

Introduced by Senator JohannessenFebruary 23, 2001

An act to amend Sections 11164, 11165, and 11167 of, and to repeal Sections 11159.2, 11161, 11162.5, 11167.5, 11168, and 11169 of, the Health and Safety Code, relating to controlled substances.

LEGISLATIVE COUNSEL'S DIGEST

SB 1000, as introduced, Johannessen. Schedule II controlled substances: prescription requirements.

Existing law provides that no person shall prescribe a controlled substance, nor shall any person fill, compound, or dispense such a prescription unless it complies with specified requirements, one of which is that prescriptions for Schedule II controlled substances shall be prepared in triplicate. Prescriptions for Schedule II controlled substances made for terminally ill patients or in an emergency are exempted from these requirements but are subject to other prescription requirements, as specified. The Department of Justice is required to issue the triplicate prescriptions to any practitioner authorized to write a prescription for Schedule II controlled substances.

This bill would eliminate the triplicate prescription requirement for Schedule II controlled substances, would eliminate the specified prescription requirements provided for terminally ill patients, and would revise when the emergency prescription requirements are applicable. The bill would make conforming changes to related provisions.

Existing law provides for the electronic monitoring of the prescribing and dispensing of Schedule II controlled substances pursuant to the Controlled Substance Utilization Review and Evaluation System (CURES) program, as specified. Existing law appropriates \$1,050,000



from the Pharmacy Board Contingent Fund to the Board of Pharmacy for the purpose of entering into an interagency agreement with the Department of Justice for the implementation, operation, and evaluation of CURES. The program is scheduled to become inoperative on July 1, 2003.

This bill would eliminate the above appropriation and would continue the program indefinitely by deleting its repeal date.

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

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

1 SECTION 1. Section 11159.2 of the Health and Safety Code
2 is repealed.

3 ~~11159.2. (a) Notwithstanding any other provision of law, a~~
4 ~~prescription for a Schedule II controlled substance for use by a~~
5 ~~patient who has a terminal illness shall not be subject to Section~~
6 ~~11164.~~

7 ~~(b) (1) The prescription shall be signed and dated by the~~
8 ~~prescriber and shall contain the name of the person for whom the~~
9 ~~controlled substance is prescribed, the name and quantity of the~~
10 ~~controlled substance prescribed, and directions for use. The~~
11 ~~signature, date, and information required by this paragraph shall~~
12 ~~be wholly written in ink or indelible pencil in the handwriting of~~
13 ~~the prescriber.~~

14 ~~(2) The prescription shall also contain the address of the person~~
15 ~~for whom the controlled substance is prescribed, as provided in~~
16 ~~paragraph (3) of subdivision (b) of Section 11164, and shall~~
17 ~~contain the name, address, telephone number, category of~~
18 ~~professional licensure, and federal controlled substance~~
19 ~~registration number of the prescriber, as provided in paragraph (2)~~
20 ~~of subdivision (b) of Section 11164.~~

21 ~~(3) The prescription shall also indicate that the prescriber has~~
22 ~~certified that the patient is terminally ill by the words “11159.2~~
23 ~~exemption.”~~

24 ~~(e) A pharmacist may fill a prescription pursuant to this section~~
25 ~~when there is a technical error in the certification required by~~
26 ~~paragraph (3) of subdivision (b), provided that he or she has~~
27 ~~personal knowledge of the patient’s terminal illness, and~~



1 ~~subsequently returns the prescription to the prescriber for~~
2 ~~correction within 72 hours.~~

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

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

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

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

16 SEC. 2. Section 11161 of the Health and Safety Code is
17 repealed.

18 ~~11161. (a) Prescription blanks shall be issued by the~~
19 ~~Department of Justice in serially numbered groups of not more~~
20 ~~than 100 forms each in triplicate unless a practitioner orally,~~
21 ~~electronically, or in writing requests a larger amount, and shall be~~
22 ~~furnished to any practitioner authorized to write a prescription for~~
23 ~~controlled substances classified in Schedule II. The Department of~~
24 ~~Justice may charge a fee for the prescription blanks sufficient to~~
25 ~~reimburse the department for the actual costs associated with the~~
26 ~~preparation, processing, and filing of any forms issued pursuant to~~
27 ~~this section. The prescription blanks shall not be transferable. Any~~
28 ~~person possessing a triplicate prescription blank otherwise than as~~
29 ~~provided in this section is guilty of a misdemeanor.~~

30 ~~(b) When a practitioner is named in a warrant of arrest or is~~
31 ~~charged in an accusatory pleading with a felony violation of~~
32 ~~Section 11153, 11154, 11156, 11157, 11170, 11173, 11350, 11351,~~
33 ~~11352, 11353, 11353.5, 11377, 11378, 11378.5, 11379, 11379.5,~~
34 ~~or 11379.6, the court in which the accusatory pleading is filed or~~
35 ~~the magistrate who issued the warrant of arrest shall, upon the~~
36 ~~motion of a law enforcement agency which is supported by~~
37 ~~reasonable cause, issue an order which requires the practitioner to~~
38 ~~surrender to the clerk of the court all triplicate prescription blanks~~
39 ~~in the practitioner’s possession at a time set in the order and shall~~
40 ~~direct the Department of Justice to withhold prescription blanks~~



1 from the practitioner. The law enforcement agency obtaining the
2 order shall notify the Department of Justice of this order. Except
3 as provided in subdivisions (e) and (f) of this section, the order
4 shall remain in effect until further order of the court. Any
5 practitioner possessing prescription blanks in violation of the
6 order is guilty of a misdemeanor.

7 (c) The order provided by subdivision (b) shall be vacated if the
8 court or magistrate finds that the underlying violation or violations
9 are not supported by reasonable cause at a hearing held within two
10 court days after the practitioner files and personally serves upon
11 the prosecuting attorney and the law enforcement agency that
12 obtained the order, a notice of motion to vacate the order with any
13 affidavits on which the practitioner relies. At the hearing, the
14 burden of proof, by a preponderance of the evidence, is on the
15 prosecution. Evidence presented at the hearing shall be limited to
16 the warrant of arrest with supporting affidavits, the motion to
17 require the defendant to surrender all triplicate prescription blanks
18 with supporting affidavits, the sworn complaint together with any
19 documents or reports incorporated by reference thereto which, if
20 based on information and belief, state the basis for the information,
21 or any other documents of similar reliability as well as affidavits
22 and counter affidavits submitted by the prosecution and defense.
23 Granting of the motion to vacate the order is no bar to prosecution
24 of the alleged violation or violations.

25 (d) The defendant may elect to challenge the order issued under
26 subdivision (b) at the preliminary examination. At that hearing, the
27 evidence shall be limited to that set forth in subdivision (c) and any
28 other evidence otherwise admissible at the preliminary
29 examination.

30 (e) If the practitioner has not moved to vacate the order issued
31 under subdivision (b) by the time of the preliminary examination
32 and he or she is held to answer on the underlying violation or
33 violations, the practitioner shall be precluded from afterwards
34 moving to vacate the order. If the defendant is not held to answer
35 on the underlying charge or charges at the conclusion of the
36 preliminary examination, the order issued under subdivision (b)
37 shall be vacated.

38 (f) Notwithstanding subdivision (e), any practitioner who is
39 diverted pursuant to Chapter 2.5 (commencing with Section 1000)



1 of Title 7 of Part 2 of the Penal Code may file a motion to vacate
2 the order issued under subdivision (b).

3 SEC. 3. Section 11162.5 of the Health and Safety Code is
4 repealed.

5 ~~11162.5. (a) Every person who counterfeits a prescription
6 blank purporting to be an official prescription blank prepared and
7 issued pursuant to Section 11161, or knowingly possesses more
8 than three such counterfeited prescription blanks, shall be
9 punished by imprisonment in the state prison or by imprisonment
10 in the county jail for not more than one year.~~

11 ~~(b) Every person who knowingly possesses three or fewer
12 counterfeited prescription blanks purporting to be official
13 prescription blanks prepared and issued pursuant to Section 11161,
14 shall be guilty of a misdemeanor punishable by imprisonment in
15 the county jail not exceeding six months, or by a fine not exceeding
16 one thousand dollars (\$1,000), or by both.~~

17 SEC. 4. Section 11164 of the Health and Safety Code is
18 amended to read:

19 11164. Except as provided in Section 11167, no person shall
20 prescribe a controlled substance, nor shall any person fill,
21 compound, or dispense such a prescription unless it complies with
22 the requirements of this section.

23 ~~(a) The signature on each prescription for a controlled
24 substance classified in Schedule II shall be wholly written in ink
25 or indelible pencil in the handwriting of the prescriber upon the
26 official prescription form issued by the Department of Justice.
27 Each prescription shall be prepared in triplicate, signed by the
28 prescriber, and shall contain, either typewritten or handwritten by
29 the physician or his or her employee, the date, name, and address
30 of the person for whom the controlled substance is prescribed, the
31 name, quantity, and strength of the controlled substance
32 prescribed, directions for use, and the address, category of
33 professional licensure, and the federal controlled substance
34 registration number of the prescriber. The original and duplicate
35 of the prescription shall be delivered to the pharmacist filling the
36 prescription. The duplicate shall be retained by the pharmacist and
37 the original, properly endorsed by the pharmacist with the name
38 and address of the pharmacy, the pharmacy's state license number,
39 the date the prescription was filled and the signature of the
40 pharmacist, shall be transmitted to the Department of Justice at the~~



1 end of the month in which the prescription was filled. Upon receipt
2 of an incompletely prepared official prescription form of the
3 Department of Justice, the pharmacist may enter on the face of the
4 prescription the address of the patient. A pharmacist may fill a
5 prescription for a controlled substance classified in Schedule II
6 containing an error or errors, if the pharmacist notifies the
7 prescriber of the error or errors and the prescriber approves any
8 correction. The prescriber shall fax or mail a corrected
9 prescription to the pharmacist within seven days of the
10 prescription being dispensed.

11 ~~(b)~~ Each prescription for a controlled substance classified in
12 Schedule II, III, IV, or V, except as authorized by subdivision ~~(e)~~
13 ~~(b)~~, shall be subject to the following requirements:

14 (1) The prescription shall be signed and dated by the prescriber
15 and shall contain the name of the person for whom the controlled
16 substance is prescribed, the name and quantity of the controlled
17 substance prescribed, and directions for use. With respect to
18 prescriptions for controlled substances classified in Schedules II,
19 III, and IV, the signature, date, and information required by this
20 paragraph shall be wholly written in ink or indelible pencil in the
21 handwriting of the prescriber.

22 (2) In addition, the prescription shall contain the name,
23 address, telephone number, category of professional licensure, and
24 federal controlled substance registration number of the prescriber.
25 The information required by this paragraph shall be either
26 preprinted upon the prescription blank, typewritten, rubber
27 stamped, or printed by hand. Notwithstanding any provision in this
28 section, the prescriber's address, telephone number, category of
29 professional licensure, or federal controlled substances
30 registration number need not appear on the prescription if that
31 information is readily retrievable in the pharmacy.

32 (3) The prescription shall also contain the address of the person
33 for whom the controlled substance is prescribed. If the prescriber
34 does not specify this address on the prescription, the pharmacist
35 filling the prescription or an employee acting under the direction
36 of the pharmacist shall write or type the address on the prescription
37 or maintain this information in a readily retrievable form in the
38 pharmacy.

39 ~~(e)~~



1 (b) Any controlled substance classified in Schedule III, IV, or
2 V may be dispensed upon an oral or electronically transmitted
3 prescription, which shall be reduced to writing by the pharmacist
4 filling the prescription or by any other person expressly authorized
5 by provisions of the Business and Professions Code. The date of
6 issue of the prescription and all the information required for a
7 written prescription by subdivision ~~(b)~~ (a) shall be included in the
8 written record of the prescription. The pharmacist need not reduce
9 to writing the address, telephone number, license classification, or
10 federal registry number of the prescriber or the address of the
11 patient if that information is readily retrievable in the pharmacy.
12 Pursuant to authorization of the prescriber, any employee of the
13 prescriber on behalf of the prescriber may orally or electronically
14 transmit a prescription for a controlled substance classified in
15 Schedule II, III, IV, or V, if in these cases the written record of the
16 prescription required by this subdivision specifies the name of the
17 employee of the prescriber transmitting the prescription.

18 ~~(d)~~

19 (c) The use of commonly used abbreviations shall not
20 invalidate an otherwise valid prescription.

21 ~~(e)~~

22 (d) Notwithstanding any provision of subdivisions (a) and (b)
23 and ~~(e)~~, prescriptions for a controlled substance classified in
24 Schedule V may be for more than one person in the same family
25 with the same medical need.

26 ~~(f) In addition to the prescriber's record required by Section~~
27 ~~11190, any practitioner dispensing a controlled substance~~
28 ~~classified in Schedule II in accordance with subdivision (b) of~~
29 ~~Section 11158 shall prepare a written record thereof on the official~~
30 ~~forms issued by the Department of Justice, pursuant to Section~~
31 ~~11161, and shall transmit the original to the Department of Justice~~
32 ~~in accordance with any rules that the department may adopt for~~
33 ~~completion and transmittal of the forms.~~

34 SEC. 5. Section 11165 of the Health and Safety Code is
35 amended to read:

36 11165. (a) To assist law enforcement and regulatory agencies
37 in their efforts to control the diversion and resultant abuse of
38 Schedule II controlled substances, and for statistical analysis,
39 education, and research, the Department of Justice shall,
40 contingent upon the availability of adequate funds, establish the



1 Controlled Substance Utilization Review and Evaluation System
2 (CURES) for the electronic monitoring of the prescribing and
3 dispensing of Schedule II controlled substances by all
4 practitioners authorized to prescribe or dispense these controlled
5 substances. ~~CURES shall be implemented as a pilot project,~~
6 ~~commencing on July 1, 1997, to be administered concurrently with~~
7 ~~the existing triplicate prescription process, to examine the~~
8 ~~comparative efficiencies between the two systems.~~

9 (b) The CURES ~~pilot project~~ *Program* shall operate under
10 existing provisions of law to safeguard the privacy and
11 confidentiality of patients. Data obtained from CURES shall only
12 be provided to appropriate state, local, and federal persons or
13 public agencies for disciplinary, civil, or criminal purposes and to
14 other agencies or entities, as determined by the Department of
15 Justice, for the purpose of educating practitioners and others in lieu
16 of disciplinary, civil, or criminal actions. Data may be provided to
17 public or private entities, as approved by the Department of
18 Justice, for educational, peer review, statistical, or research
19 purposes, provided that patient information, including any
20 information that may identify the patient, is not compromised.
21 Further, data disclosed to any individual or agency as described in
22 this subdivision, shall not be disclosed, sold, or transferred to any
23 third party.

24 ~~(e) The Department of Justice, in consultation with the Board~~
25 ~~of Pharmacy, shall submit a report to the Legislature by January~~
26 ~~1, 1999, with annual updates also due January 1, 2000, 2001, and~~
27 ~~2002, on the CURES pilot project. Specifically, these reports shall~~
28 ~~assess the ability of CURES to provide complete, accurate, and~~
29 ~~timely data on Schedule II controlled substances prescribed and~~
30 ~~dispensed in California, the effectiveness of this information in~~
31 ~~investigating and prosecuting individuals suspected of diversion~~
32 ~~activities, and the feasibility of replacing the current triple-copy~~
33 ~~prescription form with a single-copy serialized prescription form~~
34 ~~to reduce existing administrative burdens. Further, the report shall~~
35 ~~make recommendations regarding the replacement of the existing~~
36 ~~triplicate prescription process with CURES, and funding~~
37 ~~alternatives for ongoing system support.~~

38 ~~(d) The sum of one million fifty thousand dollars (\$1,050,000)~~
39 ~~is hereby appropriated from the Pharmacy Board Contingent Fund~~
40 ~~to the Board of Pharmacy for the purpose of entering into an~~



1 ~~interagency agreement with the Department of Justice for the~~
2 ~~implementation, operation, and evaluation of CURES.~~

3 ~~(c) This section shall become inoperative on July 1, 2003, and,~~
4 ~~as of January 1, 2004, is repealed, unless a later enacted statute,~~
5 ~~that becomes operative on or before January 1, 2004, deletes or~~
6 ~~extends the dates on which it becomes inoperative and is repealed.~~

7 SEC. 6. Section 11167 of the Health and Safety Code is
8 amended to read:

9 11167. Notwithstanding subdivision (a) of Section 11164, in
10 an emergency ~~where failure to issue a prescription may result in~~
11 ~~loss of life or intense suffering~~ *situation*, an order for a Schedule
12 II controlled substance may be dispensed on an oral, written, or
13 electronic data transmission order, subject to all of the following
14 requirements:

15 (a) The order contains all information required by subdivision
16 (a) of Section 11164.

17 (b) Any written order is signed and dated by the prescriber in
18 indelible pencil or ink, and the pharmacy reduces any oral or
19 electronic data transmission order to writing prior to actually
20 dispensing the controlled substance.

21 (c) The prescriber provides a ~~triplicate~~ prescription, completed
22 as provided by subdivision (a) of Section 11164, by the seventh
23 day following the transmission of the initial order; a postmark by
24 the seventh day following transmission of the initial order shall
25 constitute compliance.

26 (d) If the prescriber fails to comply with subdivision (c), the
27 pharmacy shall so notify the Bureau of Narcotic Enforcement in
28 writing within 144 hours of the prescriber's failure to do so and
29 shall make and retain a written, readily retrievable record of the
30 prescription, including the date and method of notification of the
31 Bureau of Narcotic Enforcement.

32 (e) *For purposes of this section, "emergency situation" means*
33 *a situation in which the prescriber determines that all of the*
34 *following exist:*

35 (1) *Immediate administration of the controlled substance is*
36 *necessary for the proper treatment of the intended ultimate user.*

37 (2) *No appropriate alternative treatment is available,*
38 *including the administration of a controlled substance that is not*
39 *classified under Schedule II.*



1 (3) *It is not reasonably possible for the prescriber to provide a*
2 *written prescription to be presented to the person dispensing the*
3 *substance, prior to the dispensing.*

4 SEC. 7. Section 11167.5 of the Health and Safety Code is
5 repealed.

6 ~~11167.5.—(a) An order for a controlled substance classified in~~
7 ~~Schedule II in a licensed skilled nursing facility, an intermediate~~
8 ~~care facility, or a licensed home health agency providing hospice~~
9 ~~care may be dispensed upon an oral or electronically transmitted~~
10 ~~prescription. Prior to filling the prescription, the pharmacist shall~~
11 ~~reduce it to writing in ink or indelible pencil in the handwriting of~~
12 ~~the pharmacist upon an official prescription form issued by the~~
13 ~~Department of Justice for that purpose. The prescriptions shall be~~
14 ~~prepared in triplicate and shall contain the date the prescription~~
15 ~~was orally or electronically transmitted by the prescriber, the name~~
16 ~~of the person for whom the prescription was authorized, the name~~
17 ~~and address of the licensed facility or home health agency~~
18 ~~providing hospice care in which that person is a patient, the name~~
19 ~~and quantity of the controlled substance prescribed, the directions~~
20 ~~for use, and the name, address, category of professional licensure,~~
21 ~~and federal controlled substance registration number of the~~
22 ~~prescriber. The duplicate shall be retained by the pharmacist, and~~
23 ~~the triplicate shall be forwarded to the prescriber by the end of the~~
24 ~~month in which the prescription was issued. The original shall be~~
25 ~~properly endorsed by the pharmacist with the pharmacy's state~~
26 ~~license number, the signature of the pharmacist, the name and~~
27 ~~address of the pharmacy, and the signature of the person who~~
28 ~~received the controlled substances for the licensed facility or home~~
29 ~~health agency providing hospice care and shall be forwarded by~~
30 ~~the pharmacist to the Department of Justice at the end of the month~~
31 ~~in which the prescription was filled. A skilled nursing facility,~~
32 ~~intermediate care facility, or licensed home health agency~~
33 ~~providing hospice care shall forward to the dispensing pharmacist~~
34 ~~a copy of any signed telephone orders, chart orders, or related~~
35 ~~documentation substantiating each oral or electronically~~
36 ~~transmitted prescription transaction under this section.~~

37 ~~(b) For the purposes of this section, "hospice care" means~~
38 ~~interdisciplinary health care which is designed to alleviate the~~
39 ~~physical, emotional, social, and spiritual discomforts of an~~
40 ~~individual who is experiencing the last phases of a terminal disease~~



1 ~~and to provide supportive care for the primary care person and the~~
2 ~~family of the patient under hospice care.~~

3 SEC. 8. Section 11168 of the Health and Safety Code is
4 repealed.

5 ~~11168. The prescription book containing the prescriber's~~
6 ~~copies of prescriptions issued shall be retained by the prescriber~~
7 ~~which shall be preserved for three years.~~

8 SEC. 9. Section 11169 of the Health and Safety Code is
9 repealed.

10 ~~11169. When codeine, or dihydrocodeinone or tincture opii~~
11 ~~camphorata (paregoric) is not combined with other medicinal~~
12 ~~ingredients, it shall be prescribed on the official triplicate blanks.~~

