

AMENDED IN ASSEMBLY SEPTEMBER 7, 1999

AMENDED IN ASSEMBLY AUGUST 26, 1999

AMENDED IN ASSEMBLY JUNE 28, 1999

AMENDED IN ASSEMBLY JUNE 9, 1999

AMENDED IN SENATE APRIL 6, 1999

SENATE BILL

No. 188

Introduced by Senator Leslie
(Coauthor: Senator Johannessen)
(Coauthor: Assembly Member Aanestad)

January 14, 1999

An act to amend Sections ~~4056 and 4074~~ 4074, 4115, and 4116 of the Business and Professions Code, relating to drugs, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 188, as amended, Leslie. Drugs: hospitals: physicians.

Existing law generally prohibits any person from selling or dispensing any dangerous drug, or dispensing any prescription, unless he or she is a licensed pharmacist. However, existing law permits a licensed hospital that contains 100 beds or fewer and does not employ a full-time pharmacist to purchase drugs at wholesale for administration, under the direction of a physician, to patients registered in the hospital or to emergency cases under treatment in the hospital. Existing law imposes criminal penalties for violations of these provisions.

This bill would revise the above-described exception to also permit hospitals containing 100 beds or fewer to purchase drugs at wholesale for dispensation by physicians to persons registered as inpatients of the hospital, to emergency cases under treatment in the hospital, or to outpatients of a rural hospital, as defined. The bill would impose specified restrictions on the dispensing of those drugs to outpatients. The bill would require rural hospitals, as defined, to obtain information regarding the hours of local pharmacies, as specified, and require specified hospitals that contain 100 beds or fewer to obtain the services of a pharmacist consultant to monitor and review the pharmaceutical services provided by the hospital to inpatients of the hospital and the dispensing of drugs by physicians to outpatients pursuant to the provision described above. It also would make related changes, including expansion of requirements concerning adoption of a specified written policy by health facilities. To the extent that the bill would expand the scope of an existing crime with respect to these requirements, the bill would impose a state-mandated local program.

Existing law authorizes a pharmacy technician to perform nondiscretionary tasks only while assisting, and while under the direct supervision and control of, a pharmacist. Existing law authorizes a pharmacy technician to perform these duties only under the immediate, personal supervision and control of a pharmacist. Existing law requires any pharmacist responsible for a pharmacy technician to be on the premises at all times and requires the pharmacy technician to be within the pharmacist's view, except when the pharmacy technician is employed to assist in the filling of prescriptions for an inpatient of a hospital or for an inmate of a correctional facility.

This bill would require, notwithstanding the above limitations, that the California State Board of Pharmacy adopt regulations establishing conditions to permit the temporary absence of a pharmacist for breaks and lunch periods pursuant to a specified statute and the orders of the Industrial Welfare Commission without closing the pharmacy, during which time a pharmacy technician may remain in the pharmacy but may only perform nondiscretionary tasks. The bill would



require the pharmacist to be responsible for a pharmacy technician and to review any task performed during the pharmacist's temporary absence.

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.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: $\frac{2}{3}$. 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 4056 of the Business and
2 Professions Code is amended to read:
3 4056. (a) Notwithstanding any provision of this
4 chapter, a licensed hospital that contains 100 beds or
5 fewer, and that does not employ a full-time pharmacist,
6 may purchase drugs at wholesale for administration,
7 under the direction of a physician, or for dispensation by
8 a physician, to persons registered as inpatients of the
9 hospital, to emergency cases under treatment in the
10 hospital, or, under the conditions described in subdivision
11 (f), to persons registered as outpatients in a rural hospital
12 as defined in Section 124840 of the Health and Safety
13 Code. The hospital shall keep records of the kind and
14 amounts of drugs so purchased and administered or
15 dispensed, and the records shall be available for
16 inspection by all properly authorized personnel of the
17 board.
18 (b) No hospital shall be entitled to the benefits of
19 subdivision (a) until it has obtained a license from the
20 board. Each license shall be issued to a specific hospital
21 and for a specific location.
22 (c) Each application for a license under this section
23 shall be made on a form furnished by the board. Upon the
24 filing of the application and payment of the fee



1 prescribed in subdivision (a) of Section 4400, the
2 executive officer of the board shall issue a license
3 authorizing the hospital to which it is issued to purchase
4 drugs at wholesale pursuant to subdivision (a). The
5 license shall be renewed annually on or before November
6 1 of each year upon payment of the renewal fee
7 prescribed in subdivision (b) of Section 4400 and shall not
8 be transferable.

9 (d) The form of application for a license under this
10 section shall contain the name and address of the
11 applicant, the number of beds, whether the applicant is
12 a licensed hospital, whether it does or does not employ a
13 full-time pharmacist, the name of its chief medical officer,
14 and the name of its administrator.

15 (e) The board may deny, revoke, or suspend a license
16 issued under this section in the manner and for the
17 grounds specified in Article 19 (commencing with
18 Section 4300).

19 (f) A physician himself or herself may dispense drugs
20 to outpatients directly pursuant to subdivision (a) only if
21 the physician determines that it is in the best interest of
22 the patient that a particular drug regimen be
23 immediately commenced or continued, and the
24 physician reasonably believes that a pharmacy located
25 outside the hospital is not available and accessible at the
26 time of dispensation to the patient within 30 minutes of
27 the hospital pharmaceutical services or within a 30-mile
28 radius from the hospital pharmaceutical services by
29 means of the method of transportation the patient states
30 that he or she intends to use. The quantity of drugs
31 dispensed to any outpatient pursuant to this subdivision
32 shall be limited to that amount necessary to maintain
33 uninterrupted therapy during the period when
34 pharmaceutical services outside the hospital are not
35 readily available or accessible, but shall not exceed a
36 72-hour supply. The physician shall ensure that the label
37 on the drug contains all the information required by
38 Section 4076.

39 (g) A rural hospital, as defined in Section 124840 of the
40 Health and Safety Code, shall obtain information



1 regarding the hours of operation of each pharmacy
2 located within the 30 minute or 30-mile radius of the
3 hospital. The hospital shall update this information
4 annually, and shall make this information available to its
5 medical staff.

6 (h) A licensed hospital that contains 100 beds or fewer,
7 does not employ a full-time pharmacist, and purchases
8 drugs at wholesale for administration or dispensation
9 pursuant to subdivision (a), shall retain the services of a
10 pharmacist consultant to monitor and review the
11 pharmaceutical services provided by the hospital to
12 inpatients of the hospital, and the dispensing of drugs by
13 physicians to outpatients pursuant to subdivision (f).

14 (i) This section shall not be construed to eliminate the
15 requirements of Section 11164 or 11167 of the Health and
16 Safety Code.

17 SEC. 2. Section 4074 of the Business and Professions
18 Code is amended to read:

19 4074. (a) A pharmacist shall inform a patient orally or
20 in writing of the harmful effects of a drug dispensed by
21 prescription if the drug poses substantial risk to the
22 person consuming the drug when taken in combination
23 with alcohol or if the drug may impair a person's ability
24 to drive a motor vehicle, whichever is applicable, and
25 provided the drug is determined by the board pursuant
26 to subdivision (b) to be a drug or drug type for which this
27 warning shall be given.

28 (b) The board may by regulation require additional
29 information or labeling.

30 (c) This section shall not apply to drugs furnished to
31 patients in conjunction with treatment or emergency
32 services provided in health facilities or, except as
33 provided in subdivision (d), to drugs furnished to patients
34 pursuant to subdivision (a) of Section 4056.

35 (d) A health facility shall establish and implement a
36 written policy to ensure that each patient shall receive
37 information regarding each medication given at the time
38 of discharge and each medication given pursuant to
39 subdivision (a) of Section 4056. This information shall
40 include the use and storage of each medication, the



1 precautions and relevant warnings, and the importance
2 of compliance with directions. This information shall be
3 given by a pharmacist or registered nurse, unless already
4 provided by a patient's prescriber, and the written policy
5 shall be developed in collaboration with a physician, a
6 pharmacist, and a registered nurse. The written policy
7 shall be approved by the medical staff. Nothing in this
8 subdivision or any other provision of law shall be
9 construed to require that only a pharmacist provide this
10 consultation.

11 SEC. 3. *Section 4115 of the Business and Professions*
12 *Code is amended to read:*

13 4115. (a) Notwithstanding any other provision of
14 law, a pharmacy technician may perform packaging,
15 manipulative, repetitive, or other nondiscretionary tasks,
16 only while assisting, and while under the direct
17 supervision and control of, a pharmacist.

18 (b) This section does not authorize the performance of
19 any tasks specified in subdivision (a) by a pharmacy
20 technician without a pharmacist on duty, nor does this
21 section authorize the use of a pharmacy technician to
22 perform tasks specified in subdivision (a) except under
23 the direct supervision and control of a pharmacist.

24 (c) This section does not authorize a pharmacy
25 technician to perform any act requiring the exercise of
26 professional judgment by a pharmacist.

27 (d) The board shall adopt regulations to specify tasks
28 pursuant to subdivision (a) that a pharmacy technician
29 may perform under the direct supervision and control of
30 a pharmacist. Any pharmacy that employs a pharmacy
31 technician to perform tasks specified in subdivision (a)
32 shall do so in conformity with the regulations adopted by
33 the board pursuant to this subdivision.

34 (e) (1) No person shall act as a pharmacy technician
35 without first being registered with the board as a
36 pharmacy technician as set forth in Section 4202.

37 (2) The registration requirements in paragraph (1)
38 and Section 4202 shall not apply to a person employed or
39 utilized as a pharmacy technician to assist in the filling of



1 prescriptions for an inpatient of a hospital until July 1,
2 1997.

3 (3) The registration requirements in paragraph (1)
4 and Section 4202 shall not apply during the first year of
5 employment for a person employed or utilized as a
6 pharmacy technician to assist in the filling of
7 prescriptions for an inmate of a correctional facility of the
8 Department of the Youth Authority or the Department
9 of Corrections, or for a person receiving treatment in a
10 facility operated by the State Department of Mental
11 Health, the State Department of Developmental
12 Services, or the Department of Veterans Affairs.

13 (f) The performance of duties by a pharmacy
14 technician shall be under the direct supervision and
15 control of a pharmacist. The pharmacist on duty shall be
16 directly responsible for the conduct of a pharmacy
17 technician. A pharmacy technician may perform the
18 duties, as specified in subdivision (a), only under the
19 immediate, personal supervision and control of a
20 pharmacist. Any pharmacist responsible for a pharmacy
21 technician shall be on the premises at all times, and the
22 pharmacy technician shall be within the pharmacist's
23 view. A pharmacist shall indicate verification of the
24 prescription by initialing the prescription label before the
25 medication is provided to the patient.

26 This subdivision shall not apply to a person employed
27 or utilized as a pharmacy technician to assist in the filling
28 of prescriptions for an inpatient of a hospital or for an
29 inmate of a correctional facility. Notwithstanding the
30 exemption in this subdivision, the requirements of
31 subdivisions (a) and (b) shall apply to a person employed
32 or utilized as a pharmacy technician to assist in the filling
33 of prescriptions for an inpatient of a hospital or for an
34 inmate of a correctional facility.

35 (g) (1) The ratio of pharmacy technicians performing
36 the tasks specified in subdivision (a) to pharmacists shall
37 not exceed one to one, except that this ratio shall not
38 apply to personnel performing clerical functions
39 pursuant to Section 4116 or 4117. This ratio is applicable
40 to all practice settings, except for an inpatient of a



1 licensed health facility, a patient of a licensed home
2 health agency, as specified in paragraph (2), an inmate of
3 a correctional facility of the Department of the Youth
4 Authority or the Department of Corrections, and for a
5 person receiving treatment in a facility operated by the
6 State Department of Mental Health, the State
7 Department of Developmental Services, or the
8 Department of Veterans Affairs.

9 (2) The board may adopt regulations establishing the
10 ratio of pharmacy technicians performing the tasks
11 specified in subdivision (a) to pharmacists applicable to
12 the filling of prescriptions of an inpatient of a licensed
13 health facility and for a patient of a licensed home health
14 agency. Any ratio established by the board pursuant to
15 this subdivision shall allow, at a minimum, at least one
16 pharmacy technician for each pharmacist, except that
17 this ratio shall not apply to personnel performing clerical
18 functions pursuant to Section 4116 or 4117.

19 *(h) Notwithstanding subdivisions (b) and (f), the*
20 *board shall by regulation establish conditions to permit*
21 *the temporary absence of a pharmacist for breaks and*
22 *lunch periods pursuant to Section 512 of the Labor Code*
23 *and the orders of the Industrial Welfare Commission*
24 *without closing the pharmacy. During these temporary*
25 *absences, a pharmacy technician may, at the discretion of*
26 *the pharmacist, remain in the pharmacy but may only*
27 *perform nondiscretionary tasks. The pharmacist shall be*
28 *responsible for a pharmacy technician and shall review*
29 *any task performed by a pharmacy technician during the*
30 *pharmacist's temporary absence. Nothing in this*
31 *subdivision shall be construed to authorize a pharmacist*
32 *to supervise pharmacy technicians in greater ratios than*
33 *those described in subdivision (g).*

34 SEC. 4. Section 4116 of the Business and Professions
35 Code is amended to read:

36 4116. (a) No person other than a pharmacist, an
37 intern pharmacist, an authorized officer of the law, or a
38 person authorized to prescribe shall be permitted in that
39 area, place, or premises described in the license issued by
40 the board wherein controlled substances or dangerous



1 drugs or dangerous devices are stored, possessed,
2 prepared, manufactured, derived, compounded,
3 dispensed, or repackaged. However, a pharmacist shall
4 be responsible for any individual who enters the
5 pharmacy for the purposes of receiving consultation from
6 the pharmacist or performing clerical, inventory control,
7 housekeeping, delivery, maintenance, or similar
8 functions relating to the pharmacy if the pharmacist
9 remains present in the pharmacy during all times as the
10 authorized individual is present.

11 (b) (1) The board may, by regulation, establish
12 reasonable security measures consistent with this section
13 in order to prevent unauthorized persons from gaining
14 access to the area, place, or premises or to the controlled
15 substances or dangerous drugs or dangerous devices
16 therein.

17 (2) *The board shall, by regulation, establish conditions*
18 *for the temporary absence of a pharmacist for breaks and*
19 *lunch periods pursuant to Section 512 of the Labor Code*
20 *and the orders of the Industrial Welfare Commission*
21 *without closing the pharmacy and removing authorized*
22 *personnel from the pharmacy. These conditions shall*
23 *ensure the security of the pharmacy and its operations*
24 *during the temporary absence of the pharmacist and shall*
25 *allow, at the discretion of the pharmacist, nonpharmacist*
26 *personnel to remain and perform any lawful activities*
27 *during the pharmacist's temporary absence.*

28 SEC. 5. No reimbursement is required by this act
29 pursuant to Section 6 of Article XIII B of the California
30 Constitution because the only costs that may be incurred
31 by a local agency or school district will be incurred
32 because this act creates a new crime or infraction,
33 eliminates a crime or infraction, or changes the penalty
34 for a crime or infraction, within the meaning of Section
35 17556 of the Government Code, or changes the definition
36 of a crime within the meaning of Section 6 of Article
37 XIII B of the California Constitution.

38 ~~SEC. 4.~~

39 SEC. 6. This act is an urgency statute necessary for
40 the immediate preservation of the public peace, health,



1 or safety within the meaning of Article IV of the
2 Constitution and shall go into immediate effect. The facts
3 constituting the necessity are:

4 In order to allow patients to obtain necessary
5 medications *and to allow pharmacists to take temporary*
6 *breaks without closing the pharmacy*, it is necessary that
7 this act take effect immediately.

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