



BE AWARE & TAKE CARE:
Talk to your pharmacist!

The Script

CALIFORNIA BOARD OF PHARMACY JANUARY 1999

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Pharmacy self-assessment is here!

Implementation of the Board's pharmacy self-assessment program began January 1, 1999. In compliance with section 1715 of the California Code of Regulations, each pharmacy has been provided with an assessment form for completion by the pharmacist-in-charge (PIC). The primary purpose of the program is to promote compliance through education.

Each pharmacy will have received a self-assessment form according to its licensure category. There are two types of forms: one for community pharmacies and pharmacies, located within a hospital, that dispense only outpatient prescriptions, and the other for hospital pharmacies that dispense medications only to inpatients. However, hospital pharmacies that dispense both outpatient and inpatient prescriptions will be required to complete both types of assessment forms.

The PIC of the pharmacy is responsible for completing the self-assessment form before March 31st of every odd-numbered year, including 1999. A newly licensed pharmacy must have an assessment form completed by the PIC within 30 days of the issuance of the permit. Additionally, upon termination of a pharmacy's PIC, the new PIC is required to complete a new assessment within 30 days of his or her appointment. The assessments are to be retained in the pharmacy for three years from the dates of their completion.

During an inspection of a pharmacy, the pharmacist will be asked to provide the completed pharmacy assessment to the Board inspector. The inspector will

use the assessment as a guide during the inspection to compare the noted responses with that which he or she observes in the pharmacy. If the inspector's observations are contrary to the responses on the assessment, these differences will be noted on the inspection report, or a violation notice will be issued, depending on the severity of the violation.

If the PIC has answered "no" to any question on the assessment that is applicable to his or her practice, an acceptable plan for future compliance must be attached to the form. Failure of the PIC to complete the assessment by March 31 of each odd-numbered year will result in both the PIC and the pharmacy being cited on the inspection report. Upon being cited, the PIC must

See Pharmacy self-assessment, Page 2

Answers to Questions About the Pharmacy Self-Assessment Program

Q. How do I get the self-assessment forms?

A. The Board will mail the forms to each pharmacy in January of every odd-numbered year.

Q. I just received the pharmacy self-assessment form. How much time do I have to complete it?

A. The pharmacist-in-charge (PIC) must complete it by March 31, 1999, and by March 31st of every subsequent odd-numbered year.

See Pharmacy self-assessment Q&A, Page 7

President's Message

by **Thomas S. Nelson, R.Ph.**
**President, California Board of
 Pharmacy**

The Board of Pharmacy begins the new year by rolling out the pharmacy and practice self-assessment forms for all pharmacies. The forms must be completed by each pharmacy's pharmacist-in-charge (PIC) by March 31, 1999. After that, the forms will be completed biennially and every time the pharmacy changes the PIC.

At first glance, some pharmacists may think that the Board is requiring "one more thing to do" and that the assessment doesn't serve any purpose. Quite the contrary, the assessment serves many purposes for the PIC. When a new PIC takes over a pharmacy, the self-assessment form serves as a checklist and guideline for important regulatory issues in the operation of the pharmacy. Pharmacy law and regulations hold each pharmacy to very high standards in their operation, and by using this form, the PIC can ensure that his or her pharmacy is "ship-shape" and in compliance with those laws and regulations.

The self-assessment form is a valuable tool for the PIC. I know because I completed one during the testing phase and found a few areas in which my pharmacy was deficient. I



answered the form honestly, noted the deficiencies and procedures for correcting them, and the dates by which I would be in compliance.

In addition to being an educational check-off list for the PIC, the self-assessment serves as a quick check for our inspectors when they visit your pharmacy. A cursory glance at the form should be sufficient for the inspector to check for compliance. If the pharmacy is in compliance, the inspector then will be able to spend more time working with the pharmacist on quality consultations, drug utilization reviews, pharmacists' care issues, and any disease state management programs that are in place.

The Board of Pharmacy hopes that pharmacists will use the self-assessment forms as a guideline for good pharmacy practice and for raising the level of pharmacists' care that is provided to the public.

Also, be sure to read the articles in this issue of *The Script* regarding new statutes and regulations taking effect on January 1, 1999. Of particular importance is section 11159.2 of the Health & Safety Code that exempts Schedule II prescriptions from the triplicate prescription requirements if the prescriptions are written for terminally ill patients.

Pharmacy self-assessment

Continued from Page 1

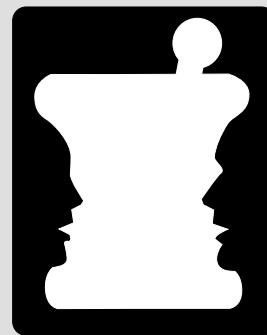
complete an assessment within two weeks, mail a copy to the Board (to the inspector's attention), and retain the original at the pharmacy. Failure to do so will result in the issuance of a violation notice and the case being referred to the Board for investigation.

The pharmacy self-assessment takes the guesswork out of what an inspector looks for during an inspection, and it assists the pharmacy to be in compliance before an inspection.

Correction

In the October 1998 issue of *The Script*, the article "A Reminder-CURES is in effect" contained an incorrect mailing address to which CURES-exempt pharmacies were asked to send their original triplicate prescriptions. The correct address is: Department of Justice, P. O. Box 160507, Sacramento CA 95816.

BE AWARE & TAKE CARE
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CALIFORNIA
 Board of Pharmacy

Changes in Pharmacy Law for 1999

The 1998/1999 Legislative Session enacted several new laws and amendments to the Health & Safety Code, the Business & Professions Code and the California Code of Regulations. These provisions (excepting sections 1261.5 and 1261.6 of the Health & Safety Code which go into effect on July 1, 1999) are in effect now.

Health & Safety Code (H&SC)

Schedule II Prescriptions for the Terminally Ill are Exempt from Triplicate Requirements

Assembly Bill 2693 (Migden, Chapter 789) created an exception to the requirement that a state-issued triplicate prescription form be used for a Schedule II controlled substance: H&SC section 11159.2. This section allows the use of regular prescription forms when prescribing Schedule II controlled substances for terminally ill patients.

The new section defines "terminally ill" as meaning a patient who, in the reasonable medical judgment of the prescriber, is suffering from an incurable, irreversible illness and will, if the illness takes its normal course, die within one year AND who the prescriber is primarily treating for control of pain, symptom management, or both, rather than for cure of the illness.

The new law is complicated in its requirements. The prescriber must complete the following information in his or her own handwriting-wholly in ink or indelible pencil: the name of the patient, the name and quantity of the drug, and directions for use, along with the prescriber's signature. If any of this information is missing, the prescriber must complete it, so the prescription must be returned to the prescriber.

The prescription must also contain additional information which the prescriber or someone else may complete (there is no requirement that the prescriber complete the information in his or her own handwriting: the patient's address and the name, address, phone number, category of prescriber licensure, and federal controlled substance registration number, essentially to comply with H&SC section 11164 (b)(2) and (3).

For a non-triplicate prescription for a Schedule II drug to be filled for a terminally ill patient on any prescription form, the prescription itself must contain the notation "11159.2 exemption," to indicate why no triplicate is being used. If this notation is "technically" deficient and the pharmacist has personal knowledge of the patient's terminal illness, he or she may fill the prescription. However, the prescription must be returned to the physician for correction within 72 hours. While section 11159.2 does not specifically provide that the notation be in the prescriber's handwriting or in indelible pencil or ink, the prescription must be returned to the prescriber for correction.

Lastly, in cases where the non-triplicate prescription has been returned to the prescriber for correction of a technical error (the

prescriber must correct the prescription or write a new one), the pharmacist should immediately notify the prescriber of the problem, especially if it appears that a delay in dispensing the prescription will cause the patient to suffer intensely (defined by H&SC 11167 as an emergency). In such emergencies, the prescriber may then issue an oral order or any ordinary written prescription for enough medication for 72 hours, but must then follow up with a triplicate prescription within seven days.

See page 11 for answers to questions regarding H&SC section 11159.2.

Time Extended for Filling Schedule II Controlled Substance Prescriptions and Definition of Emergency Triplicate Revised

Senate Bill 2239 (Committee on Business and Professions, Chapter 878) amended H&SC section 11166 by directing that "No person shall fill a prescription for a controlled substance classified in Schedule II 14 or more days after the date written on the prescription by the prescriber."

When counting the days, remember that the day the prescription is written is the first day. For example, if a prescription is written on January 1st, it may not be filled after January 14th.

Previously, pharmacists were not permitted to fill such prescriptions tendered to them after the seventh day following the prescription's date of issue.

The same bill revised section 11167, the provision which authorizes filling a Schedule II prescription without a triplicate in emergencies. An emergency is now defined as "where failure to issue a prescription may result in loss of life or intense suffering." In such an emergency, section 11167 permits the prescriber to order a Schedule II controlled substance orally, in writing (in indelible pencil or ink), or electronically, although because of more restrictive federal regulations, an electronic data transmission, as opposed to a facsimile, is not permitted.

Additionally, for example, if a physician calls in or faxes the order on January 1st, the triplicate would have to be received (or in an envelope postmarked) on or before January 8th.

Skilled Nursing Facilities May Use Automated Drug Delivery Machines Beginning July 1, 1999

SB 1606 (Lewis, Chapter 778) amended section 1261.5 and added section 1261.6 to the Health & Safety Code. Section 1261.6, beginning July 1, 1999, permits skilled nursing facilities and intermediate care facilities licensed by the Department of Health Services to use automated drug delivery machines (e.g., Pyxis machines, but not exclusively Pyxis machines). Currently, only hospitals use such dispensing machines to store drugs in non-pharmacy areas of the hospital, as automated systems

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Changes in Pharmacy Law*Continued from Page 3*

provide security and accountability regarding the drugs stored and dispensed from the machines.

This section also requires that transaction information for drugs dispensed from such machines be available for three years. Access to the drugs in the machines is limited to specific persons who are authorized by law to administer drugs.

Facilities using such a machine must have policies and procedures for use and security of stored drugs and procedures for assuring the potency and purity of those drugs. Drugs may be removed from the machine: (1) when ordered by a prescriber for a patient for administration before the next scheduled pharmacy delivery or 72 hours (whichever is less), only after a pharmacist's review of the order and patient's profile, (2) drugs ordered for a patient on an "as needed" basis where the use and retrieval is subject to review by a pharmacist, (3) drugs designated by the facility as emergency drugs or acute onset drugs, where the retrieval must be reviewed by a pharmacist within 48 hours.

The machines must be stocked by a pharmacist if done at the facility, or if removable drawers are used, the drawers may be removed for stocking outside the facility if: (1) the task is done by a pharmacist or by a pharmacy technician or an intern under the direct supervision of a pharmacist, (2) the drawers are transported between the facility and pharmacy in a tamper-evident container, and (3) written policies and procedures exist to ensure proper placement of the drawers in the machine.

Review of the drugs in the machines must be done by the pharmacy on a monthly basis for security, accountability and cleanliness. Drugs dispensed from the machine would be exempt from patient-specific labeling requirements if unit dose or unit of use packaging is used, and the facility has the information required on the label readily available.

Subsection (b) was added to section 1261.5 (also effective July 1, 1999) to provide that limitations on the number and quantity of oral dosage or suppository form drugs provided by a pharmacy to a health facility for storage in a secured emergency supplies container does not apply to an automated drug systems when a pharmacist controls access to the drugs.

Actions to be Taken Against Those Participating in Unlicensed Activity

Assembly Bill 2687 (Gallegos, Chapter 750) added H&SC section 11352.1 authorizing local public health officers to take action to stop the sale of dangerous drugs or devices without a Board of Pharmacy license. The health officer can: (1) receive and investigate complaints about such activity provided that a pharmacist accompanies the officer and the board is provided a copy of the complaint, (2) issue a cease and desist order for the activity and with the aid of local law enforcement, confiscate the dangerous drugs or devices, (3) order the closure of the business if there is an immediate threat to public health, and (4) proceed to

an expedited hearing when a business has been closed, and where the business must prove that the closure was unwarranted.

The bill also provides that any person who dispenses or furnishes or manages or operates a business that dispenses or furnishes a dangerous drug or device without a license is guilty of a misdemeanor. Conviction is punishable by imprisonment for up to one year and/or a fine of \$5,000. The penalty for second convictions is one year and/or \$10,000.

This bill was enacted to curtail the illegal selling of dangerous drugs (including controlled drugs) and dangerous devices, obtained in Mexico or from other sources by "Mom & Pop" markets or at swap meets, to consumers by unlicensed individuals or pharmacies.

Business & Professions Code (B&PC)**Under Protocols Pharmacists May Perform Specific Functions for Home Health Care Patients**

SB 440 (Maddy, Chapter 347) amended B&PC sections 4027 and 4052 to permit a pharmacist to perform specific functions for patients receiving home health care if written patient-specific protocols are developed with a physician. Pharmacists can currently perform such procedures under written protocols for patients in hospital, managed care and clinic settings. A home health care agency is defined as an agency that arranges for the provision of skilled nursing services to patients in their place of residence.

Home health care patients, because they are discharged from hospitals as soon as possible, often require pharmaceutical care ranging from home IV therapy to timely adjustments in medication doses. This bill permits pharmacists to provide such care under the above-described protocols.

Pharmacy Technician Trainees May Obtain Practical Experience in a Pharmacy Only if Enrolled in an Approved Program

SB 2239 (Business and Professions Committee, Chapter 878) created new B&PC section 4115.5 that allows only those pharmacy technician trainees who are currently enrolled in any public, ROP or private program approved by the Bureau of Private Postsecondary and Vocational Education to obtain practical instruction (externship) in a pharmacy setting. Trainees in any other program may not obtain practical instruction in a pharmacy setting: they must train in a simulated or mock-up pharmacy provided by their program.

Trainees enrolled in the approved programs may earn up to 120 hours in either a community or hospital setting. If both community and inpatient experience are provided (for example, in a hospital providing both community and inpatient experience), the maximum number of hours allowed is 320, and only 120 of these hours can be in a community setting or in a single

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Changes in Pharmacy Law*Continued from Page 4*

hospital department. The externship can last no longer than six months, and only while the trainee is enrolled in an approved program as described above.

Pharmacy technician trainees must be under the immediate, personal supervision and control of a pharmacist, and the pharmacist is responsible for any activities of a trainee. Only one pharmacy technician trainee per pharmacist may be in the pharmacy, regardless of the setting, and the trainee must wear a badge identifying him or her as a trainee.

Theoretical instruction requirements have not changed: only the practical instruction is affected in that limits have been set for the above-referenced programs. Pharmacy technician trainees enrolled in approved programs may perform all the duties listed in section 1793.2 of the California Code of Regulations.

Cash Compromise Restored as Grounds for Unprofessional Conduct Discipline

This bill also amended B&PC section 4301 to restore cash compromise to the list of grounds for discipline as unprofessional conduct. Last year the subsection containing the reference to cash compromise was repealed; however, it has been restored as subsection (m), and the remaining subsections were renumbered.

Pharmacist Licenses Suspended or Revoked in Other States to be Automatically Suspended in California

Another statute created by SB 2239 is B&PC section 4301.5. This section provides that the license of anyone who is licensed as a pharmacist in California or any other state and whose authority to practice pharmacy is suspended or revoked by another state or federal government, will be automatically suspended or revoked for the duration of the suspension or revocation imposed by the other authority.

Higher Civil Penalties and Fines for Those Who Obtain License Fraudulently

SB 2933 amended B&PC section 4322 to provide substantially higher civil penalties and fines for those convicted of obtaining licensure by making false representations or fraudulently representing himself or herself to be registered. The fines that can be collected have been increased from \$400 to \$5,000, and possible imprisonment terms were increased from 50 days to 180 days.

California Code of Regulations (CCR)**Acceptable Pharmacy Coursework for Examination Candidates with Four Failed Attempts**

Pharmacist examination candidates with four failed attempts must successfully complete at least 16 semester units of pharmacy coursework offered by a school of pharmacy approved by the American Council on Pharmaceutical Education before they may be scheduled to take the exam again. A transcript document-

ing that successful completion must be sent from the pharmacy school directly to the board.

Pharmacy Technician Trainee Courses Regulation Reverted to Original Version

During 1998, the pharmacy technician training course requirements of the CCR section 1793.6 were amended via emergency regulations that have since expired. Because the emergency regulations are no longer in effect, section 1793.6 has reverted to its original form.

Please see Law Update on page 8 for exact language of these sections.

Continuing education petition requirements to change

Beginning March 1, 1999, the fee for any continuing education (CE) petition for course review (from a non-recognized provider or from an individual pharmacist) is \$40 for each hour of coursework. For example, a one-hour course will be reviewed for \$40; the fee for a three-hour course will be \$120.

One of the requirements for renewing a pharmacist license in California is to complete 30 hours of CE every two years (section 4231 of the Business & Professions Code). Additionally, Board regulations require that providers of pharmacy CE meet the requirements of and be "recognized" by either the American Council of Pharmaceutical Education or the Accreditation Evaluation Services (section 1732 of the California Code of Regulations (CCR)).

However, the Board also permits non-recognized CE providers or individual pharmacists to petition the Board to review specific courses for acceptance as CE for California pharmacists (section 1732.2 of the CCR).

Although authorized to do so, the Board has never charged a fee for reviewing CE petitions from pharmacists, and presently charges \$40 (regardless of the number of hours of coursework to be reviewed) to review coursework being offered by non-recognized providers.

Advanced Cardiac Life Support and CPR courses will no longer be automatically approved for CE: a petition for Board approval and appropriate fee will be required.

If you wish to learn more about the petitioning process to fulfill the CE requirements of pharmacists, please contact the Board.

The pharmacist-in-charge has rights and responsibilities



Have you been offered a pharmacist-in-charge (PIC) position, but are unsure exactly what the responsibilities are? Since this issue of *The Script* is devoted mainly to information relating to the self-assessment forms to be completed by each pharmacy's PIC, it seems appropriate here to discuss the rights and responsibilities of a PIC.

While a nonpharmacist may own a pharmacy, only a pharmacist may legally take charge of a pharmacy (section 4116, Business & Professions

Code [B&P Code]). Further, section 4113 requires that every pharmacy must designate a specific pharmacist-in-charge within 30 days who is responsible for the pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy. The Board must be notified of that designation within 30 days. Both the permit holder and the PIC may be subject to disciplinary action for failure to notify the Board within 30 days when a pharmacist ceases to be PIC. ("Change of Pharmacist-in-Charge" forms can be requested from the Board.)

Section 1709.1 of the California Code of Regulations (CCR) requires the PIC of a pharmacy to be employed at that location. It also states that a pharmacist may not serve as PIC at more than one pharmacy; however, a pharmacist may serve as PIC for two pharmacies if (1) the PIC is the only pharmacist at each pharmacy, and (2) the pharmacies do not have overlapping hours of business. This section also allows the pharmacy, following the loss of the pharmacy's PIC, to designate an interim PIC (a registered pharmacist who is an employee, officer or administrator of the pharmacy and who is actively involved in the management of the pharmacy on a daily basis). The interim PIC may function in that capacity no more than 120 days. The owner must be prepared to provide representatives of the Board documentation of the interim PIC's involvement with the pharmacy and the owner's efforts to secure a permanent PIC.

Since the PIC will be held responsible for a pharmacy's compliance with relevant statutes and regulations, he or she has the right to insist that the pharmacy owner also comply with the rules.

These statutes and regulations include, but are not limited to:

- Sections 4000-4407 and other important sections of the Business & Professions Code.
- Sections 1703-1793.7 of the California Code of Regulations,
- The Uniform Controlled Substances Act (beginning at section 11053 of the Health & Safety Code.
- The State Food and Drug Act (starting at section 26000).
- Similar federal laws, related state and federal regulations, and in some circumstances, federal and state laws pertaining to anti-trust violations, false or misleading advertising and unfair business practices.

One important, specific obligation of the PIC is to be responsible for completing the pharmacy's self-assessment form before March 31 of every odd-numbered year. Section 1715 CCR also requires the PIC to complete an assessment within 30 days

whenever a new pharmacy permit has been

issued or there is a change of PIC. The

PIC is jointly responsible with the pharmacy owner for the record-keeping requirements of section 4081 B&P Code. This refers to maintaining and having available for inspection during business hours all records of acquisition and disposition of dangerous drugs and preserving such records for three years, as well as keeping a current inventory.

While section 4081 also provides that the PIC is not criminally responsible for the acts of others in violation of this section, of which he or she had no knowledge and in which he or she did not participate, the PIC may be disciplined for such violations, regardless of knowledge. This does not mean that a PIC will be disciplined for every section 4081 violation, but it does mean that the PIC is directly responsible to the Board for compliance. This gives the PIC the right to insist on control of acquisition, maintenance and disposition of dangerous drugs and records of those acquisitions and dispositions.

In summary, the designated PIC has many responsibilities, especially where a nonpharmacist owner is involved, to ensure the pharmacy's compliance with all applicable statutes and regulations. A PIC who does not receive cooperation and believes a pharmacy law is being violated and doesn't take corrective action is placing his or her license at risk.



Pharmacy Board meetings are open to the public

In accordance with its strategic plan, the Board has formed committees to address issues related to meeting the plan's objectives. To share the various committee goals, activities and accomplishments with the public, a portion of each Board meeting will be devoted to one of the committees and open to the public for comment.

On **March 24–25, 1999**, the Board meeting will be held in Sacramento, and the Board's Organizational Development Committee will discuss its objectives and how to reach them.

The **May 19–20, 1999** Board meeting will be held in San Diego, and the Licensing Committee will open its portion of the meeting to public comment.

The Board encourages all interested parties to participate in these meetings. Public comment periods are part of each meeting. If you cannot attend a meeting, you may submit written comments to the Board (for distribution to the Board members), but try to get them to the Board within seven days of the meeting. Agendas with information regarding the exact time and location of the meetings may be obtained by calling the Board at (916) 445-5014.

Pharmacy self-assessment Q&A

Continued from Page 1

Q. Is the owner responsible for completing the assessment?

A. No, the PIC is responsible for completing the assessment, but during an inspection, both the owner and the PIC may be cited on an inspection report for failure to complete the assessment. The owner is responsible for ensuring that the PIC has completed the assessment.

Q. I just became the new PIC at a pharmacy, and there is a current assessment—completed by the previous PIC—on file. Do I have to complete a new assessment?

A. Yes, you must complete a new assessment within 30 days of your appointment as PIC.

Q. I just opened my new pharmacy last week. How soon does my PIC have to complete the assessment?

A. An assessment must be completed within 30 days of the issuance of the pharmacy's permit.

Q. When the assessment is completed, do I mail it to Sacramento?

A. No. All completed assessments must remain on file at the pharmacy for three years from the date the assessment was completed.

Q. If I am the PIC at a hospital pharmacy that dispenses both outpatient and inpatient prescriptions, do I have to complete both the hospital inpatient and the community pharmacy assessment forms?

A. Yes. Both assessment forms must be completed, and the Board will provide both to you.

Q. How can I get another assessment form if I have lost or misplaced mine?

A. Additional forms may be requested from the Board.

Q. Can blank assessment forms be duplicated for use by future PICs, etc.?

A. Yes. The blank forms may be photocopied; however, remember that the completed assessments on file at the pharmacy must have original (not photocopied) responses and signatures.

Q. When a Board of Pharmacy inspector visits a pharmacy for an inspection, will he or she go over the entire assessment form?

A. The inspector may not review every question of the assessment, but will pay close attention to certain responses, depending upon what the inspector observes and the reason for the inspection.

Q. What should I do if I have answered "no" to a question that is applicable to my practice?

A. Attach procedures for coming into compliance, and demonstrate to the inspector how those procedures are being implemented.

Q. What if my pharmacy is inspected, and the PIC has not been able to complete the assessment by the March 31st due date?

A. The inspector will order a correction on the inspection report, and both the pharmacy and the PIC will be cited. The PIC will be directed to forward a copy of the completed assessment to the Board (to the inspector's attention) within two weeks. Again, remember that the original must remain on file in the pharmacy for three years from its completion date. Failure to complete and forward the assessment to the Board will result in issuance of a violation notice, citing section 1715 of the California Code of Regulations.

Law Update

This article contains additions and amendments to Chapter 9, Division 2 of the Business & Professions Code and Division 10, Chapter 4 of the Health & Safety Code. It also contains an addition to Chapter 17, Title 16 of the California Code of Regulations. For your convenience, these sections are included here so that they may be cut out and saved until the next publication of the Pharmacy Law.

Business & Professions Code

4115.5. (New)

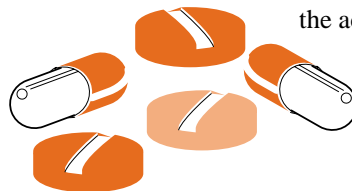
- (a) Notwithstanding any other provision of law, a pharmacy technician student may be placed in a pharmacy as a pharmacy technician trainee to complete an externship for the purpose of obtaining practical training that is required by the board as a condition of becoming registered as a pharmacy technician. A "pharmacy technician student" is a person who is enrolled in a pharmacy technician training program operated by a California public postsecondary education institution or by a private postsecondary vocational institution approved by the Bureau for Private Postsecondary and Vocational Education.
- (b) (1) A pharmacy technician trainee participating in an externship as described in subdivision (a) may perform the duties described in subdivision (a) of Section 4115 only under the immediate, personal supervision and control of a pharmacist. A pharmacist supervising a pharmacy technician trainee shall be on the premises and have the trainee within his or her view at any time the trainee performs the duties described in subdivision (a) of Section 4115.
- (2) A pharmacist supervising a pharmacy technician trainee participating in an externship as described in subdivision (a) shall be directly responsible for the conduct of the trainee.
- (3) A pharmacist supervising a pharmacy technician trainee participating in an externship as described in subdivision (a) shall verify any prescription prepared by the trainee under supervision of the pharmacist by initialing the prescription label before the medication is disbursed to a patient.
- (4) No more than one pharmacy technician trainee per pharmacist may participate in an externship as described in subdivision (a) under the immediate, personal supervision and control of that pharmacist at any time the trainee is present in the pharmacy.
- (5) A pharmacist supervising a pharmacy technician trainee participating in an externship as described in subdivision (a) shall certify attendance for the pharmacy technician trainee and certify that the pharmacy technician trainee has met the educational objectives established by California public postsecondary education institution or the private postsecondary vocational institution in which the trainee is enrolled, as established by the institution.

- (c) (1) Except as described in paragraph (2), an externship in which a pharmacy technician trainee is participating as described in subdivision (a) shall be for a period of no more than 120 hours.
- (2) When an externship in which a pharmacy technician trainee is participating as described in subdivision (a) involves rotation between a community and hospital pharmacy for the purpose of training the student in distinct practice settings, the externship may be for a period of up to 320 hours. No more than 120 of the 320 hours may be completed in a community pharmacy setting or in a single department in a hospital pharmacy.
- (d) An externship in which a pharmacy technician trainee may participate as described in subdivision (a) shall be for a period of no more than six consecutive months, and shall be completed while the trainee is enrolled in a course of instruction at the institution.
- (e) A pharmacy technician trainee participating in an externship as described in subdivision (a) shall wear identification that indicates his or her student status.

4301. (Amended)

The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

- (a) Gross immorality.
- (b) Incompetence.
- (c) Gross negligence.
- (d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.
- (e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.
- (f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.



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- (g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.
 - (h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.
 - (i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering or offering to sell, furnish, give away, or administer any controlled substance to an addict.
 - (j) The violation of any of the statutes of this state or of the United States regulating controlled substances and dangerous drugs.
 - (k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.
 - (l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.
 - (m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances. The record of the compromise is conclusive evidence of unprofessional conduct.
 - (n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter.
 - (o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board.
 - (p) Actions or conduct that would have warranted denial of a license.
 - (q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.
- 4301.5. (New)**
- (a) If a pharmacist possesses a license or is otherwise authorized to practice pharmacy in any other state or by an agency of the federal government, and that license or authority is suspended or revoked, the pharmacist's license shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the pharmacist of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.
 - (b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the pharmacy profession.
 - (c) The issue of penalty shall be heard by an administrative law judge sitting alone, by a committee of the board sitting with an administrative law judge, or by the board sitting with an administrative law judge, at the board's discretion. A pharmacist may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the pharmacist's license or authority to practice pharmacy is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon the showing to the administrative law judge, board, or committee of the board by the pharmacist that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded.
- If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.
- (d) The record of the proceedings that resulted in the suspension or revocation of the pharmacist's license or authority to

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Law Update*Continued from Page 9*

practice pharmacy, including a transcript of the testimony therein, may be received in evidence.

- (e) If a summary suspension has been issued pursuant to this section, the pharmacist may request that the hearing on the penalty conducted pursuant to subdivision (e) be held at the same time as a hearing on the accusation.

4322. (Amended)

Any person who attempts to secure or secures licensure for himself or herself or any other person under this chapter by making or causing to be made any false representations, or who fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment not exceeding 50 days, or by both that fine and imprisonment.

California Code of Regulations**1725. Acceptable Pharmacy Coursework for Examination Candidates with Four Failed Attempts (New)**

- (a) Coursework that meets the requirements of section 4200.1 of the Business and Professions Code is any pharmacy coursework offered by a pharmacy school approved by the American Council on Pharmaceutical Education or recognized by the board.
- (b) A final examination must be a part of the course of study.
- (c) When a candidate applies for reexamination after four failed attempts, he or she shall furnish evidence of successful completion of at least 16 semester units or the equivalent of pharmacy coursework. Evidence of successful completion must be posted on a transcript from the pharmacy school sent directly to the board.

1793.6. Training Courses Specified by the Board (Original form)

A course of training that meets the requirements of section 1793.4(b) is:

- (a) Any pharmacy technician training program accredited by the American Society of Health-System Pharmacists,
- (b) Any pharmacy technician training program provided by a branch of the federal armed services for which the applicant possesses a certificate of completion, or
- (c) Any other course that provides a training period of at least 240 hours of theoretical and practical instruction, provided that at least 120 of these hours are in theoretical instruction in a curriculum that provides:
1. Knowledge and understanding of different pharmacy practice settings.

2. Knowledge and understanding of the duties and responsibilities of a pharmacy technician in relationship to other pharmacy personnel and knowledge of standards and ethics, laws and regulations governing the practice of pharmacy.
3. Knowledge and ability to identify and employ pharmaceutical and medical terms, abbreviations and symbols commonly used in prescribing, dispensing and recordkeeping of medications.
4. Knowledge of and the ability to carry out calculations required for common dosage determination, employing both the metric and apothecary systems.
5. Knowledge and understanding of the identification of drugs, drug dosages, routes of administration, dosage forms and storage requirements.
6. Knowledge of and ability to perform the manipulative and record keeping functions involved in and related to dispensing prescriptions.
7. Knowledge of and ability to perform procedures and techniques relating to manufacturing, packaging, and labeling of drug products.

Health & Safety Code**11159.2. (New)**

- (a) Notwithstanding any other provision of law, a prescription for a Schedule II controlled substance for use by a patient who has a terminal illness shall not be subject to Section 11164.
- (b) (1) The prescription shall be signed and dated by the prescriber and shall contain the name of the person for whom the controlled substance is prescribed, the name and quantity of the controlled substance prescribed, and directions for use. The signature, date, and information required by this paragraph shall be wholly written in ink or indelible pencil in the handwriting of the prescriber.
- (2) The prescription shall also contain the address of the person for whom the controlled substance is prescribed, as provided in paragraph (3) of subdivision (b) of Section 11164, and shall contain the name, address, telephone number, category of professional licensure, and federal controlled substance registration number of the prescriber, as provided in paragraph (2) of subdivision (b) of Section 11164.
- (3) The prescription shall also indicate that the prescriber has certified that the patient is terminally ill by the words "1159.2 exemption."
- (c) A pharmacist may fill a prescription pursuant to this section when there is a technical error in the certification required by paragraph (3) of subdivision (b), provided that he or she has personal knowledge of the patient's terminal illness, and subsequently returns the prescription to the prescriber for correction within 72 hours.

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(d) For purposes of this section, “terminally ill” means a patient who meets all of the following conditions:

(1) In the reasonable medical judgment of the prescribing physician, the patient has been determined to be suffering from an illness that is incurable and irreversible.

(2) In the reasonable medical judgment of the prescribing physician, the patient’s illness will, if the illness takes its normal course, bring about the death of the patient within a period of one year.

(3) The patient’s treatment by the physician prescribing a Schedule II controlled substance pursuant to this section primarily is for the control of pain, symptom management, or both, rather than a cure of the illness.

11166. (Amended)

No person shall fill a prescription for a controlled substance classified in Schedule II 14 or more days after the date written on the prescription by the prescriber. No person shall knowingly fill a mutilated or forged or altered prescription for a controlled substance except for the addition of the address of the person for whom the controlled substance is prescribed as provided by paragraph (3) of subdivision (b) of Section 11164.

11167. (New)

Notwithstanding subdivision (a) of Section 11164, in an emergency where failure to issue a prescription may result in loss of life or intense suffering, an order for a Schedule II controlled substance may be dispensed on an oral, written, or electronic data transmission order, subject to all of the following requirements:

- (a) The order contains all information required by subdivision (a) of Section 11164.
- (b) Any written order is signed and dated by the prescriber in indelible pencil or ink, and the pharmacy reduces any oral or electronic data transmission order to writing prior to actually dispensing the controlled substance.
- (c) The prescriber provides a triplicate prescription, completed as provided by subdivision (a) of Section 11164, by the seventh day following the transmission of the initial order; a postmark by the seventh day following transmission of the initial order shall constitute compliance.
- (d) If the prescriber fails to comply with subdivision (b), the pharmacy shall so notify the Bureau of Narcotic Enforcement in writing within 144 hours of the prescriber’s failure to do so and shall make and retain a written, readily retrievable record of the prescription, including the date and method of notification of the Bureau of Narcotic Enforcement.

Answers to Questions About Health & Safety Code Section 11159.2

A number of questions have been raised as to the meaning and effect of the new provisions of Health & Safety Code (H&SC) section 11159.2:

Q. Have requirements that a triplicate prescription form be used for prescribing Schedule II controlled substances been repealed in California?

A. No. The new law does not eliminate existing triplicate requirements for Schedule II controlled substances for other patients; however existing exceptions for long term care facilities, skilled nursing facilities, and hospice patients under H&SC section 11167.5 and in emergencies, under H&SC section 11167, also remain in effect.

Q. Can triplicate prescriptions still be used to prescribe Schedule II controlled substances for terminally ill patients?

A. Yes.

Q. To which Schedule II controlled substances does the 11159.2 exemption apply?

A. Section 11159.2 applies to all Schedule II controlled substances, if the patient meets the definition of “terminally ill.”

Q. Can a non-triplicate prescription written for a terminally ill patient be faxed to a pharmacy for filling if the required information (patient’s name, drug, directions for use, prescriber’s signature, etc.) are in the handwriting of the prescriber?

A. Yes, the prescription may be faxed, but the pharmacy must have the original prescription in hand before dispensing the drug to the patient. Section 11159.2 does not specifically authorize the pharmacy to begin preparing the prescription without the original prescription. However, it is reasonable for the pharmacy to use a fax of the prescription to prepare the prescription as long as the pharmacist receives and properly reviews the original prescription for compliance with legal requirements before dispensing the prescription to the patient.

Q. Can a non-triplicate prescription written for a terminally ill hospice patient served by a home health agency be dispensed if the prescription is faxed to the pharmacy? Does the pharmacist need to prepare a pharmacy-generated triplicate?

A. If the prescription for the hospice patient is issued under and meets the requirements of section 11159.2, the pharmacy

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Health & Safety Code Section 11159.2*Continued from Page 11*

need not generate a triplicate, as otherwise required for patients of home health agencies by H&SC section 11167.5. However, do not “mix” sections 11159.2 and 11167.5. If you are processing a prescription under section 11159.2, it cannot be dispensed without an original prescription which complies with the requirements of section 11159.2. If you are processing a prescription under the authority of section 11167.5, you can dispense it based on a fax order, but must then prepare a pharmacy triplicate.

Q. Can a non-triplicate prescription written for a hospice patient who is not terminally ill and served by a home health agency be dispensed if the prescription is faxed to the pharmacy? Does the pharmacist need to prepare a pharmacy-generated triplicate in this case?

A. Section 11159.2 does not apply because the patient is not terminally ill. This situation is governed entirely by section 11167.5 and related federal regulations. The order for a Schedule II controlled substance for a non-terminal hospice patient of a home health agency may be faxed, but the pharmacy must generate a triplicate and otherwise comply with section 11167.5. The reason such an order may not be transmitted orally or by electronic data transmission as permitted by section 11167.5 is because federal regulations only permit a fax order under such circumstances.

Q. Must the prescriber’s address be printed on the non-triplicate prescription form if the form is used to prescribe a Schedule II drug for a terminally ill patient?

A. The prescriber’s address must appear on the prescription form, but the law does not require that the address be preprinted on the form.

Q. What is the purpose of the “11159.2 exemption” notation?

A. This notation permits the prescriber to write a prescription for a Schedule II drug on any prescription form, not just a triplicate, without specifically writing on the prescription that the patient is “terminally ill.” This was due to concern for patients who may not know that they are considered terminally ill. If the patient asks what the notation means, the pharmacist should explain that the notation allows the physician to use a regular prescription form rather than the state triplicate form.

Q. Can a pharmacist fill a non-triplicate prescription for a Schedule II controlled substance if the notation “11159.2 exemption” is not written by the prescriber on the prescription?

A. The pharmacist cannot fill such a prescription if the notation is missing. Moreover, the law does not require that the notation be in the prescriber’s own handwriting. If the notation is there but is technically incorrect, the prescription may be filled if

(1) the pharmacist has personal knowledge of the patient’s terminal illness and (2) returns the prescription to the prescriber for correction of the notation within 72 hours.

Q. What are examples of technical errors in the 11159.2 exemption notation?

A. Examples might be: the wrong section number is listed (e.g., 1159.2); “terminally ill” is written on the prescription instead of the required certification; “non-triplicate” is written on the prescription.

Q. What about other errors on a non-triplicate prescription issued pursuant to section 11159.2 (for example, the prescriber does not personally sign the form or write in the name of the patient or directions for use, or the portions written by the prescriber are not in ink or indelible pencil)?

A. In these cases, the prescription is not valid. The pharmacist may not fill the prescription. The pharmacist should immediately notify the prescriber of the problem, especially if it appears the patient will suffer if there is any significant delay in filling the prescription. The prescriber must either correct the prescription or issue a new one. If the patient may lose his or her life or suffer intensely (what H&SC section 11167 defines as an emergency), the prescriber may issue an oral order or any ordinary written prescription for enough medication for the emergency (the DEA holds this period to be 72 hours), but the prescriber must follow up with a triplicate within seven days (because this is a different process than that authorized by section 11159.2).

Q. When a pharmacist fills a non-triplicate prescription for a Schedule II controlled substance for a terminally ill patient that contains a technical error in the “11159.2 exemption” requirement, the law requires the non-triplicate prescription be returned to the prescriber for correction within 72 hours. What kind of record must the pharmacist keep to indicate that the non-triplicate prescription was returned to the prescriber for correction, and the prescriber’s return of or failure to return the corrected prescription?

A. Section 11159.2 does not specifically provide answers to these questions. However, Business and Professions Code section 4081 requires that a pharmacy have complete records of acquisition and disposition of dangerous drugs and controlled substances. The pharmacy should make a record, either in its computer or on a duplicate of the prescription, of the reason and the date the prescription was returned for correction and the date the corrected prescription was returned to the pharmacy. If the prescriber fails to return the corrected prescription, that should be noted as well. The pharmacy should be careful not to establish a pattern of failing to obtain corrected prescriptions it has filled pursuant to section 11159.2. For its own protection, the pharmacy should keep a duplicate of the non-triplicate prescription that is

See Health & Safety Code Section 11159.2, Next Page

returned to the prescriber even if all the above information is entered in a computer.

Q. Can a medication order for a Schedule II controlled substance for a terminally ill patient being discharged from the hospital be written as a chart order instead of on a non-triplicate prescription?

A. No. The chart order is for use of patients receiving treatment in the hospital, and a chart order would not meet the requirements of section 11159.2.

Q. How can the pharmacy report the filing of section 11159.2 prescriptions to the CURES system since there is no serial number on non-triplicate prescription forms?

A. Enter either "11111" or "1-1-1" in the area on the CURES screen where the triplicate serial number would go. This code will signify that the prescription was, under the authority of section 11159.2, not written on a triplicate form and was filled for a terminally ill patient. If you have problems entering this code, there may be a software problem. For assistance, contact Atlantic Associates Inc. at (888) 492-7341 or KStGelais@Prodigy.com.

Q. Under requirements of the Controlled Utilization Review and Evaluation System (CURES) program, pharmacies that are exempt from submitting data electronically or on tape or disk (those that are not computerized and fill fewer than an average of 25 Schedule II prescriptions per month) must submit the original triplicate forms to the Department of Justice. Under these guidelines, my pharmacy is exempt from submitting data electronically to CURES; am I required to submit prescriptions that have been filled under section 11159.2 to the Department of Justice?

A. Yes. Pharmacies still must submit data to CURES for all Schedule II prescriptions they fill, and for most pharmacies this data is submitted electronically each month. However, those few pharmacies that are exempt from submitting data electronically each month to CURES must send a copy of the non-triplicate prescription to CURES. Because neither section 11159.2 nor the CURES statute and regulation specifically provides how such a pharmacy should submit a section 11159.2 prescription, the Board and the Department of Justice have determined that submission of a photocopy to the Department of Justice (P.O. Box 160507, Sacramento, CA, 95816) will be satisfactory.

Q. How does the pharmacy maintain a non-triplicate prescription filled under the authority of section 11159.2?

A. As required for prescriptions written for any controlled drug, the pharmacy still must keep the original prescription in a separate area for three years.

Q. May a nurse practitioner or physician assistant write a 11159.2 prescription?

A. No. Nothing in section 11159.2 authorizes anyone other

than a physician, dentist, podiatrist, or veterinarian to write Schedule II prescriptions.

Q. Health & Safety Code section 11166 has been amended to allow a prescription for a Schedule II controlled substance to be filled up to the 14th day from the date of issue. Does that apply to 11159.2 prescriptions, and which day is the "14th day"?

A. Section 11166 applies to all Schedule II prescriptions, including those issued under section 11159.2. The 14th day includes the date of issue, so a prescription issued on January 1st could not be filled after January 14th.

Q. Is a pharmacist permitted to refill a non-triplicate prescription for a Schedule II controlled substance written pursuant to section 11159.2?

A. No. Section 11200 of the H&SC prohibits the refilling of a prescription for a Schedule II substance.

Q. If a pharmacist fills prescriptions for Schedule II controlled substances for a terminally ill patient under section 11159.2, can the pharmacist keep filling prescriptions without a triplicate if the patient is still alive after one year?

A. Section 11159.2 does not specifically address this issue, but if the prescriber has exercised reasonable medical judgment as to the patient's prognosis and the pharmacist is satisfied that the patient otherwise meets the requirements of section 11159.2, the pharmacist may continue filling prescriptions for the patient without a triplicate. However, the pharmacist would always have the responsibility, under H&SC section 11153 and section 1761 of the California Code of Regulations, to ensure that the prescriptions are for legitimate medical purposes and that the prescriber isn't subverting the purpose of section 11159.2.

Q. What is my responsibility as a pharmacist to evaluate the validity of a non-triplicate prescription for a terminally ill patient?

A. The pharmacist's responsibility remains the same as discussed in the question above. Additionally, the pharmacist's professional responsibility also requires evaluating the prescription for validity, errors, irregularity, ambiguity, etc.

Q. Isn't this a complicated requirement to place on the pharmacist? Didn't the Board see that this law would be a problem for the profession to implement?

A. The Board did have major concerns with provisions in the proposed statute and opposed the bill while it was pending in the Legislature. However, the law was enacted, and the Board's obligations now are to interpret, apply and enforce the law as enacted.



Disciplinary Actions by the Board

PHARMACISTS/PHARMACIES

GERALD O. DOWNS, RPH 28196, Tracy, CA

Violation: For purposes of stipulation only, respondent admitted to having unaccounted for shortages of controlled substances while acting as PIC.

Action: Revoked, stayed; 30 days' suspension; three years' probation; take and pass law exam; can neither hold ownership nor act as PIC; payment of \$2,509.39 costs

Effective: April 21, 1998

CATHERINE A. RUSSELL, RPH 37554, Brea, CA

Violation: For purposes of settlement only, respondent admitted to dispensing anabolic steroids for nonlegitimate, nonmedical purposes.

Action: Revoked, stayed; 15 days' suspension; three years' probation; take and pass law exam; 15 additional hours of CE related to drugs of abuse; can neither hold ownership nor act as PIC; payment of \$2,000 in costs

Effective: April 29, 1998

SMITH'S FOOD & DRUG CENTER, PHY 39036, Lakewood, CA

Violation: For purposes of settlement only, respondent admitted to dispensing anabolic steroids for nonlegitimate, nonmedical purposes.

Action: Public Letter of Reprimand; payment of \$6,500 costs

Effective: April 29, 1998

HEALTHCARE NETWORK PHARMACY, PHY 38018, San Leandro, CA

Violation: For purposes of stipulation only, respondent admitted to having unaccounted for shortages of controlled substances and failing to comply with accountability requirements for controlled substances and dangerous drugs.

Action: Revoked; payment of \$2,509.37 costs

Effective: July 3, 1998

CRAIG PATRICK FROST, RPH 47052, Houston, TX

Violation: Being disciplined by the Texas Board of Pharmacy for appropriating drugs for self-use without a prescription and failing to maintain complete and accurate records of controlled substances

Action: Revoked

Effective: July 31, 1998

MICHAEL R. KISTER, RPH 30052, Kerman, CA

Violation: For purposes of settlement only, respondent agreed that the Board could establish a factual basis for charges that while working as a pharmacist, he possessed and furnished to himself, without a lawful prescription, dangerous drugs and controlled substances and created unlawful prescriptions for dangerous drugs on the pharmacy computer.

Action: Revoked, stayed; 90 days' suspension; five years' probation; cannot function as PIC; payment of \$7,793 costs

Effective: July 7, 1998

MARVIN H. HELFGOTT, RPH 23091, Los Angeles, CA and DENNIS PRESCRIPTION PHARMACY, PHY 15100, Los Angeles, CA

Violation: For purposes of settlement only, respondent admitted to dispensing irrational combinations of controlled substances to the same patient; filling defective prescriptions for controlled substances; dispensing prescriptions with significant irregularities; and failing to take biennial inventory.

Action: Letter of Reprimand; payment of \$5,800 costs

Effective: July 31, 1998

ELLIS HERZ, RPH 29764, Sherman Oaks, CA and MAXSONS DRUGS, PHY 39229, Sherman Oaks, CA

Violation: RPH-For purposes of settlement only, respondent admitted the existence of a question as to whether it was reasonable for him to believe the prescriptions at issue were valid.

PHY-For purposes of settlement only, respondent admitted to dispensing prescriptions for nonmedical, nonlegitimate purposes; dispensing prescriptions containing significant irregularities; and unlawfully dispensing prescriptions to addicts or habitual users.

Action: RPH-Revoked, stayed; three years' probation; no new ownership; obtain RPH consultant to review pharmacy operations; payment of \$4,000 costs. PHY-Revoked, stayed; no new ownership; payment of \$4,000 costs

Effective: July 31, 1998

WEST ARCADIA PRESCRIPTION PHARMACY, PHY 21282, Arcadia, CA

Violation: Through its personnel, violating the terms and conditions of its probation from a prior administrative matter and engaging in conduct constituting additional violations

Action: Revoked, stayed; 60 days' suspension; three years' probation; share payment of \$10,710.50 costs with pharmacy technician (See TECHNICIANS, Reiko Ogawa)

Effective: August 5, 1998

EVELYN Q. NUGUID, RPH 32301, San Gabriel, CA and QUEEN'S PHARMACY, PHY 39254, Alhambra, CA

Violation: For purposes of settlement only, respondent admitted to refilling certain prescriptions without prescriber authorization.

Action: RPH-Revoked, stayed; 30 days' suspension; three years' probation; take and pass law exam; must sell current ownership and no new ownership; may not be PIC; payment of \$5,000 costs. PHY-Revoked

Effective: September 22, 1998

DAVID J. LILLICROP, RPH 41876, Cypress, CA

Violation: For purposes of settlement only, respondent admitted to illegally furnishing, possessing and administering controlled

See Disciplinary, Next Page

Disciplinary*Continued from Page 14*

substances to himself and taking controlled substances on numerous occasions from his employer without payment and without a prescription.

Action: Revoked, stayed; 90 days' suspension; five years' probation; mandatory participation in Pharmacists Recovery Program; can neither hold ownership nor act as PIC; payment of \$4,512.50 costs

Effective: September 24, 1998

KATHRYN R. NAITO, RPH 31939, Bakersfield, CA

Violation: Being convicted of unlawful possession of a controlled substance (cocaine), unlawfully appropriating with fraudulent intent the property (cocaine) of her employer, and dispensing excessive doses of dangerous drugs and controlled substances

Action: Revoked, stayed; five years' probation, take and pass law exam; mandatory participation in Pharmacists Recovery Program; may not be PIC; supervised practice; maintain separate records pertaining to the acquisition and disposition of controlled substances; payment of \$8,500 costs

Effective: September 24, 1998

TECHNICIANS**CHRISTOPHER T. RATLIFF, TCH 7615, San Diego, CA**

Violation: Being convicted of a crime substantially related to the duties, qualifications and functions of a pharmacy technician

Action: Revoked

Effective: July 3, 1998

REIKO OGAWA, TCH 14723, Montebello, CA

Violation: Aiding and abetting West Arcadia Prescription Pharmacy in violating the probation terms and conditions of a prior administrative case

Action: Revoked, stayed; 60 days' suspension; three years' probation; cannot direct or control any aspect of the practice of pharmacy, suspended from working until certified by the Pharmacy Technician Certification Board; share with pharmacy payment of \$10,710.50 costs

Effective: August 5, 1998

VICTOR HUGO ZAMORA, TCH 18765, Los Angeles, CA

Violation: Being in possession of cocaine

Action: Revoked, stayed; three years' probation; payment of \$3,700.50 costs

Effective: September 11, 1998

JACQUELINE A. GREGORY, TCH 872, Oceanside, CA

Violation: Being convicted of the illegal possession of a controlled substance

Action: Revoked

Effective: September 11, 1998

MICHAEL LEE BARRY, TCH 11990, Seal Beach, CA

Violation: Being convicted of receiving stolen property—cocaine, methadone and Demerol—and driving under the influence of drugs

Action: Revoked

Effective: September 11, 1998

DARLENE D. CORTES, TCH 6649, Riverside, CA

Violation: Being convicted of receiving stolen property

Action: Revoked

Effective: September 22, 1998

VOLUNTARY SURRENDER OF LICENSE**DOUGLAS K. STUCKY, RPH 26173, Fresno, CA**

Violation: For purposes of settlement only, respondent admitted to violating the terms and conditions of his probation in a prior case.

Action: Voluntary surrender of license; payment of \$5,299.25 costs when he reinstates

Effective: July 3, 1998

STATEMENTS OF ISSUES**ROBERT TORO, applicant for pharmacy technician registration**

Violation: Being convicted of a crime substantially related to the functions, duties and responsibilities of a pharmacy technician—convicted of grand theft, but indicated no conviction on application

Action: Application denied

Effective: July 7, 1998

WILMA MONSOD, applicant for pharmacy licensure

Violation: Knowingly making false statements on her applications

Action: Applications denied

Effective: July 7, 1998

EXPLANATION OF DISCIPLINARY LANGUAGE

- **Revoked** means the license is canceled, voided, annulled, rescinded. The right to practice or operate a Board of Pharmacy-licensed business is ended.
- **Revoked, stayed; 60 days' suspension; three years' probation**—"Stayed" means the revocation is postponed, put off. Professional practice or operation may continue so long as the licensee complies with specified probationary terms and conditions, which in this example includes 60 days' actual suspension from practice or operation. Violation of probation may result in the lifting of the stay and the implementation of the revocation that was stayed.
- **Stipulation** indicates a form of "plea-bargaining." The case is negotiated and settled prior to hearing (similar to an "out-of-court settlement" in civil court).
- **Voluntary Surrender of License**—The licensee returns his or her license to the Board, subject to specific conditions of surrender and acceptance by the Board.
- **Effective** indicates the date the disciplinary decision goes into operation.
- **Statement of Issues** refers to the initial or accusatory pleading (filed by the Board) which commences the administrative procedure for denial of licensure to an applicant.
- **Letter of Reprimand** is a public document reproofing a licensee for violations of Pharmacy Law.

This newsletter is published by the

**California State Board of Pharmacy
Department of Consumer Affairs**

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Have You Moved?

Business and Professions Code section 4100 requires licensees to report your new address to the Board within 30 days of moving. Please mail or fax your full name, license number, old address and new address to:

**California State Board of Pharmacy
400 R Street, Suite 4070
Sacramento CA 95814
FAX: (916) 327-6308**

Your "address of record" is accessible to the public, so if you wish to use a post office box as your address of record, you must also provide your residence address to the Board.

Board is accepting applications for Inspector

The Board of Pharmacy has vacancies statewide for the position of Inspector, Board of Pharmacy. Applications for appointment to this state civil service classification are now being accepted on an ongoing basis.

Inspectors, under general direction, work from home offices to conduct inspections and investigations to enforce laws regulating the practice of pharmacy. Additionally, inspectors function as team members, and frequent travel is required.

The salary range is **\$4,337 – \$4,924** per month.

For an application, you may access the Internet at <http://www.spb.ca.gov/jobgen/app.htm> and for general information, <http://www.spb.ca.gov/bullback.htm>. You may contact the Board at (916) 445-5014 if you have questions about the job duties.

The completed application and résumé should be mailed to:

Department of Consumer Affairs
P. O. Box 980428
West Sacramento CA 95798-0428
Attention: Human Resources