

AMENDED IN SENATE JUNE 1, 2006  
AMENDED IN ASSEMBLY MAY 4, 2006  
AMENDED IN ASSEMBLY MARCH 27, 2006  
CALIFORNIA LEGISLATURE—2005–06 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2408**

---

---

**Introduced by Assembly Member Negrete McLeod**

February 23, 2006

---

---

An act to amend Sections 4036, 4037, 4050, 4051, 4052, 4112, 4120, 4201, 4207, 4301, and 4306.5 of, to amend, renumber, and add Section 4052.1 of, to add Sections 4052.2 and 4052.3 to, and to repeal and add Section 4303 of, the Business and Professions Code, relating to pharmacies.

LEGISLATIVE COUNSEL'S DIGEST

AB 2408, as amended, Negrete McLeod. Pharmacies.

Existing law, the Pharmacy Law, provides for the licensing and regulation of pharmacists and pharmacies by the Board of Pharmacy in the Department of Consumer Affairs. A violation of the Pharmacy Law is a crime.

Existing law defines a pharmacist and a pharmacy, requires pharmacists and pharmacies to be licensed by the board, and authorizes a licensee to engage in certain activities. Existing law also sets forth activities that constitute unprofessional conduct for a pharmacist to engage in.

This bill would require a pharmacist to be a natural person, and would entitle a licensed pharmacist to practice pharmacy within or outside of a licensed pharmacy. The bill would revise the activities in which a pharmacist may engage, including the adjustment of

prescriptions and provisions of cognitive services, would revise the pharmacist's responsibilities and requirements with regard to certain activities, and would make certain additional acts or omissions unprofessional conduct. The bill would revise the definition of a pharmacy to include, among other things, all pharmacies in which the profession of pharmacy is practiced. The bill would list different types of pharmacies and would require a pharmacy or nonresident pharmacy to specify its type in its application for licensure and to update the board if that information changes. The bill would make it unlawful for ~~an unlicensed~~ *a* person to perform any prescription review, consultation, drug utilization review, medication therapy management, or other cognitive services for, pertaining to, or at the request of, patients, prescribers, or other health care providers, *unless he or she is a licensed pharmacist or is a licensed health care provider complying with a request for consult by a licensed health care provider, as specified.*

Existing law defines a nonresident pharmacy and requires a nonresident pharmacy to meet certain criteria, including registration with the board. Existing law prohibits an unregistered nonresident pharmacy from engaging in certain activities, including selling or distributing dangerous drugs or dangerous devices in this state through any person or media other than a licensed wholesaler. Existing law requires a nonresident pharmacy to disclose to the board the location, names, and titles of specified persons, including all pharmacists dispensing controlled substances, dangerous drugs, or dangerous devices to residents of California. Existing law authorizes the board to deny, revoke, or suspend a nonresident registration for failure to comply with specified requirements or for conduct that causes serious bodily or psychological injury to a California resident, in specified circumstances.

This bill would revise the definition of a nonresident pharmacy ~~to require shipping, mailing, or delivering directly to patients in California, and~~ to include a pharmacy located outside of the state that performs prescription review, patient consultation, drug utilization review, medication therapy management, or other cognitive pharmacy services for patients in this state. The bill would delete the requirement that a nonresident pharmacy must disclose the location, names, and titles of pharmacists, and the prohibition against a nonresident pharmacy selling or distributing dangerous drugs or devices in California through any person or media other than a

licensed wholesaler. This bill would also delete the authorization for the board to deny, revoke, or suspend a nonresident registration for failure to comply with specified requirements or for conduct causing serious bodily harm or psychological injury to a California resident, and would instead authorize the board to deny, revoke, or suspend a nonresident pharmacy registration, issue a citation or letter of admonishment, or take any other action against a nonresident pharmacy that it may take against a resident pharmacy. The bill would also authorize the board to report violations of laws or regulations by a nonresident pharmacy to ~~its~~ *any appropriate state or federal* regulatory or licensing agency.

This bill would revise and recast related provisions of the Pharmacy Law.

Because this bill would create new requirements and prohibitions under the Pharmacy Law, the violation of which would be a crime, it 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.

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 4036 of the Business and Professions  
2 Code is amended to read:

3 4036. "Pharmacist" means a natural person to whom a license  
4 has been issued by the board, under Section 4200, except as  
5 specifically provided otherwise in this chapter. The holder of an  
6 unexpired and active pharmacist license issued by the board is  
7 entitled to practice pharmacy as defined by this chapter, within or  
8 outside of a licensed pharmacy as authorized by this chapter.

9 SEC. 2. Section 4037 of the Business and Professions Code is  
10 amended to read:

11 4037. (a) "Pharmacy" means an area, place, or premises  
12 licensed by the board in which the profession of pharmacy is  
13 practiced. Only a "dispensing pharmacy," as defined in

1 subdivision (b), may possess, prepare, manufacture, derive,  
2 compound, repackage, furnish, sell, or dispense controlled  
3 substances, dangerous drugs, or dangerous devices. In all other  
4 respects, whenever the term “pharmacy” is used in this chapter, it  
5 shall be deemed to refer to all of the types of pharmacies listed in  
6 subdivision (b). *The pharmacy types listed in subdivision (b) are*  
7 *not mutually exclusive, and a single pharmacy license issued by*  
8 *the board shall permit a pharmacy to function as one or more*  
9 *type.*

10 (b) “Pharmacy” includes, but is not limited to, all of the  
11 following:

12 (1) A “dispensing pharmacy,” which is any area, place, or  
13 premises described in a license issued by the board wherein  
14 controlled substances, dangerous drugs, or dangerous devices are  
15 stored, possessed, prepared, manufactured, derived, compounded,  
16 or repackaged, and from which the controlled substances,  
17 dangerous drugs, or dangerous devices are furnished, sold, or  
18 dispensed at retail.

19 (2) A “prescription processing pharmacy,” which is any area,  
20 place, or premises described in a license issued by the board  
21 wherein personnel licensed by the board engage in or supervise  
22 drug order or prescription review by performing functions  
23 including, but not limited to, data entry, drug utilization review,  
24 patient or prescriber contact, patient profile review, and allergy  
25 and drug-interaction review.

26 (3) An “advice/clinical center pharmacy,” which is any area,  
27 place, or premises described in a license issued by the board  
28 wherein personnel licensed by the board provide cognitive  
29 pharmacy services including, but not limited to, clinical advice or  
30 information, telephonic or in-person patient consultation, drug  
31 utilization review, and medication therapy management.

32 (c) “Pharmacy” shall not include any area in a facility licensed  
33 by the State Department of Health Services where floor supplies,  
34 ward supplies, operating room supplies, or emergency room  
35 supplies of dangerous drugs or dangerous devices are stored or  
36 possessed solely for treatment of patients registered for treatment  
37 in the facility or for treatment of patients receiving emergency  
38 care in the facility.

39 (d) “Pharmacy” shall not include a clinic licensed under  
40 Section 4180 or Section 4190.

1 SEC. 3. Section 4050 of the Business and Professions Code is  
2 amended to read:

3 4050. (a) In recognition of and consistent with the decisions  
4 of the appellate courts of this state, the Legislature hereby  
5 declares the practice of pharmacy to be a profession.

6 (b) Pharmacy practice is a dynamic patient-oriented health  
7 service that applies a scientific body of knowledge to improve  
8 and promote patient health by means of appropriate drug use,  
9 drug-related therapy, and communication for clinical and  
10 consultative purposes. Pharmacy practice is continually evolving  
11 to include more sophisticated and comprehensive patient care  
12 activities.

13 SEC. 4. Section 4051 of the Business and Professions Code is  
14 amended to read:

15 4051. (a) The holder of an unexpired and active pharmacist  
16 license issued by the board is vested with the authority and  
17 responsibility to perform the following functions inherent to  
18 pharmacy practice:

19 (1) Interpreting, verifying, and implementing drug orders and  
20 prescriptions.

21 (2) Dispensing pursuant to legitimate drug orders and  
22 prescriptions.

23 (3) Ensuring proper drug storage, documentation, inventory,  
24 labeling, and recordkeeping.

25 (4) Maintaining accurate, complete, and confidential patient  
26 profiles and records.

27 (5) Supervising pharmacy technicians and other ancillary  
28 personnel in the pharmacy.

29 (6) Designing and implementing quality assurance procedures  
30 and protocols.

31 (7) Compounding drug products pursuant to prescription and  
32 for prescriber office use.

33 (8) Maintaining safe, secure, and sanitary conditions in  
34 licensed premises.

35 (9) Performing cognitive services, including drug utilization  
36 reviews and management, medication therapy reviews and  
37 management, and patient counseling and consultation.

38 (10) Collaborating with prescribers and other health care  
39 providers regarding patient care.

1 (11) Implementing standardized procedures and protocols  
2 regarding patient care.

3 (12) Administering or furnishing drugs or biologicals, where  
4 permitted by law.

5 (13) Initiating, adjusting, or implementing patient drug  
6 ~~regimens where permitted by law.~~ *regimens as authorized by*  
7 *Sections 4052.1 and 4052.2.*

8 (14) Any other pharmacy functions authorized by this chapter.

9 (b) Except as otherwise provided in this chapter, it is unlawful  
10 for any person to manufacture, compound, furnish, sell, or  
11 dispense any dangerous drug or dangerous device, or to dispense  
12 or compound any prescription pursuant to Section 4040 of a  
13 prescriber unless he or she is a pharmacist licensed under this  
14 chapter.

15 (c) Except as otherwise provided in this division, it is unlawful  
16 for any person to perform any prescription review, consultation,  
17 drug utilization review, medication therapy management, or other  
18 cognitive services for, pertaining to, or at the request of, patients,  
19 prescribers, or other *health* care providers in this state, unless he  
20 or she is a pharmacist licensed under this chapter *or unless he or*  
21 *she is a licensed health care provider complying with a request*  
22 *for consultation by a licensed health care provider in this state*  
23 *regarding the care of a patient in this state. A pharmacist*  
24 *licensed under this chapter may perform these services without*  
25 *holding or being under the auspices of a pharmacy license.*

26 (d) Notwithstanding any other law, a pharmacist licensed  
27 under this chapter may authorize the initiation or adjustment of a  
28 prescription, pursuant to Section 4052, and otherwise provide  
29 cognitive services, clinical advice or information, or patient  
30 consultation if all of the following conditions are met:

31 (1) The cognitive service, clinical advice, or information or  
32 patient consultation is provided to a health care professional or to  
33 a patient.

34 (2) The pharmacist has access to prescription records, patient  
35 profiles, or other relevant medical information for purposes of  
36 cognitive services, patient and clinical consultation, and advice,  
37 and appropriately reviews that information before performing  
38 any of these functions.

39 (3) Access to the information described in paragraph (2) is  
40 secure from unauthorized access and use.

1     ~~(4) The pharmacist authorizing initiation or adjustment of a~~  
2 ~~prescription, or cognitive services such as clinical advice,~~  
3 ~~information, or patient consultation, sets forth a complete log and~~  
4 ~~description of all patient records and other patient-specific~~  
5 ~~information, including any test results or other pertinent data,~~  
6 ~~used, consulted, or relied on by the pharmacist during the~~  
7 ~~performance of the function. The board may by regulation further~~  
8 ~~define the required content of the log and description. This log~~  
9 ~~and description shall be maintained in a readily retrievable form,~~  
10 ~~and provided to the board upon request, for a period of at least~~  
11 ~~three years from the date of performance of the function. The~~  
12 ~~underlying patient records and other patient-specific information~~  
13 ~~used, consulted, or relied on by the pharmacist during the~~  
14 ~~performance of the function may be maintained elsewhere and~~  
15 ~~not kept with the log and description, as long as those records~~  
16 ~~and that information are readily retrievable and provided to the~~  
17 ~~board upon request for a period of at least three years from the~~  
18 ~~date of performance of the function. Otherwise, a duplicate copy~~  
19 ~~of the patient records and patient-specific information used,~~  
20 ~~consulted, or relied on shall become part of the records~~  
21 ~~maintained. Where the function to which the log and description~~  
22 ~~pertains is performed on the premises of a licensed pharmacy, the~~  
23 ~~obligation to keep and maintain the foregoing records extends to~~  
24 ~~the pharmacy and its pharmacist-in-charge, and to the pharmacist~~  
25 ~~performing the function. Where the function to which the log and~~  
26 ~~description pertains is performed outside of the premises of a~~  
27 ~~licensed pharmacy, the obligation to keep and maintain the~~  
28 ~~foregoing records extends only to the performing pharmacist.~~

29     *(4) The pharmacist shall set forth a complete description of all*  
30 *patient specific records, including any test results or other*  
31 *pertinent data, used, consulted, or relied upon by the pharmacist.*  
32 *The board may, by regulation, further define the required content*  
33 *of these records.*

34     *(A) Where the pharmacist performs these functions on the*  
35 *premises of a licensed pharmacy, the obligation to keep and*  
36 *maintain the records required by this paragraph extends to the*  
37 *pharmacy and its pharmacist-in-charge, as well as to the*  
38 *pharmacist performing the function.*

39     *(B) Where the pharmacist performs these functions outside of*  
40 *the premises of a licensed pharmacy, the obligation to keep and*

1 *maintain the records required by this paragraph extends only to*  
2 *that pharmacist.*

3 *(C) The records required by this paragraph shall be*  
4 *maintained in a readily retrievable form and provided to the*  
5 *board upon request for a period of at least three years from the*  
6 *date of performance of the function. The underlying patient*  
7 *records and other patient-specific information used, consulted,*  
8 *or relied upon by the pharmacist may be maintained elsewhere*  
9 *and not kept with the pharmacist, as long as the records and the*  
10 *referenced information are readily retrievable and provided to*  
11 *the board upon request for a period of at least three years from*  
12 *the date of performance of the function. Otherwise, a duplicate*  
13 *copy of the patient records and patient-specific information used,*  
14 *consulted, or relied upon shall become part of the records*  
15 *maintained.*

16 SEC. 5. Section 4052 of the Business and Professions Code is  
17 amended to read:

18 4052. (a) Notwithstanding any other provision of law, a  
19 pharmacist may:

20 (1) Furnish a reasonable quantity of compounded drug product  
21 to a prescriber for office use by the prescriber.

22 (2) Transmit a valid prescription to another pharmacist.

23 (3) Administer, orally or topically, drugs and biologicals  
24 pursuant to a prescriber’s order.

25 (4) Perform procedures or functions in a licensed health care  
26 facility as authorized by Section 4052.1.

27 (5) Perform procedures or functions as part of the care  
28 provided by a health care facility, a licensed home health agency,  
29 a licensed clinic in which there is a physician oversight, a  
30 provider who contracts with a licensed health care service plan  
31 with regard to the care or services provided to the enrollees of  
32 that health care service plan, or a physician, as authorized by  
33 Section 4052.2.

34 (6) Manufacture, measure, fit to the patient, or sell and repair  
35 dangerous devices or furnish instructions to the patient or the  
36 patient’s representative concerning the use of those devices.

37 (7) Provide cognitive services such as drug utilization review,  
38 medication therapy management, consultation to patients, and  
39 professional information, including clinical or pharmacological

1 information, advice, or consultation to other health care  
2 professionals.

3 (8) Furnish emergency contraception drug therapy as  
4 authorized by Section 4052.3.

5 (9) Administer immunizations pursuant to a protocol with a  
6 prescriber.

7 (b) A pharmacist who is authorized to issue an order to initiate  
8 or adjust a controlled substance therapy pursuant to this section  
9 shall personally register with the federal Drug Enforcement  
10 Administration.

11 (c) Nothing in this section shall affect the requirements of  
12 existing law relating to maintaining the confidentiality of medical  
13 records.

14 (d) Nothing in this section shall affect the requirements of  
15 existing law relating to the licensing of a health care facility.

16 SEC. 6. Section 4052.1 of the Business and Professions Code  
17 is amended and renumbered to read:

18 4052.4. Notwithstanding Section 2038 or any other provision  
19 of law, a pharmacist may perform skin puncture in the course of  
20 performing routine patient assessment procedures or in the  
21 course of performing any procedure authorized under Section  
22 1206.5. For purposes of this section, “routine patient assessment  
23 procedures” means: (a) procedures that a patient could, with or  
24 without a prescription, perform for himself or herself, or (b)  
25 clinical laboratory tests that are classified as waived pursuant to  
26 the federal Clinical Laboratory Improvement Amendments of  
27 1988 (42 U.S.C. Sec. 263a) and the regulations adopted  
28 thereunder by the federal Health Care Financing Administration,  
29 as authorized by paragraph (11) of subdivision (a) of Section  
30 1206.5. A pharmacist performing these functions shall report the  
31 results obtained from a test to the patient and any physician  
32 designated by the patient. Any pharmacist who performs the  
33 service authorized by this section shall not be in violation of  
34 Section 2052.

35 SEC. 7. Section 4052.1 is added to the Business and  
36 Professions Code, to read:

37 4052.1. (a) Notwithstanding any other provision of law, a  
38 pharmacist may perform the following procedures or functions in  
39 a licensed health care facility in accordance with policies,  
40 procedures, or protocols developed by health professionals,

1 including physicians, pharmacists, and registered nurses, with the  
2 concurrence of the facility administrator:

3 (1) Ordering or performing routine drug therapy-related  
4 patient assessment procedures including temperature, pulse, and  
5 respiration.

6 (2) Ordering drug therapy-related laboratory tests.

7 (3) Administering drugs and biologicals by injection pursuant  
8 to a prescriber's order.

9 (4) Initiating or adjusting the drug regimen of a patient  
10 pursuant to an order or authorization made by the patient's  
11 prescriber and in accordance with the policies, procedures, or  
12 protocols of the licensed health care facility.

13 (b) Prior to performing any procedure authorized by this  
14 section, a pharmacist shall have received appropriate training as  
15 prescribed in the policies and procedures of the licensed health  
16 care facility.

17 SEC. 8. Section 4052.2 is added to the Business and  
18 Professions Code, to read:

19 4052.2. (a) Notwithstanding any other provision of law, a  
20 pharmacist may perform the following procedures or functions as  
21 part of the care provided by a health care facility, a licensed  
22 home health agency, a licensed clinic in which there is a  
23 physician oversight, a provider who contracts with a licensed  
24 health care service plan with regard to the care or services  
25 provided to the enrollees of that health care service plan, or a  
26 physician, in accordance with the policies, procedures, or  
27 protocols of that facility, home health agency, licensed clinic,  
28 health care service plan, or physician, and in accordance with  
29 subdivision (c):

30 (1) Ordering or performing routine drug therapy-related  
31 patient assessment procedures including temperature, pulse, and  
32 respiration.

33 (2) Ordering drug therapy-related laboratory tests.

34 (3) Administering drugs and biologicals by injection pursuant  
35 to a prescriber's order.

36 (4) Initiating or adjusting the drug regimen of a patient  
37 pursuant to a specific written order or authorization made by the  
38 individual patient's treating prescriber, and in accordance with  
39 the policies, procedures, or protocols of the health care facility,  
40 home health agency, licensed clinic, health care service plan, or

1 physician. Adjusting the drug regimen does not include  
2 substituting or selecting a different drug, except as authorized by  
3 the protocol. The pharmacist shall provide written notification to  
4 the patient's treating prescriber, or enter the appropriate  
5 information in an electronic patient record system shared by the  
6 prescriber, of any drug regimen initiated pursuant to this  
7 paragraph within 24 hours.

8 (b) A patient's treating prescriber may prohibit, by written  
9 instruction, any adjustment or change in the patient's drug  
10 regimen by the pharmacist.

11 (c) The policies, procedures, or protocols referred to in this  
12 subdivision shall be developed by health care professionals,  
13 including physicians, pharmacists, and registered nurses, and  
14 shall, at a minimum, do all of the following:

15 (1) Require that the pharmacist function as part of a  
16 multidisciplinary group that includes physicians and direct care  
17 registered nurses. The multidisciplinary group shall determine  
18 the appropriate participation of the pharmacist and the direct care  
19 registered nurse.

20 (2) Require that the medical records of the patient be available  
21 to both the patient's treating prescriber and the pharmacist.

22 (3) Require that the procedures to be performed by the  
23 pharmacist relate to a condition for which the patient has first  
24 been seen by a physician.

25 (4) Except for procedures or functions provided by a health  
26 care facility, a licensed clinic in which there is physician  
27 oversight, or a provider who contracts with a licensed health care  
28 plan with regard to the care or services provided to the enrollees  
29 of that health care service plan, require the procedures to be  
30 performed in accordance with a written, patient-specific protocol  
31 approved by the treating or supervising physician. Any change,  
32 adjustment, or modification of an approved preexisting treatment  
33 or drug therapy shall be provided in writing to the treating or  
34 supervising physician within 24 hours.

35 (d) Prior to performing any procedure authorized by this  
36 section, a pharmacist shall have ~~either~~ *done either of the*  
37 *following*:

38 (1) Successfully completed clinical residency training.

39 (2) Demonstrated ~~clinical~~ *experience equivalent clinical*  
40 *experience and competence* in direct patient care delivery.

1 SEC. 9. Section 4052.3 is added to the Business and  
2 Professions Code, to read:

3 4052.3. (a) Notwithstanding any other provision of law, a  
4 pharmacist may furnish emergency contraception drug therapy in  
5 accordance with either of the following:

6 (1) Standardized procedures or protocols developed by the  
7 pharmacist and an authorized prescriber who is acting within his  
8 or her scope of practice.

9 (2) Standardized procedures or protocols developed and  
10 approved by both the board and the Medical Board of California  
11 in consultation with the American College of Obstetricians and  
12 Gynecologists, the California Pharmacist Association, and other  
13 appropriate entities. Both the board and the Medical Board of  
14 California shall have authority to ensure compliance with this  
15 clause, and both boards are specifically charged with the  
16 enforcement of this provision with respect to their respective  
17 licensees. Nothing in this clause shall be construed to expand the  
18 authority of a pharmacist to prescribe any prescription  
19 medication.

20 (b) Prior to performing a procedure authorized under this  
21 paragraph, a pharmacist shall complete a training program on  
22 emergency contraception that consists of at least one hour of  
23 approved continuing education on emergency contraception drug  
24 therapy.

25 (c) A pharmacist, pharmacist's employer, or pharmacist's  
26 agent may not directly charge a patient a separate consultation  
27 fee for emergency contraception drug therapy services initiated  
28 pursuant to this paragraph, but may charge an administrative fee  
29 not to exceed ten dollars (\$10) above the retail cost of the drug.  
30 Upon an oral, telephonic, electronic, or written request from a  
31 patient or customer, a pharmacist or pharmacist's employee shall  
32 disclose the total retail price that a consumer would pay for  
33 emergency contraception drug therapy. As used in this  
34 subparagraph, total retail price includes providing the consumer  
35 with specific information regarding the price of the emergency  
36 contraception drugs and the price of the administrative fee  
37 charged. This limitation is not intended to interfere with other  
38 contractually agreed-upon terms between a pharmacist, a  
39 pharmacist's employer, or a pharmacist's agent, and a health care  
40 service plan or insurer. Patients who are insured or covered and

1 receive a pharmacy benefit that covers the cost of emergency  
2 contraception shall not be required to pay an administrative fee.  
3 These patients shall be required to pay copayments pursuant to  
4 the terms and conditions of their coverage. The provisions of this  
5 subparagraph shall cease to be operative for dedicated emergency  
6 contraception drugs when these drugs are reclassified as  
7 over-the-counter products by the federal Food and Drug  
8 Administration.

9 (d) A pharmacist may not require a patient to provide  
10 individually identifiable medical information that is not specified  
11 in Section 1707.1 of Title 16 of the California Code of  
12 Regulations before initiating emergency contraception drug  
13 therapy pursuant to this section.

14 (e) For each emergency contraception drug therapy initiated  
15 pursuant to this section, the pharmacist shall provide the recipient  
16 of the emergency contraception drugs with a standardized  
17 factsheet that includes, but is not limited to, the indications for  
18 use of the drug, the appropriate method for using the drug, the  
19 need for medical followup, and other appropriate information.  
20 The board shall develop this form in consultation with the State  
21 Department of Health Services, the American College of  
22 Obstetricians and Gynecologists, the California Pharmacists  
23 Association, and other health care organizations. The provisions  
24 of this section do not preclude the use of existing publications  
25 developed by nationally recognized medical organizations.

26 SEC. 10. Section 4112 of the Business and Professions Code  
27 is amended to read:

28 4112. (a) Any pharmacy located outside this state that ships,  
29 mails, or delivers, in any manner, controlled substances,  
30 dangerous drugs, or dangerous devices ~~directly to patients in~~ *into*  
31 this state, or that performs prescription review, patient  
32 consultation, drug utilization review, medication therapy  
33 management, or other cognitive pharmacy services for patients in  
34 this state, shall be considered a nonresident pharmacy.

35 (b) All nonresident pharmacies shall register with the board.  
36 The board may register a nonresident pharmacy that is organized  
37 as a limited liability company in the state in which it is licensed.

38 (c) A nonresident pharmacy shall disclose to the board the  
39 location, names, and titles of (1) its agent for service of process  
40 in this state, (2) all principal corporate officers, if any, and (3) all

1 general partners, if any. A report containing this information  
2 shall be made on an annual basis and within 30 days after any  
3 change of office, corporate officer, or partner.

4 (d) All nonresident pharmacies shall comply with all lawful  
5 directions and requests for information from the regulatory or  
6 licensing agency of the state in which it is licensed as well as  
7 with all requests for information made by the board pursuant to  
8 this section. The nonresident pharmacy shall maintain, at all  
9 times, a valid unexpired license, permit, or registration to  
10 conduct the pharmacy in compliance with the laws of the state in  
11 which it is a resident. As a prerequisite to registering with the  
12 board, the nonresident pharmacy shall submit a copy of the most  
13 recent inspection report resulting from an inspection conducted  
14 by the regulatory or licensing agency of the state in which it is  
15 located.

16 (e) All nonresident pharmacies shall maintain records of  
17 controlled substances, dangerous drugs, or dangerous devices  
18 dispensed to patients in this state so that the records are readily  
19 retrievable from the records of other drugs dispensed.

20 (f) Any pharmacy subject to this section shall, during its  
21 regular hours of operation, but not less than six days per week,  
22 and for a minimum of 40 hours per week, provide a toll-free  
23 telephone service to facilitate communication between patients in  
24 this state and a pharmacist at the pharmacy who has access to the  
25 patient's records. This toll-free telephone number shall be  
26 disclosed on a label affixed to each container of drugs dispensed  
27 to patients in this state.

28 (g) The board shall adopt regulations that apply the same  
29 requirements or standards for oral consultation to a nonresident  
30 pharmacy that operates pursuant to this section and ships, mails,  
31 or delivers any controlled substances, dangerous drugs, or  
32 dangerous devices to residents of this state, as are applied to an  
33 in-state pharmacy that operates pursuant to Section 4037 when  
34 the pharmacy ships, mails, or delivers any controlled substances,  
35 dangerous drugs, or dangerous devices to residents of this state.  
36 The board shall not adopt any regulations that require  
37 face-to-face consultation for a prescription that is shipped,  
38 mailed, or delivered to the patient. The regulations adopted  
39 pursuant to this subdivision shall not result in any unnecessary  
40 delay in patients receiving their medication.

1 (h) The registration fee shall be the fee specified in  
2 subdivision (a) of Section 4400.

3 (i) The registration requirements of this section shall apply  
4 only to a nonresident pharmacy that ships, mails, or delivers  
5 controlled substances, dangerous drugs, and dangerous devices  
6 into this state pursuant to a prescription.

7 (j) Nothing in this section shall be construed to authorize the  
8 dispensing of contact lenses by nonresident pharmacists except  
9 as provided by Section 4124.

10 SEC. 11. Section 4120 of the Business and Professions Code  
11 is amended to read:

12 4120. (a) Applications for a nonresident pharmacy  
13 registration shall be made on a form furnished by the board. The  
14 board may require any information as the board deems  
15 reasonably necessary to carry out the purposes of this section.

16 (b) Each application to conduct a nonresident pharmacy shall  
17 specify the type or types of pharmacy for which the application is  
18 submitted, pursuant to Section 4037. The applicant shall  
19 immediately notify the board of any requested addition, deletion,  
20 or other change in specified pharmacy type prior to licensure.  
21 After licensure, any change in specified pharmacy type shall be  
22 reported to the board, on a form to be furnished by the board, at  
23 least 30 calendar days prior to implementation or elimination of  
24 any activities permitted by the added, deleted, or changed type  
25 designation.

26 (c) The Legislature, by enacting this section, does not intend a  
27 license issued to any nonresident pharmacy pursuant to this  
28 section to change or affect the tax liability imposed by Chapter 3  
29 (commencing with Section 23501) of Part 11 of Division 2 of the  
30 Revenue and Taxation Code on any nonresident pharmacy.

31 (d) The Legislature, by enacting this section, does not intend a  
32 license issued to any nonresident pharmacy pursuant to this  
33 section to serve as any evidence that the nonresident pharmacy is  
34 doing business within this state.

35 SEC. 12. Section 4201 of the Business and Professions Code  
36 is amended to read:

37 4201. (a) Each application to conduct a pharmacy,  
38 wholesaler, or veterinary food-animal drug retailer, shall be made  
39 on a form furnished by the board, and shall state the name,  
40 address, usual occupation, and professional qualifications, if any,

1 of the applicant. If the applicant is other than a natural person,  
2 the application shall state the information as to each person  
3 beneficially interested therein.

4 (b) Each application to conduct a pharmacy shall specify the  
5 type or types of pharmacy for which the application is submitted,  
6 pursuant to Section 4037. The applicant shall immediately notify  
7 the board of any requested addition, deletion, or other change in  
8 specified pharmacy type prior to licensure. After licensure, any  
9 change in specified pharmacy type shall be reported to the board,  
10 on a form to be furnished by the board, at least 30 calendar days  
11 prior to implementation or elimination of any activities permitted  
12 by the added, deleted, or changed type designation.

13 (c) As used in this section, and subject to subdivision (c), the  
14 term “person beneficially interested” means and includes:

15 (1) If the applicant is a partnership or other unincorporated  
16 association, each partner or member.

17 (2) If the applicant is a corporation, each of its officers,  
18 directors, and stockholders, provided that no natural person shall  
19 be deemed to be beneficially interested in a nonprofit  
20 corporation.

21 (3) If the applicant is a limited liability company, each officer,  
22 manager, or member.

23 (d) In any case where the applicant is a partnership or other  
24 unincorporated association, is a limited liability company, or is a  
25 corporation, and where the number of partners, members, or  
26 stockholders, as the case may be, exceeds five, the application  
27 shall so state, and shall further state the information required by  
28 subdivision (a) as to each of the five partners, members, or  
29 stockholders who own the five largest interests in the applicant  
30 entity. Upon request by the executive officer, the applicant shall  
31 furnish the board with the information required by subdivision  
32 (a) as to partners, members, or stockholders not named in the  
33 application, or shall refer the board to an appropriate source of  
34 that information.

35 (e) The application shall contain a statement to the effect that  
36 the applicant has not been convicted of a felony and has not  
37 violated any of the provisions of this chapter. If the applicant  
38 cannot make this statement, the application shall contain a  
39 statement of the violation, if any, or reasons which will prevent

1 the applicant from being able to comply with the requirements  
2 with respect to the statement.

3 (f) Upon the approval of the application by the board and  
4 payment of the fee required by this chapter for each pharmacy,  
5 wholesaler, or veterinary food-animal drug retailer, the executive  
6 officer of the board shall issue a license to conduct a pharmacy,  
7 wholesaler, or veterinary food-animal drug retailer, if all of the  
8 provisions of this chapter have been complied with.

9 (g) Notwithstanding any other provision of law, the pharmacy  
10 license shall authorize the holder to conduct a pharmacy. The  
11 license shall be renewed annually and shall not be transferable.

12 (h) Notwithstanding any other provision of law, the wholesale  
13 license shall authorize the holder to wholesale dangerous drugs  
14 and dangerous devices. The license shall be renewed annually  
15 and shall not be transferable.

16 (i) Notwithstanding any other provision of law, the veterinary  
17 food-animal drug retailer license shall authorize the holder  
18 thereof to conduct a veterinary food-animal drug retailer and to  
19 sell and dispense veterinary food-animal drugs as defined in  
20 Section 4042.

21 (j) For licenses referred to in subdivisions (f), (g), and (h), any  
22 change in the proposed beneficial ownership interest shall be  
23 reported to the board within 30 days thereafter upon a form to be  
24 furnished by the board.

25 SEC. 13. Section 4207 of the Business and Professions Code  
26 is amended to read:

27 4207. (a) Upon receipt of an application for a license and the  
28 applicable fee, the board shall make a thorough investigation to  
29 determine whether the applicant is qualified for the license being  
30 sought. The board shall also determine whether this article has  
31 been complied with, and shall investigate all matters directly  
32 related to the issuance of the license that may affect the public  
33 welfare.

34 (b) The board shall not investigate matters connected with the  
35 operation of a premises other than those matters solely related to  
36 the furnishing of dangerous drugs or dangerous devices, or to the  
37 performance or provision of prescription or drug order  
38 processing or review services or cognitive services, that might  
39 adversely affect the public welfare.

1 (c) The board shall deny an application for a license if the  
2 applicant does not qualify for the license being sought.

3 (d) Notwithstanding any other provision of law, the board may  
4 request any information it deems necessary to complete the  
5 application investigation required by this section, and a request  
6 for information that the board deems necessary in carrying out  
7 this section in any application or related form devised by the  
8 board shall not be required to be adopted by regulation pursuant  
9 to the Administrative Procedure Act (Chapter 3.5 (commencing  
10 with Section 11340) of Part 1 of Division 3 of Title 2 of the  
11 Government Code).

12 SEC. 14. Section 4301 of the Business and Professions Code,  
13 as added by Section 44 of Chapter 857 of the Statutes of 2004, is  
14 amended to read:

15 4301. The board shall take action against any holder of a  
16 license who is guilty of unprofessional conduct or whose license  
17 has been procured by fraud or misrepresentation or issued by  
18 mistake. Unprofessional conduct shall include, but is not limited  
19 to, any of the following:

20 (a) Gross immorality.

21 (b) Incompetence.

22 (c) Gross negligence.

23 (d) The clearly excessive furnishing of controlled substances  
24 in violation of subdivision (a) of Section 11153 of the Health and  
25 Safety Code.

26 (e) The clearly excessive furnishing of controlled substances  
27 in violation of subdivision (a) of Section 11153.5 of the Health  
28 and Safety Code. Factors to be considered in determining  
29 whether the furnishing of controlled substances is clearly  
30 excessive shall include, but not be limited to, the amount of  
31 controlled substances furnished, the previous ordering pattern of  
32 the customer (including size and frequency of orders), the type  
33 and size of the customer, and where and to whom the customer  
34 distributes its product.

35 (f) The commission of any act involving moral turpitude,  
36 dishonesty, fraud, deceit, or corruption, whether the act is  
37 committed in the course of relations as a licensee or otherwise,  
38 and whether the act is a felony or misdemeanor or not.

1 (g) Knowingly making or signing any certificate or other  
2 document that falsely represents the existence or nonexistence of  
3 a state of facts.

4 (h) The administering to oneself, of any controlled substance,  
5 or the use of any dangerous drug or of alcoholic beverages to the  
6 extent or in a manner as to be dangerous or injurious to oneself,  
7 to a person holding a license under this chapter, or to any other  
8 person or to the public, or to the extent that the use impairs the  
9 ability of the person to conduct with safety to the public the  
10 practice authorized by the license.

11 (i) Except as otherwise authorized by law, knowingly selling,  
12 furnishing, giving away, or administering, or offering to sell,  
13 furnish, give away, or administer, any controlled substance to an  
14 addict.

15 (j) The violation of any of the statutes of this state, of any  
16 other state, or of the United States regulating controlled  
17 substances and dangerous drugs.

18 (k) The conviction of more than one misdemeanor or any  
19 felony involving the use, consumption, or self-administration of  
20 any dangerous drug or alcoholic beverage, or any combination of  
21 those substances.

22 (l) The conviction of a crime substantially related to the  
23 qualifications, functions, and duties of a licensee under this  
24 chapter. The record of conviction of a violation of Chapter 13  
25 (commencing with Section 801) of Title 21 of the United States  
26 Code regulating controlled substances or of a violation of the  
27 statutes of this state regulating controlled substances or  
28 dangerous drugs shall be conclusive evidence of unprofessional  
29 conduct. In all other cases, the record of conviction shall be  
30 conclusive evidence only of the fact that the conviction occurred.  
31 The board may inquire into the circumstances surrounding the  
32 commission of the crime, in order to fix the degree of discipline  
33 or, in the case of a conviction not involving controlled substances  
34 or dangerous drugs, to determine if the conviction is of an  
35 offense substantially related to the qualifications, functions, and  
36 duties of a licensee under this chapter. A plea or verdict of guilty  
37 or a conviction following a plea of nolo contendere is deemed to  
38 be a conviction within the meaning of this provision. The board  
39 may take action when the time for appeal has elapsed, or the  
40 judgment of conviction has been affirmed on appeal or when an

1 order granting probation is made suspending the imposition of  
2 sentence, irrespective of a subsequent order under Section 1203.4  
3 of the Penal Code allowing the person to withdraw his or her plea  
4 of guilty and to enter a plea of not guilty, or setting aside the  
5 verdict of guilty, or dismissing the accusation, information, or  
6 indictment.

7 (m) The cash compromise of a charge of violation of Chapter  
8 13 (commencing with Section 801) of Title 21 of the United  
9 States Code regulating controlled substances or of Chapter 7  
10 (commencing with Section 14000) of Part 3 of Division 9 of the  
11 Welfare and Institutions Code relating to the Medi-Cal program.  
12 The record of the compromise is conclusive evidence of  
13 unprofessional conduct.

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

17 (o) Violating or attempting to violate, directly or indirectly, or  
18 assisting in or abetting the violation of or conspiring to violate  
19 any provision or term of this chapter or of the applicable federal  
20 and state laws and regulations governing pharmacy, including  
21 regulations established by the board or by any other state or  
22 federal regulatory agency.

23 (p) Actions or conduct that would have warranted denial of a  
24 license.

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

27 (r) The selling, trading, transferring, or furnishing of drugs  
28 obtained pursuant to Section 256b of Title 42 of the United States  
29 Code to any person a licensee knows or reasonably should have  
30 known, not to be a patient of a covered entity, as defined in  
31 paragraph (4) of subsection (a) of Section 256b of Title 42 of the  
32 United States Code.

33 (s) The clearly excessive furnishing of dangerous drugs by a  
34 wholesaler to a pharmacy that primarily or solely dispenses  
35 prescription drugs to patients of long-term care facilities. Factors  
36 to be considered in determining whether the furnishing of  
37 dangerous drugs is clearly excessive shall include, but not be  
38 limited to, the amount of dangerous drugs furnished to a  
39 pharmacy that primarily or solely dispenses prescription drugs to  
40 patients of long-term care facilities, the previous ordering pattern

1 of the pharmacy, and the general patient population to whom the  
2 pharmacy distributes the dangerous drugs. That a wholesaler has  
3 established, and employs, a tracking system that complies with  
4 the requirements of subdivision (b) of Section 4164 shall be  
5 considered in determining whether there has been a violation of  
6 this subdivision. This provision shall not be interpreted to require  
7 a wholesaler to obtain personal medical information or be  
8 authorized to permit a wholesaler to have access to personal  
9 medical information except as otherwise authorized by Section  
10 56 and following of the Civil Code.

11 (t) This section shall become operative on January 1, 2006.

12 SEC. 15. Section 4303 of the Business and Professions Code  
13 is repealed.

14 SEC. 16. Section 4303 is added to the Business and  
15 Professions Code, to read:

16 4303. (a) The board may report any violation of the laws and  
17 regulations of this state, any other state, or of the United States,  
18 including, but not limited to, any violation of this chapter or of  
19 the regulations established by the board, to ~~the appropriate~~  
20 ~~regulatory or licensing agency of the state in which a nonresident~~  
21 ~~pharmacy is a resident.~~ *any appropriate state or federal*  
22 *regulatory or licensing agency, including, but not limited to, the*  
23 *regulatory or licensing agency of the state in which the*  
24 *nonresident pharmacy is a resident or in which the pharmacist is*  
25 *licensed.*

26 (b) The board may deny, revoke, or suspend a nonresident  
27 pharmacy registration, issue a citation or letter of admonishment  
28 to a nonresident pharmacy, or take any other action against a  
29 nonresident pharmacy that the board may take against a resident  
30 pharmacy license, on any of the same grounds upon *which* such  
31 action might be taken against a resident pharmacy.

32 SEC. 17. Section 4306.5 of the Business and Professions  
33 Code is amended to read:

34 4306.5. (a) Unprofessional conduct for a pharmacist may  
35 include any of the following:

36 (1) Acts or omissions that involve, in whole or in part, the  
37 inappropriate exercise of his or her education, training, or  
38 experience as a pharmacist, whether or not the act or omission  
39 arises in the course of the practice of pharmacy or the ownership,

1 management, administration, or operation of a pharmacy or other  
2 entity licensed by the board.

3 (2) Acts or omissions that involve, in whole or in part, the  
4 failure to exercise or implement his or her best professional  
5 judgment or corresponding responsibility with regard to the  
6 dispensing or furnishing of controlled substances, dangerous  
7 drugs, or dangerous devices, or with regard to the provision of  
8 cognitive services.

9 (3) Acts or omissions that involve, in whole or in part, the  
10 failure to consult appropriate patient, prescription, and other  
11 records pertaining to the performance of any pharmacy function.

12 (b) For pharmacists who practice outside of a pharmacy  
13 premises, unprofessional conduct may include acts or omissions  
14 that involve, in whole or in part, the failure to fully maintain and  
15 retain appropriate patient-specific information pertaining to the  
16 performance of any pharmacy function.

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