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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 9. Pharmacy [4000 - 4427.8]** ( *Chapter 9 repealed and added by Stats. 1996, Ch. 890, Sec. 3. )*

**ARTICLE 20. Prohibitions and Offenses [4320 - 4343]** ( *Article 20 added by Stats. 1996, Ch. 890, Sec. 3. )*

**4320.** (a) The penalties prescribed in this chapter may be recovered in any court having jurisdiction, by a civil action instituted by the board in the name of the State of California, or by criminal prosecution upon complaint being made.

(b) The district attorney of the county wherein violations of this chapter occur shall conduct all felony prosecutions at the request of the board. The district attorney of the county or city attorney of the city wherein violations of this chapter occur shall conduct all other actions and prosecutions at the request of the board.

(Amended by Stats. 1997, Ch. 549, Sec. 124. Effective January 1, 1998.)

**4321.** (a) Any person who knowingly violates any of the provisions of this chapter, when no other penalty is provided, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than two hundred dollars (\$200), and not more than two thousand dollars (\$2,000), or by imprisonment of not less than 30 days nor exceeding six months, or by both that fine and imprisonment.

(b) In all other instances, any person who violates any of the provisions of this chapter, when no other penalty is provided, is guilty of an infraction, and upon conviction thereof may be punished by a fine not to exceed one thousand dollars (\$1,000).

(Amended by Stats. 1997, Ch. 549, Sec. 125. Effective January 1, 1998.)

**4322.** Any person who attempts to secure or secures licensure for himself or herself or any other person under this chapter by making or causing to be made any false representations, or who fraudulently represents himself or herself to be registered, is guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine not exceeding five thousand dollars (\$5,000), or by imprisonment not exceeding 50 days, or by both that fine and imprisonment.

(Amended by Stats. 1998, Ch. 878, Sec. 31. Effective January 1, 1999.)

**4323.** Every person who, in order to obtain any drug, falsely represents himself or herself to be a physician or other person who can lawfully prescribe the drug, or falsely represents that he or she is acting on behalf of a person who can lawfully prescribe the drug, in a telephone or electronic communication with a pharmacist, shall be punished by imprisonment in the county jail for not more than one year.

(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)

**4324.** (a) Every person who signs the name of another, or of a fictitious person, or falsely makes, alters, forges, utters, publishes, passes, or attempts to pass, as genuine, any prescription for any drugs is guilty of forgery and upon conviction thereof shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in a county jail for not more than one year.

(b) Every person who has in his or her possession any drugs secured by a forged prescription shall be punished by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code, or by imprisonment in the county jail for not more than one year.

(Amended by Stats. 2011, Ch. 15, Sec. 13. (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.)

**4325.** (a) No person other than a physician, dentist, podiatrist, veterinarian, pharmacist, or other person authorized by law to dispense, administer, or prescribe controlled substances, or the person's agent acting under authorization by the person to print prescription blanks, and acting in the regular practice of the person's profession, shall knowingly and willfully manufacture, copy,

reproduce, or possess, or cause to be manufactured, copied, reproduced, or possessed, any prescription blank that purports to bear the name, address, and federal registry or other identifying information of a physician, dentist, podiatrist, veterinarian, or other person authorized by law to dispense, administer, or prescribe controlled substances.

(b) Every person who violates this section shall be guilty of a misdemeanor.

*(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*

**4327.** Any person who, while on duty, sells, dispenses or compounds any drug while under the influence of any dangerous drug or alcoholic beverages shall be guilty of a misdemeanor.

*(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*

**4328.** Except as otherwise provided in this chapter, any person who permits the compounding or dispensing of prescriptions, or the furnishing of dangerous drugs in his or her pharmacy, except by a pharmacist, is guilty of a misdemeanor.

*(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*

**4329.** Any nonpharmacist who takes charge of or acts as supervisor, manager, or pharmacist-in-charge of any pharmacy, or who compounds or dispenses a prescription or furnishes dangerous drugs except as otherwise provided in this chapter, is guilty of a misdemeanor.

*(Amended by Stats. 2009, Ch. 308, Sec. 59. (SB 819) Effective January 1, 2010.)*

**4330.** (a) Any person who has obtained a license to conduct a pharmacy, who fails to place in charge of the pharmacy a pharmacist, or any person, who by himself or herself, or by any other person, permits the compounding or dispensing of prescriptions, or the furnishing of dangerous drugs, in his or her pharmacy, except by a pharmacist, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(b) Any pharmacy owner who commits any act that would subvert or tend to subvert the efforts of the pharmacist-in-charge to comply with the laws governing the operation of the pharmacy is guilty of a misdemeanor.

*(Amended by Stats. 2009, Ch. 308, Sec. 60. (SB 819) Effective January 1, 2010.)*

**4331.** (a) A person not authorized under this chapter who takes charge of a wholesaler or veterinary food-animal drug retailer or who dispenses a prescription or furnishes dangerous devices, except as otherwise provided in this chapter, is guilty of a misdemeanor.

(b) A person who is not a responsible manager or a designated representative-3PL who takes charge of a third-party logistics provider or coordinates the warehousing or distribution of dangerous drugs or dangerous devices within a third-party logistics provider, except as otherwise provided in this chapter, is guilty of a misdemeanor.

(c) A person licensed as a veterinary food-animal drug retailer that fails to place in charge of that veterinary food-animal drug retailer a pharmacist or designated representative, or any person who, by himself or herself, or by any other person, permits the dispensing of prescriptions, except by a pharmacist or designated representative, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(d) A person licensed as a wholesaler that fails to place in charge of that wholesaler a pharmacist or designated representative, or any person who, by himself or herself, or by any other person, permits the furnishing of dangerous drugs or dangerous devices, except by a pharmacist or designated representative, or as otherwise provided in this chapter, is guilty of a misdemeanor.

(e) A person licensed as a third-party logistics provider that fails to place in charge of a licensed place of business of the third-party logistics provider a responsible manager, or any person who, by himself or herself, or by any other person, permits the furnishing of dangerous drugs or dangerous devices, except by a facility manager, or as otherwise provided in this chapter, is guilty of a misdemeanor.

*(Amended by Stats. 2017, Ch. 598, Sec. 9. (SB 752) Effective January 1, 2018.)*

**4332.** Any person who fails, neglects, or refuses to maintain the records required by Section 4081 or who, when called upon by an authorized officer or a member of the board, fails, neglects, or refuses to produce or provide the records within a reasonable time, or who willfully produces or furnishes records that are false, is guilty of a misdemeanor.

*(Repealed and added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*

**4333.** (a) All prescriptions filled by a pharmacy and all other records required by Section 4081 shall be maintained on the premises and available for inspection by authorized officers of the law for a period of at least three years. In cases where the pharmacy discontinues business, these records shall be maintained in a board-licensed facility for at least three years.

(b) Any person who willfully fails to comply with subdivision (a) is guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars (\$200). Any person convicted of a second or subsequent offense shall be punished by a fine of not less than two hundred dollars (\$200) and not more than four hundred dollars (\$400).

(c) (1) Notwithstanding subdivisions (a) and (b), the board may, upon written request, grant a waiver of the requirement that the records described in subdivisions (a) and (b) be maintained on the licensed premises or, in the event the pharmacy discontinues business, that the records be maintained in a board licensed facility. A person who maintains records in compliance with that waiver is not subject to the penalties set forth in subdivision (b).

(2) A waiver granted pursuant to this subdivision shall not affect the board's authority under this section or any other provision of this chapter.

*(Amended by Stats. 1997, Ch. 549, Sec. 129. Effective January 1, 1998.)*

**4335.** Any person who knowingly violates subdivision (b) of Section 4312 is guilty of a misdemeanor.

*(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*

**4336.** (a) Every person who knowingly or willfully violates Section 4055, 4059, 4060, 4061, 4062, 4063, 4064, 4065, 4077, 4080, 4081, 4083, or 4332 with respect to dangerous drugs by use of a minor as an agent is guilty of a felony.

(b) Nothing contained in this section shall apply to a pharmacist furnishing dangerous drugs pursuant to a prescription.

*(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*

**4337.** Except as otherwise specified, all fines collected for violations of this chapter shall be paid as follows: one-half into the State Treasury to the credit of the Contingent Fund of the Board of Pharmacy of the State of California and one-half to the treasurer of the jurisdiction in which the misdemeanor is prosecuted, to be deposited in the same fund as fines for other misdemeanors occurring in that jurisdiction are deposited.

*(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*

**4338.** In addition to any fine assessed under Section 4321, the judge may assess a fine not to exceed seventy dollars (\$70) against any person who violates Section 4140 or 4142, with the proceeds of this fine to be used in accordance with Section 1463.23 of the Penal Code. The court shall, however, take into consideration the defendant's ability to pay and no defendant shall be denied probation because of his or her inability to pay the fine permitted under this section.

*(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*

**4339.** (a) The board may bring an action to enjoin the violation of any provision of this chapter in any superior court in and for the county in which the violation has occurred. Any action shall conform to the requirements of Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure, except that the board shall not be required to allege facts necessary to show or tending to show lack of adequate remedy at law or irreparable damage or loss. The action shall be brought in the name of the people of the State of California.

(b) Nothing in this section shall permit the bringing of any action with respect to any drug or product not subject to Section 4022 that is packaged or bottled in the manufacturer's or distributor's container and labeled in accordance with applicable federal and state drug labeling requirements.

(c) The authority granted by this section is in addition to the authority of the board to institute any other administrative, civil, or criminal action.

*(Amended by Stats. 1997, Ch. 549, Sec. 130. Effective January 1, 1998.)*

**4340.** It is unlawful for any nonresident pharmacy that is not registered pursuant to Section 4112 or for any person who is a resident of this state to advertise the pharmacy services of any pharmacy, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

*(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*

**4341.** Notwithstanding any other provision of law, prescription drugs or devices may be advertised if the advertisement conforms with the requirements of Section 651.

*(Amended by Stats. 1997, Ch. 549, Sec. 131. Effective January 1, 1998.)*

**4342.** (a) The board may institute any action or actions as may be provided by law and that, in its discretion, are necessary, to prevent the sale of pharmaceutical preparations and drugs that do not conform to the standard and tests as to quality and strength,

provided in the latest edition of the United States Pharmacopoeia or the National Formulary, or that violate any provision of the Sherman Food, Drug, and Cosmetic Law (Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety Code).

(b) Any knowing or willful violation of any regulation adopted pursuant to Section 4006 shall be subject to punishment in the same manner as is provided in Sections 4321 and 4336.

*(Amended by Stats. 2014, Ch. 71, Sec. 8. (SB 1304) Effective January 1, 2015.)*

**4343.** No building shall have upon it or displayed within it or affixed to or used in connection with it a sign bearing the word or words "Pharmacist," "Pharmacy," "Apothecary," "Drugstore," "Druggist," "Drugs," "Medicine," "Medicine Store," "Drug Sundries," "Remedies," or any word or words of similar or like import; or the characteristic symbols of pharmacy; or the characteristic prescription sign (Rx) or similar design, unless there is upon or within the building a pharmacy holding a license issued by the board pursuant to Section 4110.

*(Added by Stats. 1996, Ch. 890, Sec. 3. Effective January 1, 1997.)*