

Review and Discussion of Policy Ranking Exercise (3.31.22 Meeting)

For each policy listed below:

1. In what pharmacy settings should this policy apply?

- Independent
- Small Chain (More than 1, but less than 12 locations)
- Large Chain (Grocer/Big Box/Standalone)
- Long-Term Care
- Hospital
- Mail Order
- Other (clinic, nuclear, etc.)

2. What are some considerations/modifications/details that are needed to make this policy feasible to implement?

3. How does this policy address the underlying issues raised in the survey?

4. Can this policy be enforced?

5. How will this policy improve overall workload conditions for pharmacy personnel?

PWAC Policy Ranking Results (11 total responses)

Number	Title	Type of Change	Description	Rank
18	Expand Technician Scope of Practice – Immunizations	Legislative Change	Make permanent the administration of immunizations and vaccines by Pharmacy Technicians that includes all approved ACIP-recommended vaccines for adults and children.	5.82
8	Mandatory Breaks/Rest Periods	Administrative Rule	Require pharmacies to provide appropriate opportunities for uninterrupted rest periods and meal breaks to all staff. (See breakdown of requirements from other states in Appendix I)	6.09
1	Improve Resources to Promote Technician Onboarding	Board Initiative	Board shall develop onboarding educational videos and other materials to facilitate onboarding of new technicians.	6.27
3	License Transferability	Administrative Rule	Board shall develop and implement a process for technician reciprocity.	6.36
2	Improve Technician Training Resources	Administrative Rule	Requiring pharmacies to have a dedicated staff member to train all new technicians. Staff person should be at the pharmacy or district level.	7.64
6	Staffing Plan	Administrative Rule	<p>Require each pharmacy’s responsible person to develop a staffing plan that establishes the appropriate number of pharmacy technicians and interns to pharmacist(s) on duty. The staffing plan shall ensure that the number of pharmacy technicians and interns on duty can be satisfactorily supervised by the pharmacist(s) on duty.</p> <p>In developing a staffing plan, the responsible person shall consider all the following:</p> <ul style="list-style-type: none"> a. The volume of workload and the services provided by the pharmacy (MTM, vaccines, etc.). b. The volume of prescriptions handled by staff to include: <ul style="list-style-type: none"> i. Prescriptions filled, dispensed, and sold; ii. Prescriptions placed on hold; iii. Prescriptions returned to stock; iv. Any other prescriptions metrics developed by the responsible person. c. Security needs of the pharmacy and pharmacy staff. 	7.91

			<p>d. Required closing of certain touchpoints (drive-thru, vaccines, etc.) if understaffed. Provide autonomy to the on-duty pharmacist as part of the rule to close touchpoints.</p> <p>The responsible person shall be able to increase staffing to operate a pharmacy in a safe and effective manner.</p>	
15	Tech-Check-Tech	Legislative Change	Implementation of Tech-Check-Tech. This would allow for enhanced pharmacy technician certification, increased payment tiers for additional education/training required, and would also reduce work burden on the pharmacist.	8.00
17	Expand Technician Scope of Practice – Order and Administration of Diagnostics Tests	Legislative Change	Change in the required current law/rule(s) regarding the authority to order and administer diagnostic tests. This should include diagnostic tests for COVID-19 and tests for COVID-19 antibodies. In addition, other FDA approved tests should be included in the amended law/rule(s). Also, the updated law/rule(s) should allow under the supervision of a pharmacist two additional work groups to the already allowed pharmacy intern and certified pharmacy technician. These additions are registered pharmacy technicians and pharmacy technician trainees.	8.73
16	Expand Technician Scope of Practice – Drug Administration	Legislative Change	Develop permanent law/rule(s) to allow for pharmacy technicians to administer drugs in the state of Ohio. This would include at a minimum immunization, antipsychotic drugs, Hydroxyprogesterone caproate, Medroxyprogesterone acetate, and Cobalamin at least. This is currently allowed by law/rule for pharmacists in the state.	9.45
11	Managing Touchpoints	Administrative Rule	Provide autonomy to the pharmacist on duty to shut down touchpoints and non-essential services if understaffed.	9.73
4	Working Conditions / Security	Administrative Rule	<p>Require any “open-door” pharmacy must operate with at least one technician and one pharmacist (or two pharmacists). Include exception for documented absence.</p> <p><i>California rules have a similar provision (two individuals required to work in a pharmacy). [See Appendix 3 of this document for California Laws impacting pharmacist workload]</i></p> <p><i>A community pharmacy shall not require 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.</i></p> <p><i>Includes the following exceptions:</i></p>	9.82

			<p><i>(1) A hospital pharmacy.</i></p> <p><i>(2) A pharmacy located in a hospital facility, including, but not limited to, a building where outpatient services are provided in accordance with the hospital's license.</i></p> <p><i>(3) A pharmacy owned or operated by a federal, state, local, or tribal government entity, including, but not limited to, a correctional pharmacy, a University of California pharmacy, or a pharmacy operated by the State Department of State Hospitals.</i></p> <p><i>(4) A pharmacy owned by a person or persons who, collectively, control the majority of the beneficial interest in no more than four pharmacies in California.</i></p> <p><i>(5) A pharmacy entirely owned and operated by a health care service plan that exclusively contracts with no more than two medical groups in the state to provide, or arrange for the provision of, professional medical services to the enrollees of the plan.</i></p> <p><i>(6) A pharmacy that permits patients to receive medications at a drive-through window when both of the following conditions are met:</i></p> <p><i>(i) A pharmacist is working during the times when patients may receive medication only at the drive-through window.</i></p> <p><i>(ii) The pharmacist's employer does not require the pharmacist to retrieve items for sale to patients if the items are located outside the pharmacy. These items include, but are not limited to, items for which a prescription is not required.</i></p> <p><i>(7) Any other pharmacy from which controlled substances, dangerous drugs, or dangerous devices are not furnished, sold, or dispensed at retail.</i></p> <p><i>The board shall not take action against a pharmacy for a violation of this section if both of the following apply:</i></p> <p><i>(1) Another employee is unavailable to assist the pharmacist due to reasonably unanticipated circumstances, including, but not limited to, illness, injury, family emergency, or the employee's termination or resignation.</i></p> <p><i>(2) The pharmacy takes all reasonable action to make another employee available to assist the pharmacist.</i></p>	
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5	Staffing Requirements	Administrative Rule	Ancillary staffing (support personnel and technicians) must allow for each point of contact to be covered at all hours the pharmacy is open. This must include drive-thru, drop-off, register, vaccinations, and a person dedicated to phones.	11.00
14	Technician Career Pathways	Administrative Rule	We are adding more and more clinical services and responsibilities to the pharmacy technician position. Some employers are compensating accordingly while others are not. Since we cannot implement any rules or regulations involving pay, I feel it would help to somehow recognize our pharmacy technicians' additional certifications including immunizations, MTM, etc.	11.64
7	Report of Understaffing	Administrative Rule	<p>(A) Adequate staffing to safely dispense prescriptions is the responsibility of the pharmacy and the pharmacy's responsible person. If conditions exist that could cause prescriptions to be dispensed in an unsafe manner the pharmacy and the pharmacy's responsible person shall take action to correct the problem.</p> <p>(B) In order to ensure adequate staffing levels a staffing report form shall be available in each pharmacy. A copy of this form, when executed, will be given to the immediate supervisor and a copy must remain in the pharmacy for Board inspection. Such form shall include, but not be limited to the following:</p> <ul style="list-style-type: none"> (1) Date and time the inadequate staffing occurred; (2) Number of prescriptions filled during this time frame; (3) Summary of events; and (4) Any comments or suggestions. <p>(C) A pharmacist shall complete the staffing report form when:</p> <ul style="list-style-type: none"> (1) A pharmacist is concerned regarding staffing due to: <ul style="list-style-type: none"> (a) inadequate number of support persons (cashiers, technicians, auxiliary supportive personnel, etc.); or, (b) excessive workload; (2) Filling out the form may enable management to make a better decision concerning staffing. (3) Any errors that occurred to the result of inadequate staffing. 	11.64

			<p>(D) The responsible person shall submit that form in a manner determined by the board.</p> <p>(E) Each pharmacy shall review completed staffing reports and address any issues listed as well as document any corrective action taken or justification for inaction to assure continual self-improvement. If the issue is not staffing related, measures taken to address the issue should be described.</p> <p>(F) Each pharmacy shall retain completed staffing reports on-site in a readily retrievable manner for at least three years from the date of creation.</p>	
9	Limits on Hours Worked	Administrative Rule	<p>A pharmacy shall not require a pharmacist or pharmacy technician to work longer than twelve (12) hours per twenty-four (24) hour period. A pharmacist/technician working longer than six (6) continuous hours per 24-hour period must be permitted a thirty-minute meal break. Signage indicating the pharmacy hours of operation, including the meal break, must be displayed in a location readily visible to the public.</p> <p>(See breakdown of requirements from other states in Appendix I)</p>	11.91
10	Mandatory Dark Hours	Administrative Rule	<p>Require "open door" pharmacies to operate dark hours that allow for staff to prepare and catchup on their work without any interruptions. This will allow pharmacies to operate more efficiently and safely and help minimize distractions when engaged in activities requiring greater concentration.</p>	12.55
12	Metrics	Administrative Rule	<p>Eliminate Job impacting metrics that compromise safety and integrity of the profession. Pharmacists and technicians should not be financially impacted, or job performance impacted to meet corporate metrics around speed and time to fulfillment. Accuracy should be allowed as a metric. Prohibit metrics related to the volume of services provided. <i>[See Appendix 3 of this document for California Laws impacting pharmacist workload]</i></p>	12.91
13	Elimination of Cold Call Lists	Administrative Rule	<p>Eliminate required cold call lists.</p>	13.55

Appendix 1 – State Laws/Rules on Pharmacy Personnel Rest/Meal Breaks/Shift Limits

Alabama:

Every pharmacy when opened for business shall be under the personal supervision of a duly licensed pharmacist who shall have personal supervision of not more than one pharmacy at the same time. During temporary absences of the licensed pharmacist, not to exceed three hours daily or more than one and one-half hours at any one time, nor more than one week for temporary illness, the prescription department shall be closed, and no prescriptions are to be filled. During the temporary absence of a pharmacist, a sign shall be placed on the prescription counter in a prominent location easily seen by the public stating, "Prescription Department Closed, No Pharmacist on Duty."

Florida:

*A pharmacist may take a meal break, **not to exceed thirty minutes in length**, during which the pharmacy department of a permittee shall not be considered closed, under the following conditions:*

- (a) The pharmacist shall be considered present and on duty during any such meal break if a sign has been prominently posted in the pharmacy indicating the specific hours of the day during which meal breaks may be taken by the pharmacist and assuring patients that a pharmacist is available on premises for consultation upon request during a meal break;*
- (b) The pharmacist shall be considered directly and immediately available to patients during such meal breaks if patients to whom medications are delivered during the meal break are verbally informed that they may request that a pharmacist contact them at the pharmacist's earliest convenience after the meal break, and if a pharmacist is available on premises during the meal break for consultation regarding emergency matters; only prescriptions with final certification by the pharmacist may be delivered;*
- (c) The activities of pharmacy technicians during such a meal break shall be considered to be under the direct and immediate personal supervision of a pharmacist if the pharmacist is available on premises during the meal break to respond to questions by the technicians, and if at the end of the meal break the pharmacist certifies all prescriptions prepared by pharmacy technicians during the meal break.*

Minnesota:

A pharmacist, pharmacist-intern, or pharmacy technician working longer than six continuous hours per day shall be allowed during that time period to take a 30-minute, uninterrupted break.

New Hampshire:

(a) No pharmacist shall work more than 8 hours without a rest break of 30 minutes. Breaks shall be scheduled as close as possible to the same time each day so that patients may become familiar with the approximate break times.

(b) Whenever the prescription department is staffed by a single pharmacist, the pharmacist may take a rest break for a period of 30 minutes without closing the pharmacy and removing support personnel from the pharmacy, provided that the pharmacist reasonably believes that the security of the prescription drugs will be maintained in the pharmacist's absence.

North Carolina:

A permit holder shall not require a pharmacist to work longer than 12 continuous hours per workday. A pharmacist working longer than 6 continuous hours per workday shall be allowed during that time period to take a 30 minute meal break and one additional 15 minute break.

Oregon:

Appropriate opportunities for uninterrupted rest periods and meal breaks.

Vermont:

(a) Whenever the prescription department is staffed by a single pharmacist, the pharmacist may take a meal/rest break for a period of up to 30 minutes without closing the pharmacy and removing support personnel from the pharmacy, provided that the pharmacist reasonably believes that the security of the prescription drugs will be maintained in the pharmacist's absence.

(b) No pharmacist shall work more than 8 hours without a meal/rest break. Breaks should be scheduled as close as possible to the same time each day, so that patients may become familiar with the approximate time of the breaks

Virginia:

Except in an emergency, a permit holder shall not require a pharmacist to work longer than 12 continuous hours in any work day and shall allow at least six hours of off-time between consecutive shifts. A pharmacist working longer than six continuous hours shall be allowed to take a 30-minute break.

West Virginia:

No pharmacist may work more than twelve (12) hours within a twenty-four (24) hour period without at least eight (8) hours off duty in that 24 hours, except in a case of emergency when a pharmacist calls off work, the pharmacist on duty may work more than twelve (12) hours in order to keep the pharmacy open. The pharmacists would have to document and date and amount of time worked beyond the twelve (12) hour limit along with the reason for the extended hours of work and make it available to the Board.

Appendix 2 – Ranking Response Data (bolded = average for all responses)

Improve Resources to Promote Technician Onboarding (#1)	Improve Technician Training Resources (#2)	License Transferability (#3)	Working Conditions / Security (#4)	Staffing Requirements (#5)	Staffing Plan (#6)	Report of Understaffing (#7)	Mandatory Breaks/Rest Periods (#8)	Limits on Hours Worked (#9)	Mandatory Dark Hours (#10)	Managing Touchpoints (#11)	Metric (#12)	Elimination of Cold Call Lists (#13)	Technician Career Pathways (#14)	Tech - Check-Tech (#15)	Expand Technician Scope of Practice – Drug Administration (#16)	Expand Technician Scope of Practice – Order and Administration of Diagnostics Tests (#17)	Expand Technician Scope of Practice – Immunizations (#18)
3	10	1	6	11	7	17	2	5	15	8	9	16	18	12	13	14	4
11	10	6	18	16	7	17	1	15	13	8	14	9	12	5	3	4	2
15	16	7	13	12	14	6	2	3	5	4	9	10	17	11	18	8	1
3	5	2	12	13	7	6	14	11	15	16	17	18	4	1	9	8	10
6	9	17	1	3	4	10	5	7	8	2	11	12	18	13	14	16	15
7	4	1	8	9	3	11	2	10	13	12	14	16	15	5	18	17	6
5	9	2	6	10	12	13	15	14	11	16	8	18	17	1	3	7	4
1	2	8	9	13	10	11	12	18	14	5	16	15	4	17	6	3	7
11	10	6	18	16	7	17	1	15	13	8	14	9	12	5	3	4	2
3	4	6	2	8	7	9	1	16	15	10	17	18	5	11	14	13	12
4	5	14	15	10	9	11	12	17	16	18	13	8	6	7	3	2	1
6.27	7.64	6.36	9.82	11.00	7.91	11.64	6.09	11.91	12.55	9.73	12.91	13.55	11.64	8.00	9.45	8.73	5.82

Senate Bill No. 362

CHAPTER 334

An act to add Sections 4113.7 and 4317 to the Business and Professions Code, relating to healing arts.

[Approved by Governor September 27, 2021. Filed with
Secretary of State September 27, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

SB 362, Newman. Chain community pharmacies: quotas.

Under the Pharmacy Law, the California State Board of Pharmacy licenses and regulates the practice of pharmacy and the conduct of a pharmacy in this state. The Pharmacy Law refers to various types of pharmacies, including community pharmacies, as specified. Existing law prohibits a community pharmacy from requiring a pharmacist to engage in the practice of pharmacy at any time the pharmacy is open to the public, unless another employee, as specified, is made available to assist the pharmacist at all times.

This bill would prohibit a chain community pharmacy, as defined, from establishing a quota, defined as a fixed number or formula related to the duties for which a pharmacist or pharmacy technician license is required, against which the chain community pharmacy or its agent measures or evaluates the number of times either an individual pharmacist or pharmacy technician performs tasks or provides services while on duty. The bill would also prohibit a chain community pharmacy, through employees, contractors, or third parties, from communicating the existence of quotas to pharmacists or pharmacy technicians who are its employees or with whom it contracts. The bill would authorize the board to take an enforcement action against a chain community pharmacy that violates these provisions, as specified.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) California's pharmacists and pharmacy technicians employed by multibillion dollar, publicly-traded, pharmacy chain stores will imminently be called upon to accomplish something unprecedented: to vaccinate tens of millions of California patients on top of their already overwhelming workloads.

(b) However, widespread, profit-driven, and long-decried performance quotas imposed by these chains upon their licensed professional employees place at risk the ability of pharmacists and pharmacy technicians safely to vaccinate Californians properly while at the same time performing their already life-or-death duties.

Appendix 3 - California Laws Regarding Pharmacist Workload

Ch. 334

— 2 —

(c) Documents and data obtained by investigative reporters, public prosecutors, and researchers have established that large, publicly-traded pharmacy chains impose performance quotas on licensed pharmacists and pharmacy technicians that place at risk the health and well-being of patients. For example:

(1) More than one-half of the chain and retail pharmacists reported high stress work environments from “having to meet quotas.”

(2) Eighty-three percent of pharmacists reported in one survey that “performance metrics contributed to dispensing errors.”

(3) Another survey by the California State Board of Pharmacy found that about 85 percent of the pharmacists surveyed indicated “workload” was “too high.” Prescription errors can be found and corrected 89 percent of the time during such consultations. However, performance quotas such as timed metrics inhibit consistent consultations.

(4) An investigative report by The Los Angeles Times documented enormous pressure placed upon pharmacy employees by vast drug chains to meet quotas. One pharmacist is quoted as saying, “Everyone knows that if we don’t hit our quotas, people can lose their jobs,” and The Times writes “[c]ompany documents . . . have shown that CVS workers are expected to enroll at least 40% of patients into the [automatic prescription renewal] program. Failure to do so can result in loss of raises or bonuses. Other drugstores, notably Target, Rite Aid and Walgreens, have similar quotas [.]”

(5) In 2011, the California State Board of Pharmacy brought to three District Attorneys’ offices information about the three biggest retail chains failing to properly provide needed personal consultation to prescription drug customers. All three of these major retailers were forced to pay huge fines and were permanently enjoined to comply with California’s standards for patient consultations. Indeed, major drug store chains have been forced to pay millions to settle claims brought by the United States Department of Justice and other public agencies for overzealous and unlawful profit-increasing practices.

(d) Performance quotas in normal times pose a risk to the public health. When implemented during a time when pharmacists and pharmacy technicians will have imposed upon them for an indefinite period significant new and vital public health duties, quotas are unacceptable.

SEC. 2. Section 4113.7 is added to the Business and Professions Code, to read:

4113.7. (a) A chain community pharmacy, as defined in subdivision (c) of Section 4001, shall not establish a quota related to the duties for which a pharmacist or pharmacy technician license is required.

(b) A chain community pharmacy shall not, through employees, contractors, or third parties, communicate the existence of quotas, that are illegal pursuant to this section, to pharmacists or pharmacy technicians who are employees of the chain community pharmacy or with whom the chain community pharmacy contracts.

Appendix 3 - California Laws Regarding Pharmacist Workload

(c) (1) For purposes of this section, “quota” means a fixed number or formula related to the duties for which a pharmacist or pharmacy technician license is required, against which the chain community pharmacy or its agent measures or evaluates the number of times either an individual pharmacist or pharmacy technician performs tasks or provides services while on duty. “Quota” includes a fixed number or formula related to any of the following:

- (A) Prescriptions filled.
- (B) Services rendered to patients.
- (C) Programs offered to patients.
- (D) Revenue obtained.

(2) For purposes of this section, “quota” does not mean any of the following:

(A) A measurement of the revenue earned by a particular licensed chain community pharmacy not calculated in relation to, or measured by, the tasks performed, or services provided by, individual pharmacists or pharmacy technicians.

(B) Any evaluation or measurement of the competence, performance, or quality of care provided to patients of a pharmacist or pharmacy technician if the evaluation does not use quotas, as defined in paragraph (1).

(C) Any performance metric required by state or federal regulators that does not use quotas, as defined in paragraph (1).

(d) This section does not prohibit a chain community pharmacy from establishing policies and procedures that assist in assessing the competency and performance of a pharmacist or pharmacy technician in providing care to patients if the measurements used are not, or do not include, quotas, as defined in subdivision (c).

SEC. 3. Section 4317 is added to the Business and Professions Code, immediately following Section 4316, to read:

4317. The board may take an enforcement action against a chain community pharmacy, as defined in subdivision (c) of Section 4001, that violates Section 4113.7 unless, by clear and convincing evidence, the chain community pharmacy demonstrates that the violation was contrary to its policy.

SEC. 4. The provisions of this act are severable. If any provision of this act or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

UNFINISHED BUSINESS

Bill No: SB 362
Author: Newman (D)
Amended: 7/7/21
Vote: 21

SENATE BUS., PROF. & ECON. DEV. COMMITTEE: 9-3, 3/22/21
AYES: Roth, Archuleta, Becker, Dodd, Eggman, Leyva, Min, Newman, Pan
NOES: Melendez, Bates, Jones
NO VOTE RECORDED: Hurtado, Ochoa Bogh

SENATE APPROPRIATIONS COMMITTEE: 5-2, 5/20/21
AYES: Portantino, Bradford, Kamlager, Laird, Wieckowski
NOES: Bates, Jones

SENATE FLOOR: 30-9, 6/1/21
AYES: Allen, Archuleta, Atkins, Becker, Bradford, Caballero, Cortese, Durazo,
Eggman, Glazer, Gonzalez, Hertzberg, Hueso, Hurtado, Kamlager, Laird, Leyva,
Limón, McGuire, Min, Newman, Pan, Portantino, Roth, Rubio, Skinner, Stern,
Umberg, Wieckowski, Wiener
NOES: Bates, Borgeas, Dahle, Grove, Jones, Melendez, Nielsen, Ochoa Bogh,
Wilk
NO VOTE RECORDED: Dodd

ASSEMBLY FLOOR: 73-0, 8/30/21 - See last page for vote

SUBJECT: Chain community pharmacies: quotas

SOURCE: California Pharmacists Association
United Food and Commercial Workers

DIGEST: This bill prohibits a chain community pharmacy from establishing a quota to measure or evaluate a pharmacist or pharmacy technician's performance of duties, prohibits a chain community pharmacy from communicating the existence of quotas to employees or those it contracts with, and authorizes the

Board of Pharmacy to take enforcement action against a community pharmacy that establishes a quota related to a pharmacist or pharmacy technician duties, unless by clear and convincing evidence the community pharmacy can demonstrate the violation was contrary to its policy.

Assembly Amendments make clarifying changes, including: 1) changing the bill from a community pharmacy to a “chain community pharmacy; 2) communicating the existence of quotas; 3) changes the definition of quota, as specified; and 4) adds a severability clause.

ANALYSIS:

Existing law:

- 1) Establishes the California State Board of Pharmacy (Board) within the Department of Consumer Affairs to license and regulate the practice of pharmacy and the conduct of a pharmacy in this state, and administer and enforce the Pharmacy Law. (Business and Professions Code (BPC) § 4001 et seq.)
- 2) Specifies that a “chain community pharmacy” means a chain of 75 or more stores in California under the same ownership, and an “independent community pharmacy” means a pharmacy owned by a person or entity who owns no more than four pharmacies in California. (BPC § 4001 (c))
- 3) Prohibits a community pharmacy from requiring a pharmacist to engage in the practice of pharmacy at any time the pharmacy is open to the public, unless another employee, as specified, is made available to assist the pharmacist at all times. (BPC § 4113.5)
- 4) Prohibits the corporate practice of medicine. (BPC § 2400)
- 5) Prohibits the corporate practice of chiropractic medicine. (BPC § 1056)
- 6) Prohibits the corporate practice dentistry. (BPC § 1805)
- 7) Prohibits the corporate practice of speech pathology. (BPC § 2537.2)

This bill prohibits a chain community pharmacy from establishing a quota to measure or evaluate a pharmacist or pharmacy technician’s performance of duties, prohibits a chain community pharmacy from communicating the existence of

quotas to employees or those it contracts with, and authorizes the Board of Pharmacy to take enforcement action against a community pharmacy that establishes a quota related to a pharmacist or pharmacy technician duties, unless by clear and convincing evidence the community pharmacy can demonstrate the violation was contrary to its policy.

Background

Board of Pharmacy. The Board regulates the practice of pharmacies, pharmacists, interns, pharmacy technicians, and exemptees (those who are involved with the wholesale or manufacturer of drugs and medical devices, but not required to hold a pharmacist license). The Board also regulates all types of firms that distribute prescription drugs and devices in California, including community pharmacies and those located in hospitals, clinics, home and community support services facilities, and out-of-state mail order pharmacies that fill prescriptions and deliver them in California.

In Fiscal Year 2019/2020, there were approximately 143,242 licensees under the Board's jurisdiction. The Board is self-funded and receives no money from the General Fund. Funds necessary for its operation are generated primarily through its licensing fees.

Pharmacist Licensee Obligations and Recent Legislation. According to the findings and declarations in current law, pharmacists are health care professionals whose training and experience play a vital role in protecting public health. Pharmacists are legally and ethically bound to advise their patients, physicians, and other health practitioners on the selection, dosages, interactions, and side effects of medications as well as monitor the health and progress of those patients to ensure that they are using their medications safely and effectively. According to BPC § 4001.1, the highest priority for the regulation of pharmacists is protection of the public.

In a recent effort to support pharmacists in specific work environments, SB 1442 (Wiener, Chapter 569, Statutes of 2018) prohibited 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 another employee is made available to assist the pharmacist at all times.

Corporate Ownership Structure and Licensee Status. Most health professions require that licensees of the profession(s) in question are owners, shareholders, or

otherwise have authority over other licensees within a company setting. For example, the Medical Board of California (MBC) explains that this “policy expressed in Business and Professions Code section 2400 against the corporate practice of medicine is intended to prevent unlicensed persons from interfering with or influencing the physician’s professional judgment.” The theory is that licensed members of a profession have just as much incentive to choose ethical integrity over profit as their employees, as all are subject to the same licensing rules and regulations. Chiropractors, dentists, and speech language pathologists are among the other professions that have a similar policy.

Existing law does not prevent unlicensed persons from being shareholders or corporate owners over pharmacists or pharmacy technicians. The Author and Sponsors contend that this allows for practices like the existing quota structure that places pharmacists in the position of monitoring their own obligations as licensees while also complying with business practices that can conflict with these obligations.

Quotas, Recent Fact Findings on Large-Scale Pharmacies, and Concern around COVID-19 Vaccine Protocol. As defined in this legislation, quotas are “a fixed number or formula related to the duties for which a pharmacist or pharmacy technician license is required, against which the community pharmacy or its agent measures or evaluates the pharmacist or pharmacy technician’s performance of those duties in the community pharmacy.” Quotas are corporate metrics used by some pharmacies—CVS, Walgreens, and Rite Aid included—to evaluate pharmacist-employee performance. The idea is that a good pharmacist-employee should be able to dispense a certain number of prescriptions, shots, medications, services, and/or programs per day. In essence, it is a way for larger pharmacies to ensure quality employees stay with the companies and non-qualify employees can be shown the door. Therefore, performance metrics like are one way of structurally handling large-scale employee evaluation.

However, reports over the last decade describe the quotas employed by some large-scale pharmacies to be harmful to pharmacists and patients. In 2012, The Los Angeles Times wrote a piece on this very predicament that CVS pharmacists in California found themselves in. The article documents how one pharmacist learned of other pharmacists entering patient information into automatic refill programs like ReadyFill without explicit instructions from a doctor or patient consent. When this pharmacist called the CVS ethics hotline to report the problem, he never received a call back. Another pharmacist readily admits that entering customer

information into automatic refill programs without their consent was necessary to meet certain quotas. He said that failure to do so would result in job termination.

More recently, in 2020 The New York Times ran a story outlining the pitfalls of this workplace environment. In addition to the experiences of pharmacists reporting a fear of losing their jobs for not meeting corporate metrics, *The New York Times* reported that pharmacists, doctors, and customers across the country have reported actual patient harm and death as a result of the current system. From an increase in incorrectly-filled prescriptions due to too few staff, to refilling more psychiatric drugs for patients than psychiatrists specifically prescribe and that patients specifically asked for, to offering customers settlements when an incorrectly-filled prescription kills a loved one, the stories compiled demonstrate significant problems with the existing quota system and specific work environment for pharmacists at these types of pharmacies.

In 2020, AB 1710 (Wood, Chapter 123, Statutes of 2020) expanded pharmacist authority to administering COVID-19 vaccines. This expansion of authority calls into question the implementation methods of pharmacies with respect to quotas, especially given CDC guidelines that require the vaccine administrator to wait with a vaccine recipient for 15-30 minutes to monitor them for an anaphylactic response. According to the Author, a “2021 UFCW membership survey found that over 90% [of pharmacists said] they worked under the shadow of quotas with no relief from those quotas when also having quotas imposed for administering the COVID-19 vaccines.”

Board Action against Pharmacists and Pharmacies. *The New York Times* article highlights that state boards of pharmacy currently lack adequate tools to assist in a fair evaluation of incidents of professional conduct between pharmacy and pharmacist. The Board also lacks tools to adequately ascertain the facts necessary to either discipline non-compliant licensees or penalize pharmacies for creating work environments that leave little choice but non-compliance. In general terms, assuming no death or significant bodily injury for something described above, a pharmacist might receive a citation and fine. Completion of continuing education to teach pharmacists how not to reoffend is the goal, rather than any punitive outcome. As described in its recent 2020 sunset report, the Board is working on a workplace survey to better understand the working environments of pharmacists.

FISCAL EFFECT: Appropriation: No Fiscal Com.: Yes Local: No

According to the Assembly Appropriations Committee, the Board anticipates the need for a 0.5 personnel year inspector to conduct inspections and investigations into allegations of violations, which is an annual estimate of \$96,000.

SUPPORT: (Verified 8/30/21)

California Pharmacists Association (co-source)
United Food and Commercial Workers (co-source)
California Alliance for Retired Americans
California Chronic Care Coalition
California Dental Association
California Labor Federation
California Medical Association
California Nurses Association
California Society for Health-System Pharmacists
California Service Employees International Union
Consumer Federation of California

OPPOSITION: (Verified 8/30/21)

California Retailers Association
National Association of Chain Drug Stores

ARGUMENTS IN SUPPORT: Generally, sponsors and supporters argue that pharmacists should not be forced to meet corporate benchmarks that conflict with the ethical standards and training of pharmacists. They say a pharmacist's only priority should be providing adequate care to their patients.

ARGUMENTS IN OPPOSITION: The California Retailers Association and the National Association of Chain Drug Stores generally argue that the provisions of the bill threaten access to pharmacy services and jeopardize patient safety due to its ambiguous requirements. They argue that “[i]nstead of prohibiting performance metrics, California should explore solutions that will make pharmacy workflow more efficient while expanding access to care.”

ASSEMBLY FLOOR: 73-0, 8/30/21

AYES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Gray, Grayson, Holden, Jones-Sawyer, Kalra, Kiley, Lackey, Lee, Levine, Low, Maienschein, Mayes, McCarty, Medina, Mullin, Muratsuchi,

O'Donnell, Patterson, Petrie-Norris, Quirk, Quirk-Silva, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Blanca Rubio, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon

NO VOTE RECORDED: Frazier, Lorena Gonzalez, Irwin, Mathis, Nazarian, Nguyen

Prepared by: Dana Shaker / B., P. & E.D. /
8/31/21 16:39:10

**** END ****

Appendix 3 - California Laws Regarding Pharmacist Workload

State of California

BUSINESS AND PROFESSIONS CODE

Section 4113.5

4113.5. (a) A community pharmacy shall not require 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.

(b) This section shall not apply to any of the following:

- (1) A hospital pharmacy, as defined in Section 4029 or 4056.
 - (2) A pharmacy located in a hospital facility, including, but not limited to, a building where outpatient services are provided in accordance with the hospital's license.
 - (3) A pharmacy owned or operated by a federal, state, local, or tribal government entity, including, but not limited to, a correctional pharmacy, a University of California pharmacy, or a pharmacy operated by the State Department of State Hospitals.
 - (4) A pharmacy owned by a person or persons who, collectively, control the majority of the beneficial interest in no more than four pharmacies in California.
 - (5) A pharmacy entirely owned and operated by a health care service plan that exclusively contracts with no more than two medical groups in the state to provide, or arrange for the provision of, professional medical services to the enrollees of the plan.
 - (6) A pharmacy that permits patients to receive medications at a drive-through window when both of the following conditions are met:
 - (A) A pharmacist is working during the times when patients may receive medication only at the drive-through window.
 - (B) The pharmacist's employer does not require the pharmacist to retrieve items for sale to patients if the items are located outside the pharmacy. These items include, but are not limited to, items for which a prescription is not required.
 - (7) Any other pharmacy from which controlled substances, dangerous drugs, or dangerous devices are not furnished, sold, or dispensed at retail.
- (c) A violation of subdivision (a) is not subject to subdivision (a) of Section 4321.
- (d) The board shall not take action against a pharmacy for a violation of this section if both of the following apply:
- (1) Another employee is unavailable to assist the pharmacist due to reasonably unanticipated circumstances, including, but not limited to, illness, injury, family emergency, or the employee's termination or resignation.
 - (2) The pharmacy takes all reasonable action to make another employee available to assist the pharmacist.

Appendix 3 - California Laws Regarding Pharmacist Workload

(e) This section shall not be construed to permit an employee who is not licensed under this chapter to engage in any act for which a license is required under this chapter.

(Added by Stats. 2018, Ch. 569, Sec. 2. (SB 1442) Effective January 1, 2019.)