Damoth, Debbie@DCA

From: kyoshizula <kyoshizula@aol.com>
Sent: Friday, April 5, 2024 5:56 PM
To: Damoth, Debbie@DCA

Subject: BOP Legislation and Regulation Committee: AB 2115

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Report Suspicious

I have concerns about AB 2115 (Haney) as written. The bill proposes to allow non-profit and free clinics to dispense CII controlled substances. Currently, only pharmacies and prescribers may dispense. A clinic is not a real person, hence cannot prescribe. When the prescriber issues the prescription to the clinic, there is no pharmacist to fill the prescription. The clinic may not dispense a controlled substance without a valid prescription as this would be a criminal act under both California and Federal law.

I see that the recommended position on this bill is support. I respectfully request that the position be support if amended so that the details to make the bill comply with both California and federal law can be worked out.

Keith Yoshizuka

Sent from my Galaxy

United Food & Commercial Workers Union
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March 18, 2024

The Hon. Angelique V. Ashby
Chair, Senate Business, Professions & Economic
Development Committee
Hon. Committee Members
State Capitol, Room 2053
Sacramento, CA 95814

RE: SB 1365 (Glazer) -- OPPOSE

Dear Chair Ashby and Honorable Committee Members:

The United Food and Commercial Workers Western States Council (UFCW), on behalf of its over 180,000 members and several thousand pharmacist and pharmacy technician members in California, respectfully opposes SB 1365 (Glazer).

Existing law prohibits a pharmacy with only one pharmacist on duty from having to supervise the work of more than two pharmacy technicians. SB 1365 would massively change this relationship. The bill would authorize a chain pharmacy to compel a pharmacist on duty to have to supervise the work of up to six pharmacy technicians.

THE FOUNDATIONAL FLAW IN SB 1365 (GLAZER)

Pharmacists are required by law "directly" to supervise the work of pharmacy technicians.[1] More pharmacy technicians means more pharmacy technicians will be doing more tasks that must "directly" supervised by pharmacists.

If hiring more legislative aids meant your offices authored more bills, the hiring of more legislative aids would mean more not less work for a supervising Legislative Director (LD). There would simply be more bills and, hence, more work that needed to be overseen. Alternatively, if the LD wanted to work the same number of hours after the additional legislative aides were hired as before, the LD would have to decrease the amount of time they spent supervising each legislative aid. One or the other of these would be true if more legislative aids translated into more bills. It is just arithmetic.

[1] Business & Professions Code section 4115(h): "The pharmacist on duty shall be directly responsible for the conduct of a pharmacy technician supervised by that pharmacist." This requirement is retained by SB 1356.

The same is true here and this arithmetic highlights the dangerous, foundational flaw of SB 1365. If the amount of work of a pharmacy remained static, then, yes, hiring more pharmacy technicians as permitted by this bill would, in fact, decrease the workload of everyone working in the pharmacy, pharmacist included. But, nothing in the bill ensures that.

Instead, the reason the for-profit, publicly traded chains want to hire far more pharmacy technicians while keeping the number of pharmacists the same is so they can dramatically increase the number of prescriptions being filled through the hiring of lower paid pharmacy technicians rather than hiring more pharmacists.

In this way, dramatically increasing the number pharmacy technicians that must by law be "directly" supervised by pharmacists under SB 1365 either means (i) more work for our already stretched-to-the-breaking-point, chain pharmacists, to the detriment of their other, patient-serving duties, or (ii) the inability of pharmacists to "directly" supervise the technicians, placing their licenses at-risk and, worse, dangerously compromising the public's health.

Either of these results place your patient constituents in jeopardy. One or the other is the inevitable result of this bill.

BACKGROUND

A. Unlike Almost Every Other Licensed Healthcare Professional, Licensed Pharmacists Are Often Directly Employed By Large Publicly Traded Corporations. Compared To Other Healthcare Professionals Where Such Employment Is Prohibited, Licensed Pharmacists Have Little Leverage To Protest About Workplace Issues.

Just as law firm cannot be owned and operated by the non-lawyer shareholders that own Walmart, almost all licensees -- including healthcare providers -- are prohibited by statute from being direcly employed by corporations unless the corporation is owned entirely by licensees. (Witkin, *Summary of California Law*, (2005) Tenth Edition, sec. 26, pp. 804-05, discussing the Moscone-Knox Professional Corporations Act.)

Licensed pharmacists, however, may be employed directly by corporations that are not owned by pharmacists.[2] This permission for the corporate practice of medicine is highly unusual in any of the licensed professions and almost entirely unprecedented in the licensed healthcare professions.

Why does the prevailing prohibition on licensees like pharmacists being employed by non-licensee owned corporations exist? It exists is to protect patients and consumers. As the Medical Board of California explains:

[2] Compare Business and Professions Code section 4155 ("Nothing in this article shall be construed as requiring the applicant or holder of a pharmacy permit pursuant to Section 4110 to be a pharmacy corporation [meaning one owned by pharmacists]" with Business and Professions Code section 2400 "Corporations and other artificial legal entities shall have no professional rights, privileges, or powers. However, the Division of Licensing may in its discretion, after such investigation and review of such documentary evidence as it may require, and under regulations adopted by it, grant approval of the employment of licensees on a salary basis by licensed charitable institutions, foundations, or clinics, if no charge for professional services rendered patients is made by any such institution, foundation, or clinic."

> The 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.[3]

The concern underlying the prohibition against the corporate practice of licensed professions is that lay shareholders and directors "who are not bound by the ethical standards governing the profession, might seek to enhance the corporation's 'commercial advantage' rather than conform to professional strictures." (*Marik v. Superior Court (Friedman)* (1987) 191 Cal. App. 3d 1136, 1139.) The court observed:

> These public policy concerns were incorporated into the Moscone-Knox Act, which prohibits persons other than those answerable to the licensing authority of the particular profession from becoming shareholders or directors of a corporation engaged in rendering the services of that profession.

(*Ibid.*)

And, as the California Research Bureau observed in its recent background paper on corporate practice of medicine:

> As states banned the corporate practice of medicine, the initial practical impact was to create distance between the person holding a professional license, such as a physician or dentist, and the corporate entity, thus reducing the ability of the corporation to control or coerce the licensee.[4]

This professional-judgment preserving, patient-protecting "distance" aimed at "reducing the ability of the corporation to control or coerce the licensee" does not exist for licensed pharmacists that are employees of vast corporations. **This fact is critical to understanding why this bill poses a risk to patients.** Given the unique tension between their corporate employer's single-minded aim of maximizing shareholder value each quarter, on one hand, and their professional ethics and judgment on the other, licensed pharmacists employed by large corporations are uniquely in need of legislative protection compared to other healthcare professionals.

B. Publicly Traded Pharmacy Chains, As One Might Expect, Are Placing Enormous Pressure Upon Their Employees To Maximize Profits.

It is a certainty that the publicly-traded chain stores will, if this bill were enacted, use it to try and maximize profits in ways that could compromise patient safety. The record of these corporations prioritizing profits by dangerously overworking their pharmacy employees is amply documented. It is, for example, documented by findings and declarations enacted by this Legislature and affirmed by the Governor. The findings and declarations for SB 362 (Newman) in part provide:

> *(b) [W]idespread, 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.*
> *(c) Documents and data obtained by investigative reporters, public prosecutors,*

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[3] http://www.mbc.ca.gov/Licensees/Corporate_Practice.aspx.

[4] http://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/CRB%202016%20CPM%20Report.pdf (emphasis added)

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.

Indeed, major drug store chains have been forced to pay millions to settle claims brought by the U.S. Department of Justice and other public agencies for overzealous (and unlawful) profit-increasing practices and they are currently defending against similar suits.[5]

Further underscoring the corporate pressure to move product is at the expense of patient care, in 2011, the California State Board of Pharmacy (Board) brought to the three District Attorneys' Offices (Riverside, San Diego, Alameda) information about the three biggest retail chains (CVS, Rite Aid, and Walgreens), failing properly to provide needed personal consultation to prescription drug customers.

Such consultations can be the difference between life and death, well-being and suffering.

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[5] See, for example, https://www.justice.gov/opa/pr/cvs-pharmacy-inc-agrees-pay-175-million-resolve-false-prescription-billing-case; https://www.usatoday.com/story/news/nation/2013/06/11/walgreens-drug-oxycodone-license-80-million/2412451/; https://www.reuters.com/article/us-walgreens-boots-lawsuit-genericdrugs/walgreen-must-face-lawsuit-over-u-s-generic-drug-pricing-idUSKCN1GL2VF;
https://www.bizjournals.com/boston/news/2018/03/20/walgreens-to-pay-5-5m-for-overcharging-workers.html

Working with the Board, the three DA offices conducted an undercover investigation of the consultation practices of the major pharmacy chains in California. All three of these major retailers were forced to pay huge fines (CVS--$658,000; Rite Aid -- $500,000; Walgreens--$502,200) and were permanently enjoined to comply properly with California's standards for patient consultations, and must fully implement internal compliance programs.[6]

The workload pressures placed upon pharmacists by these corporations has spawned bills and laws all across the country:

> **Pharmacists' Workloads Earn Attention Of Legislators**
>
> *There is growing concern that the lack of limits on pharmacists' workload may increase the risk for patient harm.* [7]

And, pharmacists have walked off their jobs in several states to protest being dangerously overworked:

> ***US pharmacy workers strike over 'dangerous' workloads as CVS and Walgreens rake in profits***
>
> Pharmacists say increased workloads and cut hours are the perfect recipe for medication errors, which can be fatal …
>
> Twelve CVS locations in the Kansas City, Missouri, area closed on 21 and 22 September after "wildcat" strikes, which are organized by workers without union representation or support. Walgreens workers held their own wildcat strikes on 9-11 October at stores around the US, with confirmed closures in Oregon, Arizona, Washington and Massachusetts. [8]

C. Background on Pharmacists: What Do They Really Do?

Pharmacists do not simply count pills. This is a common but entirely erroneous assumption. Pharmacists are legally and ethically bound to listen to and counsel their patients, advise physicians, and other health practitioners on the selection, dosages, interactions, and side effects of medications, and as well as monitor the health and progress of patients to ensure that they are using their medications safely and effectively.

To more specifically illustrate the wide-ranging duties of pharmacists, consider a pharmacist's critical role in preventing the abuse of prescription opioids. In August 2013, the Board revoked the licenses of both a pharmacy and its pharmacist because the pharmacist failed to comply with requirements in the distribution of opioid drugs. Four patients died as a result of the pharmacist's

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[6] https://www.pharmacy.ca.gov/meetings/agendas/2015/15_sep_enf_mat.pdf, pp. 40-45

[7] https://www.pharmacist.com/article/pharmacists-workloads-earn-attention-legislators. States that have imposed workload-related restrictions upon pharmacists include: Alabama (Reg 680-X-2-.22.Code of Professional Conduct), Nebraska (Reg Chapter 8 Section 006. Standards for the Operation of a Pharmacy.), Oklahoma (8-006.01, Reg 535:15-3-2. Pharmacy responsibilities, Reg 535:15-5-10. Director of Pharmacy responsibilities, Reg 535:15-3-16), Oregon (Reg 855-041-1170, Grounds for Discipline), Tennessee (Reg 1140-02-.01. Pharmacists and pharmacy interns, Reg 1140-03-.03. Medical and prescription orders, Reg 1140-04-.02, Personnel) Texas (Reg291.32.Personnel) West Virginia (Reg 15-1-14. Regulations Governing Pharmacy Permits)

[8] https://www.theguardian.com/business/2023/oct/19/cvs-walgreens-strike-pharmacy-workers

actions. As a result, the Board's decision and order in that case identifies "red flags" that pharmacists are legally obligated to watch for before filling such a prescription. These "red flags" include:

- Irregularities on the face of the prescription itself.
- Nervous patient demeanor.
- The age or presentation of patient (e.g., youthful patients seeking chronic pain medications).
- Multiple patients all with the same address.
- Requests for early refills of prescriptions.
- Prescriptions written for an unusually large quantity of drugs.
- Prescriptions written for duplicative drug therapy.
- Initial prescriptions written for strong opiates.
- Long distances traveled from the patient's home to the prescriber's office or to the pharmacy.
- Irregularities in the prescriber's qualifications in relation to the type of medications prescribed.
- Prescriptions that are written outside of the prescriber's medical specialty.
- Prescriptions for medications with no logical connection to an illness or condition.

On top of this, in 2013, legislation that significantly expanded the scope of practice of licensed pharmacists was enacted. To expand access to healthcare, pharmacists are now permitted to:

- vaccinate their patients
- aid them in the administration of self-administered hormonal contraception
- and provide nicotine replacement products.

The Board has by regulation promulgated extensive protocols governing each and every of these new duties. To take just one example, for self-administered hormonal contraception, the California Code of Regulations requires a pharmacist to complete the following steps:

- Ask the patient to use and complete the self-screening tool.
- Review the self-screening answers and clarify responses if needed.
- Measure and record the patient's seated blood pressure if combined hormonal contraceptives are requested or recommended.
- Before furnishing self-administered hormonal contraception, ensure that the patient is appropriately trained in administration of the requested or recommended contraceptive medication.
- When a self-administered hormonal contraceptive is furnished, provide the patient with appropriate counseling and information on the product furnished, including:
    - Dosage, effectiveness, potential side effects, safety.
    - The importance of receiving recommended preventative health screenings.
    - That self-administered hormonal contraception does not protect against sexually transmitted infections.

Under SB 1365, a pharmacist who now must "directly" supervise the work of six technicians as opposed to two will either not be able to perform these tasks at all or will not be able to perform them up to the standards of their ethics and as required for patient protection. Alternatively, the pharmacist can place their license and your constituents at-risk by not actually spending as much time supervising technicians as they had been.

One or the other of these will be the result of SB 1365. Both place your patient-constituents in needless jeopardy.

CONCLUSION

For these reasons, we respectfully urge you respectfully to oppose SB 1365 (Glazer).

Sincerely,

Amber Baur, Executive Director
UFCW Western States Council

From: ccotb@ccbnet.org
To: Damoth, Debbie@DCA
Subject: Support Assembly Bill 1902, accessible drug labeling
Date: Monday, February 12, 2024 12:57:17 PM
Attachments: image001.emz
image002.emz
image003.png
image004.png

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Regarding Support Assembly Bill 1902, accessible drug labeling, as per our conversation.

Sending to you on behalf of the California Council of the Blind. To Jessica Crowley Vice Chair of the Pharmacy.

Dear Jessica Crowley:

The California Council of the Blind is the largest organization of Californians who are blind or have low vision. Since 1934, the council has been advocating for programs and services that will enable people with vision loss to live independently in their own communities.

On behalf of the council, Assemblymember Juan Alanis is sponsoring AB1902. This bill would require pharmacies to provide persons with print disabilities or who are limited English proficient with prescription drug labeling information in a format or language they can understand. As the bill and attached factsheet make clear, medical dosage errors have become a serious issue for people with print disabilities and those who are not proficient in English. This is especially true of persons with vision or cognitive disabilities, large numbers of whom are seniors. People with print disabilities are more likely to be low-income and be in underserved minority populations. Access to drug labeling information can mean the difference between moving to, or remaining in, an institutionalized setting, as opposed to remaining in one's own home or community.

Certain chain stores and providers of prescription drugs by mail have already largely implemented these requirements.

AB1902 will save lives, prevent serious illness, and further the goal of enabling people to live independently. Thus, we urge your support of this very important bill.

With Warm Regards:

Regina Brink

Assistant Director of Governmental Affairs

California Council of the Blind

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