



COMMUNICATION AND PUBLIC EDUCATION COMMITTEE REPORT

Ricardo Sanchez, Public Member, Chairperson
Jason Weisz, Public Member, Vice Chairperson
Shirley Kim, Public Member

The Communication and Public Education Committee met July 14, 2021.

a. **Discussion and Consideration of Recommended Changes to the Notice to Consumers Poster/Display and Suggested Revisions to California Code of Regulations, Division 17, Title 16, Section 1707.6**

Background

The committee is considering possible changes to update the Notice to Consumers. BPC sections [4122](#) and [733](#) require pharmacies to post a notice to consumers. CCR section [1707.6](#) further defines the posting requirements, including establishing the specific wording for the Notice to Consumer and the notice requirements for interpreter services availability. A copy of the current Notice to Consumers is in **Attachment 1**.

At the April 29 committee meeting, staff presented two wording options focused on preventing medication errors. The committee chose Option 1 and directed staff to work with counsel on language to modify CCR 1707.6 to incorporate the wording. (A copy of Option 1 is in **Attachment 1**.) The committee also directed staff to report back on language to modify BPC sections 4122 and 733.

At the July 14 Committee Meeting

Staff presented proposed regulation language that would modify subsection (b) of CCR 1707.6 to incorporate the changes requested. A copy of CCR 1707.6 in **Attachment 1** shows the proposed modifications in underline and strike-through text.

Staff also recommended two changes to the regulation language:

- Dropping the reference to a QR barcode for more information about interpretive services. A barcode would not be technically workable for pharmacies displaying the Notice to Consumers in a looped video message.
- Adding a tagline: "Talk to the expert. Talk to your pharmacist." This is intended to encourage personal contact between consumers and their pharmacist as another means to protect against medication errors.

In addition, staff presented other possible modifications to CCR 1707.6. However, these changes would raise the following policy questions for the Board:

1. **Subsection (a)** specifies the poster shall be located “in a place conspicuous to and readable by a prescription drug consumer... .” A notice posted by the pharmacy counter might not be conspicuous and readable to consumers who use a drive-through window. **Question:** Should this language be revised to require the notice be placed in specific locations?
2. **Subsection (c)** requires pharmacies also to post or provide a separate notice regarding interpreter services in 12 languages. **Question:** Should this wording be revised to include other or additional languages? For example, in 2017, section 1557 of the Affordable Care Act required Medi-Cal providers to post taglines regarding the availability of language services for the top 16 languages spoken by non-English proficient individuals, based on census data.
3. **Subsection (d)** could be added to CCR 1707.6 to address additional information required by BPC sections 733 and 4122. This information can be printed on a written receipt instead of on the Notice to Consumers, pursuant to BPC 4122. (Copies of the relevant provisions of BPC 4122 and 733 are in **Attachment 1.**) **Question:** Should CCR 1707.6 be amended to add subsection (d)?

Committee Discussion and Recommendation

The committee discussed and accepted staff recommendations regarding modifications to the wording of the Notice to Consumers poster in CCR section 1707.6(b).

Committee members also agreed the poster should be conspicuous and readable to consumers, and the notice of interpreter services should be available in languages required for Medi-Cal providers by the Affordable Care Act and the Americans with Disabilities Act.

In addition, the committee agreed with adding 1707.6(d) to address information for the Notice to Consumers required by BPC sections 4122 and 733.

The committee voted to approve the following recommendation to the Board: Initiate rulemaking to amend CCR section 1707.6 as provided in the committee meeting materials.

b. Discussion and Consideration of Information Sheet Regarding Possible Disciplinary Consequences of DUI Conviction

Background

Board members have expressed concern that licensees may not understand and appreciate the serious consequences that a DUI conviction can have on their professional license issued by the Board, including possible disciplinary action. The committee asked staff to develop ways to better educate licensees about this important issue that could impact their license as well as their employment and livelihood.

At the July 14 Committee Meeting

Staff presented an information sheet to educate and emphasize to licensees the possible serious consequences of DUI conviction for their license. The information could be posted in a conspicuous location on the Board's website, as well as published in the Script and any other locations directed by the Board.

The information sheet has been submitted for DCA legal review. A copy is in **Attachment 2**.

Committee members had no comments on the information sheet.

c. Discussion and Consideration of Frequently Asked Questions Regarding Electronic Data Transmission Prescriptions

Background

The Enforcement Committee heard a report April 22 about BPC [section 688](#), a new law regarding electronic data transmission prescriptions. Key provisions of the law take effect January 1, 2022. The committee discussed drafting frequently asked questions (FAQs) to educate licensees about the law and referred the discussion to the Communication and Public Education Committee.

At the July 14 Committee Meeting

Staff reported an alert about BPC 688 was sent to subscribers June 21 to solicit questions from licensees and Board inspectors for possible inclusion in the FAQs. Staff also presented a draft of FAQs developed by supervising inspectors and reviewed by the Board's executive officer and DCA counsel. A copy of the subscriber alert and draft FAQs are in **Attachment 3**.

Committee Discussion and Recommendation

Committee members asked how the FAQs are disseminated and discussed how to generate more participation from licensees. Staff said the FAQs would be disseminated through subscriber alerts, publication in the Script, and posted on the Board's website.

A supervising inspector said the Board received no more than 15 questions from licensees. However, he noted questions also were submitted by inspectors based on input they receive from licensees during field inspections. He said inspectors expect the FAQs will generate additional questions from licensees once they are disseminated.

The supervising inspector said Board-provided training sessions are another means for disseminating information. However, he said, subscriber alerts are most effective way to get information to licensees.

The executive officer reported the draft FAQs have been circulated to other DCA boards that regulate prescribers for feedback as well. The public information officer said the Medical Board of California is also educating its licensees about the new electronic prescription requirements and that DCA may issue a news release as well.

John Gray, a Kaiser Permanente pharmacist, thanked the Board for drafting the FAQs. He also said the FAQs do not address an important question raised by BPC section 688(g) regarding transferring or forwarding an electronic prescription that has not been dispensed to an alternative pharmacy.

The committee voted to approve the following recommendation to the Board: Approve the draft FAQs.

d. Update on Communication and Public Education Activities by Staff

1. The Script

Staff is working on articles and disciplinary case summaries for the next issue of the Script. Publication is planned for August 2021.

2. Staff Outreach

Staff provided CE training for pharmacists on prescription drug abuse and diversion on May 19, 2021, via WebEx. About 600 registrants participated in the event.

In addition, the Executive Officer provided presentations on Pharmacy Law:

- May 1, 2021, CPhA Pharmacy Law and Practice Conference.
- June 19, CPhA Western Exchange.

3. News Media

Staff responded to news media inquiries listed in **Attachment 4**.

Attachment 1

- 1. Current Notice to Consumers Poster**
- 2. Option 1 Wording**
- 3. CCR Section 1707.6 – Proposed Modified Text**
- 4. BPC Sections 733 and 4122**

Ask Your Pharmacist!

You have the right to ask the pharmacist for:

Easy-to-read type

You have the right to ask for and receive from any pharmacy prescription drug labels in 12-point font.

Interpreter services

Interpreter services are available to you upon request at no cost.

Drug pricing

You may ask this pharmacy for information on drug pricing and use of generic drugs.

California law requires a pharmacist to speak with you every time you get a **new** prescription.

Before taking your medicine, be sure you know:

- 1** The name of the medicine and what it does.
- 2** How and when to take it, for how long, and what to do if you miss a dose.
- 3** Possible side effects and what you should do if they occur.
- 4** Whether the new medicine will work safely with other medicines or supplements.
- 5** What foods, drinks, or activities should be avoided while taking the medicine.

Ask the pharmacist if you have any questions.

This pharmacy must provide any medicine or device legally prescribed for you, unless:

- It is not covered by your insurance;
- You are unable to pay the cost of a copayment;
- The pharmacist determines doing so would be against the law or potentially harmful to health.

If a medicine or device is not immediately available, the pharmacy will work with you to help you get your medicine or device in a timely manner.



BE AWARE AND TAKE CARE:
Talk to your pharmacist!
CALIFORNIA STATE BOARD OF PHARMACY

2720 Gateway Oaks Drive, Suite 100 • Sacramento, CA 95833
(916) 518-3100 • www.pharmacy.ca.gov



Proposed Wording for Notice to Consumers Poster – Option 1

KNOW YOUR RIGHTS (headline)

- California law requires a pharmacist to speak with you:
 - Upon your request.
 - Every time you get a new prescription.
 - Every time you get a new prescription dosage form, strength, or written directions.
- Interpreter services are available to you upon request at no cost. Scan barcode for more information: _____

Commented [TS1]: Question: Where should this be added in the Regulatory Text? Or should it be added? Recommendation - do not use because compliance by the pharmacy would be too difficult on (rolling) video. Scan barcode for more information.

Before you leave the pharmacy, CHECK:

- The patient name on the label is correct.
- The medication matches the description on the label.
- The name of the medication and what it does.
- How and when to take the medication, for how long, and what to do if you miss a dose.
- Possible side effects and what to do if they occur.
- Whether the medication will work safely with other medicines or supplements.
- What foods, drinks, or activities you should avoid while taking the medication.

TALK TO THE EXPERT. TALK TO YOUR PHARMACIST. _____

Commented [DB2]: Add tagline to encourage personal contact between consumers and their pharmacist to guard against medication errors.

Got a complaint? Contact:

California State Board of Pharmacy
2720 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833
(916) 518-3100
www.pharmacy.ca.gov

[This is the Regulation that will be revised. Underline is text that will be added. ~~Strikethrough~~ is text that will be deleted.]

§ 1707.6. Notice to Consumers.

(a) In every pharmacy there shall be prominently posted, in a place conspicuous to and readable by a prescription drug consumer, a notice containing the text in subdivision (b). Each pharmacy shall use the standardized poster-sized notice provided or made available by the board, unless the pharmacy has received prior approval of another format or display methodology from the board. The board may delegate authority to a committee or to the Executive Officer to give the approval. As an alternative to a printed notice, the pharmacy may also or instead display the notice on a video screen located in a place conspicuous to and readable by prescription drug consumers, so long as: (1) The video screen is at least 24 inches, measured diagonally; (2) The pharmacy utilizes the video image notice provided by the board; (3) The text of the notice remains on the screen for a minimum of 60 seconds; and (4) No more than five minutes elapses between displays of any notice on the screen, as measured between the time that a one-screen notice or the final screen of a multi-screen notice ceases to display and the time that the first or only page of that notice re-displays. The pharmacy may seek approval of another format or display methodology from the board. The board may delegate authority to a committee or to the Executive Officer to give the approval.

Commented [TS3]: What about drive-through pharmacies?

(b) The notice shall contain the following text:

NOTICE TO CONSUMERS KNOW YOUR RIGHTS

California law requires a pharmacist to speak with you upon your request, every time you get a new prescription, every time you get a new prescription dosage form, strength, or written directions.

You have the right to ask for and receive from any pharmacy prescription drug labels in 12-point font.

Interpreter services are available to you upon request at no cost.

TALK TO THE EXPERT – SPEAK WITH YOUR PHARMACIST

Before you leave the pharmacy, CHECK taking your medicine, be sure you know:

- the patient name on the label is correct;
- the medication matches the description on the label;
- the name of the medicine and what it does;

- how and when to take it the medication, for how long, and what to do if you miss a dose;
- possible side effects and what you should to do if they occur;
- whether the new medicine medication will work safely with other medicines or supplements; and
- what foods, drinks, or activities should be avoided while taking the medicine.

The address and contact information for patients to send any complaints about the pharmacy:

California State Board of Pharmacy
2720 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833
(916) 518-3100
www.pharmacy.ca.gov.

Ask the pharmacist if you have any questions.

~~This pharmacy must provide any medicine or device legally prescribed for you, unless it is not covered by your insurance; you are unable to pay the cost of a copayment; or the pharmacist determines doing so would be against the law or potentially harmful to health. If a medicine or device is not immediately available, the pharmacy will work with you to help you get your medicine or device in a timely manner.~~

~~You may ask this pharmacy for information on drug pricing and of generic drugs.~~

Commented [TS4]: This is no longer in the notice but is covered in subdivision (d) which is added below.

(c) Every pharmacy, in a place conspicuous to and readable by a prescription drug consumer, at or adjacent to each counter in the pharmacy where dangerous drugs are dispensed or furnished, shall post or provide a notice containing the following text:

Point to your language. Interpreter services will be provided to you upon request at no cost.

~~This text shall be repeated in at least the following languages: Arabic, Armenian, Cambodian, Chinese Cantonese, Farsi, Hindi, Hmong, Japanese, Laotian, Korean, Mandarin, Punjabi, Russian, Spanish, Thai, Tagalog, and Vietnamese.~~

Commented [TS5]: Do you want to take the opportunity to update the required languages? For example, in 2017, to comply with Section 1557 of the Affordable Care Act, the Medi-Cal Managed Care Program required Medi-Cal Plans to post taglines to inform members of the availability of language services for the top 16 non-English languages spoken by LEP individuals. These languages are based on the December 2015 U.S. Census data. They include these languages and more:
 -Chinese (replaces Cantonese and Mandarin)
 -Hindi
 -Japanese
 -Laotian
 -Punjabi
 -Thai

Each pharmacy shall use the standardized notice provided or made available by the board, unless the pharmacy has received prior approval of another format or display methodology from the board. The board may delegate authority to a committee or to the Executive Officer to give the approval.

The pharmacy may post this notice in paper form or on a video screen if the posted notice or video screen is positioned so that a consumer can easily point to and touch the statement identifying the language in which he or she requests assistance.

Otherwise, the notice shall be made available on a flyer or handout clearly visible from and kept within easy reach of each counter in the pharmacy where dangerous drugs are dispensed or furnished, available at all hours that the pharmacy is open. The flyer or handout shall be at least 8 1/2 inches by 11 inches.

(d) Every pharmacy shall either post or provide on the patient's written receipt a statement describing patients' rights per Business and Professions Code sections 733 and 4122.

Note: Authority cited: Sections 4005 and 4122, Business and Professions Code.
Reference: Sections 733, 4005, 4076.5 and 4122, Business and Professions Code.

Statutes and notes:

BPC 4122

(a) In every pharmacy there shall be prominently posted in a place conspicuous to, and readable by, prescription drug consumers a notice provided by the board concerning the —availability of prescription price information, —the possibility of generic drug product selection, —the type of services provided by pharmacies, and —a statement describing patients' rights relative to the requirements imposed on pharmacists pursuant to Section 733. The format and wording of the notice shall be adopted by the board by regulation. A written receipt that contains the required information on the notice may be provided to consumers as an alternative to posting the notice in the pharmacy.

Commented [TS6]: Must Be in Notice or on Written Receipt:
-availability of price information

-possibility of generic drug product selection

-type of services provided by pharmacies

-statement describing patient's rights relative to 733

BPC 733.

(a) A licentiate shall not obstruct a patient in obtaining a prescription drug or device that has been legally prescribed or ordered for that patient. A violation of this section constitutes unprofessional conduct by the licentiate and shall subject the licentiate to disciplinary or administrative action by his or her licensing agency.

(b) Notwithstanding any other law, a licentiate shall dispense drugs and devices, as described in subdivision (a) of Section 4024, pursuant to a lawful order or prescription unless one of the following circumstances exists:

(1) Based solely on the licentiate's professional training and judgment, dispensing pursuant to the order or the prescription is contrary to law, or the licentiate determines that the prescribed drug or device would cause a harmful drug interaction or would otherwise adversely affect the patient's medical condition.

(2) The prescription drug or device is not in stock. If an order, other than an order described in Section 4019, or prescription cannot be dispensed because the drug or device is not in stock, the licentiate shall take one of the following actions:

(A) Immediately notify the patient and arrange for the drug or device to be delivered to the site or directly to the patient in a timely manner.

(B) Promptly transfer the prescription to another pharmacy known to stock the prescription drug or device that is near enough to the site from which the prescription or order is transferred, to ensure the patient has timely access to the drug or device.

(C) Return the prescription to the patient and refer the patient. The licentiate shall make a reasonable effort to refer the patient to a pharmacy that stocks the prescription drug or device that is near enough to the referring site to ensure that the patient has timely access to the drug or device.

(3) The licentiate refuses on ethical, moral, or religious grounds to dispense a drug or device pursuant to an order or prescription. A licentiate may decline to dispense

Commented [TS7]: Required by 4122 to be in the Notice or on a Written Receipt:
Statement describing patient's rights relative to pharmacists' requirement under 733.
Pharmacy must provide any medicine or device legally prescribed, unless:
1) pharmacist determines dispensing medication or device is against the law or potentially harmful to health; or

2) the prescription drug or device is not in stock – pharmacy must notify the patient and arrange for drug or device to be delivered to the site or directly to the patient in timely manner, or transfer prescription to nearby pharmacy that has the drug or device in stock so patient has timely access, or return the prescription to the patient and make reasonable effort to refer the patient to a nearby pharmacy that stocks the drug or device so the patient has timely access; or

3) pharmacist refuses based on ethical, moral, or religious grounds to dispense the drug or device and has notified their employer in writing of their objection; the pharmacy must have protocols that ensure the patient has timely access to the drug or device; or

4) the medication or devices is not covered by the patient's insurance and the patient is unable to pay for the medication or device, or if covered by the patient's insurance, the patient is unable to pay the copayment,

a prescription drug or device on this basis only if the licentiate has previously notified his or her employer, in writing, of the drug or class of drugs to which he or she objects, and the licentiate's employer can, without creating undue hardship, provide a reasonable accommodation of the licentiate's objection. The licentiate's employer shall establish protocols that ensure that the patient has timely access to the prescribed drug or device despite the licentiate's refusal to dispense the prescription or order. For purposes of this section, "reasonable accommodation" and "undue hardship" shall have the same meaning as applied to those terms pursuant to subdivision (l) of Section 12940 of the Government Code.

(c) For the purposes of this section, "prescription drug or device" has the same meaning as the definition in Section 4022.

(d) This section applies to emergency contraception drug therapy and self-administered hormonal contraceptives described in Section 4052.3.

(e) This section imposes no duty on a licentiate to dispense a drug or device pursuant to a prescription or order without payment for the drug or device, including payment directly by the patient or through a third-party payer accepted by the licentiate or payment of any required copayment by the patient.

(f) The notice to consumers required by Section 4122 shall include a statement that describes patients' rights relative to the requirements of this section.

Attachment 2

DUI Information for Licensees

DUI Conviction – Did You Know?

Driving under the influence (DUI) is a criminal offense. But did you know a DUI conviction also can result in serious consequences for your Board of Pharmacy license?

Under Business and Professions Code (BPC) [section 4301](#), the Board shall take disciplinary action against any licensee who is guilty of “unprofessional conduct.” The provisions of BPC section 4301 define specific types of acts that constitute “unprofessional conduct,” including:

- Subsection (k): “The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcohol, or any combination of those substances.”
- Subsection (l): “The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter.”

What does “substantially related” mean? California Code of Regulation, title 16, [section 1770](#) states that for the purpose of a license denial, suspension, or revocation, “(A) crime or act shall be considered substantially related to the qualifications, functions, or duties of a licensee or registrant if to a substantial degree it evidences present or potential unfitness of a licensee or registrant to perform the functions authorized by his license or registration in a manner consistent with the public health, safety, or welfare.”

In addition, BPC [section 4311](#) authorizes license suspension for conviction of a felony. BPC 4311(c) states a Board license shall be suspended “if the Board determines that the felony conviction ... is substantially related to the qualifications, functions, or duties of the licensee.”

Licensees should remember that criminal behaviors outside the workplace – including DUI – can result in denial, suspension, or revocation of a license issued by the Board of Pharmacy. **Don’t drink or take dangerous drugs and drive.**

###

Attachment 3

- 1. Subscriber Alert regarding FAQs**
- 2. Draft FAQs – Electronic Data Transmission Prescriptions**

From: [Board of Pharmacy Pharmacists](#) on behalf of [California State Board of Pharmacy](#)
To: PHARM-RPH@SUBSCRIBE.DCALISTS.CA.GOV
Subject: FAQs: Electronic Data Transmission Prescriptions
Date: Monday, June 21, 2021 9:49:14 AM

[EXTERNAL]: owner-pharm-rph@SUBSCRIBE.DCALISTS.CA.GOV

CAUTION: THIS EMAIL ORIGINATED OUTSIDE THE DEPARTMENT OF CONSUMER AFFAIRS!

DO NOT: click links or open attachments unless you know the content is safe.

NEVER: provide credentials on websites via a clicked link in an Email.

FAQs: Electronic Data Transmission Prescriptions

The California State Board of Pharmacy is preparing frequently asked questions (FAQs) to help educate licensees about Business and Professions Code (BPC) [section 688](#), a comprehensive law regarding electronic data transmission prescriptions. Key provisions of the law take effect January 1, 2022.

The Board urges licensees and stakeholders to read the [full text of BPC section 688](#) and to send questions to be addressed in FAQs to edtFAQs@dca.ca.gov. Although the FAQs may not be able to answer all questions, issues that arise during implementation of BPC 688 may be directed to the Board's [Ask an Inspector](#) program.

Key provisions of BPC section 688 include:

- Beginning January 1, 2022, health care practitioners who are authorized to issue prescriptions shall have capability to send electronic data transmission prescriptions.
- Beginning January 1, 2022, pharmacies shall have capability to receive electronic data transmission prescriptions.
- Beginning January 2, 2022, a prescription issued by a health care practitioner shall be issued as an electronic data transmission prescription subject to some exceptions.

The law does not apply to the following specific situations:

- Prescriptions issued pursuant to section 11159.2 of the Health and Safety Code.
- An electronic data transmission prescription is not available due to a temporary technological or electrical failure – meaning failure of a computer system, application, or device; the loss of electrical power to that system, application, or device; or any other service interruption affecting the certified electronic data transmission prescription application used to transmit the prescription.
- The prescribing health care practitioner is issuing a prescription to be dispensed by a pharmacy located outside California.
- A prescription issued in a hospital emergency department or urgent care clinic when at least one of the following conditions is present:
 - a. The patient resides outside California.

- b. The patient resides outside the geographic area of the hospital.
- c. The patient is homeless or indigent and does not have a preferred pharmacy.
- d. The prescription is issued at a time when a patient's regular or preferred pharmacy is likely to be closed.

Under any of conditions a, b, c, and d, a prescription shall be electronically issued but does not require electronic transmission and may be provided directly to the patient.

- The prescription is issued by a veterinarian.
- The prescription is for eyeglasses or contact lenses.
- The prescribing health care practitioner and the dispenser are the same entity.
- The prescribing health care practitioner reasonably determines it would be impractical for the patient to obtain the prescribed substances in a timely manner, and the delay would adversely impact the patient's medical condition.
- The prescription includes elements not covered by the latest version of the National Council for Prescription Drug Programs' SCRIPT standard.

Other key provisions of BPC section 688 include:

- A health care practitioner who issues a prescription for a controlled substance but does not transmit the prescription as an electronic data transmission prescription shall document the reason in the patient's medical record as soon as practicable and within 72 hours of the end of the technological or electrical failure that prevented the electronic data transmission of the prescription.
- A pharmacy that receives an electronic data transmission prescription but has not dispensed the medication to the patient shall, at the request of the patient or other authorized person, immediately transfer or forward the electronic data transmission prescription to an alternative pharmacy.
- If a pharmacy or its staff is aware an attempted transmission of an electronic data transmission prescription failed, is incomplete, or is otherwise not appropriately received, the pharmacy shall immediately notify the prescribing health care practitioner.
- A pharmacist who receives a written, oral, or faxed prescription shall not be required to verify that the prescription properly falls under one of the exceptions above and may continue to dispense medications from legally valid written, oral, or fax prescriptions.

###

To unsubscribe from the PHARM-RPH list, click the following link:
<https://www.dca.ca.gov/webapps/pharmacy/subscribe.php>

Electronic Data Transmission Prescriptions – Frequently Asked Questions

Question #1: Does the pharmacy need to have the capability of receiving electronic data transmission prescriptions from all prescribers?

Answer: Under the California Business and Professions Code (BPC) section 688(b), a pharmacy must have the capability to receive an electronic data transmission prescription on behalf of a patient from a health care practitioner authorized to issue a prescription pursuant to Section 4040.

Reference: BPC 688(a), 688(b), 4040

Question #2: Does BPC 688(b) apply to both non-controlled and controlled substances?

Answer: BPC 688(b) applies to both non-controlled and controlled substances with regard to a pharmacy's capability to receive electronic data transmission prescriptions. However, under BPC 688(c), a prescription for a controlled substance, as defined by BPC 4021, the electronic data transmission prescription must comply with Parts 1300, 1304, 1306, and 1311 of Title 21 of the Code of Federal Regulations (CFR).

Note: The California Board of Pharmacy recommends that practitioners contact their respective regulatory board for guidance on its requirements for issuing a prescription.

Reference: BPC 688(a) 688(b), 688(c) 4021 and CFR sections 1300, 1304, 1306 and 1311

Question #3: On or after 01/01/2022, may a pharmacy dispense a prescription medication if it receives a prescription that is not transmitted to the pharmacy as an electronic data transmission prescription?

Answer: BPC 688(i) states that a pharmacist who receives a written, oral, or faxed prescription is not required to verify that the prescription properly falls under one of the exceptions in subdivision (e). Pharmacists may continue to dispense medications from legally valid written, oral, or faxed prescriptions pursuant to this division.

Reference: BPC 688(i)

Question #4: Can an unfilled non-controlled electronic data transmission prescription received by a pharmacy be transferred or forwarded to another pharmacy?

Answer: BPC 688(g) states that a pharmacy that receives an electronic data transmission prescription from a prescribing health care practitioner who has issued the prescription but has not dispensed the medication to the patient must, at the request of the patient or a person authorized to make a request on behalf of the patient, immediately transfer or forward the electronic data transmission prescription to an alternative pharmacy designated by the requester.

Reference: BPC 688(g)

Question #5: Can an unfilled Schedule II-V controlled substance electronic data transmission prescription received by a pharmacy be transferred or forwarded to another pharmacy?

Answer: BPC 688(g) states, a pharmacy that receives an electronic data transmission prescription from a prescribing health care practitioner who has issued the prescription but has not dispensed the medication to the patient must, at the request of the patient or a person authorized to make a request on behalf of the patient, immediately transfer or forward the electronic data transmission prescription to an alternative pharmacy designated by the requester.

Reference: BPC 688(g), see Drug Enforcement Administration (DEA) policy referenced in "The Script" Newsletter dated October 2017

Question #6: What are the record keeping requirements for a pharmacy who transfers or forwards electronic data transmission prescriptions? What are the record keeping requirements for a pharmacy who receives a transfer or forward of electronic data transmission prescriptions?

Answer: Record keeping must comply with the California Code of Regulations (CCR) section 1717(e) and CFR 1306.25, if applicable

Question #7: If a licensed non-resident pharmacy is located outside of California and services a patient in California, is an electronic data transmission prescription required?

Answer: BPC 688(b) states, a pharmacy, pharmacist, or other practitioner authorized under California law to dispense or furnish a prescription pursuant to Section 4040 must have the capability to receive an electronic data transmission prescription on behalf of a patient. Depending on the scenario, the pharmacy would not need to question a non-electronic data transmission prescription under BPC 688(i).

Reference: BPC 688(b), 688(i)

Question #8: How does BPC 688 apply to out-of-state telemedicine doctors or telephonic/faxed prescriptions from out-of-state?

Answer: BPC 688(a) states, a health care practitioner authorized to issue a prescription pursuant to Section 4040 must have the capability to issue an electronic data transmission prescription, as defined under Section 4040, on behalf of a patient and to transmit that electronic data transmission prescription to a pharmacy selected by the patient. Depending on the scenario, the pharmacy would not need to question a non-electronic data transmission prescription under BPC 688(i).

Note: The California Board of Pharmacy recommends that practitioners contact their respective regulatory board for guidance on its requirements for issuing a prescription.

Reference: BPC 688(a), 688(i)

Question #9: BPC 688(e)(1) contains an exception to the law referencing California Health and Safety Code (HSC) section 11159.2 which discusses controlled substance prescriptions issued to terminally ill patients. Does HSC 11167.5 remain effective for those that practice in the applicable hospice and long-term care settings?

Answer: HSC 11167.5 will remain effective in the applicable hospice and long-term care settings.

Reference: HSC 11167.5, HSC 11159.2, BPC 688(e)(1)

Question #10: Is there an instance when an electronic data transmission prescription must be printed?

Answer: Under certain circumstances as outlined in HSC 11167.5, there may be instances where a long-term care or hospice care pharmacy may need to print the electronic transmission prescription. Additionally, 688(e)(4)(A)(B) references instances when a prescription must be electronically issued but does not require electronic transmission and may be provided directly to the patient. Controlled substance prescriptions provided directly to the patient also must comply with federal law. Depending on the scenario, the pharmacy would not need to question a non-electronic data transmission prescription under BPC 688(i).

Reference: Health and Safety Code section 11167.5, 688(e)(4)(A)(B), 688(i)

Question #11: Does the hospital retail pharmacy have the option to only receive electronic data transmission prescription from its own hospital health care practitioners, but not from any other health care practitioner?

Answer: BPC 688(a) is inclusive of all health care practitioners authorized to issue a prescription pursuant to BPC 4040. As indicated in BPC 688(b), a pharmacy must have the capability to receive an electronic data transmission prescription on behalf of a patient from all types of health care practitioners pursuant to BPC 4040. BPC 688(e)(7) provides a potential exemption of this law if the health care practitioner and the dispenser are the same entity.

References: BPC 688(a), 688(b), 688(e)(7)

Question #12: Is posting a prescription in a health care provider's system accessible by pharmacists in their system considered transmission?

Answer: Under the provisions of BPC section 688(e)(7), if the prescribing health care practitioner and dispenser are the same entity, electronic transmission are not required. Based on the Board's understanding of the scenario posed, "posting" of the prescription in an electronic medical record for dispensing by a pharmacy of the same entity meets

the intent of California law. Controlled substance prescriptions must also comply with federal law.

Reference: Business and Professions Code section 688(a)(d)(e)(7).

Question #13: Under BPC 688(e)(7), what does “same entity” mean? Same location or just same health care system?

Answer: As described in BPC 688(e)(7), “same entity” refers to the same health care system which may or may not be the same physical location.

Reference: BPC 688(e)(7)

Question #14: For prescribers working under exempted medical practices described in BPC 688(e), do they still need to comply with BPC 688(a) and have the capability of issuing and transmitting an electronic data transmission prescription?

Answer: BPC 688(d) would not be applicable to a health care practitioner prescribing a prescription pursuant to subdivision (e). However, the health care practitioner must have the capability to issue and transmit an electronic data transmission prescription as defined under BPC 4040 and 688(a).

Note: The California Board of Pharmacy recommends that practitioners contact their respective regulatory board for guidance on its requirements for issuing a prescription.

Reference: BPC 688(a), 688(d), 688(e) and 4040

Question #15: Does an e-mail qualify as “an electronic data transmission prescription” or does the prescription need to come from an electronic prescribing platform?

Answer: BPC 4040(c) describes an “electronic data transmission prescription” as any prescription order, other than an electronic image prescription that is electronically transmitted from a licensed prescriber to a pharmacy. An email could potentially qualify as an electronic data transmission prescription for noncontrolled substances; however, does not appear to meet the spirit of the law. However, under BPC 688(c) a prescription for a controlled substance, as defined by BPC 4021, the electronic data transmission prescription must comply with Parts 1300, 1304, 1306, and 1311 of Title 21 of the Code of Federal Regulations.

Note: The California Board of Pharmacy recommends that practitioners contact their respective regulatory board for guidance on its requirements for issuing a prescription.

Reference: BPC 4040(c), 4021, 688(c), Code of Federal Regulations section 1300, 1304, 1306 and 1311

Question #16: If after speaking with the prescriber/agent a modification is made, would the electronic data transmission prescription be voided and does the prescription need to be rewritten as a telephone prescription?

Answer: BPC 688 does not address the modification of an electronic data transmission prescription. For a noncontrolled and Schedule III-V prescription, a pharmacy may reduce the oral prescription to writing as described in BPC 4070(a) and HSC 11164(b).

Note: DEA registrants also must comply with federal law regarding controlled substances.

Reference: BPC 688, 4070(a), HSC 11164(b)

Question #17: Does a pharmacist have a responsibility to report prescribers who are not complying with BPC 688?

Answer: The law does not require pharmacists to notify the respective regulatory agency of issues of non-compliance, but they may choose to do so.

Reference: BPC 688(j)

Question #18: Do health care practitioners, pharmacists, or pharmacies, when providing health care services to an inmate, individual on parole, or youth under the jurisdiction of the Department of Corrections and Rehabilitation need to comply with BPC 688?

Answer: BPC 688(k) indicates this section must not apply in the scenario described. However, if an inmate, individual on parole or youth is not under the jurisdiction of the Department of Corrections and Rehabilitation, BPC 688 would apply.

Reference: BPC 688(k)

Attachment 4

News Media Inquiries

News Media Inquiries

Board staff responded to the following news media inquiries:

- April 29, 2021: Tiffany Dobbyn, Capitol Morning Report, regarding terms for newly elected Board officers.
- May 7, 2021: Angelica LaVito, Bloomberg, regarding pharmacies contributing to Californian's access to contraceptives.
- May 13, 2021: Pam Marino, Monterey County Weekly, regarding pharmacist who provided a COVID-19 vaccination to a 12-to-15-year-old person ahead of approval for vaccines for that age group.