

AMENDED IN ASSEMBLY MARCH 26, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 788**

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**Introduced by Assembly Member Chu**

February 25, 2015

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~~An act to amend Section 4070 of the Business and Professions Code, relating to healing arts.~~ *An act to amend Sections 4040 and 4076 of the Business and Professions Code, relating to pharmacists.*

LEGISLATIVE COUNSEL'S DIGEST

AB 788, as amended, Chu. ~~Pharmacy.~~ *Prescriptions.*

*Existing law, the Pharmacy Law, establishes the California State Board of Pharmacy and sets forth its powers and duties, including, but not limited to, the licensing and regulation of pharmacists. Existing law makes a knowing violation of these provisions a crime.*

*Existing law requires every prescription, as defined, to include a legible, clear notice of the condition or purpose for which the drug is prescribed, if requested by the patient. Existing law prohibits a pharmacist from dispensing any prescription unless it is in a specified container that is correctly labeled to include, among other information, the condition or purpose for which the drug was prescribed, if the condition or purpose is indicated on the prescription.*

*This bill would instead require that every prescription include a legible, clear notice of the condition or purpose for which the drug is prescribed, and would authorize the prescriber or patient to request that this information not be included in the prescription container label. This bill would, similarly, require that every prescription container be correctly labeled to include that information, unless omission of that information has been requested by the prescriber or patient.*

*By establishing these additional requirements, the knowing violation of which would be a crime, this bill would impose a state-mandated local program.*

*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.*

~~Existing law, the Pharmacy Law, requires an oral or an electronic data transmission prescription to be reduced to writing by the pharmacist and to be filled by, or under the direction of, the pharmacist. Under existing law, the pharmacist does not need to reduce to writing the address, telephone number, license classification, federal registry number of the prescriber or the address of the patient or patients if the information is readily retrievable in the pharmacy.~~

~~This bill would make nonsubstantive changes to those provisions.~~

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

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

- 1     SECTION 1. Section 4040 of the Business and Professions
- 2     Code is amended to read:
- 3     4040. (a) "Prescription" means an oral, written, or electronic
- 4     transmission order that is both of the following:
- 5     (1) Given individually for the person or persons for whom
- 6     ordered that includes all of the following:
- 7     (A) The name or names and address of the patient or patients.
- 8     (B) The name and quantity of the drug or device prescribed and
- 9     the directions for use.
- 10    (C) The date of issue.
- 11    (D) Either rubber stamped, typed, or printed by hand or typeset,
- 12    the name, address, and telephone number of the prescriber, his or
- 13    her license classification, and his or her federal registry number,
- 14    if a controlled substance is prescribed.
- 15    (E) A legible, clear notice of the condition or purpose for which
- 16    the drug is being prescribed, ~~if requested by the patient or patients.~~
- 17    *prescribed. This notice shall indicate that, at the request of the*
- 18    *prescriber or patient, the information regarding the condition or*

1 *purpose shall be omitted from the container label information*  
2 *pursuant to Section 4076.*

3 (F) If in writing, signed by the prescriber issuing the order, or  
4 the certified nurse-midwife, nurse practitioner, physician assistant,  
5 or naturopathic doctor who issues a drug order pursuant to Section  
6 2746.51, 2836.1, 3502.1, or 3640.5, respectively, or the pharmacist  
7 who issues a drug order pursuant to Section 4052.1, 4052.2, or  
8 4052.6.

9 (2) Issued by a physician, dentist, optometrist, podiatrist,  
10 veterinarian, or naturopathic doctor pursuant to Section 3640.7 or,  
11 if a drug order is issued pursuant to Section 2746.51, 2836.1,  
12 3502.1, or 3460.5, by a certified nurse-midwife, nurse practitioner,  
13 physician assistant, or naturopathic doctor licensed in this state,  
14 or pursuant to Section 4052.1, 4052.2, or 4052.6 by a pharmacist  
15 licensed in this state.

16 (b) Notwithstanding subdivision (a), a written order of the  
17 prescriber for a dangerous drug, except for any Schedule II  
18 controlled substance, that contains at least the name and signature  
19 of the prescriber, the name and address of the patient in a manner  
20 consistent with paragraph (2) of subdivision (a) of Section 11164  
21 of the Health and Safety Code, the name and quantity of the drug  
22 prescribed, directions for use, and the date of issue may be treated  
23 as a prescription by the dispensing pharmacist as long as any  
24 additional information required by subdivision (a) is readily  
25 retrievable in the pharmacy. In the event of a conflict between this  
26 subdivision and Section 11164 of the Health and Safety Code,  
27 Section 11164 of the Health and Safety Code shall prevail.

28 (c) “Electronic transmission prescription” includes both image  
29 and data prescriptions. “Electronic image transmission  
30 prescription” means any prescription order for which a facsimile  
31 of the order is received by a pharmacy from a licensed prescriber.  
32 “Electronic data transmission prescription” means any prescription  
33 order, other than an electronic image transmission prescription,  
34 that is electronically transmitted from a licensed prescriber to a  
35 pharmacy.

36 (d) The use of commonly used abbreviations shall not invalidate  
37 an otherwise valid prescription.

38 (e) Nothing in the amendments made to this section (formerly  
39 Section 4036) at the 1969 Regular Session of the Legislature shall  
40 be construed as expanding or limiting the right that a chiropractor,

1 while acting within the scope of his or her license, may have to  
2 prescribe a device.

3 *SEC. 2. Section 4076 of the Business and Professions Code is*  
4 *amended to read:*

5 4076. (a) A pharmacist shall not dispense any prescription  
6 except in a container that meets the requirements of state and  
7 federal law and is correctly labeled with all of the following:

8 (1) Except when the prescriber or the certified nurse-midwife  
9 who functions pursuant to a standardized procedure or protocol  
10 described in Section 2746.51, the nurse practitioner who functions  
11 pursuant to a standardized procedure described in Section 2836.1  
12 or protocol, the physician assistant who functions pursuant to  
13 Section 3502.1, the naturopathic doctor who functions pursuant  
14 to a standardized procedure or protocol described in Section  
15 3640.5, or the pharmacist who functions pursuant to a policy,  
16 procedure, or protocol pursuant to Section 4052.1, 4052.2, or  
17 4052.6 orders otherwise, either the manufacturer's trade name of  
18 the drug or the generic name and the name of the manufacturer.  
19 Commonly used abbreviations may be used. Preparations  
20 containing two or more active ingredients may be identified by  
21 the manufacturer's trade name or the commonly used name or the  
22 principal active ingredients.

23 (2) The directions for the use of the drug.

24 (3) The name of the patient or patients.

25 (4) The name of the prescriber or, if applicable, the name of the  
26 certified nurse-midwife who functions pursuant to a standardized  
27 procedure or protocol described in Section 2746.51, the nurse  
28 practitioner who functions pursuant to a standardized procedure  
29 described in Section 2836.1 or protocol, the physician assistant  
30 who functions pursuant to Section 3502.1, the naturopathic doctor  
31 who functions pursuant to a standardized procedure or protocol  
32 described in Section 3640.5, or the pharmacist who functions  
33 pursuant to a policy, procedure, or protocol pursuant to Section  
34 4052.1, 4052.2, or 4052.6.

35 (5) The date of issue.

36 (6) The name and address of the pharmacy, and prescription  
37 number or other means of identifying the prescription.

38 (7) The strength of the drug or drugs dispensed.

39 (8) The quantity of the drug or drugs dispensed.

1 (9) The expiration date of the effectiveness of the drug  
2 dispensed.

3 (10) The condition or purpose for which the drug was prescribed  
4 ~~if the~~ *prescribed, unless the patient or prescriber has requested*  
5 *that the condition or purpose is not be* indicated on the ~~prescription.~~  
6 *prescription container label.*

7 (11) (A) Commencing January 1, 2006, the physical description  
8 of the dispensed medication, including its color, shape, and any  
9 identification code that appears on the tablets or capsules, except  
10 as follows:

11 (i) Prescriptions dispensed by a veterinarian.

12 (ii) An exemption from the requirements of this paragraph shall  
13 be granted to a new drug for the first 120 days that the drug is on  
14 the market and for the 90 days during which the national reference  
15 file has no description on file.

16 (iii) Dispensed medications for which no physical description  
17 exists in any commercially available database.

18 (B) This paragraph applies to outpatient pharmacies only.

19 (C) The information required by this paragraph may be printed  
20 on an auxiliary label that is affixed to the prescription container.

21 (D) This paragraph shall not become operative if the board,  
22 prior to January 1, 2006, adopts regulations that mandate the same  
23 labeling requirements set forth in this paragraph.

24 (b) If a pharmacist dispenses a prescribed drug by means of a  
25 unit dose medication system, as defined by administrative  
26 regulation, for a patient in a skilled nursing, intermediate care, or  
27 other health care facility, the requirements of this section will be  
28 satisfied if the unit dose medication system contains the  
29 aforementioned information or the information is otherwise readily  
30 available at the time of drug administration.

31 (c) If a pharmacist dispenses a dangerous drug or device in a  
32 facility licensed pursuant to Section 1250 of the Health and Safety  
33 Code, it is not necessary to include on individual unit dose  
34 containers for a specific patient, the name of the certified  
35 nurse-midwife who functions pursuant to a standardized procedure  
36 or protocol described in Section 2746.51, the nurse practitioner  
37 who functions pursuant to a standardized procedure described in  
38 Section 2836.1 or protocol, the physician assistant who functions  
39 pursuant to Section 3502.1, the naturopathic doctor who functions  
40 pursuant to a standardized procedure or protocol described in

1 Section 3640.5, or the pharmacist who functions pursuant to a  
2 policy, procedure, or protocol pursuant to Section 4052.1, 4052.2,  
3 or 4052.6.

4 (d) If a pharmacist dispenses a prescription drug for use in a  
5 facility licensed pursuant to Section 1250 of the Health and Safety  
6 Code, it is not necessary to include the information required in  
7 paragraph (11) of subdivision (a) when the prescription drug is  
8 administered to a patient by a person licensed under the Medical  
9 Practice Act (Chapter 5 (commencing with Section 2000)), the  
10 Nursing Practice Act (Chapter 6 (commencing with Section 2700)),  
11 or the Vocational Nursing Practice Act (Chapter 6.5 (commencing  
12 with Section 2840)), who is acting within his or her scope of  
13 practice.

14 *SEC. 3. No reimbursement is required by this act pursuant to*  
15 *Section 6 of Article XIII B of the California Constitution because*  
16 *the only costs that may be incurred by a local agency or school*  
17 *district will be incurred because this act creates a new crime or*  
18 *infraction, eliminates a crime or infraction, or changes the penalty*  
19 *for a crime or infraction, within the meaning of Section 17556 of*  
20 *the Government Code, or changes the definition of a crime within*  
21 *the meaning of Section 6 of Article XIII B of the California*  
22 *Constitution.*

23 ~~SECTION 1. Section 4070 of the Business and Professions~~  
24 ~~Code is amended to read:~~

25 ~~4070. (a) Except as provided in Section 4019 and subdivision~~  
26 ~~(b), an oral or an electronic data transmission prescription as~~  
27 ~~defined in subdivision (c) of Section 4040 shall, as soon as~~  
28 ~~practicable, be reduced to writing by the pharmacist and shall be~~  
29 ~~filled by, or under the direction of, the pharmacist. The pharmacist~~  
30 ~~does not need to reduce to writing the address, telephone number,~~  
31 ~~license classification, federal registry number of the prescriber or~~  
32 ~~the address of the patient or patients if the information is readily~~  
33 ~~retrievable in the pharmacy.~~

34 ~~(b) A pharmacy receiving an electronic transmission prescription~~  
35 ~~shall not be required to reduce that prescription to writing or to~~  
36 ~~hard copy form if, for three years from the last date of furnishing~~  
37 ~~pursuant to that prescription or order, the pharmacy is able, upon~~  
38 ~~request by the board, to immediately produce a hard copy report~~  
39 ~~that includes for each date of dispensing of a dangerous drug or~~  
40 ~~dangerous device pursuant to that prescription or order: (1) all of~~

1 the information described in subparagraphs (A) to (E), inclusive,  
2 of paragraph (1) of subdivision (a) of Section 4040, and (2) the  
3 name or identifier of the pharmacist who dispensed the dangerous  
4 drug or dangerous device. This subdivision shall not apply to  
5 prescriptions for controlled substances classified in Schedule II,  
6 III, IV, or V, except as permitted pursuant to Section 11164.5 of  
7 the Health and Safety Code.

8 (e) ~~If only recorded and stored electronically, on magnetic  
9 media, or in any other computerized form, the pharmacy's  
10 computer system shall not permit the received information or the  
11 dangerous drug or dangerous device dispensing information  
12 required by this section to be changed, obliterated, destroyed, or  
13 disposed of, for the record maintenance period required by law  
14 once the information has been received by the pharmacy and once  
15 the dangerous drug or dangerous device has been dispensed. Once  
16 a dangerous drug or dangerous device has been dispensed, if the  
17 previously created record is determined to be incorrect, a correcting  
18 addition may be made only by or with the approval of a pharmacist.  
19 After a pharmacist enters the change or enters his or her approval  
20 of the change into the computer, the resulting record shall include  
21 the correcting addition and the date it was made to the record, the  
22 identity of the person or pharmacist making the correction, and  
23 the identity of the pharmacist approving the correction.~~

24 ~~(d) Nothing in this section shall impair the requirement to have  
25 an electronically transmitted prescription transmitted only to the  
26 pharmacy of the patient's choice or to have a written prescription.  
27 This requirement shall not apply to orders for medications to be  
28 administered in an acute care hospital.~~