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**AB-1286 Pharmacy.** (2023-2024)

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Date Published: 10/10/2023 09:00 PM

**Assembly Bill No. 1286**

**CHAPTER 470**

An act to amend Sections 4113, 4115, 4192, 4204, and 4301 of, and to add Sections 4113.1, 4113.6, and 4316.5 to, the Business and Professions Code, relating to pharmacy.

[ Approved by Governor October 08, 2023. Filed with Secretary of State October 08, 2023. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 1286, Haney. Pharmacy.

Existing law, the Pharmacy Law, provides for the licensure and regulation of pharmacists, pharmacy technicians, and pharmacies by the California State Board of Pharmacy, which is within the Department of Consumer Affairs. Existing law authorizes the board to appoint an executive officer to exercise the powers and perform the duties delegated by the board. A violation of the Pharmacy Law is a crime.

(1) Existing law requires every pharmacy to designate a pharmacist-in-charge who is responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

This bill would authorize a pharmacist-in-charge to make staffing decisions to ensure sufficient personnel are present in the pharmacy to prevent fatigue, distraction, or other conditions that may interfere with a pharmacist's ability to practice competently and safely. The bill would authorize a pharmacist on duty, if the pharmacist-in-charge is not available, to adjust staffing according to workload if needed. The bill would require a pharmacist-in-charge or pharmacist on duty to immediately notify store management of any conditions that present an immediate risk of death, illness, or irreparable harm to patients, personnel, or pharmacy staff. The bill would require store management to take immediate and reasonable steps to address and resolve those conditions, and, if those conditions are not resolved within 24 hours, would require the pharmacist-in-charge or pharmacist on duty to ensure the board is notified. The bill would require the executive officer, upon a reasonable belief that conditions within a pharmacy exist that present an immediate risk of death, illness, or irreparable harm to patients, personnel, or pharmacy staff, to issue a cease and desist order, as specified. The bill would make a failure to comply with the cease and desist order unprofessional conduct for a pharmacy corporation.

(2) Existing law, with specified exceptions, prohibits a community pharmacy from requiring a pharmacist employee to engage in the practice of pharmacy at any time the pharmacy is open to the public, unless either another employee of the pharmacy or, if the pharmacy is located within another establishment, an employee of the establishment within which the pharmacy is located, is made available to assist the pharmacist at all times.

This bill would require a chain community pharmacy to be staffed at all times with at least one clerk or pharmacy technician fully dedicated to performing pharmacy-related services. The bill would prohibit the board from taking action against a pharmacy for a violation of this requirement if specified conditions apply, including if the pharmacist on duty waives the requirement in writing during specified hours based on workload needs. The bill would require, if staffing of pharmacist hours within a chain community

pharmacy does not overlap sufficiently, that scheduled closures for lunch time for all pharmacy staff be established and publicly posted and included on the outgoing telephone message.

The bill would require a licensed community pharmacy, as defined, to report all medication errors to an entity approved by the board and to maintain records, as prescribed. The bill would deem these reports confidential and not subject to discovery, subpoena, or disclosure pursuant to the California Public Records Act, except that the board would be authorized to publish certain deidentified information compiled from the data in the reports in accordance with specified requirements.

(3) Existing law authorizes a pharmacy technician to perform prescribed nondiscretionary tasks only while assisting, and while under the direct supervision and control of, a pharmacist who is responsible for the duties performed under their supervision by a technician. Existing law prohibits a pharmacy with only one pharmacist from having more than one pharmacy technician performing these tasks.

This bill would additionally authorize a pharmacy technician under the direct supervision and control of a pharmacist to prepare and administer influenza and COVID-19 vaccines via injection or intranasally, prepare and administer epinephrine, perform specimen collection for specified tests, receive prescription transfers, and accept clarification on prescriptions under prescribed conditions. The bill would prohibit a pharmacy with only one pharmacist from having more than one pharmacy technician performing these additionally authorized tasks and specify that if a pharmacy technician is performing these additionally authorized tasks, a second pharmacy technician is required to be assisting a pharmacist with performing the nondiscretionary tasks currently authorized under existing law.

(4) Existing law establishes specific provisions for the licensure of clinics, including requiring a clinic that makes an application for a license to show evidence that the professional director is responsible for the safe, orderly, and lawful provision of pharmacy services. Existing law requires a consulting pharmacist be retained to approve the clinic's policies and procedures in conjunction with the professional director and the administrator and to visit the clinic regularly and at least quarterly. Existing law requires the consulting pharmacist to certify in writing quarterly that the clinic is, or is not, operating in compliance with existing law governing clinics.

This bill would require a consulting pharmacist, before July 1 of every odd-numbered year, to complete a Surgical Clinic Self-Assessment Form as determined by the board as a means to promote compliance through self-examination and education, as specified, including a requirement that the professional director of the clinic and consulting pharmacist make a prescribed certification signed under penalty of perjury, kept on file in the clinic for 3 years, and made available to the board or its designee, upon request. The bill would require, as part of the renewal process for a clinic license, that the consulting pharmacist certify compliance with the quarterly inspections and provide the most recent self-assessment form.

By expanding the crime of perjury, this bill would impose a state-mandated local program.

(5) Existing law requires the board to take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. Existing law establishes a list of specified actions that constitute unprofessional conduct.

This bill would expand the list of specified actions that constitute unprofessional conduct to include actions or conduct that would subvert the efforts of a pharmacist to comply with laws and regulations, or exercise professional judgment, including creating or allowing conditions that may interfere with a pharmacist's ability to practice with competency and safety or creating or allowing an environment that may jeopardize patient care; actions or conduct that would subvert the efforts of a pharmacist-in-charge to comply with laws and regulations, exercise professional judgment, or make determinations about adequate staffing levels to safely fill prescriptions of the pharmacy or provide other patient care services in a safe and competent manner; actions or conduct that would subvert the efforts of a pharmacist intern or a pharmacy technician to comply with laws or regulations; or establishing policies and procedures related to time guarantees to fill prescriptions within a specified time unless those guarantees are required by law or to meet contractual requirements.

(6) Existing law authorizes the board to issue a cease and desist order for operating any facility under existing law that requires licensure or for practicing any activity under existing law that requires licensure without obtaining that licensure.

This bill would authorize the board to assess administrative fines and issue orders of abatement to any unlicensed entity who engages in any action that requires licensure under the jurisdiction of the board, not to exceed \$5,000 for each occurrence pursuant to a citation issued by the board.

(7) By imposing new requirements under the Pharmacy Law, the violation of which would be a crime, this bill would impose as state-mandated local program.

(8) Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

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

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

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

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## THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

**SECTION 1.** Section 4113 of the Business and Professions Code is amended to read:

**4113.** (a) Every pharmacy shall designate a pharmacist-in-charge and, within 30 days thereof, shall notify the board in writing of the identity and license number of that pharmacist and the date they were designated.

(b) The proposed pharmacist-in-charge shall be subject to approval by the board. The board shall not issue or renew a pharmacy license without identification of an approved pharmacist-in-charge for the pharmacy.

(c) (1) The pharmacist-in-charge shall be responsible for a pharmacy's compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

(2) The pharmacist-in-charge may make staffing decisions to ensure sufficient personnel are present in the pharmacy to prevent fatigue, distraction, or other conditions that may interfere with a pharmacist's ability to practice competently and safely. If the pharmacist-in-charge is not available, a pharmacist on duty may adjust staffing according to workload if needed. This paragraph does not apply to facilities of the Department of Corrections and Rehabilitation.

(d) (1) The pharmacist-in-charge or pharmacist on duty shall immediately notify store management of any conditions that present an immediate risk of death, illness, or irreparable harm to patients, personnel, or pharmacy staff. Store management shall take immediate and reasonable steps to address and resolve the conditions that present an immediate risk of death, illness, or irreparable harm to patients, personnel, or pharmacy staff. If the conditions are not resolved within 24 hours, the pharmacist-in-charge or pharmacist on duty shall ensure the board is timely notified.

(2) Nothing in this subdivision shall be construed as presenting, limiting, or restraining a pharmacist-in-charge, pharmacy technician, or member of the public from communication with the board, including filing a complaint.

(3) The conditions that present an immediate risk of death, illness, or irreparable harm to patients, personnel, or pharmacy staff may include, but are not limited to, any of the following:

(A) Workplace safety and health hazards that present an immediate risk of death, illness, or irreparable harm to patients, personnel, or pharmacy staff.

(B) Sustained temperatures that could impact ambient temperature drug stability according to manufacturer data on acceptable drug storage conditions.

(C) Vermin infestation that poses a risk to the safety or efficacy of medicine.

(4) If, after receipt of a notice described in paragraph (1) and an evaluation and assessment of the relevant evidence, the executive officer has a reasonable belief that conditions within a pharmacy exist that present an immediate risk of death, illness, or irreparable harm to patients, personnel, or pharmacy staff, the executive officer may, in conformance with the processes set forth in subdivisions (b) and (c) of Section 4127.3, issue an order to the pharmacy to immediately cease and desist those pharmacy operations that are affected by the conditions at issue. The cease and desist order shall remain in effect until either the executive officer determines the conditions that presented an immediate risk of death, illness, or irreparable harm to patients, personnel, or pharmacy staff have been abated or for no more than 30 days, whichever is earlier. Evidence of corrective actions taken shall be submitted by the pharmacy to correct the conditions at issue. Failure to comply with a cease and desist order issued pursuant to this section shall be unprofessional conduct pursuant to Section 4156.

(5) Nothing in this paragraph shall prevent the owner of the licensed premises from closing a pharmacy to mitigate against a perceived immediate risk of death, illness, or irreparable harm to patients, personnel, or pharmacy staff.

(6) Facilities of the Department of Corrections and Rehabilitation shall be exempt from this subdivision.

(e) Every pharmacy shall notify the board in writing, on a form designed by the board, within 30 days of the date when a pharmacist-in-charge ceases to act as the pharmacist-in-charge, and shall on the same form propose another pharmacist to take over as the pharmacist-in-charge. The proposed replacement pharmacist-in-charge shall be subject to approval by the board. If

disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board.

(f) If a pharmacy is unable, in the exercise of reasonable diligence, to identify within 30 days a permanent replacement pharmacist-in-charge to propose to the board on the notification form, the pharmacy may instead provide on that form the name of any pharmacist who is an employee, officer, or administrator of the pharmacy or the entity that owns the pharmacy and who is actively involved in the management of the pharmacy on a daily basis, to act as the interim pharmacist-in-charge for a period not to exceed 120 days. The pharmacy, or the entity that owns the pharmacy, shall be prepared during normal business hours to provide a representative of the board with the name of the interim pharmacist-in-charge with documentation of the active involvement of the interim pharmacist-in-charge in the daily management of the pharmacy, and with documentation of the pharmacy's good faith efforts prior to naming the interim pharmacist-in-charge to obtain a permanent pharmacist-in-charge. By no later than 120 days following the identification of the interim pharmacist-in-charge, the pharmacy shall propose to the board the name of a pharmacist to serve as the permanent pharmacist-in-charge. The proposed permanent pharmacist-in-charge shall be subject to approval by the board. If disapproved, the pharmacy shall propose another replacement within 15 days of the date of disapproval, and shall continue to name proposed replacements until a pharmacist-in-charge is approved by the board.

**SEC. 2.** Section 4113.1 is added to the Business and Professions Code, to read:

**4113.1.** (a) Except as specified in subdivision (e), a community pharmacy licensed pursuant to this article shall report, either directly or through a designated third party, including a component patient safety organization as defined in Section 3.20 of Title 42 of the Code of Federal Regulations, all medication errors to an entity approved by the board. A community pharmacy shall submit the report no later than 14 days following the date of discovery of the error. These reports are deemed confidential and are not subject to discovery, subpoena, or disclosure pursuant to the California Public Records Act (Division 10 (commencing with Section 7920.000) of Title 1 of the Government Code), except that the board may publish deidentified case summary information compiled from the data in the reports so long as deidentification is done in accordance with the requirements set forth in Section 164.514(b)(2) of Title 45 of the Code of Federal Regulations, and includes omitting the name of the reporting pharmacy. The community pharmacy shall maintain records demonstrating compliance with this requirement for three years and shall make these records immediately available at the request of an inspector. A medication error report made pursuant to this section shall not be subject to investigation, discipline, or other enforcement action by the board based solely on a report received pursuant to this section. However, if the board receives other information regarding the medication error independent of the medication error report, that information may serve as basis for discipline or other enforcement by the board.

(b) Any entity approved by the board shall have experience with the analysis of medication errors that occur in the outpatient setting.

(c) For purposes of this section, "community pharmacy" includes any pharmacy that dispenses medication to an outpatient, but does not include facilities of the Department of Corrections and Rehabilitation.

(d) For purposes of this section, "medication error" includes any variation from a prescription drug order not authorized by the prescriber, including, but not limited to, errors involving the wrong drug, the wrong dose, the wrong patient, the wrong directions, the wrong preparation, or the wrong route of administration. A medication error does not include any variation that is corrected prior to dispensing to the patient or patient's agent or any variation allowed by law.

(e) An outpatient hospital pharmacy shall not be required to report a medication error that meets the requirements of an adverse event, as specified in subdivision (a), that has been reported to the State Department of Public Health pursuant to Section 1279.1 of the Health and Safety Code. The State Department of Public Health may share a report with the California State Board of Pharmacy.

**SEC. 3.** Section 4113.6 is added to the Business and Professions Code, to read:

**4113.6.** (a) A chain community pharmacy subject to Section 4113.5 shall be staffed at all times with at least one clerk or pharmacy technician fully dedicated to performing pharmacy-related services. The board shall not take action against a pharmacy for a violation of this subdivision if any of the following conditions apply:

(1) The pharmacist on duty waives the requirement in writing during specified hours based on workload need.

(2) The pharmacy is open beyond normal business hours, which is before 8:00 am and after 7:00 pm. During the hours before 8:00 am and after 7:00 pm, the requirement shall not apply.

(3) The pharmacy's prescription volume per day on average is less than 75 prescriptions per day based on the average daily prescription volume for the past calendar year. However, if the pharmacist is also expected to provide additional pharmacy services such as immunizations, tests classified as waived under the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a), or any other ancillary services provided by law, this paragraph does not apply.

(b) Where staffing of pharmacist hours within a chain community pharmacy does not overlap sufficiently, scheduled closures for lunch time for all pharmacy staff shall be established and publicly posted and included on the outgoing telephone message.

**SEC. 4.** Section 4115 of the Business and Professions Code is amended to read:

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

(b) (1) In addition to the tasks specified in subdivision (a) a pharmacy technician may, under the direct supervision and control of a pharmacist, prepare and administer influenza and COVID-19 vaccines via injection or intranasally, prepare and administer epinephrine, perform specimen collection for tests that are classified as waived under CLIA, receive prescription transfers, and accept clarification on prescriptions under the following conditions:

(A) The pharmacy has scheduled another pharmacy technician to assist the pharmacist by performing the tasks provided in subdivision (a).

(B) The pharmacy technician is certified pursuant to paragraph (4) of subdivision (a) of Section 4202 and maintains that certification.

(C) The pharmacy technician has successfully completed at least six hours of practical training approved by the Accreditation Council for Pharmacy Education and includes hands-on injection technique, the recognition and treatment of emergency reactions to vaccines, and an assessment of the pharmacy technician's injection technique.

(D) The pharmacy technician is certified in basic life support.

(2) "CLIA" means the federal Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. Sec. 263a; Public Law 100-578).

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

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

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

(f) A person shall not act as a pharmacy technician without first being licensed by the board as a pharmacy technician.

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

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

(3) A pharmacist scheduled to supervise a second pharmacy technician may refuse to supervise a second pharmacy technician if the pharmacist determines, in the exercise of their professional judgment, that permitting the second pharmacy technician to be on duty would interfere with the effective performance of the pharmacist's responsibilities under this chapter. A pharmacist assigned to supervise a second pharmacy technician shall notify the pharmacist-in-charge in writing of their determination, specifying the circumstances of concern with respect to the pharmacy or the pharmacy technician that have led to the

determination, within a reasonable period, but not to exceed 24 hours, after the posting of the relevant schedule. An entity employing a pharmacist shall not discharge, discipline, or otherwise discriminate against any pharmacist in the terms and conditions of employment for exercising or attempting to exercise in good faith the right established pursuant to this paragraph.

(h) Notwithstanding subdivisions (a) to (c), inclusive, the board shall by regulation establish conditions to permit the temporary absence of a pharmacist for breaks and lunch periods pursuant to Section 512 of the Labor Code and the orders of the Industrial Welfare Commission without closing the pharmacy. During these temporary absences, a pharmacy technician may, at the discretion of the pharmacist, remain in the pharmacy but may only perform nondiscretionary tasks. The pharmacist shall be responsible for a pharmacy technician and shall review any task performed by a pharmacy technician during the pharmacist's temporary absence. This subdivision shall not be construed to authorize a pharmacist to supervise pharmacy technicians in greater ratios than those described in subdivision (g).

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

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

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

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

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

**SEC. 5.** Section 4192 of the Business and Professions Code is amended to read:

**4192.** (a) Each clinic that makes an application for a license under this article shall show evidence that the professional director is responsible for the safe, orderly, and lawful provision of pharmacy services. In carrying out the professional director's responsibilities, a consulting pharmacist shall be retained to approve the policies and procedures in conjunction with the professional director and the administrator. In addition, the consulting pharmacist shall be required to visit the clinic regularly and at least quarterly. However, nothing in this section shall prohibit the consulting pharmacist from visiting more than quarterly to review the application of policies and procedures based on the agreement of all the parties approving the policies and procedures.

(b) The consulting pharmacist shall certify in writing quarterly that the clinic is, or is not, operating in compliance with the requirements of this article. Each completed written certification shall be kept on file in the clinic for three years and shall include recommended corrective actions, if appropriate. Before July 1 of every odd-numbered year, the consulting pharmacist shall complete a Surgical Clinic Self-Assessment Form as determined by the board as a means to promote compliance through self-examination and education. The self-assessment shall assess the clinic's compliance with current laws and regulations and include information on compounding practices as specified on the most recent version of the Surgical Clinic Self-Assessment Form approved by the board and posted on its internet website. The professional director of the clinic and consulting pharmacist shall certify on the final page of the Surgical Clinic Self-Assessment Form that they have read, reviewed, and completed self-assessment to the best of their professional ability and acknowledge that failure to correct any deficiency identified could result in action by the board. The completed form shall be signed under penalty of perjury, kept on file in the clinic for three years, and made available to the board or its designee, upon request.

(c) For the purposes of this article, "professional director" means a physician and surgeon acting in their capacity as medical director or a dentist or podiatrist acting in their capacity as a director in a clinic where only dental or podiatric services are provided.

(d) Licensed clinics shall notify the board within 30 days of any change in professional director on a form furnished by the board.

**SEC. 6.** Section 4204 of the Business and Professions Code is amended to read:

**4204.** (a) Each application for a license under Section 4190 shall be made on a form furnished by the board. The form of application for a license under this article shall contain the name and address of the applicant, whether the applicant is licensed, the type of services the facility will offer, the name of its professional director, the name of its administrator, and the name of its consulting pharmacist.

(b) Each initial application shall contain a statement from a consulting pharmacist certifying that the policies and procedures of the clinic's drug distribution service, relative to inventories, security procedures, training, protocol development, recordkeeping,

packaging, labeling, dispensing, and patient consultation are consistent with the promotion and protection of health and safety of the public. Upon the filing of the application and the payment of a fee in subdivision (s) of Section 4400, the board shall make a thorough investigation to determine whether the applicant and the premises for which application for a license is made qualify for a license. The board shall also determine whether this article has been complied with, and shall investigate all matters directly related to the issuance of the license. The board shall not however, investigate any matters connected with the operation of a premises, including operating hours, parking availability, or operating noise, except those matters relating to the furnishing, sale, or dispensing of drugs or devices. The board shall deny an application for a license if either the applicant or the premises for which application for a license is made do not qualify for a license under this article.

(c) If the board determines that the applicant and the premises for which application for a license is made qualify for a license under Section 4190, the executive officer of the board shall issue a license authorizing the clinic to which it is issued to purchase drugs at wholesale pursuant to Section 4190. The license shall be renewed annually upon payment of a renewal fee prescribed in subdivision (s) of Section 4400 and shall not be transferable. As part of the renewal process the consulting pharmacist shall certify compliance with the quarterly inspections as required in Section 4192. Further, as part of the renewal process of every odd-numbered year, the most recent self-assessment form completed as provided in Section 4192 shall also be provided to the board.

**SEC. 7.** Section 4301 of the Business and Professions Code is amended to read:

**4301.** The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been issued by mistake. Unprofessional conduct includes, but is not limited to, any of the following:

(a) Procurement of a license by fraud or misrepresentation.

(b) Incompetence.

(c) Gross negligence.

(d) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153 of the Health and Safety Code.

(e) The clearly excessive furnishing of controlled substances in violation of subdivision (a) of Section 11153.5 of the Health and Safety Code. Factors to be considered in determining whether the furnishing of controlled substances is clearly excessive shall include, but not be limited to, the amount of controlled substances furnished, the previous ordering pattern of the customer (including size and frequency of orders), the type and size of the customer, and where and to whom the customer distributes its product.

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

(g) Knowingly making or signing any certificate or other document that falsely represents the existence or nonexistence of a state of facts.

(h) The administering to oneself, of any controlled substance, or the use of any dangerous drug or of alcoholic beverages to the extent or in a manner as to be dangerous or injurious to oneself, to a person holding a license under this chapter, or to any other person or to the public, or to the extent that the use impairs the ability of the person to conduct with safety to the public the practice authorized by the license.

(i) Except as otherwise authorized by law, knowingly selling, furnishing, giving away, or administering, or offering to sell, furnish, give away, or administer, any controlled substance to a person with substance use disorder.

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

(k) The conviction of more than one misdemeanor or any felony involving the use, consumption, or self-administration of any dangerous drug or alcoholic beverage, or any combination of those substances.

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this

chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw their plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

(m) The cash compromise of a charge of violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code relating to the Medi-Cal program.

(n) The revocation, suspension, or other discipline by another state of a license to practice pharmacy, operate a pharmacy, or do any other act for which a license is required by this chapter that would be grounds for revocation, suspension, or other discipline under this chapter. Any disciplinary action taken by the board pursuant to this section shall be coterminous with action taken by another state, except that the term of any discipline taken by the board may exceed that of another state, consistent with the board's enforcement guidelines. The evidence of discipline by another state is conclusive proof of unprofessional conduct.

(o) 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 of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency.

(p) Actions or conduct that would have warranted denial of a license.

(q) Engaging in any conduct that subverts or attempts to subvert an investigation of the board.

(r) The selling, trading, transferring, or furnishing of drugs obtained pursuant to Section 256b of Title 42 of the United States Code to any person a licensee knows or reasonably should have known, not to be a patient of a covered entity, as defined in Section 256b(a)(4) of Title 42 of the United States Code.

(s) The clearly excessive furnishing of dangerous drugs by a wholesaler to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities. Factors to be considered in determining whether the furnishing of dangerous drugs is clearly excessive shall include, but not be limited to, the amount of dangerous drugs furnished to a pharmacy that primarily or solely dispenses prescription drugs to patients of long-term care facilities, the previous ordering pattern of the pharmacy, and the general patient population to whom the pharmacy distributes the dangerous drugs. That a wholesaler has established, and employs, a tracking system that complies with the requirements of subdivision (b) of Section 4164 shall be considered in determining whether there has been a violation of this subdivision. This provision shall not be interpreted to require a wholesaler to obtain personal medical information or be authorized to permit a wholesaler to have access to personal medical information except as otherwise authorized by Section 56 and following of the Civil Code. For purposes of this section, "long-term care facility" has the same meaning given the term in Section 1418 of the Health and Safety Code.

(t) The acquisition of a nonprescription diabetes test device from a person that the licensee knew or should have known was not the nonprescription diabetes test device's manufacturer or the manufacturer's authorized distributor as identified in Section 4160.5.

(u) The submission of a reimbursement claim for a nonprescription diabetes test device to a pharmaceutical benefit manager, health insurer, government agency, or other third-party payor when the licensee knew or reasonably should have known that the diabetes test device was not purchased either directly from the manufacturer or from the nonprescription diabetes test device manufacturer's authorized distributors as identified in Section 4160.5.

(v) Actions or conduct that would subvert the efforts of a pharmacist to comply with laws and regulations, or exercise professional judgment, including creating or allowing conditions that may interfere with a pharmacist's ability to practice with competency and safety or creating or allowing an environment that may jeopardize patient care. This subdivision does not apply to facilities of the Department of Corrections and Rehabilitation.

(w) Actions or conduct that would subvert the efforts of a pharmacist-in-charge to comply with laws and regulations, exercise professional judgment, or make determinations about adequate staffing levels to safely fill prescriptions of the pharmacy or provide other patient care services in a safe and competent manner. This subdivision does not apply to facilities of the Department of Corrections and Rehabilitation.

(x) Actions or conduct that would subvert the efforts of a pharmacist intern or a pharmacy technician to comply with laws or regulations.

(y) Establishing policies and procedures related to time guarantees to fill prescriptions within a specified time unless those guarantees are required by law or to meet contractual requirements. This subdivision does not apply to facilities of the



Department of Corrections and Rehabilitation.

**SEC. 8.** Section 4316.5 is added to the Business and Professions Code, to read:

**4316.5.** Notwithstanding any other law, the board may assess administrative fines and issue orders of abatement to any unlicensed entity who engages in any action that requires licensure under the jurisdiction of the board, not to exceed five thousand dollars (\$5,000) for each occurrence pursuant to a citation issued by the board.

**SEC. 9.** The Legislature finds and declares that Section 2 of this act, which adds Section 4113.1 to the Business and Professions Code, imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

To advance patient safety through medication error reduction, the primary purpose of the medication error reporting is to advance error prevention by analyzing individually and collectively medication error data that occurs in the community pharmacy setting to identify contributing factors and to broadly disseminate information on preventative measures and best practices for safe medication use, to advise regulators as part of its ongoing activities to monitor and improve the safety of medication use, and to advise policymakers to advance patient safety.

**SEC. 10.** No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.