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The Script

CALIFORNIA BOARD OF PHARMACY April 2000

BOARD-SPONSORED BILL INTRODUCED TO MAKE CURES PROGRAM PERMANENT

On February 18, 2000, Assembly Members Helen Thomson (D - Davis) and George Runner (R - Lancaster) introduced Assembly Bill 2018 which would repeal the triplicate prescription requirement and make the Controlled Substance Utilization and Review Evaluation System (CURES) program permanent. The bill is sponsored by the Board of Pharmacy and is the outgrowth of the Board's efforts to implement and improve on controlled substance monitoring.

A substantial element in these efforts was the Conference on the Monitoring and Regulation of Schedule II Controlled Substances which was hosted by the Board on February 4, 2000. Board members Richard Mazzoni and Darlene Fujimoto both participated in the conference. It featured presentations by national experts in drug diversion, pain management, and controlled substance monitoring as well as doctors and patients. The conference was broadly attended by law enforcement, regulatory

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CURES REQUIREMENTS AT A GLANCE

Electronic Capability-All Triplicate Amounts	Electronic Capability-Zero Fill	No Electronic Capability and Fills Less Than 25 CIIs Per Month
1. Transmit triplicate information (by the 18th of the following month) via modem, diskette or magnetic tape to: Atlantic Associates, Inc. Prescription Collection 8030 S. Willow Street Bldg. III Unit 3 Manchester NH 03103 **AND** 2. Mail original triplicate forms to: Department of Justice Triplicate Prescription Program P O Box 903327 Sacramento CA 94203-3720	Fax information monthly (by the 18th of the following month) to: Atlantic Associates (888) 492-7341	Mail original triplicate forms (by the 18th of the following month) to an alternate address: Department of Justice Triplicate Prescription Program P O Box 160507 Sacramento CA 95816 **No Computer-No Fills** Fax information monthly to: Atlantic Associates, Inc. (888) 492-7341

Licensees participating in the CURES Program are to report each and every month even if zero triplicates are reported.

Licensure verification now online!

Those with Internet access can now verify Board-issued license numbers, issuance and expiration dates at the Department of Consumer Affairs website-www.dca.ca.gov.

Licensees' "address of record" will be added to that online information in July of this year.

In This Issue

Confidentiality of Pharmacy Information

By William Marcus
Deputy Attorney General

A subject of growing concern is what the laws are which govern access to and use of personal information maintained about customers by pharmacies. This is especially important, given pharmacies' ability to receive and transmit information electronically and the ever-increasing requests for and use of medical information.

California's Confidentiality of Medical Information Act

There are federal and California constitutional rights of privacy, but they generally protect against state action, such as by a government agency, which unduly infringes on a person's expectation of privacy. The key law in California is the Confidentiality of Medical Information Act, which is found starting at California's Civil Code section 56.

Basic Provisions

The Act broadly defines both personally identifiable medical information which is protected from disclosure and those persons and entities subject to the Act. "Medical information" encompasses the information maintained by Board licensees and information maintained either physically or electronically. "Individually identifiable" information means any individually identifying item which, alone or in combination with other publicly available information, is sufficient to allow identification of an individual. "Publicly available" information would, for example, include information available over the Internet.

The Act covers "providers of health care" and defines that to include health care professionals and health care service plans (any entity regulated under the Knox-Keene Act). It even covers contractors for health care providers and health care service plans that are medical groups, independent practice associations, pharmaceutical benefits managers, or medical service organizations. By July 1, 2001, every health care service plan must have policies and procedures on file with the director of the new Department of Managed Health Care which provide for maintaining security of medical information. Every plan must, on request, provide enrollees with a written statement on how the plan maintains confidentiality of medical information. In addition, providers of health care services, health care service plans, and contractors for such providers or plans will be barred from requiring a patient, as a condition of services, to authorize (by release, waiver, etc.) the disclosure of medical information subject to the Act's confidentiality protections.

Authorized Disclosures

Although the basic rule of the Act is that disclosure, use, sale, etc. of medical information is barred without patient authorization, there are, in fact, a number of exceptions to the confidentiality provisions. Medical information may be released without patient authorization for:

- non-identifiable use for certain study or research purposes,
- the sole purpose of encoding or encrypting data,
- government reporting, or
- chronic disease management programs.

The above are only some of the many exceptions to the bar against disclosure without patient consent. Even when disclosure is permitted under the Act, the recipient can only use the information for a proper purpose and may not disclose the information to someone not authorized to receive it under the Act or for a use not permitted to the recipient under the Act.

Medical information can be disclosed pursuant to a court order or a lawful subpoena or search warrant. Perhaps most importantly, it may be disclosed to other providers of health care, including other health care professionals or facilities, for diagnosis or treatment purposes. The information can also be disclosed to various persons and entities to the extent necessary to determine responsibility for payment for services, to obtain payment, to determine eligibility for coverage, and for billing, claims management and similar purposes. The information must also be disclosed if requested by the patient or his or her representative.

Note: Further questions regarding your liability in maintaining, using and providing confidential information should be referred to your attorney.

Patient Contact or Compliance Programs

The Act does not define specifically, or limit, the scope of provision of information for diagnosis or treatment purposes. This becomes a major issue in patient contact programs initiated by a pharmacy or using pharmacy data in patient compliance programs. The obvious potential conflict is between the patient's right to limit the use of his or her medical information and the potential benefits of improving patient compliance through the use of such information. For example, a program in which a pharmacy regularly contacts patients to determine if they are, successfully and regularly, taking prescribed medication, can help avoid therapeutic problems. The same is true for programs through which a patient who, according to directions for use, is

about to or apparently has run out of a chronic medication is contacted to determine if he or she needs a refill (when, of course, refills have been authorized by the prescriber).

But a different problem is posed by programs through which a pharmacy, or someone acting on the pharmacy's behalf, contacts and encourages a patient to get a new prescription for the drug or switch to a different drug for the same condition. First, if the pharmacy contacts the patient to encourage a new order for which there are no refills outstanding, this may constitute interference in the patient-prescriber relationship. Secondly, if the pharmacy or person contacting the patient has some financial interest in the drug being promoted or would benefit in some way from convincing the patient to switch drugs, there may be serious conflicts of interests. Also, such actions may be potential violations of California or federal laws against kickbacks, rebates, commissions, etc. for steering a patient to particular medical care or services. As long as the latter issue is not involved, pharmacists can, when acting under a protocol with a physician or health care plan or other health entity, adjust a drug regimen within the scope of the protocol, which may include changing from one drug to another for the same condition.

There is also the issue of who may contact the patient and from where. Because the acts involved in contacting a patient about his or her drug regimen are generally done for a pharmacy, as opposed to a pharmacist in his or her clinical role and under physician, etc. protocol, the contacts must be made from a pharmacy. There is a limited exception for a pharmacist authorizing the initiation of a prescription or providing clinical advice or information or patient consultation from outside a pharmacy. However, that exception applies when the information is provided either to a health care professional or to a patient of or resident in a licensed acute care hospital, health care facility, home health agency, or hospice and where the pharmacist has access to prescription, patient profile, or other relevant medical information for purposes of patient and clinical consultation, and the information is secure from unauthorized access and use.

As to who may contact the patient, because the contact involves asking questions about compliance or complications, whether to refill, whether to switch to another drug, etc., it must be a pharmacist who contacts the patient. That is because the purpose of improved compliance will be undercut if the patient does not have access to the pharmacist to ask questions at the time of contact and/or is dissuaded in some manner from talking with the pharmacist by the non-professional person. An additional factor is the need to determine whether any changed circumstances, including instructions from the prescriber or a reaction or problem that may be related to the drug involved, are the reason the patient is not complying or has not requested a refill. A pharmacist knows how to ask the right questions and respond to such information.

Maintenance, Destruction, Abandonment, etc. of Records

Another important provision of the Act requires that anyone who creates, maintains, stores, abandons, destroys, etc. medical records do so in a manner that preserves the confidentiality of the information. Violators, either negligent or intentional, are subject to the penalties for violations of the Act. In addition, the intentional sharing, sale or use of medical information for any purpose not necessary to provide health care services to the patient is prohibited, again except as specifically authorized by the Act.

Violations of the Act

There are major penalty provisions for violations of the Act. A person's whose rights under the Act are violated may sue for damages and attorney's fees (up to $1,000) and costs of litigation (such as court filing charges). That person has a right, even without proving actual damages, to recover $1,000 for a proven violation (there is also a limited right to punitive damages, up to $3,000). In addition, either by administrative fine (although the Act does not make it clear what agency or agencies could impose such fines) or court action for civil penalties (filed by a local or county prosecutor or the Attorney General), substantial fines can be imposed for violations. For example, negligent disclosure in violation of the Act is subject to up to $2,500 in fine or penalty for each violation of the Act, and each violation can mean each individual violation as to each individual record, so that a careless entity could be subject to many, many counts. Knowing or willful obtaining, disclosing, or using medical information in violation of the Act is subject to a fine or penalty of up to $25,000 per violation.

Knowing or willful obtaining or use of medical information in violation of the Act for the purpose of financial gain is subject to a fine or penalty of up to $250,000 per violation. In the cases of the $25,000 and $250,000 amounts, a first violation is lower for a health care professional, such as a pharmacist: respectively, $2,500 or $5,000 for a first violation, $10,000 or $25,000 for a second violation, and up to $25,000 or $250,000 for a third or subsequent violation. The $250,000 maximum also applies to a person or entity who is not permitted to receive medical information under the Act and who knowingly and willfully obtains, discloses, or uses such information without written authorization from the patient. In assessing the amount of a fine or penalty, the agency or court is to consider such as whether the defendant has made a reasonable, good faith effort to comply with the Act. Also considered are the nature and seriousness of the misconduct; the harm to the patient, enrollee, or subscriber; the number of violations; the persistence of the misconduct; the length of time over which the misconduct occurred; the willfulness of the defendant's misconduct; and the defendant's assets, liabilities, and net worth.

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Other Relevant Privacy Provisions

Pharmacists should also be aware of other provisions relevant to the privacy of information. There is a right to sue for invasion of privacy where information a person reasonably expects to remain private is publicly disclosed. Additionally, although a pharmacist may, for a health care professional or a patient of or resident in a licensed acute care hospital, health care facility, home health agency, or hospice, authorize the initiation of a prescription or provide clinical advice or information or patient consultation from outside a pharmacy if he or she has access to the relevant medical information, any prescription, patient profile, or other medical information must be kept secure from unauthorized access and use.

Two or more pharmacies may maintain common electronic files provided that they post a notice to consumers describing the system and notifying consumers that they have the right to notify their pharmacist they do not want to be included in the system. A prescription may also be transmitted electronically from the prescriber to the pharmacy or to an interim storage device from which an authorized individual may later retrieve the order for dispensing, provided the security, integrity and confidentiality of the prescription and any information contained in it are maintained.

Further, section 1764 of the California Code of Regulations (CCR), provides that no pharmacist shall exhibit, discuss, or reveal the contents of any prescription, the therapeutic effect thereof, the nature, extent, or degree of illness suffered by any patient or any medical information furnished by the prescriber with any person other than the patient, the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, another pharmacist serving the patient, or another person authorized by law to receive such information.

Both federal and California action (by regulation or legislation) is pending to address the issues of confidentiality and use of medical information. The California provisions, if enacted, would toughen the protection of medical information, including where the Internet is involved (to the extent California has jurisdiction over out-of-state entities). Federal provisions might strengthen protections, at least as to electronically maintained and transmitted information, while increasing ease of access for medical treatment purposes.

A Few Questions and Answers

Other issues related to the confidentiality of pharmacy information are:

1. **Can I refuse to produce or turn over records of acquisition or disposition of records for dangerous drugs, dangerous devices, or controlled substances if they are requested by a board inspector or an authorized officer of the law?** The answer is "no."

2. **Can I provide personal information about a patient to a spouse? For a minor, to his or her parent? For an adult, to his or her adult children? For tax purposes?** Because the right of privacy and confidentiality is personal, one should be sure the person asking for the information is actually authorized to receive it. Although one would think a spouse would not object to the other spouse receiving such information, sometimes there are considerations, such as potential divorce proceedings and custody contests, so be careful. Although minor children's rights are generally perceived as being "held" by their parents, there are medical conditions for which a minor can receive treatment without parental knowledge, so it would be a clear violation of that patient's privacy to disclose information about the treatment or patient that he or she did not want parents to know.

3. **Is it legal to transmit an order electronically? Over the Internet? By e-mail? Through use of a notebook or Palm Pilot?** Federal regulations do not allow an electronic data transmission of a prescription for a controlled substance and, while they allow faxes of Schedule III-Vs, and, to a limited extent, of IIs, require that the fax be of a original, signed prescription. California law does allow electronic data transmissions without limiting the form or source, so a prescription for a dangerous drug or dangerous device could, legally, be transmitted electronically, over the Internet, by e-mail, or through use of a notebook or Palm Pilot. California law would, except for Schedule IIs, allow electronic data transmission of controlled substance prescriptions as well but, because federal regulations are more restrictive, the federal provisions control. Again, the pharmacy and pharmacist should always take care to ensure the security and confidentiality of information and the authenticity of the order.

4. **What about on-line services that offer to receive an order from a prescriber and forward it to a pharmacy for dispensing? Is this legal? What is the Board doing?** There are many variants available or being set up on the Internet. The Board's focus is on its licensees who use electronic systems for receipt or maintenance of prescription and patient information and any out-of-state pharmacies who use such systems and dispense to California residents. Remember that any person who transmits, maintains or receives any prescription or prescription refill electronically must ensure the security, integrity, and confidentiality of the order and any information contained in it (CCR 1717.4 (h)). The pharmacy should also take the steps necessary to ensure the authenticity of the order and the authority of the person issuing it and the person or entity from whom it is received by the pharmacy.

   The Board is concerned about the servers or intermediaries themselves, including the legality of their

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agencies, patient advocates, legislative staff, and pain management experts. Discussion at the conference focused on California's monitoring system, which includes both the triplicate prescription forms and electronic monitoring through CURES.

The conference originated from a workgroup made up of state regulatory agencies that work on prescription drug diversion cases. The group includes the Board of Pharmacy, Medical Board, Dental Board, Department of Health Services, and Department of Justice. This group has been working since early 1999 to study the data gathered by CURES and improve the program. The conference featured a presentation by Keith Macdonald, Executive Secretary of the Nevada State Board of Pharmacy, outlining Nevada's Controlled Substance Abuse Task Force which has been utilizing data gathered by Nevada's electronic monitoring system to inform doctors about patients who may be "doctor shopping." His presentation highlighted the effectiveness of cooperation between law enforcement and regulatory agencies in addressing this problem and making use of electronic monitoring data (Nevada has no triplicate requirement).

Other presentations included:

- David Joranson from the Pain & Policy Studies Group at the University of Wisconsin. Joranson is a international expert on pain policy who shared data on trends in controlled substance tracking and abuse in the United States.
- Dr. J. David Haddox is a nationally recognized expert in the treatment of pain who shared the latest thinking and information on the physiology of pain and addiction.
- Susan Peine from the Drug Enforcement Administration (DEA) discussed her agencies experience with drug diversion and shared DEA data regarding the prevalence of prescription drug abuse.
- Dr. George McClane from Sharp Grossmont Hospital shared his experience as an emergency physician, including results from his research, on doctor shopping in the emergency department.
- Dr. Kaaren Douglas shared her struggles as a caregiver for her husband who recently died of cancer. The difficulty she encountered in obtaining adequate pain treatment for her husband, despite being a physician, spoke eloquently to the obstacles to the proper treatment of pain.

The results of the conference highlighted consensus on several policy issues. Agreement was reached regarding the need to make the CURES program permanent, to add the ability to make patient profile data generated from CURES available to treating physicians, and to repeal the triplicate prescription requirement for Schedule II drugs. There was considerable difference of opinion regarding whether the triplicate should be replaced with a single serialized state form for Schedule II drugs.

Proper disposal of confidential information is critical

Pharmacy records containing confidential information, including prescription containers, used and unused prescription labels, receipts, notes, telephone messages, and other pharmacy-generated documents must be disposed of in a manner that ensures patient confidentiality.

To prevent unauthorized access to patients' confidential medical information, the following procedures are recommended:

1. Shred all paper documents and black out information on prescription container labels before placing in the garbage.
2. Give empty prescription containers back to patients.
3. Implement a system that holds pharmacy garbage in a secure area until transferred to a disposal firm for incineration or other method of destruction.

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activities in the area of issuing and processing of orders for prescription drugs and devices. However, that is more a matter for the prescriber boards, such as the medical board, and state and federal agencies with more direct interest and authority over the Internet and issues of electronic privacy. Certainly, the Confidentiality of Medical Information Act, discussed in the above article, provides for broad protection against commercial use of such information, including substantial civil penalties or administrative fines. The Board will, however, in an appropriate case, exercise its authority over the dispensing process, including provisions related to accountability for stock (Business & Professions Code (B&PC), section 4080) and records of prescribing and dispensing and drug acquisition and disposition (B&PC 4081).

The Board and other agencies, including the Office of the Attorney General, are determining whether to take legal action in certain cases. As for electronic transmission of medical data and issues of privacy, the FDA has extensive proposed regulations (see 64 Federal Register, vol. 212, November 3, 1999, starting at page 59917); the comment period on those proposed regulations ends in April 2000. You may wish to contact your association(s) for further information.

Faxing of Prescriptions

By William Marcus
Deputy Attorney General

With the proliferation of computers and facsimile machines, and devices from which orders can be transmitted and forms, including electronic signatures, in which the orders may be received by a pharmacy, many pharmacists have asked about the legality of transmitting or transferring prescriptions electronically or by facsimile. Some of those questions are addressed here.

Faxed transmissions

A "faxed" prescription, **if signed by the prescriber**, is a written prescription within the meaning of Business & Professions Code (B&PC) section 4040. Such a prescription can legally be used to dispense drugs as long as all other requirements for written prescriptions (under state and federal law and regulation) are satisfied.

A faxed prescription that is **not signed** by the prescriber is not a valid prescription. However, if an order is submitted electronically but received in fax form with an electronic signature, it is a valid order for prescription drugs and devices.

Some practitioners have asked, if a secretary or other non-professional "agent" of a prescriber can legally call in an order for the practitioner, why is it required that a facsimile, to be legal for a controlled substance, or to be considered the equivalent of a written prescription for other prescription drugs or devices, be signed by the prescriber. That is simply a function of laws and regulations, in this particular case the federal regulations for controlled substances, which have not quite caught up with modern technology (California's pharmacy and controlled substance laws generally have).

Federal regulations define a faxed order, which is allowed for Schedule III, IV, and V controlled substances, as a facsimile of an original, written order. Effectively, this means that a fax with an electronic signature does not meet federal requirements and is not permitted, under current federal regulations, for controlled substances. However, it is acceptable for prescription drugs that are not controlled substances (and for prescription devices), because the Pharmacy Law permits both faxed and electronic data orders.

Electronic data transmissions

An e-mailed prescription qualifies as an electronic data transmission. An order transmitted from a Palm Pilot, a laptop or notebook, a PC, or any other electronic device with the capacity to send such an order would also be an electronic data order, again regardless of the form in which it is received by the pharmacy.

All electronic data transfers must still be reduced to writing, as must oral prescriptions. These written document(s) must still be retained for at least three years from the time of making. The thermal paper used in some facsimile machines lasts substantially less than three years, so pharmacies would be well-advised to photocopy such facsimiles.

The Drug Enforcement Administration (DEA) takes the position that prescriptions for Schedule II controlled substances should not be sent by fax because of concern about the potential for diversion (an original prescription could be faxed to many pharmacies). Exceptions to that position include emergencies or orders for patients in long term care facilities or hospice patients receiving care through home health agencies. For that and other reasons, the dispenser should take care to ensure that a faxed prescription actually came directly from a prescriber or someone in his or her office or medical facility, and that the transmitter was authorized to send the facsimile. In fact, the same is true for an order transmitted orally or in electronic data form (see B&PC section 4072). The DEA does allow a fax of any order for a Schedule II to initiate the dispensing if the original, written and signed order is received in the pharmacy before the drug is actually dispensed.

Although California law would allow either a faxed order or electronic data order for any Schedule III-V controlled substances, federal regulations do not. Because of the way federal controlled substances law is written, the more restrictive of federal and state provisions controls in each state.

The DEA has created some letter "accommodations" which authorize the requesters and recipients of such letters some flexibility to transmit Schedule II controlled substances by fax or any controlled substance in electronic data form. However, those letters only apply to and protect the person or entity to whom the letters were provided. The DEA is also beginning pilot projects on broader use of electronic transmission of controlled substance prescriptions but appears unlikely to change its regulations before the end of this year.

Faxed or Electronic Data Transfers of Prescriptions

The transfer of a prescription by facsimile or electronic means is already covered by Title 16 California Code of Regulations section 1717(f). Such transfers must simply comply with that section. If the transfer is electronic, it must be either directly between two pharmacists or must be received by a pharmacist who has means of verifying its

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creation or is verified by a pharmacist at the transferring pharmacy. If the transfer is by facsimile, it is sufficient if the transferred prescription adequately establishes what it is, where it is transferred from, and when and by whom it was previously filled. And, of course, both pharmacies must comply with other statutory and regulatory provisions governing the form of prescription orders.

The Board reminds pharmacists, especially those who enter into arrangements with medical practitioners and clinics where the pharmacy, the medical practitioner or clinic furnishes the other with electronic transmission equipment, including computers and fax machines, of the provisions of B&PC 650. This section states, among other things, that it is unlawful to offer, give, deliver, receive or accept any preference, discount, or other consideration, in monetary form or otherwise, as compensation or inducement for referring patients, clients, or customers to any other person. A violation is a misdemeanor; a second conviction is a felony.

Second Board-sponsored pharmacy manpower forum held in Riverside

The second of the Board's pharmacy manpower forums was held in Riverside on January 25, 2000. The purpose of these meetings was to provide the profession with an opportunity to share with the Board their information, ideas and solutions relating to issues that impact pharmacists' ability to provide quality pharmaceutical care to the public. Both written and oral comments were invited, and more than 23 individuals provided information to the Board.

The greatest number of speakers were concerned about a pharmacist shortage in California, and reference was made to a nationwide shortage. Comments also included reference to a recent study concluding that pharmacists spend more than two-thirds of their work time on activities that could be performed by technicians. Those activities include entering data, maintaining data files, verifying third-party billing eligibility, packaging and labeling prescriptions, cashiering, and managing inventory. Twenty percent of a pharmacist's workday is spent on activities directly related to the administrative and claims processing procedures required by prescriptions.

Another statistic noted was that 70 percent of prescriptions are paid for by one of many insurance programs, each of which issues its own unique drug benefits and insurance card. However, these cards frequently lack sufficient data for pharmacists to process claims for prescriptions efficiently and require pharmacists to obtain the necessary information via telephone.

Added to the list of factors contributing to the pharmacist shortage was the report that the number of pharmacists in California has increased approximately 17 percent since 1990, while the number of prescriptions, according to one speaker, has increased 58 percent.

Other speakers asserted that poor working conditions in some chain pharmacies were a contributing factor to why there are not enough pharmacists.

Solutions offered for relieving the pharmacist shortage included:

- increasing the pharmacist/ technician ratio,
- participating in pharmacist licensure reciprocity with other states,
- urging the Board to support the issuance of uniform insurance cards (to facilitate pharmacy paperwork),
- utilizing central refill pharmacies, and
- urging the Board to study work environment conditions in pharmacies to determine the impact on public safety.

During discussion of these solutions, other opinions were provided that indicated California's participation in reciprocity would not necessarily relieve a nationwide shortage, it would simply move pharmacists from one area to another. A pharmacy in which the pharmacist spends two-thirds of the time performing ancillary tasks indicates of poor pharmacy management rather than a need for more technicians. To assure better use of pharmacy employees, future regulatory considerations by the Board need to include ways to increase the use of technology in a pharmacy.

Again, the Board wishes to express its appreciation to all those who participated in the Sacramento and Riverside forums. The ideas and opinions collected there are important and vital to any future regulations related to these issues.

Comments solicited for nationwide study of pharmacist shortage

The National Center for Healthcare Workforce Information and Analysis in the Health Resources and Services Administration's (HRSA) Bureau of Health Professions will conduct a study to determine whether there is a pharmacist shortage and address concerns raised by a number of associations, including the National Association of Chain Drug Stores. A primary concern is that a shortage of pharmacists in some areas of the country could create a health crisis.

HRSA invites all interested parties to submit resource information, data and documented studies that verify pharmacist shortages during the Federal Register notice's 45-day comment period, which started March 16 and ends April 29, 2000. However, the Board was advised that comments would be accepted until mid-May.

Examples of comments and information include:

- vacancy rates for pharmacist jobs, delayed store openings or reduction in store hours, signing bonuses and other hiring incentives, and wage increases;
- difficulties communities may experience in accessing pharmacy services, especially in rural or underserved areas;
- how pharmacies and employers are addressing a shortage of pharmacists;
- limitations on, state laws governing, and certification requirements for the use of technicians to fill prescriptions;
- impact of managed care and third-party coverage of prescriptions on pharmacy practice;
- problems or adverse events connected with a shortage of pharmacists, for example, medication errors;
- impact that a drug benefit for Medicare patients might have on prescription volume and the pharmacist demand;
- use of technology to assist pharmacists, streamline the dispensing process or improve pharmacist efficiency;
- impact of Internet and mail order pharmacies on the demand for pharmacists;
- the current pharmacist education process, especially the number of applications to pharmacy programs, the effects that a shift to the doctor of pharmacy degree may have on pharmacist supply, trends in graduates taking residencies and student job preferences.

Everyone is strongly urged to send comments to:

Vincent Rogers, D.D.S., M.P.H.
Associate Administrator for Health Professions/HRSA
Bureau of Health Professions
Parklawn Building Room 8-05
5600 Fishers Lane
Rockville MD 20857

GHB is now Schedule I

The Drug Enforcement Administration placed gamma-hydroxybutyric acid (GHB) and its salts, isomers, and salts of isomers into Schedule I of the Controlled Substances Act, effective March 13, 2000 (21 Code of Federal Regulations Parts 1301 and 1308).

GHB is a drug classified as a central nervous system depressant and not approved for marketing as a medicine. The abuse of GHB has increased substantially because it produces euphoric and hallucinogenic states, and it has an alleged role as a growth hormone releasing agent that stimulates muscle growth. It was such abuses that led to the drug's rescheduling.

A full summary of this change can be found in the Federal Register at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Marinol™ is now Schedule III in California

Legislation (Senate Bill 550, authored by Pat Johnston) to change Marinol from Schedule II to a Schedule III controlled substance was signed by Governor Gray Davis on March 29, 2000, and took effect immediately. Consequently, triplicate prescriptions are no longer required for Marinol.

Federal regulations have already changed Marinol's designation from a Schedule II to a Schedule III controlled substance, allowing pharmacies to purchase Marinol from wholesalers without using the federal DEA 222 order form.

CCR 1710 mistakenly omitted from Pharmacy Law 2000

If you are unable to locate section 1710 of the California Code of Regulations in your new law book and think that perhaps it was repealed, that is not the case. It was somehow inadvertently omitted during publishing, and even though it is not in the law book, it is still in effect.

For your convenience, the exact language is included here:

1710. Inpatient Hospital Pharmacy

For purposes of Business and Professions Code Section 4111 an inpatient hospital pharmacy is a hospital pharmacy pursuant to Business and Professions Code Section 4029 which solely or predominantly furnishes drugs to inpatients of that hospital. A hospital pharmacy which predominantly furnishes drugs to inpatients of that hospital may furnish drugs to outpatients or employees of that hospital or to walk-in customers, provided that sales to walk-in customers do not exceed one (1) percent of all the pharmacy's prescriptions.

Failure to complete CE can incur fine

Beginning March 31, those licensees who fail to complete the continuing education requirement for renewing their pharmacist license will be subject to citation and fine, pursuant to amended sections 1775 and 1775.1 of the California Code of Regulations. See Regulation Update for exact language of the amended regulations

Regulation Update

This article contains amendments to Division 17, Title 16 of the California Code of Regulations that became effective March 31, 2000. For your convenience, these amended sections are included here so that they may be cut out and saved until the next publication of the Pharmacy Law.

1775. Citations and Fines

(a) A board inspector or committee of the board may issue citations containing orders of abatement and fines for violations of the statutes and regulations referred to in Section 1775.1.

(b) Each citation shall be in writing and shall describe with particularity the nature and facts of the violation, including a reference to the statute or regulations alleged to have been violated. The citation shall be served upon the individual personally or by certified mail.

(c) A citation must inform the cited person or entity that if he/she or it desires a hearing to contest the finding of a violation, that hearing shall be requested by written notice to the board within 30 days of the issuance of the citation. If a hearing is not requested pursuant to this article, payment of any fine shall not constitute an admission of the violation charged.

NOTE: Authority cited: Sections 125.9, 148, and 4005, Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

1775.1. Violations Subject to Citation and Fine

(a) A board inspector may issue a citation under Section 1775 for a violation of the provisions listed below.

(1) Business and Professions Code Section 4051(a)

(2) Business and Professions Code Section 4110(a) and 4130(a)

(3) Business and Professions Code Section 4112

(4) Business and Professions Code Section 4120

(5) Business and Professions Code Section 4141

(6) Business and Professions Code Section 4160

(7) Business and Professions Code Section 4162

(8) Business and Professions Code Section 4231

(9) Title 16 California Code of Regulations Section 1732.5

(10) Title 16 California Code of Regulations Section 1781

(b) A committee of the board may issue a citation under Section 1775 for a violation of the provisions listed below.

(1) Business and Professions Code Section 4074

(2) Title 16 California Code of Regulations Section 1707.1

(3) Title 16 California Code of Regulations Section 1707.2

(4) Title 16 California Code of Regulations Section 1707.3

(5) Title 16 California Code of Regulations Section 1744

NOTE: Authority cited: Sections 125.9, 148, 4005, and 4231 Business and Professions Code. Reference: Sections 125.9 and 148, Business and Professions Code.

Complimentary Pharmacy Law 2000 provided to all California pharmacies

In January of this year, to assure that all personnel of California pharmacies have access to the laws related to the pharmacy profession, the Board of Pharmacy provided a free Pharmacy Law 2000 to every pharmacy in California. As well as being updated with the new laws, the book's index has been revised into a more easy-to-use format. Also included with each law book was a CD-ROM, with which you may query the law on your computer and obtain a printout.

Another educational tool provided to licensees by the Board is its newsletter, *The Script*. To encourage licensees to keep the newsletters for future reference, they are three-hole punched to permit saving them in a binder.

Licensees with questions are encouraged to seek answers in the law book before calling a Board inspector for assistance. However, if you are unable to locate the desired information, an inspector can provide the specific statute or regulation section numbers so that you can find the exact language of the codes in the law book.

Another valuable source of information is, of course, the Internet. Pharmacy law can also be found at the following sites:

- **Business & Professions and Health & Safety Codes:** *www.leginfo.ca.gov/calaw.html*
- **Title 21 Code of Federal Regulations:** *www.access.gpo.gov/nara/cfr/cfr-table-search.html*
- **California Code of Regulations:** *www.calregs.com*
- **U.S. Food & Drug Administration:** *www.fda.gov/ora/compliance_ref/cpg/cpgdrg*
- **FDA Compliance Policy Guidelines (Chapter 4):** *www.fda.gov/ora/compliance_ref/cpg/cpgdrg/default.htm*
- To verify licensure of **Board of Pharmacy licensees:** *www.dca.ca.gov*
- To verify licensure of **Medical Board licensees:** *www.medbd.ca.gov*
- For **import/export** questions: *www.customs.gov*

Additionally, licensees will be able to query laws on the Board's own website when it goes online later this year.

Good pharmacy practice follows when all licensees know where to find answers to their questions.

The Board of Pharmacy has a new telephone system

If you have tried to call the Board in the last few weeks, you've encountered substantial changes in our telephone system. The Board now has one telephone number, (916) 445-5014. Board staff can no longer be reached through individual telephone numbers-everyone now has a four-digit extension number. After reaching the main greeting, if you don't know your party's extension number, you may press 7 for a "spell-by-first-name" directory. To reach an inspector or to verify a license, you can press 0, or press 9 for "Fax on Demand."

For general information or questions regarding pending applications:

4014—wholesaler, medical device retailer, veterinary food-animal drug retailer or exemptees for those facilities

4033—pharmacy intern or technician permits

4034—pharmacist licensure examination or foreign graduate evaluation

4181—pharmacy permits or changes in ownership, location, or pharmacist-in-charge

Other frequently called extensions:

4007—proposed or pending regulations

4008—editor, The Script

4016—Senate or Assembly bills

4031—Information on Northern or Southern Compliance Committee meetings

4039—license renewal or continuing education

As with most new telephone systems, we are still making changes to find out what works best for our callers. Meanwhile, thanks for your patience during this "work-in-progress" period.

Board has Fax on Demand

The Board's new telephone system includes an automated "fax on demand" option that allows callers to request certain documents to be faxed to them. This feature can be accessed by calling (916) 445-5014 and selecting option **9**. Make your selection, and listen for the recorded prompt requesting you to enter your area code and fax number.

Documents available for faxing will be changed or updated periodically. Callers presently hear the following message:

You have reached the Board of Pharmacy Fax on Demand. Be sure to include a "1" and your area code if you are outside of the 916 area. Please make your selection from the following options:

For forms, press **1**
- Complaint, press 1
- Change of PIC, press 2
- Discontinuance of Business, press 3

For license renewal application, press **2**
- Pharmacist license renewal, press 1
- Pharmacy technician renewal, press 2

To request a duplicate license, press **3**
- For a license that was never received, press 1
- For a lost or destroyed license, press 2

Articles from The Script, press **4**
- Faxing Prescriptions, press 1
- Medicare/MediCal Discount Program, press 2
- PAs, NPs and Certified Nurse Midwives furnishing medications (and amended codes), press 3
- Marinol Rescheduling, press 4
- Automated Dispensing at Skilled Nursing Facilities, press 5

For newly adopted regulations, press **5**
- Expanding citation and fine parameters (CCR 1775 & 1775.1), press 1

For Statutes & Regulations, press **6**
- Inpatient Hospital Pharmacy (CCR 1710), press 1
- Operational Standards and Security (CCR 1714), press 2
- Physician prescribing pursuant to "good faith" examination (B&PC 2242), press 3
- Optometrist prescribing (B&PC 3040, 3041 and newsletter article), press 4
- Terminally ill triplicate exemption, 11159.2 (H&SC 11159.2 and Q&As), press 5
- Pharmacy Technicians (4115, 4115.5 and 1793-1793.7), press 6

For job duty statements at the Board, press **7**
- For pharmacy inspector, press 1

Major legislation sponsored by the Board

The Senate Business and Professions Committee is currently considering Board-sponsored Senate Bill 1339 relating to medication errors. Medication errors are a serious concern, and this legislation would require all California pharmacies to adopt quality assurance programs to reduce the incidence of such errors.

The Institute of Medicine (IOM) recently issued a report on ways to improve the quality of medical care. The report estimates that over 7,000 people die each year from medication errors alone. And this figure does not take into account the other injuries that people suffer from non-fatal medication errors.

The IOM study recommends that quality assurance programs be established throughout the healthcare system, and that the data from these voluntary systems should be confidential and exempt from discovery. Quality assurance processes have a record of success in certain areas of health care, and applying quality assurance processes to the dispensing of prescription drugs should substantially reduce the number of medication errors. In fact, the IOM report recommends that state regulators should require health care organizations to implement meaningful patient safety programs. This legislation will do just that for California pharmacies.

Rx for Good Practice

In day-to-day pharmacy practice, unusual situations sometimes occur, generating questions that require a quick answer. So to help our licensees with questions whose answers may or may not be found in the pharmacy law book, "Rx for Good Practice" will be featured in each issue of The Script. Everyone is encouraged to fax questions to The Script at (916) 327-6308 or e-mail them to the editor at hope_tamraz@dca.ca.gov.

Some of our frequently asked questions:

Q. What can an optometrist prescribe?

A. Optometrists are allowed to prescribe drugs, pursuant to section 4170 of the Business & Professions Code (B&PC), and must meet all the requirements of a prescription (4040 B&PC).

Optometrists who are certified with the Board of Optometry to use therapeutic pharmaceutical agents (TPAs) may diagnose and treat specific eye conditions including, but not limited to, allergies, infectious diseases, and nonsystemic inflammations of the conjunctiva. They are permitted to use topical pharmaceutical agents including mydriatics, cycloplegics, anesthetics, and agents for the reversal of mydriasis.

All currently authorized diagnostic agents and topical products such as miotics, lubricants, nonsteroidal antiallergy agents, nonsteroidal anti-inflammatories, antibiotic agents, and hyperosmotics may be used. Additional TPAs include oral tetracyclines for the treatment of blepharitis, nonprescription medications, and diagnostic and dissolvable punctal plugs.

License numbers of those optometrists authorized to prescribe will include the letter "T" at the end of the license number (e.g., OPT 12345-T) and may be verified by calling (916) 323-8720.

To have additional information on optometrist prescribing faxed to you, access the Board's Fax on Demand feature by calling (916) 445-5014, selecting option 9, then 6, then 4.

Q. On a triplicate prescription form, what do the codes 2, 2N, and 22N mean?

A. These codes denote the practitioner's Schedule II prescribing privileges. It tells the pharmacist whether the practitioner is authorized to prescribe the Schedule II substance listed on the prescription:

Code **2** indicates that the practitioner can write prescriptions for Schedule II narcotic controlled substances.

Code **2N** allows the practitioner to prescribe Schedule II non-narcotic controlled substances.

Code **22N** indicates that the practitioner may write prescriptions for both narcotic and non-narcotic Schedule II controlled substances

If there is a discrepancy between the prescribed drug and the practitioner's indicated prescribing privileges, do not fill the prescription. Contact the Triplicate Prescription Program at (916) 227-4249.

Q. What are the rules for filing a Change of Pharmacist-In-Charge (PIC) with the Board?

A. Notifying the Board of a PIC change is done in two steps:

1. The first step is mandated by section 4101 B&PC, requiring the designated PIC, who is terminating his/her employment at a pharmacy, to notify the Board in writing within 30 days of termination or change.
2. The second step (4305 (a) and 4113 B&PC) requires the **owner or manager** of the pharmacy to submit a completed "Change of Pharmacist-In-Charge" form and fee of $60 to the Board within 30 days of the PIC change.

When a pharmacist is replaced as PIC but is still employed at the pharmacy, the **pharmacy owner or manager** must complete the change of PIC requirements (#2 above) within 30 days of the change.

To have a change of PIC form faxed to you, access the Board's Fax on Demand feature by calling (916) 445-5014, selecting option 9, then 1, then 2.

Q. What are the requirements for filling an out-of-state prescription?

A Section 1717(d) of the California Code of Regulations, pursuant to 4005(b) B&PC, permits a pharmacist to fill a prescription written by an out-of-state prescriber if the prescriber is licensed in a state other then California, in the same llicense category that would permit prescribing in this state (i.e., physician, dentist, podiatrist or veterinarian). The prescription may be oral or in written form and may be an order for any dangerous drug or controlled substance, except those categorized as Schedule II. Refills may honored within the limitations established by federal and state statutes.

Pharmacists must determine the authenticity of the prescription by interviewing the patient and/or contacting the medical board of the other state to verify the prescriber's licensure. If unable to verify the authenticity of the prescription quickly, and the patient's requirements are urgent, the pharmacist may provide enough medication to last until proper verification can be obtained.

Q. Are exemptees required to be on site all the time at a medical device retailer facility?

A. Section 4133 B&PC requires medical device retailer facilities to be in the charge of a pharmacist or an exemptee. An exemptee is a person who has taken and passed an examination administered by the Board. **Either the pharmacist or the exemptee must be on the facility's premises at all times that dangerous devices are available for sale or fitting** unless the dangerous devices are stored separately from the other merchandise and are under the exclusive control of the pharmacist or exemptee.

Q. Where do I look in the law to find the answers to such questions as- What a pharmacy can or cannot take back? Expiration dates on repacks? Or whether a pharmacy can or cannot repackage antibiotics?

A. Look in Chapter 4 of the FDA Compliance Policy Guidelines at www.fda.gov/ora/compliance_ref/cpg/cpgdrg/default.htm.

Board welcomes Don W. Gubbins, Jr., and says goodbye to Tom Nelson

The Board of Pharmacy is pleased to welcome Don W. Gubbins, Jr., Pharm.D., to its membership. Dr. Gubbins was appointed by Governor Gray Davis on March 10, 2000, and will serve through May 2003. Dr. Gubbins replaces Board Member, Tom Nelson, R.Ph., of Sacramento.

Dr. Gubbins graduated from the University of the Pacific School of Pharmacy in 1982 and brings more than 18 years of chain pharmacy experience to the Board. Currently, he is the Director of Pharmacy Operations-Northwest for Rite Aid Corporation, with oversight of approximately 500 stores in seven western states.

Along with welcoming Dr. Gubbins, we wish to express our deep appreciation and gratitude to Tom Nelson for his untiring devotion to the pharmacy profession and good judgement and leadership during his tenure with the Board. Thank you, Tom-we'll miss you!

Has your name or address changed?

Section 4100 of the Business and Professions Code requires all holders of individual Board-issued licenses (pharmacists, interns, and pharmacy technicians) to report name or address changes to the Board within 30 days of the change. Such changes must be mailed or faxed to the Board.

When notifying the Board of a change in your name, please include the following:

- A copy of legal documentation (marriage license, divorce decree, or legal name change) of your name change or
- Copies of your driver license **and** social security card (both reflecting the new name).

For address changes, please include your full name, license number, old address, and new address. **Your "address of record" is accessible to the public, pursuant to the Information Practices Act and the Public Records Act.** If you choose to use a post office box or business address as your address of record, section 1704 of the Business and Professions Code requires you to also provide your residence address which is not accessible to the public. (see form, page 15.)

Please mail or fax all change of information to:

California State Board of Pharmacy
400 R Street, Suite 4070
Sacramento CA 95814
Fax: (916) 327-6308

Personnel Ratio in a Pharmacy

In July 1998, The Script published a chart detailing the ratio of ancillary personnel to a pharmacist in community and institutional pharmacy settings. However, since then there have been changes in the law, and the updated ratios are listed below with the specific Business & Professions Code (B&PC) and California Code of Regulations (CCR) section references:

	Intern (B&PC 4114)	Technician (CCR 1793.7(f))	Technician Trainee (B&PC 4115.5(b))	Clerk-Typist (CCR 1793.3)
Community Pharmacy One Pharmacist to:	1	1	1	1
Institutional Pharmacy One Pharmacist to:	1	2	1	1

Want a job with great benefits? Be a pharmacy inspector for the Board of Pharmacy

If you are an innovative, highly motivated individual who is looking for an exciting career that puts you on the front line of changes in the pharmacy practice, the Board of Pharmacy is looking for you! Applications for examination and employment as a pharmacy inspector for the Board are accepted on an ongoing basis.

The Board has inspector vacancies (that are not specific to a particular city or area) and is seeking self-starting pharmacists with experience in the new practice areas of pharmacy, such as automated drug dispensing, clinical case management, specialty clinic management, and patient education.

To be considered, you must be registered as a pharmacist in California with two years' experience in the practice of pharmacy and possess a valid California driver's license. You will be required to take a civil service examination, and the examination results will determine your ranking on the civil service list. Based on that ranking and other qualifications, you may be called to appear for the Board's employment interview and writing skills evaluation. If you are a good match for this position, the Board wants you!

Inspectors from all over California are assigned to work in teams, and each inspector's duties are divided between those performed in a home office environment (report writing and answering telephone inquiries) and those requiring travel. Travel, which includes local and statewide, is approximately 20-25 percent of the workweek.

There are plenty of perks. Inspectors are provided home office equipment (telephone, cell phone, computer, printer, fax machine), a state car, business and travel expense reimbursement, a salary range of $5,085 - $5,774 per month, and all the health and retirement benefits of state civil service.

To obtain an application for examination and employment, you may access the Internet at www.spb.ca.gov/jobgen/app.htm, and for general information, www.spb.ca.gov/bullback.htm. Or you may contact the Board at (916) 445-5014.

Your completed application and résumé should be mailed to:

Department of Consumer Affairs
P. O. Box 980428
West Sacramento CA 95798-0428
Attention: Human Resources

Important Notice: Licensure verifications and addresses of record online!

The public can now access Board of Pharmacy licensee information, including license number, status, and issue/expiration dates on the Department of Consumer Affairs website?www.dca.ca.gov. Beginning in July, addresses of record will also be included in the online information. Addresses of record are available to the public, pursuant to the Information Practices Act (Civil Code section 1789 et seq.) and the Public Records Act (Government Code section 6250 et seq.).

If you don't want your residence address available for public view, you may provide the Board with a post office box number, a personal mail box (PMB) number, or a business address as your address of record. However, you must still provide the Board with your residence address (pursuant to section 1704 of the California Code of Regulations), which will not be available to the public.

If you have moved or wish to change your address of record, please complete and return the following form to the Board of Pharmacy at 400 R Street, Suite 4070, Sacramento CA 95814-6237.

CHANGE OF ADDRESS
(Please print)

Name: _____ License #: _____

Social Security Number: _____
(For purposes of identification only)

Old Address: _____

_____

Address of Record

New Address: _____

_____

If address of record is a PO Box, PMB, or a business address, please enter residence address below.

Residence Address

Address: _____

_____

Signature: _____ Date: _____

Telephone: _____

NEW PRESCRIPTION DRUG DISCOUNT PROGRAM

FOR MEDICARE RECIPIENTS

Beginning February 1, 2000, a new law–Senate Bill 393 (Speier) Chapter 946, Statutes of 1999 and now found in the Business & Professions Code (B&PC) sections 4425-4427–entitles Medicare recipients to obtain prescription drugs at a cost no higher than the Medi-Cal reimbursement rate for those drugs, plus a fee set by the Department of Health Services to cover electronic transmission charges (B&PC 4425[a]). This is a condition of a pharmacy's becoming or remaining a Medi-Cal provider. This discount program does not apply to over-the-counter drugs or compounded drug prescriptions.

When asked by a Medicare recipient for the Medi-Cal price for a drug, Medi-Cal provider pharmacies are required to quote the Medi-Cal price (reimbursement rate) even if the requestor does not purchase the prescription.

Pharmacists and pharmacies are reminded that California law requires pharmacies to provide price quotes for up to five prescription drugs upon request, in any form, from a consumer in California (B&PC 4122[b]); however, the pharmacy need not provide such information in response to a telephoned request for a price quote for a controlled substance (B&P 4122[e])[1]. Section 1707.2(f) of the California Code of Regulations requires pharmacies to post a notice regarding the availability of prescription drug price quotes. For Medicare recipients, in any pharmacy participating in the Medi-Cal program, this would be the Medi-Cal price for that prescription drug.

Providers will be able to access the Medi-Cal pricing inquiry system through their existing practice management systems via the Department of Health Services Medi-Cal online pharmacy system called CALPOS, the CERTS Software or POS Device. CERTS Software can be purchased by calling (800) 427-1295, and calls are answered up to midnight during the workweek.

The new pricing inquiry system, designed and implemented by Electronic Data Systems Corporation (EDS), has the following features:

- With a new Banking Identification Number (BIN), the pricing inquiry will be sent to a separate electronic

[1] *As to requests for more than five price quotes, where there are no prescriptions presented, the pharmacy may request that the request be in writing and the pharmacy does not have to respond to more than three such requests from the same consumer in any six-month period (B&PC 4122[c]).*

location. The system will recognize the transaction as a Medi-Cal pricing inquiry based on the unique BIN.

- The unique BIN may enable providers to enter the actual Medicare recipient identification number and prescription information once.
- If a provider is dispensing a multi-source innovator brand name drug which has a Federal Allowable Cost (FAC) or state Maximum Allowable Ingredient Cost (MAIC), the provider should enter "00000000001" in the TAR field. This alerts the system to calculate the appropriate Medi-Cal rate for the innovator brand name and override the FAC/MAIC price.

- The Medi-Cal reimbursement rate will be calculated based on the NDC, quantity and TAR field using the current Medi-Cal pricing logic, which includes the provider's usual and customary charge. All Medi-Cal pharmacy claim edits and audits will be bypassed.

- A transmission charge of 15 cents, to cover the provider's cost for sending the pricing inquiry transaction, will be added to the calculated Medi-Cal reimbursement rate sent back in the system response.

- In the response back to the provider, the paid amount will be $0.00 and the calculated Medi-Cal reimbursement rate, including the 15 cent transmission charge, will appear in the "co-pay" amount field.

- EDS has issued Third-Party Specifications for this new system to pharmacy software vendors. Providers can obtain a copy of the Third-Party Specifications by calling the EDS POS Help-Desk at (800) 427-1295.

When contacted for information about the program, providers are requested to give Medicare recipients the following information about how the program works:

1. You must have a Medicare card, and show it to the pharmacy staff.
2. Give your prescription to the pharmacy staff, ask for the Medi-Cal prescription price, and ask if that is the lowest price the pharmacy will accept for the drug.
3. If the Medi-Cal price is lower, you can pay that price, plus a small processing fee of 15 cents, for the prescribed drug.
4. You must pay for the prescription in full at the pharmacy: if you have prescription drug coverage, your insurance company is not eligible to receive the Medi-Cal price.
5. Only Medi-Cal provider pharmacies are required by law to offer and accept the Medi-Cal price as payment for prescription medication for Medicare recipients. However, non-Medi-Cal pharmacies may also offer the Medi-Cal price if they choose.

Please note that obtaining prices from several pharmacies may help you find the lowest cost, but it's best to get all your prescriptions from the same pharmacy. This way the pharmacist can record all the medications you are taking and what you are taking them for, and your pharmacist can tell you what to do if you have a bad reaction to a drug or find that a drug isn't working. Also, the pharmacist can check your new prescription to make sure it won't react badly with medicine you're already taking. Proper pharmaceutical care can protect your health-or even save your life!

The Department of Health Services developed the following questions and answers to help providers respond to the Medicare recipient inquiries:

Frequently Asked Questions

Q. What is the "Prescription Drug Discount Program for Medicare Recipients," and when did it begin?

A. It is a program that requires Medi-Cal provider pharmacies to charge Medicare recipients no more than the Medi-Cal price for their prescription drugs, plus a small processing fee. Specific Medi-Cal price rates can be obtained by the pharmacy via an online computer system. The program began February 1, 2000.

Q. What is the "small processing fee," and what is it for?

A. The processing fee is 15 cents per prescription and is intended to reimburse the pharmacy for electronically checking Medi-Cal for prescription pricing information.

Q. Who is eligible?

A. Anyone who has a Medicare card is eligible. That includes seniors over age 65 and those under age 65 who are disabled and have a Medicare card. You do not have to be on Medi-Cal.

Q. Is Medi-Cal paying for my prescription?

A. No, Medi-Cal is not paying for the prescription.

You, the Medicare recipient, are still responsible for paying for the prescription medication and the processing fee.

Q. Do I have to fill out any forms to take advantage of the program?

A. No. All you need is your Medicare card.

Q. How exactly does the program work?

A. When you give your prescription to the pharmacist, show the pharmacy staff your Medicare card, and request the Medi-Cal price rate. The pharmacist will electronically check Medi-Cal for the price of the prescribed drug, and you will be eligible to buy the drug at that price, plus the 15 cent fee.

Q. How does the discount program work with telephoned prescriptions?

A. Ask the doctor's office to advise the pharmacy that you are a Medicare patient when phoning in your prescription. Then show your card when you pick up your prescription. For future prescriptions, it is also a good idea to ask your regular pharmacy to note on your record that you are a Medicare recipient.

Q. What drugs are covered?

A. Virtually every prescription medication is covered including both generic and brand name drugs; however, over-the-counter drugs and drugs that the pharmacist has to compound are not covered under this program.

Q. Can I go to any pharmacy I want to get the Medi-Cal price?

A. Only Medi-Cal pharmacy providers are required to charge a Medicare recipient no more than the Medi-Cal prescription price; however, most pharmacies in California do participate in the Medi-Cal program. Ask your pharmacy if it is a Medi-Cal provider. Some non-Medi-Cal pharmacies may be willing to charge a similar prescription price.

Q. How much money will I have to pay?

A. What you pay will depend on the medication, but it will not exceed the amount Medi-Cal pays the pharmacy for the medication, plus the 15 cent processing fee.

Q. How much will I save?

A. Again, that will depend on the medication, as well as the quantity ordered and the drug manufacturer. The same drug may be manufactured by several companies, with each charging a different price.

Q. How do I know I'm being charged the right amount?

A. Ask the pharmacist for a printout of the Medi-Cal information obtained through the pharmacy's computer. Be sure to make this request when you hand your prescription to the pharmacy staff or when the doctor's office calls in the prescription.

Q. I have called four different pharmacies and have received four different prices. Why is that?

A. Prescription pricing can differ from pharmacy to pharmacy under this program. Most of the time this will occur because different drug manufacturers charge Medi-Cal different prices for the same drug.

Q. I just refilled my prescription, and it cost more than last time, why?

A. Prescription drug manufacturers change their prices periodically. Price increases occur throughout the year, and for some drugs, many times during the year. Medi-Cal updates the prices it pays for drugs in its computer every month. If your prescription price does increase, you can ask your pharmacist if the manufacturer has increased the price.

Pharmacy Board meetings are open to the public

Pharmacy Board meetings are open to the public, and the Board encourages all interested parties to participate in these meetings. The remaining Board meeting dates and sites for 2000 are:

July 25-26, 2000
Westgate Hotel
1055 Second Avenue
San Diego CA 92101

October 18-19, 2000
Embassy Suites
150 Anza Boulevard
Burlingame CA 94010

Agendas with meeting times, locations and information regarding Board committee meetings may be obtained by calling the Board at (916) 445-5014.

Q. If I already have prescription coverage, will this program affect me?

A. The program covers Medicare patients who themselves pay the full drug price. If you have prescription drug coverage through an insurance plan, your pharmacy is not required to charge the insurance company the Medi-Cal price, even if you are a Medicare patient. However, if you have prescription coverage, it might be advantageous to use the program if:

- You have reached your yearly or monthly prescription maximum paid amount under your insurance program and now have to pay full price for your prescriptions.
- Your prescription insurance doesn't cover a certain drug prescribed for you.
- You have a deductible to meet before your coverage begins.

Q. Will this program affect my Medicare coverage?

A. No, this program does not affect your coverage under the Medicare program.

Q. Can I receive the Medi-Cal price from my mail order pharmacy?

A. Yes, if that pharmacy is a Medi-Cal provider.

Q. Who do I call if I believe the pharmacy is not charging me the right price, and I haven't been able to work it out with the pharmacy?

A. You can contact the California State Board of Pharmacy, Monday through Friday between the hours of 8 a.m. and 5 p.m. at (916) 445-5014, extension 4010.

Disciplinary Actions by the Board

Explanation of Disciplinary Language

1. *Revoked* means the license is canceled, voided, annulled, rescinded. The right to practice or operate a Board of Pharmacy-licensed business is ended.

2. *Revoked, stayed; 60 days' suspension; three years' probation*-"Stayed" means the revocation is postponed, put off. Professional practice or operation may continue so long as the licensee complies with specified probationary terms and conditions, which in this example includes 60 days' actual suspension from practice or operation. Violation of probation may result in the lifting of the stay and the implementation of the revocation that was stayed.

3. *Stipulation* indicates a form of "plea-bargaining." The case is negotiated and settled prior to hearing (similar to an "out-of-court settlement" in civil court).

4. *Voluntary Surrender of License*-The licensee returns his or her license to the Board, subject to specific conditions of surrender and acceptance by the Board

5. *Effective* indicates the date the disciplinary decision goes into operation.

6. *Statement of Issues* refers to the initial or accusatory pleading (filed by the Board) which commences the administrative procedure for denial of licensure to an applicant.

7. *Letter of Reprimand (or Reproval)* is a public document reproving a licensee for violations of Pharmacy Law.

PHARMACISTS/PHARMACIES

PHUONG A. TAT aka SYLVIA TAT, RPH 47708, San Ramon, CA

Violation: For purposes of settlement only, respondent admitted to obtaining controlled substances from the pharmacy stock for self-use without a valid prescription.
Action: Revoked, stayed; one year's suspension with credit given; five years' probation; participation in the Pharmacist Recovery Program; shall not order, possess or dispense any controlled substance during first two years of probation; access to controlled substances only under supervision of a pharmacist not on probation; report to the Board acquisition and disposition of controlled substances not prescribed by a physician, dentist or podiatrist; no ownership; payment of $3,767.50 in costs
Effective: March 5, 1999

JOSEPH V. DALAVAI, RPH 45490, Hayward, CA

Violation: Obtaining and furnishing to himself various controlled substances and dangerous drugs without a prescription; using forged prescriptions to obtain controlled substances and dangerous drugs; being convicted of a crime for violation of Penal Code section 273.5(A), inflicting corporal injury upon a spouse.
Action: Revoked
Effective: March 5, 1999

ROBERT EARL HOAG, RPH 28260, Irvine, CA

Violation: While denying guilt of allegations of failing to prepare and maintain proper records and to train and/or supervise a technician, respondent understands that this public reproval constitutes disciplinary action against his license by the Board.
Action: Public Letter of Reprimand
Effective: March 6, 1999

DAVID I. RUBENS, RPH 33289, North Hollywood, CA

Violation: For purposes of settlement only, respondent admitted to failing to comply with all probation conditions of prior administrative case #1884.
Action: Revoked; may reapply for licensure in three years; payment of $4,700 in costs to be paid prior to reapplication
Effective: April 27, 1999

THOMAS F. DEMBSKI, RPH 41096, Santa Cruz, CA and MEDICAL PHARMACY WESTSIDE, PHY 37563, Santa Cruz, CA

Violation: For purposes of settlement only, respondents admitted to refilling prescriptions for dangerous drugs without prescriber authorization and refilling Valium prescription more than five times and in an amount exceeding a 120-days supply.
Action: RPH-Revoked, stayed; 30 days' suspension; three years' probation; no supervision or preceptorship of interns; retention of an independent consultant if a PIC; share payment of $3,135 in costs with the pharmacy. PHY-Revoked, stayed; three years' probation; share payment of $3,135 in costs with the pharmacist
Effective: April 27, 1999

JIN HO KIM, RPH 40334, Chino, CA and K'S PHARMACY, PHY 41224, Chino, CA

Violation: For purposes of settlement only, respondent admitted to failing to maintain a complete accountability of controlled substances and failing to adequately provide sufficient records of acquisition and disposition of drugs; filling an obviously altered prescription and failing to contact the prescriber to validate the prescription.
Action: RPH-90 days' suspension, stayed; one year's probation; no supervision or preceptorship of interns; retention of an independent consultant if a PIC; pass the law section of the pharmacist licensure examination within six months; no acquisition of any new Board-licensed businesses; payment of $3,000 in costs. PHY-90 days'

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Disciplinary Actions
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suspension, stayed; one year's probation
Effective: May 1, 1999

WEN-HSIANG HSIN, RPH38188, Long Beach, CA and WEN PHARMACY, PHY 33294, Long Beach, CA
Violation: For purposes of settlement only, respondent admitted to being convicted of selling a controlled substance without a prescription.
Action: RPH-Revoked, stayed; 180 days' suspension; three years' probation; take and pass law section of the pharmacist licensure examination within six months; no preceptorship or supervision of interns; no functioning as PIC; no ownership; payment of $3,585 in costs. PHY-Revoked
Effective: May 1, 1999

RICHARD T. YABUTA, RPH 23620, Torrance, CA and NORTHRIDGE TOWER PHARMACY, PHY 22738, Northridge, CA
Violation: For purposes of settlement only, respondent admitted to failing to provide patient consultation; dispensed medications in non-childproof containers; failing to communicate generic substitution
Action: RPH-Revoked, stayed; one year's suspension; three years' probation; no preceptorship or supervision of interns; no functioning as PIC; payment of $5,580 in costs. PHY-Revoked, stayed for 90 days (until 7/29/99) to allow for sale of pharmacy
Effective: May 1, 1999

RICHARD L. MURPHY, RPH 31588, Yountville, CA
Violation: Convicted of two felony counts of possessing and transporting narcotic controlled substances; refilling Vicodin prescriptions 10 times without prescriber authorization; forging prescriptions for self-use; changing prescriber from dentist to physician on prescriptions.
Action: Revoked; payment of $9,364 in costs
Effective: May 1, 1999

JAMES CHIU-HUEN TSANG, RPH 32548, Foster City, CA and FLORIN MEDICAL CENTER PHARMACY, INC., PHY 39757, Sacramento, CA
Violation: Respondents admitted to purchasing products that were only to be sold by institutions, repackaging and selling to Medi-Cal patients at a higher cost; dispensing prescriptions without directions and strength of medication; filling prescriptions containing more than one prescription per document; failing to record number and date of Schedule II drugs purchased on DEA forms; allowing unlabeled liquids on stock shelf.
Action: RPH-Revoked, stayed; 21 days' suspension; no preceptorship or supervision of interns; may be PIC with independent consultant; no ownership of additional business; take and pass law section of the pharmacist licensure examination within six months; share payment of $16,132 in costs with the pharmacy. PHY-Revoked, stayed; three years' probation; share payment of $16,132 in costs with the pharmacist
Effective: May 1, 1999

PAUL EUGENE KASPER, RPH 46082, San Antonio, TX
Violation: Possessing and using dangerous drugs/ controlled substances without prescriptions; taking drugs for self-use from pharmacy where employed; being under the influence of drugs while working as a pharmacist; illegally obtained prescription blanks from a physician.
Action: Revoked
Effective: May 1, 1999

JERRY D. POND, RPH 30310, Thousand Oaks, CA and SANTA ROSA PHARMACY, PHY 31111, Camarillo, CA
Violation: Dispensing dangerous drugs that were inconsistent with prescribed daily dosages without conferring with the prescriber or discussing alternative treatment plans.
Action: RPH-Probation period extended additional two years beyond previously established probation expiration date of February 20, 1999; no preceptorship or supervision of interns; payment of $3,700 in costs. PHY- Probation period extended additional two years beyond previously established probation expiration date of February 20, 1999
Effective: May 22, 1999

WHOLESALER

VICTOR INSTRUMENTS, INC., WLS 1658, Irvine, CA
Violation: Being convicted of manufacturing and introducing animal drug products not approved by the FDA.
Action: Revoked, stayed; two years' probation; payment of $9,486.50 in costs
Effective: May 22, 1999

*See **Disciplinary Actions,** Page 22*

Disciplinary Actions
Continued from Page 21

EXEMPTEES

JAMES POWELL, EXC 12153, Monrovia, CA
Violation: Receiving four misdemeanor and two felony convictions for driving a vehicle while under the influence of drugs or alcohol.
Action: Revoked
Effective: March 7, 1999

GARY WAYNE SEAL, EXC 1460, Costa Mesa, CA
Violation: Convicted of illegally possessing controlled substances and driving while intoxicated, which resulted in a traffic accident.
Action: Revoked, stayed; suspended from practice until exemptee examination is retaken and passed; three years' probation; payment of $3,252.50 in costs
Effective: May 22, 1999

STATEMENT OF ISSUES

DAVID STEWART MOSS, PHARMACY TECHNICIAN APPLICANT, Costa Mesa, CA
Violation: Convicted of two felonies: DUI with injury and fleeing the hit-and-run injury scene.
Action: Pharmacy technician registration denied
Effective: May 1, 1999

MICHAEL WILLIAM BARBER, PHARMACIST EXAM APPLICANT, Redding, CA
Violation: Illegally possessing, self-administering, and obtaining dangerous drugs (without prescriptions) from the hospital pharmacy while on duty as a pharmacy intern.
Action: Application for pharmacist licensure examination accepted; upon successful completion of the licensure exam and all licensing requirements, said license will be issued and immediately revoked, stayed; 10 years' probation; provide proof to the Board that a copy of this decision is provided to all facilities where employed; undergo psychiatric evaluation and treatment; participation in the Pharmacist Recovery Program; abstention from and no possession of mood altering substances or drugs; payment of restitution to St. Joseph Hospital Pharmacy and Scenic Hospital Pharmacy.
Effective: May 22, 1999

VOULUNTARY SURRENDER OF LICENSES

KENTON CROWLEY, RPH 38214, Temecula, CA and CROWLEY FAMILY PHARMACY, PHY 41147, Murietta, CA
Violation: While on duty as a pharmacist, self-administering and being under the influence of controlled substances not prescribed; possessing a controlled substance without prescription; arrested for being under the influence of a controlled substance.
Action: May not reapply or petition for reinstatement of licenses for three years; payment of $29,426.25 in costs is due upon respondent's reapplication for licensure for himself or for any entity with which he is associated. RPH-Must take and pass pharmacist licensure examination before reinstatement of his license. PHY-Surrender of license stayed for 90 days to allow sale of pharmacy, and any sale to be approved by the Board.
Effective: July 6, 1999

Unrenewed permits and registrations are cancelled 60 days after expiration

All site permits issued by the Board (e.g., pharmacy, clinic, nonresident pharmacy, wholesaler, out of state distributor, medical device retailer, veterinary food-animal drug retailer, and hypodermic syringe retailer) are cancelled if not renewed within 60 days of their expiration date, pursuant to section 4402 of the Business & Professions Code. Also cancelled after 60 days are pharmacy intern permits and pharmacy technician registrations.

Pharmacist licenses, however, will be cancelled if not renewed within three years of their expiration dates.

Pharmacists-in-charge (PICs) are responsible for ensuring that all licenses, permits and registrations (site and personnel) of the pharmacy are current. Wholesalers, medical device retailers, and veterinary food-animal drug retailers should also ensure that the licenses of their qualifying pharmacists or the certifications of their exemptees have been properly renewed. As well as the possibility of cancellation, failure to renew a PIC's license or an exemptee's certification can also block the renewal capabilities of the facility with which those employees are associated.

Any license, permit or registration cancelled under this section can not be restored, reinstated or reissued. New applications will be required.

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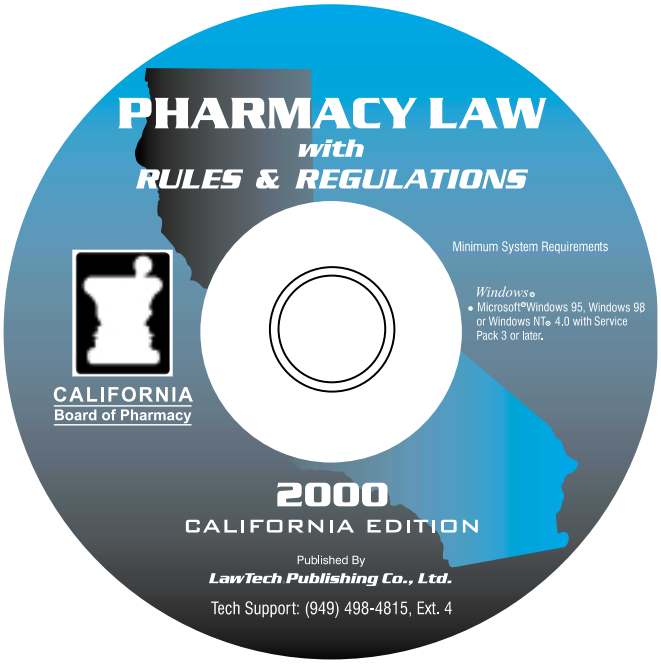

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400 R Street, Suite 4070
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(916) 445-5014
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