

AMENDED IN ASSEMBLY JULY 5, 2005

AMENDED IN SENATE MAY 18, 2005

AMENDED IN SENATE MAY 4, 2005

AMENDED IN SENATE APRIL 7, 2005

**SENATE BILL**

**No. 644**

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**Introduced by Senator Ortiz**

*(Principal coauthor: Assembly Member Levine)*

**(Coauthors: Senators ~~Kuehl~~ Alquist, Figueroa, Kuehl, and  
Romero)**

*(Coauthors: Assembly Members ~~Frommer, Jones, Berg, Cohn,~~  
Frommer, Goldberg, Jones, Koretz, and Laird)*

February 22, 2005

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An act to add Section 733 to the Business and Professions Code, relating to healing arts.

LEGISLATIVE COUNSEL'S DIGEST

SB 644, as amended, Ortiz. Dispensing prescription drugs and devices.

Existing law makes certain actions by a health care professional unprofessional conduct subject to disciplinary action by the licensing board regulating the health care professional.

This bill would include within those provisions, a requirement that a health care licentiate dispense drugs and devices pursuant to a lawful prescription or order except in specified circumstances, including on ethical, moral, or religious grounds asserted by the licentiate. The bill would authorize the licentiate to decline to dispense the prescription or order on that basis only if the licentiate notified his or her employer of the objection and it can be reasonably accommodated. The bill would

require the licentiate's employer in those circumstances to establish protocols to ensure a patient's timely access to the prescribed drug or device.

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. It is the intent of the Legislature that health care  
2 professionals dispense prescription drugs and devices in a timely  
3 way or provide appropriate referrals for patients to obtain the  
4 necessary prescription drugs and devices, despite the health care  
5 professional's objection to dispensing the drugs or devices on  
6 ethical, moral, or religious grounds.

7 SEC. 2 Section 733 is added to the Business and Professions  
8 Code, to read:

9 733. (a) No licentiate shall obstruct a patient in obtaining a  
10 prescription drug or device that has been legally prescribed or  
11 ordered for that patient. A violation of this section constitutes  
12 unprofessional conduct by the licentiate and shall subject the  
13 licentiate to disciplinary action by his or her licensing agency.

14 (b) Notwithstanding any other provision of law, a licentiate  
15 shall dispense drugs and devices, as described in subdivision (a)  
16 of Section 4024, pursuant to a lawful order or prescription unless  
17 one of the following circumstances exists:

18 (1) Based solely on the licentiate's professional training and  
19 judgment, dispensing pursuant to the order or the prescription is  
20 contrary to law, or the licentiate determines that the prescribed  
21 drug or device would cause a harmful drug interaction or would  
22 otherwise adversely affect the patient's medical condition.

23 (2) The prescription drug or device is not in stock. If an order,  
24 *other than an order described in Section 4019*, or prescription  
25 cannot be dispensed because the drug or device is not in stock,  
26 the licentiate shall take one of the following actions:

27 (A) Immediately notify the patient and arrange for the drug or  
28 device to be delivered to the site or directly to the patient in a  
29 timely manner.

30 (B) Promptly transfer the prescription to another pharmacy  
31 known to stock the prescription drug or device that is near  
32 enough to the site from which the prescription or order is

1 transferred, to ensure the patient has timely access to the drug or  
2 device.

3 (C) Return the prescription to the patient and refer the patient  
4 . The licentiate shall make a reasonable effort to refer the patient  
5 to a pharmacy that stocks the prescription drug or device that is  
6 near enough to the referring site to ensure that the patient has  
7 timely access to the drug or device.

8 (3) The licentiate refuses on ethical, moral, or religious  
9 grounds to dispense a drug or device pursuant to an order or  
10 prescription. A licentiate may decline to dispense a prescription  
11 drug or device on this basis only if the licentiate has previously  
12 notified his or her employer, in writing, of the drug or class of  
13 drugs to which he or she objects, and the licentiate’s employer  
14 can, without creating undue hardship, provide a reasonable  
15 accommodation of the licentiate’s objection. The licentiate’s  
16 employer shall establish protocols that ensure that the patient has  
17 timely access to the prescribed drug or device despite the  
18 licentiate’s refusal to dispense the prescription or order. For  
19 purposes of this section, “reasonable accommodation” and  
20 “undue hardship” shall have the same meaning as applied to  
21 those terms pursuant to subdivision-(e)(l) of Section 12940 of the  
22 Government Code.

23 (c) For the purposes of this section, “prescription drug or  
24 device” has the same meaning as the definition in Section 4022.

25 (d) The provisions of this section shall apply to the drug  
26 therapy described in paragraph (8) of subdivision (a) of Section  
27 4052.

28 (e) This section imposes no duty on a licentiate to dispense a  
29 drug or device pursuant to a prescription or order without  
30 payment for the drug or device, including payment directly by  
31 the patient or through a third party payer accepted by the  
32 licentiate or payment of any required copayment by the patient.

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35 **CORRECTIONS:**

36 **Heading-Page 1.**

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