



United Food & Commercial Workers Union

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December 12, 2022

The Honorable Seung Oh,
President California State Board of Pharmacy
Hon. Board Members
2720 Gateway Oaks Drive, Suite 100
Sacramento, CA 95833

Re: Proposals to Amend Business & Professions Code –SUPPORT FOR PROPOSALS MOVING FORWARD

Dear President Oh:

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, is supports the Board fulfilling its public protection mission by proposing, for consideration by the Legislature, legislation to prevent Californians from being harmed by chain pharmacy medical errors.

Respectfully, by voting to support the proposals moving to the Legislature the Board is not voting to enact the proposal into law. The Legislature now embarking on a new two year session will have final say on amendments and changes to the Board's proposal. Stakeholders will be permitted to make their case to the Board, Committee Chairs and their staff, and members on proposed amendments during that process.

Rather, the only questions before the Board are (i) whether addressing medical errors through legislation is needed to protect Californians, (ii) whether the Board should be the leader in such an effort, and (iii) whether the basic approaches – not every detail *but the concepts* -- presented to the Board are worthy of being considered by the Legislature.

The answer to all three questions is yes.

I. BACKGROUND: THE UNYIELDING PRESSURE PUT UPON PHARMACISTS EMPLOYED BY PUBLICLY-TRADED CHAIN PHARMACIES.

Existing California law prohibits most categories of healthcare providers from being employed by corporations not owned entirely by licensees. Pharmacists and pharmacy technicians are two

of the few licensed healthcare providers who are directly employed by large corporations, primarily large chain pharmacies. As a result, these employee licensees often find themselves in the unique and dangerous position of being forced to meet profit-driven, corporate-imposed performance goals imposed from distant corporate headquarters while trying to provide competent and ethical care to patients.

As the California Research Bureau observed in its recent background paper on the 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.¹

The Example Of Quotas. When it comes to pharmacists who are employed by some of the world's largest retailers, such "distance" simply does not exist. No better example of how this lack of distance imperils patient safety is the fact that community pharmacies imposed profit-driven, performance-based quotas that endanger patient safety; quotas that the Legislature had to outlaw as obviously injurious to patient safety. An investigation in the *Los Angeles Times* explained:

"'Everyone knows that if we don't hit our quotas, people can lose their jobs,' one pharmacist says ... Company documents previously obtained by The Times from current and former pharmacists 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, pharmacists at those stores have said. 'There's tremendous pressure,' said Charles Franklin, 66, a pharmacist at one of CVS's Whittier stores. 'You feel like your job is always on the line.'"²

As part of the effort to outlaw quotas, UFCW surveyed its pharmacist members about quotas and the results were alarming:

- Over 90 percent of respondents said they worked under the shadow of quotas with no relief from those quotas as they related to prescriptions and vaccines. For example, one pharmacist was required to fill between 240 to 300 prescriptions per work day, give 20 COVID-19 vaccines per day, give 10 shingles vaccines per day, and give over 1,000 flu shots per season.

Quotas Are Just A Symptom Of The Bigger Problem Of Constant Pressure To Do More With Fewer People. Eighty-five percent – 85%! -- of pharmacists surveyed indicated their "workload [was] too high."³

This Board has experienced a history of community pharmacies placing patient care at-risk,

¹ <http://sbp.senate.ca.gov/sites/sbp.senate.ca.gov/files/CRB%202016%20CPM%20Report.pdf> (emphasis added)

² <http://articles.latimes.com/2012/oct/25/business/la-fi-lazarus-20121026>

³ <http://www.drugtopics.com/viewpoints/keys-minimizing-prescription-drug-errors>

including medical errors. In 2011, the California State Board of Pharmacy 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.

It took four government entities to address the failure of the big pharmacy chains to protect their patients. Working with the Board, the three DA offices conducted an undercover investigation of the consultation practices 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.⁴

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

Unsurprisingly, given that it is most prominently the publicly traded national chains under constant pressure to maximize profits, the workload-related, profit-maximizing policies of the chains are not unique to California. The workload pressures placed upon pharmacists by these nation-spanning corporations has spawned a variety of workload-related pharmacy 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.*"⁶

II. UNCONTRADICTED EVIDENCE BEFORE THE BOARD SUPPORTS THE NEED FOR MANDATORY ERROR REPORTING AND STAFFING LEGISLATION.

In June of this year, the Board received a report from the Medication Error Reduction and Workforce Committee. It provided to the Board the following evidence from the National State-Based Pharmacy Workplace Survey jointly conducted by the American Pharmacists Association and the National Alliance of State Pharmacy Associations (quotes from that report provided to the Board through a link in the Committee's June 2022 report, emphases supplied):

⁴ https://www.pharmacy.ca.gov/meetings/agendas/2015/15_sep_enf_mat.pdf, pp. 40-45

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>

⁶ <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)

- “In recent years, stress has reached an all-time high especially for those working in community and hospital practice settings. The 2019 National Pharmacist Workforce Survey found that overall, 71% of pharmacists rated their **workload as high or extremely high and job satisfaction was at the lowest point in 20 years.**”
- “Approximately, 75% responded in the negative to questions regarding enough time and personnel **to safely perform or meet duties.**”
- “Telephone Interruptions (90%), inadequate staff (88%), patient demands/expectations (80%), inadequately trained staff (75%), the inability to practice in a patient-focused manner (76%) and harassment and bullying from customers/patients (69%) **are stressors that contribute the most to medication errors and near misses.**”
- “Pharmacists' and pharmacy personnel **workload has been linked to patient safety concerns regarding medication errors.** (Haugtvedt, Lewis, Gaither, et al, 2021)”
- “[A]lmost **one-third** of respondents indicated ‘no’ or ‘did not know’ if their employer had a continuous quality improvement (CQI) program.”
- As the Committee itself summarized the report: “[Committee] Members also received a presentation from April Shaughnessy, with the American Pharmacists Association. Members were provided with an overview of the Well-Being index and information that suggests pharmacist at risk of high distress are, among other things, at a **2-fold higher risk of medication errors.**”

And, the June Committee report also attached a report from the National Association of Boards of Pharmacy which in relevant part found:

- **“Members agreed that this lack of access [of boards] to error reports and any aggregate data hampers the ability of a board of pharmacy to conduct a full analysis to detect trends and subsequently, could negate implementing meaningful change.”**

As well, underscoring the usefulness of legislation directed at staffing specifically, the Board’s report attached an accusation from its sister Virginia Board containing the following “Finding of Fact” against a CVS pharmacy:

- “Multiple pharmacists and pharmacy technicians reported to an Inspector from the Virginia Department of Health Professions (“DHP Inspector”) that Respondent is **routinely understaffed compared to the workload, despite multiple requests for additional staff to be scheduled.**”
- “Moreover, in or about January and February 2020, prescription volume increased; **yet despite this knowledge Respondent cut pharmacy technician staffing hours.**”
- “Due to the lack of adequate staffing, multiple pharmacists reported that the facility would

be so busy that pharmacy staff would **barely be able to take a bathroom break during a 12-hour shift.**”

- **“Multiple pharmacy staff attributed medication dispensing errors to Respondent's facility being understaffed.”**

III. A SECTION-BY-SECTION REVIEW OF THE PROPOSED BILL LANGUAGE SHOWS ITS REASONABLENESS AND WORTHINESS FOR LEGISLATIVE EVALUATION.

Against all of this, consider please the proposed legislation placed before the Board:

Proposed Amendment to BPC 4113.5.

(e) The pharmacist on duty may close a pharmacy if, in their opinion, the staffing at the pharmacy is inadequate to safely fill or dispense prescriptions or provide other patient care services in a safe manner without fear of retaliation.

Would the Board wish the law to be that a pharmacist on duty can be required by a chain to keep a pharmacy open, dispensing narcotics and all manner of possibly lethal drugs, even if the pharmacist on duty believes drugs cannot be distributed to sick people “in a safe manner”? And, would the Board support a bill that allowed a chain pharmacy to retaliate against a licensee who takes such a patient-protecting action? Of course not. Details can be discussed in the Legislature but as a beginning point for a bill this is unquestionably meritorious.

(f) A pharmacy is always staffed with at least one clerk or pharmacy technician fully dedicated to performing pharmacy related services. Where staffing of pharmacist hours does not overlap sufficiently, scheduled closures for lunch time for all pharmacy staff shall be established and publicly posted and included on the outgoing phone message.

This simply says a pharmacist working in a pharmacy owned by a large chain (a pharmacy that would not remain open if not busy) shall not be entirely left alone. Surely the Board would not support a bill that affirmed it was legal for a chain, in its discretion, to leave a pharmacist entirely alone. So, too, should it support legislative evaluation of the opposite, obvious principle.

Proposal to Amend BPC 4113

(c) 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. The pharmacist-in-charge shall have autonomy 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.

Again, respectfully, how could the Board support the law being otherwise when it comes to a licensee being able to ensure patients are not harmed? If this is not the law then the pharmacist-in-charge is, notwithstanding being possibly responsible for medical errors, utterly powerless to address what has been documented to be a source of medical errors; namely, staffing. Moreover, they aren’t “in charge” without such an ability. Details can and will be

discussed but, again, as a principle worthy of initial consideration by the Legislature, respectfully, how could this Board charged with public protection say any other principle is justified?

(d) The pharmacist-in-charge shall have the authority to close a pharmacy if workplace hazards, such as unsanitary conditions, temperatures deviate from appropriate drug storage conditions, or other conditions based on their professional judgement may create an unsafe environment for personnel or pharmacy staff. In the event the pharmacist-in-charge is not available, the pharmacist on duty, may close the pharmacy to the reasons previously cited.

See above. Would the Board support a bill that said that a pharmacist-in-charge would have to keep a pharmacy open even if it is “unsafe,” “unsanitary,” and the like? Of course not and for the same reason it should support moving this principle to the Legislature.

Proposal to Amend BPC 4301

(v) Actions or conduct that would subvert or tend to subvert the efforts of a pharmacist to comply with laws and regulations, or exercise professional judgement, 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.

(w) Actions or conduct that would subvert or tend to subvert the efforts of a pharmacist-in-charge to comply with laws and regulations, exercise professional judgement, 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.

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

Would the Board support a bill that made lawful “actions or conduct” that “subverted” the efforts of a pharmacist to comply with the law? To exercise the judgment for which they have a license? To jeopardize patient care? Again, respectfully, of course not. For the identical reason, the Board should support moving these bedrock principles to the Legislature for its consideration.

(y) Establishing policies and procedures related to time guarantees to fill prescriptions within a specified time unless such guarantees are required by law or to meet contractual requirements.

This simply forbids chain pharmacies from imposing entirely arbitrary time frames on the exercise of a professional’s judgment.

Proposal To Enact Business and Professions Code Section 4113.1

Any community pharmacy licensed pursuant to this article shall report all medication errors to the Institute for Safe Medication Practices.

This simply establishes the principle that community pharmacies no longer have a right to keep medication errors secret and that they will be obliged to report such errors to the Institute.

Reporting shall be submitted no later than 14 days following discovery of the error.

This provides these large companies a full one-half month to report such errors.

Such reports are deemed confidential and are not subject to discovery, subpoena, or disclosure pursuant to Chapter 3.5 (commencing with Section 6250) of Division of Title 1 of the Government Code.

This simply cloaks the reports in confidentiality to promote compliance.

The pharmacy shall maintain records demonstrating compliance with this requirement for three years and shall make such records immediately available at the request of an inspector.

This simply sets forth a requirement to retain the records and make them available for a Board inspector, both obviously in line with the Board's public protection mission.

A medication error report made pursuant to this section shall not be subject to discipline or other enforcement action by the Board based solely on the report; however, if the Board receives other information regarding the medication error, that information may serve as basis for discipline or other enforcement by the Board.

This simply says that the Board may not use error reports as bases for discipline alone but can be used in combination with other information obtained by the Board. Indeed, it would be bizarre logically and manifestly against the Board's public protection mission if it were forbidden to use error information in combination with other factors to protect the public.

IV. CONCLUSION

As any seasoned legislative advocate knows, the standard for introducing legislation in the Capitol is not whether it is perfected; will not change. The standard is whether the ideas and principles embraced by proposed legislation are worthy of consideration by a Legislature that will weigh the input of stakeholders and, eventually, call balls and strikes on what if anything is enacted.

The Board has before it uncontradicted evidence that inadequate staffing – sometimes grossly inadequate -- are a source of medical errors in chain pharmacies. The Board's public protection mission respectfully requires it to act to prevent such errors. The Board has identified gaps in its enabling legislation that prevent it from acting on this uncontradicted evidence to prevent errors and protect the public. The Board has before it proposed legislation embracing principles and approaches that are incontestably reasonable.

UFCW will assuredly offer amendments and suggestions but, that's the process. The Legislature should through this Board-sponsored legislation be permitted to weigh its merits.

Sincerely,



Amber Baur, Executive Director
UFCW Western States Council

cc: Anne Sodergren, Executive Officer, Board of Pharmacy