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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 2. HEALING ARTS [500 - 4999.129] (*Division 2 enacted by Stats. 1937, Ch. 399.*)

CHAPTER 3. Clinical Laboratory Technology [1200 - 1327] (*Chapter 3 repealed and added by Stats. 1951, Ch. 1727.*)

ARTICLE 5. Offenses Against the Chapter [1280 - 1291] (*Article 5 added by Stats. 1951, Ch. 1727.*)

1280. It is unlawful for any person to represent himself or act as a licensed individual under this chapter unless he is, in fact, duly licensed under this chapter.

(Amended by Stats. 1970, Ch. 1377.)

1281. It is unlawful for any person to own, operate, maintain, direct, or engage in the business of operating a clinical laboratory, as defined in this chapter, unless he or she possesses a valid clinical laboratory license issued by the department. In the event a health facility does not perform clinical laboratory services, but provides laboratory services to its patients under an agreement with another person or entity that holds and is operating under a valid clinical laboratory license, the health facility shall not be required to obtain a clinical laboratory license.

(Amended by Stats. 1994, Ch. 261, Sec. 1. Effective January 1, 1995.)

1281.1. It is unlawful for any person, including a person who owns, operates, or directs a clinical laboratory, to provide, offer, or solicit, any form of payment or gratuity for human blood or any other biological specimen provided for the purpose of clinical laboratory testing or clinical laboratory practice, unless the person is serving as an agent of a clinical laboratory or another facility legally utilizing those specimens only for purposes of research or teaching or for quality assurance purposes, or is an entity licensed under Chapter 4 (commencing with Section 1600) of Division 2 of the Health and Safety Code.

(Added by Stats. 2000, Ch. 322, Sec. 4. Effective January 1, 2001.)

1282. It is unlawful for any person to engage in clinical laboratory practice in a clinical laboratory unless he or she is a duly licensed physician and surgeon or is duly authorized to do so under this chapter.

(Amended by Stats. 1990, Ch. 195, Sec. 9. Effective July 9, 1990.)

1282.2. It is unlawful for any person to perform venipuncture, skin puncture, or arterial puncture to collect a biological specimen unless he or she is authorized to do so under this chapter, the regulations adopted thereunder, or under other provisions of law.

(Added by Stats. 2000, Ch. 322, Sec. 5. Effective January 1, 2001.)

1282.3. (a) It is unlawful for any person to act with willful or wanton disregard for a person's safety that exposes the person to a substantial risk of, or that causes, great bodily injury by affecting the integrity of a clinical laboratory test or examination result through improper collection, handling, storage, or labeling of the biological specimen or the erroneous transcription or reporting of clinical laboratory test or examination results.

(b) Notwithstanding Section 1287, a violation of this section shall be punished as follows:

(1) A first conviction is punishable by imprisonment in a county jail for a period of not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for 16 months, or two or three years, by a fine not exceeding fifty thousand dollars (\$50,000), or by both this imprisonment and fine.

(2) A second or subsequent conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code for two, four, or six years, or by a fine not exceeding fifty thousand dollars (\$50,000), or by both this imprisonment and fine.

(c) The enforcement remedies provided under this section are not exclusive, and shall not preclude the use of any other criminal or civil remedy. However, an act or omission punishable in different ways by this section and any other provision of law shall not be punished under more than one provision. Under those circumstances, the penalty to be imposed shall be determined as set forth in Section 654 of the Penal Code.

(Amended by Stats. 2011, Ch. 15, Sec. 7. (AB 109) Effective April 4, 2011. Operative October 1, 2011, by Sec. 636 of Ch. 15, as amended by Stats. 2011, Ch. 39, Sec. 68.)

1283. It is unlawful for any person to conduct, maintain, or operate a clinical laboratory unless he is a duly licensed physician and surgeon or is duly authorized to do so under the provisions of this chapter.

(Added by renumbering Section 1284 by Stats. 1970, Ch. 1377.)

1284. It is unlawful for a duly licensed physician and surgeon, or any person authorized to serve as director under this chapter, to serve only as a nominal director.

(Added by renumbering Section 1285 by Stats. 1970, Ch. 1377.)

1285. It is unlawful for any person conducting, maintaining, or operating a clinical laboratory to employ any person to perform clinical laboratory procedures unless the person is a duly licensed physician and surgeon or is duly authorized to do so under the provisions of this chapter.

(Added by renumbering Section 1286 by Stats. 1970, Ch. 1377.)

1286. It is unlawful for any person to operate a school or conduct any course for the purpose of training or preparing persons to perform duties, as defined under this chapter and regulations of the department, without having first secured the approval of the department as herein provided.

(Amended by Stats. 1978, Ch. 429.)

1287. (a) Any person who violates any provision of this chapter is guilty of a misdemeanor punishable upon conviction by imprisonment in the county jail for a period not exceeding six months or by fine not exceeding one thousand dollars (\$1,000) or by both.

(b) (1) Notwithstanding subdivision (a), a violation of Section 1281.1 is a public offense and is punishable upon conviction by imprisonment in the county jail for not more than one year, or by a fine not exceeding ten thousand dollars (\$10,000), or by both that imprisonment and fine.

(2) Notwithstanding subdivision (a), a violation of Section 1282.2 is a public offense and is punishable upon conviction by imprisonment in the county jail for not more than one year, or by a fine not exceeding one thousand dollars (\$1,000), or by both that imprisonment and fine.

(3) The enforcement remedies provided under this section are not exclusive, and shall not preclude the use of any other criminal or civil remedy. However, an act or omission punishable in different ways by this section and any other provision of law shall not be punished under more than one provision. Under those circumstances, the penalty to be imposed shall be determined as set forth in Section 654 of the Penal Code.

(Amended by Stats. 2000, Ch. 322, Sec. 7. Effective January 1, 2001.)

1288. Any person conducting or operating a clinical laboratory may accept assignments for tests only from and make reports only to persons licensed under the provisions of law relating to the healing arts or their representatives. This section does not prohibit the acceptance of evaluation specimens for proficiency testing or referral of specimens or such assignment from one clinical laboratory to another clinical laboratory, either licensed or exempt under this chapter, providing the report indicates clearly the laboratory performing the test. A report of results issuing from a clinical laboratory shall show clearly the name and address of the laboratory and the name of the director.

(Added by renumbering Section 1292 by Stats. 1970, Ch. 1377.)

1288.3. (a) If a clinical laboratory employee, agent, or courier retrieves biological specimens located in a public place outside of the custodial control of a licensee, or his or her employee, agent, or contractor, and those specimens are not secured in a locked container, the clinical laboratory employee, agent, or courier, utilizing the form provided by the State Department of Health Services pursuant to Section 1220.5, shall (1) notify the licensee by attaching the appropriate copy of the form to the unlocked storage container, and (2) mail the appropriate copy of the form to the Department of Consumer Affairs. The Department of Consumer Affairs shall forward all forms received to the appropriate licensing entity.

(b) This section shall not apply where the biological specimens have been received by mail in compliance with all applicable laws and regulations.

(c) For purposes of this section: (1) "locked container" means a secure container that is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device.

(2) "Licensee" means a person licensed pursuant to this division 2 (commencing with Section 500), who collects human biological specimens for clinical testing or examination.

(d) A violation of this section is not subject to Section 1287.

(e) This section shall become operative on January 1, 2001. Nothing in this section shall be construed to require clinical laboratory employees, agents, or couriers to notify licensees or the Department of Consumer Affairs of an unsecured specimen if the State Department of Health Services has not provided the appropriate forms.

(Added by Stats. 1999, Ch. 748, Sec. 3. Effective January 1, 2000. Section operative January 1, 2001, by its own provisions.)

1288.5. No person may solicit or accept any biological specimen for clinical laboratory testing or examination unless there is in effect for the clinical laboratory where the test or examination is to be performed a license or registration issued pursuant to this chapter applicable to the category of test or examination which includes that testing or examination, and the person performing the test or examination is authorized to perform the test or examination under this chapter.

(Added by Stats. 1995, Ch. 510, Sec. 31. Effective January 1, 1996.)

1289. The violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or regulations promulgated thereunder constitutes unprofessional conduct within the meaning of this chapter.

(Added by Stats. 1970, Ch. 1377.)

1290. With the exception of narcotics and dangerous drugs stored on the licensed clinical laboratory premises for use exclusively as standards for the purpose of testing, the violation of any of the statutes of this state regulating narcotics and dangerous drugs constitutes unprofessional conduct within the meaning of this chapter.

(Repealed and added by Stats. 1970, Ch. 1377.)

1291. Nothing in this chapter shall prohibit a licensed physician and surgeon from instructing or training any person employed by him to work in a laboratory maintained by such physician and surgeon as an incident of his own medical practice.

(Added by Stats. 1971, Ch. 1070.)