

Introduced by Senator Speier

February 20, 2001

An act to amend Section 4301 of, and to add Sections 4073.5 and 4126 to, the Business and Professions Code, relating to pharmacies.

LEGISLATIVE COUNSEL'S DIGEST

SB 340, as introduced, Speier. Pharmacies.

(1) Existing law, the Pharmacy Law, authorizes a pharmacist filling a prescription order for a drug product prescribed by the trade or brand name to substitute a generic drug product, subject to specified requirements.

This bill would authorize a pharmacist to substitute a drug product with a different dosage form having the same active chemical ingredients of the same strength and quantity as the prescribed drug product, unless the prescriber indicates no substitution may be made. The bill would require that the patient be notified of the substitution.

(2) The Pharmacy Law authorizes specified nonprofit and free clinics licensed by the California State Board of Pharmacy to purchase drugs at wholesale for administration or dispensing to patients registered for care at the clinic.

This bill would authorize a licensed nonprofit or free clinic to contract with a pharmacy to provide pharmacy related services to individuals receiving care in the clinic. The bill would authorize a pharmacy to dispense preferentially priced drugs obtained pursuant to federal law, would require that those drugs be maintained in a separate area from the pharmacy's other drug stock, and would require excess drug stock to be returned to the distributor.

(3) The Pharmacy Law requires the board to take disciplinary action against any person licensed under the Pharmacy Law who is guilty of unprofessional conduct.

The bill would provide that it is unprofessional conduct for any person licensed under the Pharmacy Law to sell, trade, transfer, or furnish, drugs obtained pursuant to federal law, to an individual who is not receiving care from a covered entity, as defined by federal law.

(4) Because a knowing violation of the Pharmacy Law is a misdemeanor, this bill would expand the scope of that crime and thus would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 4073.5 is added to the Business and
2 Professions Code, to read:

3 4073.5. (a) A pharmacist filling a prescription order for a
4 drug product prescribed by its trade or brand name may select
5 another drug product with a different dosage form with the same
6 active chemical ingredients of the same strength and quantity as
7 the prescribed drug product.

8 (b) In no case shall a selection be made pursuant to this section
9 if the prescriber personally indicates, either orally or in his or her
10 own handwriting, "Do not substitute" or words of similar
11 meaning. Nothing in this subdivision shall prohibit a prescriber
12 from checking a box on a prescription marked "Do not substitute"
13 if the prescriber personally initials the box or checkmark.

14 (c) Selection pursuant to this section is within the discretion of
15 the pharmacist, except as provided in subdivision (b). The person
16 who selects the drug product to be dispensed pursuant to this
17 section shall assume the same responsibility for selecting the
18 dispensed drug product as would be incurred in filling a
19 prescription for a drug product prescribed by generic name. There



1 shall be no liability on the prescriber for an act or omission by a
2 pharmacist in selecting, preparing, or dispensing a drug product
3 pursuant to this section.

4 (d) This section shall apply to all prescriptions, including those
5 presented by or on behalf of persons receiving assistance from the
6 federal government or pursuant to California Medical Assistance
7 Program set forth in Chapter 7 (commencing with Section 14000)
8 of Part 3 of Division 9 of the Welfare and Institutions Code.

9 (e) When a substitution is made pursuant to this section, the use
10 of the drug product with a different dosage form shall be
11 communicated to the patient, and the name of the dispensed drug
12 product shall be indicated on the prescription label, unless the
13 prescriber orders otherwise.

14 SEC. 2. Section 4126 is added to the Business and Professions
15 Code, to read:

16 4126. (a) Notwithstanding any other provision of law, a
17 clinic licensed pursuant to Section 4180 may contract with a
18 pharmacy to provide pharmacy services to individuals receiving
19 care in that clinic, including dispensing preferentially priced drugs
20 obtained pursuant to Section 256b of Title 42 of the United States
21 Code. Contracts between those clinics and pharmacies shall
22 comply with guidelines published by the Health Resources and
23 Services Administration and shall be available for inspection by
24 board staff during normal business hours.

25 (b) Drugs purchased pursuant to Section 256b of Title 42 of the
26 United States Code and received by a pharmacy shall be
27 segregated from the pharmacy's other drug stock. All records of
28 acquisition and disposition of these drugs shall be maintained
29 separately from the pharmacy's other records and computer data
30 relating to these drugs shall be readily retrievable.

31 (c) Excess drug stock purchased pursuant to Section 256b of
32 Title 42 of the United States Code and received by a pharmacy
33 shall be returned to the distributor from which it was purchased.

34 (d) A licensee that participates in a contract to dispense
35 preferentially priced drugs pursuant to this section shall not have
36 both a pharmacy and a wholesaler license.

37 SEC. 3. Section 4301 of the Business and Professions Code
38 is amended to read:

39 4301. The board shall take action against any holder of a
40 license who is guilty of unprofessional conduct or whose license



- 1 has been procured by fraud or misrepresentation or issued by
2 mistake. Unprofessional conduct shall include, but is not limited
3 to, any of the following:
- 4 (a) Gross immorality.
 - 5 (b) Incompetence.
 - 6 (c) Gross negligence.
 - 7 (d) The clearly excessive furnishing of controlled substances in
8 violation of subdivision (a) of Section 11153 of the Health and
9 Safety Code.
 - 10 (e) The clearly excessive furnishing of controlled substances in
11 violation of subdivision (a) of Section 11153.5 of the Health and
12 Safety Code. Factors to be considered in determining whether the
13 furnishing of controlled substances is clearly excessive shall
14 include, but not be limited to, the amount of controlled substances
15 furnished, the previous ordering pattern of the customer (including
16 size and frequency of orders), the type and size of the customer,
17 and where and to whom the customer distributes its product.
 - 18 (f) The commission of any act involving moral turpitude,
19 dishonesty, fraud, deceit, or corruption, whether the act is
20 committed in the course of relations as a licensee or otherwise, and
21 whether the act is a felony or misdemeanor or not.
 - 22 (g) Knowingly making or signing any certificate or other
23 document that falsely represents the existence or nonexistence of
24 a state of facts.
 - 25 (h) The administering to oneself, of any controlled substance,
26 or the use of any dangerous drug or of alcoholic beverages to the
27 extent or in a manner as to be dangerous or injurious to oneself, to
28 a person holding a license under this chapter, or to any other person
29 or to the public, or to the extent that the use impairs the ability of
30 the person to conduct with safety to the public the practice
31 authorized by the license.
 - 32 (i) Except as otherwise authorized by law, knowingly selling,
33 furnishing, giving away, or administering or offering to sell,
34 furnish, give away, or administer any controlled substance to an
35 addict.
 - 36 (j) The violation of any of the statutes of this state or of the
37 United States regulating controlled substances and dangerous
38 drugs.
 - 39 (k) The conviction of more than one misdemeanor or any
40 felony involving the use, consumption, or self-administration of



1 any dangerous drug or alcoholic beverage, or any combination of
2 those substances.

3 (l) The conviction of a crime substantially related to the
4 qualifications, functions, and duties of a licensee under this
5 chapter. The record of conviction of a violation of Chapter 13
6 (commencing with Section 801) of Title 21 of the United States
7 Code regulating controlled substances or of a violation of the
8 statutes of this state regulating controlled substances or dangerous
9 drugs shall be conclusive evidence of unprofessional conduct. In
10 all other cases, the record of conviction shall be conclusive
11 evidence only of the fact that the conviction occurred. The board
12 may inquire into the circumstances surrounding the commission
13 of the crime, in order to fix the degree of discipline or, in the case
14 of a conviction not involving controlled substances or dangerous
15 drugs, to determine if the conviction is of an offense substantially
16 related to the qualifications, functions, and duties of a licensee
17 under this chapter. A plea or verdict of guilty or a conviction
18 following a plea of nolo contendere is deemed to be a conviction
19 within the meaning of this provision. The board may take action
20 when the time for appeal has elapsed, or the judgment of
21 conviction has been affirmed on appeal or when an order granting
22 probation is made suspending the imposition of sentence,
23 irrespective of a subsequent order under Section 1203.4 of the
24 Penal Code allowing the person to withdraw his or her plea of
25 guilty and to enter a plea of not guilty, or setting aside the verdict
26 of guilty, or dismissing the accusation, information, or indictment.

27 (m) The cash compromise of a charge of violation of Chapter
28 13 (commencing with Section 801) of Title 21 of the United States
29 Code regulating controlled substances. The record of the
30 compromise is conclusive evidence of unprofessional conduct.

31 (n) The revocation, suspension, or other discipline by another
32 state of a license to practice pharmacy, operate a pharmacy, or do
33 any other act for which a license is required by this chapter.

34 (o) Violating or attempting to violate, directly or indirectly, or
35 assisting in or abetting the violation of or conspiring to violate any
36 provision or term of this chapter or of the applicable federal and
37 state laws and regulations governing pharmacy, including
38 regulations established by the board.

39 (p) Actions or conduct that would have warranted denial of a
40 license.



1 (q) Engaging in any conduct that subverts or attempts to
2 subvert an investigation of the board.

3 (r) *The selling, trading, transferring, or furnishing of drugs*
4 *obtained pursuant to Section 256b of Title 42 of the United States*
5 *Code to individuals who are not receiving care from a covered*
6 *entity, as defined in paragraph (4) of subsection (a) of Section*
7 *256b of Title 42 of the United States Code.*

8 SEC. 4. No reimbursement is required by this act pursuant to
9 Section 6 of Article XIII B of the California Constitution because
10 the only costs that may be incurred by a local agency or school
11 district will be incurred because this act creates a new crime or
12 infraction, eliminates a crime or infraction, or changes the penalty
13 for a crime or infraction, within the meaning of Section 17556 of
14 the Government Code, or changes the definition of a crime within
15 the meaning of Section 6 of Article XIII B of the California
16 Constitution.

