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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 Pharmacy [4000 - 4427.8] (*Chapter 9 repealed and added by Stats. 1996, Ch. 890, Sec. 3.*)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 22. Unfair Trade Practices [4380 - 4382] (*Article 22 added by Stats. 1996, Ch. 890, Sec. 3.*)

4380. (a) The resale, by any person, of drugs acquired at preferentially low prices permitted under federal law only because of the Nonprofit Institutions Act (15 U.S.C. Sec. 13c) is prohibited except in any of the following instances:

- (1) When for the person's own use, as defined by the federal courts in *Abbott Labs. v. Portland Retail Druggists* (425 U.S. 1, 47 L. Ed. 2d 537) and *DeModena v. Kaiser Foundation Health Plan, Inc.* (743 F. 2d 1388).
- (2) When sold to a purchaser also eligible for those prices under the Nonprofit Institutions Act, that controls, is controlled by, or is under common control with, the seller, and that purchases the products for its own use, as defined in paragraph (1).
- (3) When sold to a walk-in customer pursuant to a prescription, provided that those sales represent less than 1 percent of the drugs purchased by the seller for its own use in this state.

(b) Nothing in this article prohibits the resale of drugs to any person in the occasional emergency situation where no other sources are readily available in the community to meet the emergency need.

(Repealed and added by Stats. 1996, Ch. 890, Sec. 3.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

4381. (a) A violation of this article is an act of unfair competition within the meaning of Chapter 5 (commencing with Section 17200) of Part 2 of Division 7, and this article is enforceable as provided in that chapter.

(b) In addition thereto, any person or trade association may bring an action to enjoin and restrain any violation of this article and to recover actual damages, if any.

(c) In an action for injunctive relief under this article, it is not necessary to allege or prove actual damages or the threat thereof, or actual injury or the threat thereof, to the plaintiff. In addition to injunctive relief, the plaintiff in any action shall recover three times the amount of his or her actual damages, if any, as well as three times the actual damages, if any, sustained by any person who has assigned to the plaintiff a claim for damages resulting from a violation of this section. In any action under this article in which judgment is entered against the defendant, the plaintiff shall be awarded reasonable attorneys' fees together with the costs of suit.

(d) In issuing an injunction against a violation under this article, the court may, in its discretion, include any other restraint it deems expedient in order to deter the defendant from and ensure against future violations of this article.

(e) Proof of malice or intent to harm competition is immaterial to sustain a cause of action under this article.

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

4382. The board may audit persons for compliance with the limits established in paragraph (3) of subdivision (a) of Section 4380 except that in the case of a facility or pharmacy that predominately serves members of a prepaid group practice health care service plan, those audits may be undertaken solely by the Department of Managed Health Care pursuant to its authority to audit those plans.

(Amended by Stats. 2000, Ch. 857, Sec. 2. Effective January 1, 2001.)