



COMMUNICATION AND PUBLIC EDUCATION COMMITTEE REPORT

Ricardo Sanchez, Public Member, Chairperson
Jason Weisz, Public Member, Vice Chairperson
Jose De La Paz, Public Member
Shirley Kim, Public Member
Kula Koenig, Public Member
Nicole Thibeau, Licensee Member

The Communication and Public Education Committee met January 19, 2022.

a. **Review of Education Materials Regarding How to File a Complaint under SB 362 and General Whistleblower Protections under California Law**

Background

[Senate Bill 362](#), which took effect January 1, 2022, prohibits a community chain pharmacy:

- Using a quota to evaluate the performance of a pharmacist or pharmacy technician.
- Communicating the existence of such a quota to its pharmacists and pharmacy technicians.

In addition, SB 362 authorizes the Board to take enforcement action against a pharmacy that violates provisions of the bill.

During Board and committee meetings, members asked about a complaint process and whistleblower protections for licensees alleging violations of SB 362. The Board requested the development of educational materials for licensees to implement the law, including a complaint process and whistleblower protections.

At the Committee Meeting

Staff identified existing materials that could be leveraged as resources for filing complaints and whistleblower protections.

1. **Filing complaints:** The Board has several resources for consumer complaints, including a [brochure](#) and [online complaint form](#). These resources could be revised to include sections for licensee complaints related to SB 362 or adapted to create separate forms for SB 362 complaints. Staff drafted sample text in italic below for a possible brochure related to quota complaints:

Do You Have a Complaint about a Pharmacy Performance Quota?

California law prohibits a chain community pharmacy from setting certain types of quotas related to the duties of a pharmacist or pharmacy technician.

[Business and Professions Code section 4113.7](#) forbids a pharmacy from setting a quota – which is defined as “a fixed number or formula” – regarding the duties of a pharmacist or pharmacy technician related to:

- *Prescriptions filled.*
- *Services rendered to patients.*
- *Programs offered to patients.*
- *Revenue obtained.*

In addition, [Business and Professions Code section 4317](#) authorizes the California State Board of Pharmacy to take action against a pharmacy for violations of BPC section 4113.7.

If you believe a community chain pharmacy has established quotas for pharmacists or pharmacy technicians in violation of BPC section 4113.7, you may file a complaint to be investigated by the Board of Pharmacy. To file a complaint, ...

2. **Whistleblower protections:** Although SB 362 does not include whistleblower protections, California law provides general protections for employees alleging employer violations of laws or regulations. For example, a sample [workplace notice regarding whistleblower protections](#) published by the state Division of Labor Standards Enforcement discusses protections for employees and advises that information about possible violations be reported to the state Attorney General’s Whistleblower Hotline. The committee could direct staff to identify resources regarding whistleblower protections in the communication of the complaint process for licensees who file complaints related to SB 362.

Summary of Committee Discussion and Action

The committee asked if a licensee who files a complaint could remain anonymous and if the Board could decline to share a licensee’s identity with the pharmacy.

Staff said the Board does investigate anonymous complaints; however, they can be difficult because investigators sometimes need additional information from the complainant. Counsel noted the Board may not be able to shield a complainant’s identity from discovery requests in administrative hearings or from subpoenas in complaints that amount to violations of federal law.

Committee members said educational materials about SB 362 should explain these confidentiality issues to licensees. The committee also supported including information

directing complainants to materials regarding whistleblower protections. In addition, members expressed support for the draft text for a proposed brochure for licensees on how to file complaints related to SB 362.

During public comment, speakers from the California Pharmacists Association and the UFCW Western States Council expressed support for educational materials for licensees, including information regarding anonymity and whistleblower protections.

Committee Recommendation: Recommend approval of establishing a complaint process specifically for pharmacy employees and include references to whistleblower protections as well as provisions for anonymity and confidentiality consistent with legal provisions.

b. Update on Communication and Public Education Activities by Staff

1. The Script

Staff reported work is under way on the next issue of the Script, which is expected to be published by February. Articles will focus on new laws as well as issues related to COVID-19 vaccinations at pharmacies.

2. Projects Under Development

Staff reported meeting with DCA's internet team and Organizational Improvement Office (OIO) to discuss developing an online, interactive process for pharmacy self-assessment to replace the current paperwork process. Staff plans to meet again with OIO to develop different use cases and business process mapping that could be used by OIO to develop a possible alternative process for self-assessment. Staff said the meeting is expected before the end of the fiscal year, subject to resource availability.

3. Staff Outreach

Staff reported presenting Webex training for pharmacists on prescription drug abuse and diversion on November 16, 2021. A total of 254 licensees attended the event.

Additional outreach activities included:

- October 6: Executive Officer Anne Sodergren provided a presentation on Pharmacy Law updates to the Sacramento Valley Pharmacists Association.
- October 30: Ms. Sodergren provided a presentation on updates to Pharmacy Law to the California Pharmacists Association.
- November 3: Ms. Sodergren provided a presentation on Pharmacy Law updates and Board activities at the California Society of Health Systems Pharmacists annual meeting. President Oh, Vice-President Serpa, Supervising Inspector Tony Ngondara and Executive Officer Anne Sodergren also answered questions from licensees at the event.

- December 4: Dr. Ngondara and Ms. Sodergren answered questions at the Indian Pharmacists Association meeting.
- December 15: Ms. Sodergren participated in a webinar discussing e-prescribing requirements hosted by the California Society of Health Systems Pharmacists.

4. News Media

Staff responded to news media inquiries listed in **Attachment 1**.

Attachment 1

News Media Inquiries

News Media Inquiries

Board staff responded to the following news media inquiries received June 1 through December, 31, 2021:

- June 25, 2021: Angelica LaVito, Bloomberg News, regarding Enforcement Committee informational meeting on white bagging.
- July 11, 2021: Michael Joe, Point Reyes Light, regarding disciplinary action against RPH Zsuzanna Biran and West Marin Pharmacy.
- November 4, 2021: Renee Santos, CBS 13 (Sacramento), regarding complaint about pharmacist vaccinating minor without parental consent.
- November 10, 2021: Ed Silverman, STAT, regarding status of Board accusation against OptumRx, case no. 6638.
- December 9, 2021: Brooks Jarosz, Fox 2 (Oakland), regarding complaints about billing errors related to COVID-19 vaccinations.