

Senate Bill No. 1039

CHAPTER 319

An act to amend Section 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 pharmacy.

[Approved by Governor September 15, 2014. Filed with
Secretary of State September 15, 2014.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1039, Hernandez. 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, manipulative, repetitive, or other nondiscretionary tasks only while assisting and while under the direct supervision and control of a pharmacist, as specified. This bill would also authorize a pharmacy technician's duties in a licensed general acute care hospital to include, among other things, sealing emergency containers for use in the hospital.

(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 an intern pharmacist, under the direct supervision and control of a pharmacist, to stock, replenish, and inspect the drugs maintained in the emergency pharmaceutical supplies container and the emergency medical system supplies of a licensed general acute care hospital, as defined.

This bill would authorize an intern pharmacist to inspect the drugs maintained in a licensed general acute care hospital at least once per month pursuant to policies and procedures of the hospital. This bill would also authorize a hospital pharmacy serving a licensed general acute care hospital to furnish a dangerous drug or dangerous device pursuant to preprinted or electronic standing orders, order sets, and protocols of the hospital, as specified. This bill would require licensed general acute care hospitals to store and maintain drugs in accordance with national standards regarding

the storage area and refrigerator or freezer temperature and in accordance with the manufacturers' guidelines.

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 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.

(4) Existing law provides for the licensure and inspection of health facilities, including general acute care hospitals, by the State Department of Public Health and makes a violation of those provisions a crime. 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 instead require a licensed general acute care hospital or an acute psychiatric hospital, as defined, to adopt policies and procedures regarding the responsibility for ensuring proper methods of repackaging and labeling of bulk cleaning agents, solvents, chemicals, and nondrug hazardous substances used throughout the hospital and would specify that the hospital is not required to consult a pharmacist regarding the repackaging and labeling of those substances except for areas where sterile compounding is performed. Because a violation of these requirements would be a crime, the bill would impose a state-mandated local program.

(5) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

SECTION 1. Section 4115 of the Business and Professions Code is amended to read:

4115. (a) A pharmacy technician may perform packaging, manipulative, repetitive, or other nondiscretionary tasks, only while assisting, and while under the direct supervision and control of a pharmacist. The pharmacist shall be responsible for the duties performed under his or her supervision by a technician.

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

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

(d) The board shall adopt regulations to specify tasks pursuant to subdivision (a) that a pharmacy technician may perform under the supervision of a pharmacist. Any pharmacy that employs a pharmacy technician shall do so in conformity with the regulations adopted by the board.

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

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

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

(3) A pharmacist scheduled to supervise a second pharmacy technician may refuse to supervise a second pharmacy technician if the pharmacist determines, in the exercise of his or her professional judgment, that permitting the second pharmacy technician to be on duty would interfere with the effective performance of the pharmacist's responsibilities under this chapter. A pharmacist assigned to supervise a second pharmacy technician shall notify the pharmacist in charge in writing of his or her determination, specifying the circumstances of concern with respect to the pharmacy or the pharmacy technician that have led to the determination, within a reasonable period, but not to exceed 24 hours, after the posting of the relevant schedule. No entity employing a pharmacist may discharge, discipline, or otherwise discriminate against any pharmacist in the terms and conditions of employment for exercising or attempting to exercise in good faith the right established pursuant to this paragraph.

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

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

(i) In a health care facility licensed under subdivision (a) of Section 1250 of the Health and Safety Code, a pharmacy technician's duties may include any of the following:

(1) Packaging emergency supplies for use in the health care facility and the hospital's emergency medical system or as authorized under Section 4119.

(2) Sealing emergency containers for use in the health care facility.

(3) Performing monthly checks of the drug supplies stored throughout the health care facility. Irregularities shall be reported within 24 hours to the pharmacist in charge and the director or chief executive officer of the health care facility in accordance with the health care facility's policies and procedures.

SEC. 2. Section 4119.6 is added to the Business and Professions Code, to read:

4119.6. An intern pharmacist under the direct supervision and control, as defined in Section 4023.5, of a pharmacist may stock, replenish, and inspect the emergency pharmaceutical supplies container and the emergency medical system supplies of a health care facility licensed under subdivision (a) of Section 1250 of the Health and Safety Code.

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

4119.7. (a) Notwithstanding any other law, a hospital pharmacy serving a health care facility licensed under subdivision (a) of Section 1250 of the Health and Safety Code may furnish a dangerous drug or dangerous device pursuant to preprinted or electronic standing orders, order sets, and protocols established under the policies and procedures of the health care facility, as approved according to the policies of the health care facility's governing body, if the order is dated, timed, and authenticated in the medical record of the patient to whom the dangerous drug or dangerous device will be provided.

(b) A health care facility shall store and maintain drugs in accordance with national standards regarding the storage area and refrigerator or freezer temperature, and otherwise pursuant to the manufacturer's guidelines. The

health care facility's policies and procedures shall specify these storage parameters.

(c) An intern pharmacist under the direct supervision and control, as defined in Section 4023.5, of a pharmacist, may inspect the drugs maintained in the health care facility at least once per month. The health care facility shall establish specific written policies and procedures for inspections pursuant to this subdivision.

(d) For purposes of this section, "health care facility" means a health facility licensed under subdivision (a) of Section 1250 of the Health and Safety Code.

SEC. 4. Section 1250.06 is added to the Health and Safety Code, immediately following Section 1250.05, to read:

1250.06. A licensed general acute care hospital, as defined pursuant to subdivision (a) of Section 1250, or an acute psychiatric hospital, as defined pursuant to subdivision (b) of Section 1250, shall adopt policies and procedures regarding the responsibility for ensuring proper methods of repackaging and labeling of bulk cleaning agents, solvents, chemicals, and nondrug hazardous substances used throughout the hospital. The hospital is not required to consult a pharmacist regarding the repackaging and labeling of these substances, except for areas where sterile compounding is performed.

SEC. 5. Section 11150 of the Health and Safety Code is amended to read:

11150. No person other than a physician, dentist, podiatrist, or veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and Professions Code, a registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, a certified nurse-midwife acting within the scope of Section 2746.51 of the Business and Professions Code, a nurse practitioner acting within the scope of Section 2836.1 of the Business and Professions Code, a physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or Section 3502.1 of the Business and Professions Code, a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code, or an out-of-state prescriber acting pursuant to Section 4005 of the Business and Professions Code shall write or issue a prescription.

SEC. 6. Section 11210 of the Health and Safety Code is amended to read:

11210. A physician, surgeon, dentist, veterinarian, naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3

of Division 107 or within the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and Professions Code, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code may prescribe for, furnish to, or administer controlled substances to his or her patient when the patient is suffering from a disease, ailment, injury, or infirmities attendant upon old age, other than addiction to a controlled substance.

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

The physician, surgeon, dentist, veterinarian, or naturopathic doctor acting pursuant to Section 3640.7 of the Business and Professions Code, or podiatrist, or pharmacist acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107 or within the scope of Section 4052.1, 4052.2, or 4052.6 of the Business and Professions Code, or registered nurse acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or physician assistant acting within the scope of a project authorized under Article 1 (commencing with Section 128125) of Chapter 3 of Part 3 of Division 107, or a naturopathic doctor acting within the scope of Section 3640.5 of the Business and Professions Code, or an optometrist acting within the scope of Section 3041 of the Business and Professions Code shall prescribe, furnish, or administer controlled substances only in the quantity and for the length of time as are reasonably necessary.

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

Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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