

AMENDED IN ASSEMBLY JUNE 5, 2014

AMENDED IN SENATE MAY 5, 2014

AMENDED IN SENATE APRIL 10, 2014

AMENDED IN SENATE MARCH 28, 2014

**SENATE BILL**

**No. 1039**

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**Introduced by Senator Hernandez**

February 18, 2014

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An act to amend Sections 4052.6 and 4115 of, and to add Sections 4119.6 and 4119.7 to, the Business and Professions Code, and to amend Sections 11150 and 11210 of, and to add Section 1250.06 to, the Health and Safety Code, relating to ~~pharmacies~~. *pharmacy*.

LEGISLATIVE COUNSEL'S DIGEST

SB 1039, as amended, Hernandez. ~~Pharmacies: furnishing drugs.~~  
*Pharmacy.*

(1) Existing law, the Pharmacy Law, the violation of which is a crime, provides for the licensure and regulation of pharmacies, pharmacists, intern pharmacists, and pharmacy technicians by the California State Board of Pharmacy. The Pharmacy Law authorizes an intern pharmacist to perform all functions of a pharmacist, and authorizes a pharmacy technician to perform packaging, manipulative, repetitive, or other nondiscretionary tasks, in each case under supervision of a pharmacist, as specified.

This bill would authorize a pharmacy technician to perform packaging, including emergency supply packaging and sealing in or for hospitals, hospital unit inspections, and other physical, manipulative, repetitive, or other nondiscretionary tasks under supervision of a pharmacist, as specified.

(2) Existing law authorizes a pharmacy to furnish a dangerous drug or dangerous device to a licensed health care facility for storage in a secured emergency pharmaceutical supplies container maintained within the facility in accordance with facility regulations of the State Department of Public Health and other existing law requirements, as specified.

This bill would authorize a pharmacy to furnish a dangerous drug or dangerous device to the emergency medical services system of a licensed general acute care hospital, as defined, for storage in a secured emergency pharmaceutical supplies container maintained within the hospital in accordance with the hospital's policies and procedures. The bill would require both the hospital and the dispensing pharmacy to maintain records pertaining to the dangerous drugs or dangerous devices furnished to the hospital's emergency medical services system for at least 3 years. The bill would also authorize a pharmacy to furnish a dangerous drug or dangerous device to a licensed general acute care hospital pursuant to preprinted or electronic standing orders, order sets, and protocols established under the policies and procedures of a licensed general acute care hospital under specified conditions. The bill would require a pharmacist, a pharmacy technician, or an intern pharmacist, under the direct supervision and control of a pharmacist, to inspect the drugs maintained in the hospital at least once per month, and to report any irregularities, as specified.

Because a violation of certain provisions of the bill would be a crime, the bill would create a state-mandated local program.

(3) Existing law authorizes a pharmacist recognized by the board as an advanced practice pharmacist to perform specified functions, including performing patient assessments.

This bill would also authorize a pharmacist recognized by the board as an advanced practice pharmacist to order patient assessments.

(4) Existing law authorizes a pharmacist to initiate or adjust the drug regimen of a patient under specified circumstances. Existing law authorizes specified practitioners, including a pharmacist acting within the scope of an authorized pilot project, to prescribe, furnish, or administer controlled substances to a patient suffering from a disease, ailment, injury, or infirmity, but only when in good faith he or she believes the disease, ailment, injury, or infirmity requires the treatment, and only in the quantity and for the length of time as reasonably necessary.

This bill would modify that list of practitioners to include a pharmacist initiating or adjusting the drug regimen of a patient as authorized under existing law.

(5) Existing law provides for the licensure and inspection of health facilities, including general acute care hospitals, by the State Department of Public Health. ~~A violation of these provisions is a misdemeanor punishable by a fine or imprisonment, or by both a fine and imprisonment.~~ Existing regulations require a hospital to have a pharmacy on the premises or a pharmacy license, as specified. Existing regulations also require the hospital to consult the pharmacist on the proper methods of, among other things, repackaging and labeling bulk cleaning agents.

This bill would ~~require instead provide that a licensed general acute care hospital or an acute psychiatric hospital, as defined, to adopt policies and procedures for ensuring proper methods of~~ *is not required to consult a pharmacist regarding repackaging and labeling of bulk cleaning agents, solvents, chemicals, and nondrug hazardous substances according to state and federal law substances.*

~~By expanding the scope of an existing crime, this bill would create a state-mandated local program.~~

(6) 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 4052.6 of the Business and Professions
- 2 Code is amended to read:
- 3 4052.6. (a) A pharmacist recognized by the board as an
- 4 advanced practice pharmacist may do all of the following:
- 5 (1) Order and perform patient assessments.
- 6 (2) Order and interpret drug therapy-related tests.
- 7 (3) Refer patients to other health care providers.
- 8 (4) Participate in the evaluation and management of diseases
- 9 and health conditions in collaboration with other health care
- 10 providers.

1 (5) Initiate, adjust, or discontinue drug therapy in the manner  
2 specified in paragraph (4) of subdivision (a) of Section 4052.2.

3 (b) A pharmacist who adjusts or discontinues drug therapy shall  
4 promptly transmit written notification to the patient’s diagnosing  
5 prescriber or enter the appropriate information in a patient record  
6 system shared with the prescriber, as permitted by that prescriber.  
7 A pharmacist who initiates drug therapy shall promptly transmit  
8 written notification to, or enter the appropriate information into,  
9 a patient record system shared with the patient’s primary care  
10 provider or diagnosing provider, as permitted by that provider.

11 (c) This section shall not interfere with a physician’s order to  
12 dispense a prescription drug as written, or other order of similar  
13 meaning.

14 (d) Prior to initiating or adjusting a controlled substance therapy  
15 pursuant to this section, a pharmacist shall personally register with  
16 the federal Drug Enforcement Administration.

17 (e) A pharmacist who orders and interprets tests pursuant to  
18 paragraph (2) of subdivision (a) shall ensure that the ordering of  
19 those tests is done in coordination with the patient’s primary care  
20 provider or diagnosing prescriber, as appropriate, including  
21 promptly transmitting written notification to the patient’s  
22 diagnosing prescriber or entering the appropriate information in a  
23 patient record system shared with the prescriber, when available  
24 and as permitted by that prescriber.

25 SEC. 2. Section 4115 of the Business and Professions Code is  
26 amended to read:

27 4115. (a) A pharmacy technician may perform packaging,  
28 including emergency supply packaging and sealing in or for  
29 hospitals, hospital unit inspections, and other physical,  
30 manipulative, repetitive, or other nondiscretionary tasks, only while  
31 assisting, and while under the direct supervision and control of a  
32 pharmacist.

33 (b) This section does not authorize the performance of any tasks  
34 specified in subdivision (a) by a pharmacy technician without a  
35 pharmacist on duty.

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

39 (d) The board shall adopt regulations to specify tasks pursuant  
40 to subdivision (a) that a pharmacy technician may perform under

1 the supervision of a pharmacist. Any pharmacy that employs a  
2 pharmacy technician shall do so in conformity with the regulations  
3 adopted by the board.

4 (e) No person shall act as a pharmacy technician without first  
5 being licensed by the board as a pharmacy technician.

6 (f) (1) A pharmacy with only one pharmacist shall have no  
7 more than one pharmacy technician performing the tasks specified  
8 in subdivision (a). The ratio of pharmacy technicians performing  
9 the tasks specified in subdivision (a) to any additional pharmacist  
10 shall not exceed 2:1, except that this ratio shall not apply to  
11 personnel performing clerical functions pursuant to Section 4116  
12 or 4117. This ratio is applicable to all practice settings, except for  
13 an inpatient of a licensed health facility, a patient of a licensed  
14 home health agency, as specified in paragraph (2), an inmate of a  
15 correctional facility of the Department of Corrections and  
16 Rehabilitation, and for a person receiving treatment in a facility  
17 operated by the State Department of State Hospitals, the State  
18 Department of Developmental Services, or the Department of  
19 Veterans Affairs.

20 (2) The board may adopt regulations establishing the ratio of  
21 pharmacy technicians performing the tasks specified in subdivision  
22 (a) to pharmacists applicable to the filling of prescriptions of an  
23 inpatient of a licensed health facility and for a patient of a licensed  
24 home health agency. Any ratio established by the board pursuant  
25 to this subdivision shall allow, at a minimum, at least one pharmacy  
26 technician for a single pharmacist in a pharmacy and two pharmacy  
27 technicians for each additional pharmacist, except that this ratio  
28 shall not apply to personnel performing clerical functions pursuant  
29 to Section 4116 or 4117.

30 (3) A pharmacist scheduled to supervise a second pharmacy  
31 technician may refuse to supervise a second pharmacy technician  
32 if the pharmacist determines, in the exercise of his or her  
33 professional judgment, that permitting the second pharmacy  
34 technician to be on duty would interfere with the effective  
35 performance of the pharmacist's responsibilities under this chapter.  
36 A pharmacist assigned to supervise a second pharmacy technician  
37 shall notify the pharmacist in charge in writing of his or her  
38 determination, specifying the circumstances of concern with respect  
39 to the pharmacy or the pharmacy technician that have led to the  
40 determination, within a reasonable period, but not to exceed 24

1 hours, after the posting of the relevant schedule. No entity  
2 employing a pharmacist may discharge, discipline, or otherwise  
3 discriminate against any pharmacist in the terms and conditions  
4 of employment for exercising or attempting to exercise in good  
5 faith the right established pursuant to this paragraph.

6 (g) Notwithstanding subdivisions (a) and (b), the board shall  
7 by regulation establish conditions to permit the temporary absence  
8 of a pharmacist for breaks and lunch periods pursuant to Section  
9 512 of the Labor Code and the orders of the Industrial Welfare  
10 Commission without closing the pharmacy. During these temporary  
11 absences, a pharmacy technician may, at the discretion of the  
12 pharmacist, remain in the pharmacy but may only perform  
13 nondiscretionary tasks. The pharmacist shall be responsible for a  
14 pharmacy technician and shall review any task performed by a  
15 pharmacy technician during the pharmacist's temporary absence.  
16 Nothing in this subdivision shall be construed to authorize a  
17 pharmacist to supervise pharmacy technicians in greater ratios  
18 than those described in subdivision (f).

19 (h) The pharmacist on duty shall be directly responsible for the  
20 conduct of a pharmacy technician supervised by that pharmacist.

21 SEC. 3. Section 4119.6 is added to the Business and Professions  
22 Code, to read:

23 4119.6. (a) Notwithstanding any other law, a pharmacy may  
24 furnish a dangerous drug or dangerous device to the emergency  
25 medical services system of a licensed general acute care hospital,  
26 as defined in subdivision (a) of Section 1250 of the Health and  
27 Safety Code, for storage in a secured emergency pharmaceutical  
28 supplies container maintained within the hospital in accordance  
29 with the hospital's policies and procedures. A pharmacy technician  
30 or intern pharmacist under the direct supervision and control, as  
31 defined in Section 4023.5, of a pharmacist may stock, replenish,  
32 and inspect the hospital's emergency pharmaceutical supplies  
33 container.

34 (b) Both the hospital and the dispensing pharmacy acting under  
35 this section shall maintain records of each request by, and  
36 dangerous drugs or dangerous devices furnished to, the hospital's  
37 emergency medical services system, for at least three years.

38 (c) Controlled substances shall be furnished to the hospital's  
39 emergency medical services system under this section in  
40 accordance with the California Uniform Controlled Substances

1 Act (Division 10 (commencing with Section 11000) of the Health  
2 and Safety Code).

3 SEC. 4. Section 4119.7 is added to the Business and Professions  
4 Code, to read:

5 4119.7. (a) Notwithstanding any other law, a pharmacy may  
6 furnish a dangerous drug or dangerous device to a licensed general  
7 acute care hospital, as defined in subdivision (a) of Section 1250  
8 of the Health and Safety Code, pursuant to preprinted or electronic  
9 standing orders, order sets, and protocols established under the  
10 policies and procedures of the hospital, as approved according to  
11 the policies of the hospital's governing body, if the order is  
12 promptly dated, timed, and authenticated in the medical record of  
13 the patient to whom the dangerous drug or dangerous device is  
14 dispensed by the ordering practitioner or another practitioner  
15 responsible for the care of that patient and authorized by the  
16 hospital's policies and procedures to write orders.

17 (b) The hospital shall store and maintain drugs in accordance  
18 with national standards regarding the storage area and refrigerator  
19 or freezer temperature, and otherwise pursuant to the  
20 manufacturer's guidelines.

21 (c) (1) A pharmacist, pharmacy technician, or an intern  
22 pharmacist under the direct supervision and control, as defined in  
23 Section 4023.5, of a pharmacist, shall inspect the drugs maintained  
24 in the hospital at least once per month. The hospital shall establish  
25 specific written policies and procedures for inspections pursuant  
26 to this paragraph.

27 (2) The person conducting the inspection pursuant to paragraph  
28 (1) shall report any irregularities to the director or chief executive  
29 officer of the hospital, or other person holding an equivalent  
30 position, and in accordance with the hospital's policy.

31 SEC. 5. Section 1250.06 is added to the Health and Safety  
32 Code, immediately following Section 1250.05, to read:

33 1250.06. A licensed general acute care hospital, as defined  
34 pursuant to subdivision (a) of Section 1250, ~~shall adopt policies~~  
35 ~~and procedures regarding the responsibility for ensuring proper~~  
36 ~~methods for~~ *or an acute psychiatric hospital, as defined pursuant*  
37 *to subdivision (b) of Section 1250, is not required to consult a*  
38 *pharmacist regarding repackaging and labeling of bulk cleaning*  
39 *agents, solvents, chemicals, and nondrug hazardous substances*

1 used throughout the ~~hospital according to state and federal law~~  
2 ~~and standards:~~ *hospital.*

3 SEC. 6. Section 11150 of the Health and Safety Code is  
4 amended to read:

5 11150. No person other than a physician, dentist, podiatrist,  
6 or veterinarian, or naturopathic doctor acting pursuant to Section  
7 3640.7 of the Business and Professions Code, or pharmacist acting  
8 within the scope of a project authorized under Article 1  
9 (commencing with Section 128125) of Chapter 3 of Part 3 of  
10 Division 107 or within the scope of Section 4052.1, 4052.2, or  
11 4052.6 of the Business and Professions Code, a registered nurse  
12 acting within the scope of a project authorized under Article 1  
13 (commencing with Section 128125) of Chapter 3 of Part 3 of  
14 Division 107, a certified nurse-midwife acting within the scope of  
15 Section 2746.51 of the Business and Professions Code, a nurse  
16 practitioner acting within the scope of Section 2836.1 of the  
17 Business and Professions Code, a physician assistant acting within  
18 the scope of a project authorized under Article 1 (commencing  
19 with Section 128125) of Chapter 3 of Part 3 of Division 107 or  
20 Section 3502.1 of the Business and Professions Code, a  
21 naturopathic doctor acting within the scope of Section 3640.5 of  
22 the Business and Professions Code, or an optometrist acting within  
23 the scope of Section 3041 of the Business and Professions Code,  
24 or an out-of-state prescriber acting pursuant to Section 4005 of the  
25 Business and Professions Code shall write or issue a prescription.

26 SEC. 7. Section 11210 of the Health and Safety Code is  
27 amended to read:

28 11210. A physician, surgeon, dentist, veterinarian, naturopathic  
29 doctor acting pursuant to Section 3640.7 of the Business and  
30 Professions Code, or podiatrist, or pharmacist acting within the  
31 scope of a project authorized under Article 1 (commencing with  
32 Section 128125) of Chapter 3 of Part 3 of Division 107 or within  
33 the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and  
34 Professions Code, or registered nurse acting within the scope of a  
35 project authorized under Article 1 (commencing with Section  
36 128125) of Chapter 3 of Part 3 of Division 107, or physician  
37 assistant acting within the scope of a project authorized under  
38 Article 1 (commencing with Section 128125) of Chapter 3 of Part  
39 3 of Division 107, or naturopathic doctor acting within the scope  
40 of Section 3640.5 of the Business and Professions Code, or an

1 optometrist acting within the scope of Section 3041 of the Business  
2 and Professions Code may prescribe for, furnish to, or administer  
3 controlled substances to his or her patient when the patient is  
4 suffering from a disease, ailment, injury, or infirmities attendant  
5 upon old age, other than addiction to a controlled substance.

6 The physician, surgeon, dentist, veterinarian, naturopathic doctor  
7 acting pursuant to Section 3640.7 of the Business and Professions  
8 Code, or podiatrist, or pharmacist acting within the scope of a  
9 project authorized under Article 1 (commencing with Section  
10 128125) of Chapter 3 of Part 3 of Division 107 or within the scope  
11 of Section 4052.1, 4052.2, or 4052.6 of the Business and  
12 Professions Code, or registered nurse acting within the scope of a  
13 project authorized under Article 1 (commencing with Section  
14 128125) of Chapter 3 of Part 3 of Division 107, or physician  
15 assistant acting within the scope of a project authorized under  
16 Article 1 (commencing with Section 128125) of Chapter 3 of Part  
17 3 of Division 107, or naturopathic doctor acting within the scope  
18 of Section 3640.5 of the Business and Professions Code, or an  
19 optometrist acting within the scope of Section 3041 of the Business  
20 and Professions Code shall prescribe, furnish, or administer  
21 controlled substances only when in good faith he or she believes  
22 the disease, ailment, injury, or infirmity requires the treatment.

23 The physician, surgeon, dentist, veterinarian, or naturopathic  
24 doctor acting pursuant to Section 3640.7 of the Business and  
25 Professions Code, or podiatrist, or pharmacist acting within the  
26 scope of a project authorized under Article 1 (commencing with  
27 Section 128125) of Chapter 3 of Part 3 of Division 107 or within  
28 the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and  
29 Professions Code, or registered nurse acting within the scope of a  
30 project authorized under Article 1 (commencing with Section  
31 128125) of Chapter 3 of Part 3 of Division 107, or physician  
32 assistant acting within the scope of a project authorized under  
33 Article 1 (commencing with Section 128125) of Chapter 3 of Part  
34 3 of Division 107, or a naturopathic doctor acting within the scope  
35 of Section 3640.5 of the Business and Professions Code, or an  
36 optometrist acting within the scope of Section 3041 of the Business  
37 and Professions Code shall prescribe, furnish, or administer  
38 controlled substances only in the quantity and for the length of  
39 time as are reasonably necessary.

1     SEC. 8. No reimbursement is required by this act pursuant to  
2 Section 6 of Article XIII B of the California Constitution because  
3 the only costs that may be incurred by a local agency or school  
4 district will be incurred because this act creates a new crime or  
5 infraction, eliminates a crime or infraction, or changes the penalty  
6 for a crime or infraction, within the meaning of Section 17556 of  
7 the Government Code, or changes the definition of a crime within  
8 the meaning of Section 6 of Article XIII B of the California  
9 Constitution.

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