions.

Example: A National Board may develop guidelines about the advertising of regulated health services by health practitioners registered by the Board or other persons for the purposes of section 133.

##### 40 Consultation about registration standards, codes and guidelines

- (1) If a National Board develops a registration standard or a code or guideline, it must ensure there is wide-ranging consultation about its content.
- (2) A contravention of subsection (1) does not invalidate a registration standard, code or guideline.
- (3) The following must be published on a National Board's website—
  - (a) a registration standard developed by the Board and approved by the Ministerial Council;
  - (b) a code or guideline approved by the National Board.
- (4) An approved registration standard or a code or guideline takes effect—
  - (a) on the day it is published on the National Board's website; or
  - (b) if a later day is stated in the registration standard, code or guideline, on that day.

##### 41 Use of registration standards, codes or guidelines in disciplinary proceedings

An approved registration standard for a health profession, or a code or guideline approved by a National Board, is admissible in proceedings under this Law or a law of a co-regulatory jurisdiction against a health practitioner registered by the Board as evidence of what constitutes appropriate professional conduct or practice for the health profession.

## Clarification on registration type required by proprietors of pharmacies

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29 January 2013

### Regulation of pharmacy ownership

The Health Practitioner Regulation National Law Act (the National Law) as in force in each state and territory outlines the provisions for the various types of registration of pharmacists. Ownership of pharmacies is regulated by separate legislation or under specific provisions in the National Law of a particular jurisdiction, and may specify the type of registration a pharmacist must hold in order to own a pharmacy business.

### The Board's policy – 'a pharmacist who owns a pharmacy is practising pharmacy'

It is the Board's view that it is in the public interest for proprietor pharmacists to hold general registration as it believes there may be greater risk in meeting their obligations outlined in its 'Guidelines on responsibilities of pharmacists when practising as proprietors' whilst holding non-practising registration. However, the Board acknowledges that it must take into consideration, whether under state and territory legislation governing pharmacy ownership, pharmacists are entitled to maintain non-practising registration whilst remaining proprietors of pharmacies in the jurisdiction where the pharmacy premises is located. Regardless of registration type, ongoing compliance with the requirements of the National Law, including all relevant registration standards and guidelines must be ensured.

### Current Status

ACT	proprietors must hold general registration
New South Wales	proprietors must hold general registration
Northern Territory	proprietors must hold general registration
Queensland	proprietors may hold general or non-practising registration
South Australia	proprietors may hold general or non-practising registration
Tasmania	proprietors must hold general registration
Victoria	proprietors may hold general or non-practising registration
Western Australia	proprietors may hold general or non-practising registration