

CALIFORNIA CODES
BUSINESS AND PROFESSIONS CODE
SECTION 4300-4315

4300. (a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

- (1) Suspending judgment.
- (2) Placing him or her upon probation.
- (3) Suspending his or her right to practice for a period not exceeding one year.
- (4) Revoking his or her license.
- (5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(c) The board may refuse a license to any applicant guilty of unprofessional conduct. The board may, in its sole discretion, issue a probationary license to any applicant for a license who is guilty of unprofessional conduct and who has met all other requirements for licensure. The board may issue the license subject to any terms or conditions not contrary to public policy, including, but not limited to, the following:

- (1) Medical or psychiatric evaluation.
- (2) Continuing medical or psychiatric treatment.
- (3) Restriction of type or circumstances of practice.
- (4) Continuing participation in a board-approved rehabilitation program.
- (5) Abstention from the use of alcohol or drugs.
- (6) Random fluid testing for alcohol or drugs.
- (7) Compliance with laws and regulations governing the practice of pharmacy.

(d) The board may initiate disciplinary proceedings to revoke or suspend any probationary certificate of licensure for any violation of the terms and conditions of probation. Upon satisfactory completion of probation, the board shall convert the probationary certificate to a regular certificate, free of conditions.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government **Code**, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the **Code** of Civil Procedure.

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

- (a) Gross immorality.
- (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 an addict.

(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 his or her 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. The record of the compromise is conclusive evidence of unprofessional conduct.

(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.

(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 paragraph (4) of subsection (a) of Section 256b 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" shall have the same meaning given the term in Section 1418 of the Health and Safety **Code**.

4301.5. (a) If a pharmacist possesses a license or is otherwise authorized to practice pharmacy in any other state or by an agency of the federal government, and that license or authority is suspended or revoked, the pharmacist's license shall be suspended automatically for the duration of the suspension or revocation, unless terminated or rescinded as provided in subdivision (c). The board shall notify the pharmacist of the license suspension and of his or her right to have the issue of penalty heard as provided in this section.

(b) Upon its own motion or for good cause shown, the board may decline to impose or may set aside the suspension when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the pharmacy profession.

(c) The issue of penalty shall be heard by an administrative law judge sitting alone, by a committee of the board sitting with an administrative law judge, or by the board sitting with an administrative law judge, at the board's discretion. A pharmacist may request a hearing on the penalty and that hearing shall be held within 90 days from the date of the request. If the order suspending or revoking the pharmacist's license or authority to practice pharmacy is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Upon the showing to the administrative law judge, board, or committee of the board by the pharmacist that the out-of-state action is not a basis for discipline in California, the suspension shall be rescinded.

If an accusation for permanent discipline is not filed within 90 days of the suspension imposed pursuant to this section, the suspension shall automatically terminate.

(d) The record of the proceedings that resulted in the suspension or revocation of the pharmacist's license or authority to practice

pharmacy, including a transcript of the testimony therein, may be received in evidence.

(e) If a summary suspension has been issued pursuant to this section, the pharmacist may request that the hearing on the penalty conducted pursuant to subdivision (c) be held at the same time as a hearing on the accusation.

4302. The board may deny, suspend, or revoke any license of a corporation where conditions exist in relation to any person holding 10 percent or more of the corporate stock of the corporation, or where conditions exist in relation to any officer or director of the corporation that would constitute grounds for disciplinary action against a licensee.

4303. (a) The board may report any violation by a nonresident pharmacy of the laws and regulations of this state, any other state, or of the United States, including, but not limited to, any violation of this chapter or of the regulations established by the board, to any appropriate state or federal regulatory or licensing agency, including, but not limited to, the regulatory or licensing agency of the state in which the nonresident pharmacy is a resident or in which the pharmacist is licensed.

(b) The board may deny, revoke, or suspend a nonresident pharmacy registration, issue a citation or letter of admonishment to a nonresident pharmacy, or take any other action against a nonresident pharmacy that the board may take against a resident pharmacy license, on any of the same grounds upon which such action might be taken against a resident pharmacy, provided that the grounds for the action are also grounds for action in the state in which the nonresident pharmacy is permanently located.

4304. The board may deny, revoke, or suspend any license issued pursuant to Section 4161 for any violation of this chapter or for any violation of Part 5 (commencing with Section 109875) of Division 104 of the Health and Safety **Code**.

4305. (a) Failure by any pharmacist to notify the board in writing that he or she has ceased to act as the pharmacist-in-charge of a pharmacy, or by any pharmacy to notify the board in writing that a pharmacist-in-charge is no longer acting in that capacity, within the 30-day period specified in Sections 4101 and 4113 shall constitute grounds for disciplinary action.

(b) Operation of a pharmacy for more than 30 days without supervision or management by a pharmacist-in-charge shall constitute grounds for disciplinary action.

(c) Any person who has obtained a license to conduct a pharmacy, who willfully fails to timely notify the board that the pharmacist-in-charge of the pharmacy has ceased to act in that capacity, and who continues to permit the compounding or dispensing of prescriptions, or the furnishing of drugs or poisons, in his or her pharmacy, except by a pharmacist subject to the supervision and management of a responsible pharmacist-in-charge, shall be subject to summary suspension or revocation of his or her license to conduct a pharmacy.

4305.5. (a) A person who has obtained a license to conduct a

wholesaler or veterinary food-animal drug retailer, shall notify the board within 30 days of the termination of employment of the designated representative-in-charge. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(b) A person who has obtained a license to conduct a wholesaler or veterinary food-animal drug retailer, who willfully fails to notify the board of the termination of employment of the designated representative-in-charge, and who continues to operate the licensee in the absence of the designated representative-in-charge for that location, shall be subject to summary suspension or revocation of his or her license to conduct a wholesaler or veterinary food-animal drug retailer.

(c) A designated representative-in-charge of a wholesaler or veterinary food-animal drug retailer, who terminates his or her employment at the licensee, shall notify the board within 30 days of the termination of employment. Failure to notify the board within the 30-day period shall constitute grounds for disciplinary action.

(d) This section shall become operative on January 1, 2006.

4306. It shall constitute unprofessional conduct and a violation of this chapter for any person licensed under this chapter to violate, attempt to violate, directly or indirectly, or assist in or abet the violation of, or conspire to violate, any provision or term of this article, the Moscone-Knox Professional Corporation Act, or any regulations duly adopted under those laws.

4306.5. Unprofessional conduct for a pharmacist may include any of the following:

(a) Acts or omissions that involve, in whole or in part, the inappropriate exercise of his or her education, training, or experience as a pharmacist, whether or not the act or omission arises in the course of the practice of pharmacy or the ownership, management, administration, or operation of a pharmacy or other entity licensed by the board.

(b) Acts or omissions that involve, in whole or in part, the failure to exercise or implement his or her best professional judgment or corresponding responsibility with regard to the dispensing or furnishing of controlled substances, dangerous drugs, or dangerous devices, or with regard to the provision of services.

(c) Acts or omissions that involve, in whole or in part, the failure to consult appropriate patient, prescription, and other records pertaining to the performance of any pharmacy function.

(d) Acts or omissions that involve, in whole or in part, the failure to fully maintain and retain appropriate patient-specific information pertaining to the performance of any pharmacy function.

4306.6. If the board disciplines a pharmacist-in-charge for the violation of a state or federal law or regulation committed by another person and the pharmacist-in-charge reported to the board that violation or suspected violation, the board shall use the report as a mitigating factor if all of the following conditions are met:

(a) The pharmacist-in-charge did not engage, either directly or indirectly, in any conduct that violated any state or federal law or regulation pertaining to the practice of pharmacy.

(b) The pharmacist-in-charge did not permit, encourage, approve of, either tacitly or implicitly or through willful ignorance, any

conduct committed by another person that violated state or federal law or regulation pertaining to the practice of pharmacy.

(c) The pharmacist-in-charge reported the violation, or suspected violation, of any state or federal law or regulation pertaining to the practice of pharmacy to the board as soon as reasonably possible following the discovery of the violation.

(d) The pharmacist-in-charge took all actions reasonably necessary to stop and remedy the violation, or suspected violation, of any state or federal law or regulation pertaining to the practice of pharmacy as soon as reasonably possible following the discovery of the violation.

4307. (a) Any person who has been denied a license or whose license has been revoked or is under suspension, or who has failed to renew his or her license while it was under suspension, or who has been a manager, administrator, owner, member, officer, director, associate, or partner of any partnership, corporation, firm, or association whose application for a license has been denied or revoked, is under suspension or has been placed on probation, and while acting as the manager, administrator, owner, member, officer, director, associate, or partner had knowledge of or knowingly participated in any conduct for which the license was denied, revoked, suspended, or placed on probation, shall be prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as follows:

(1) Where a probationary license is issued or where an existing license is placed on probation, this prohibition shall remain in effect for a period not to exceed five years.

(2) Where the license is denied or revoked, the prohibition shall continue until the license is issued or reinstated.

(b) "Manager, administrator, owner, member, officer, director, associate, or partner," as used in this section and Section 4308, may refer to a pharmacist or to any other person who serves in that capacity in or for a licensee.

(c) The provisions of subdivision (a) may be alleged in any pleading filed pursuant to Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government **Code**. However, no order may be issued in that case except as to a person who is named in the caption, as to whom the pleading alleges the applicability of this section, and where the person has been given notice of the proceeding as required by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government **Code**. The authority to proceed as provided by this subdivision shall be in addition to the board's authority to proceed under Section 4339 or any other provision of law.

4308. Whenever a person is prohibited from serving as a manager, administrator, owner, member, officer, director, associate, or partner of a licensee as provided by Section 4307, the board shall, in each case where it has that information, notify in writing each licensee for whom the person is a manager, administrator, owner, member, officer, director, associate, or partner of the prohibition. The board shall send the notification to the licensee's address of record. The licensee shall have 30 days from the date that the notice is sent to remove and replace the prohibited person and, where appropriate, file a change of permit to reflect that change.

4309. (a) A person whose license has been revoked or suspended or who has been placed on probation may petition the board for

reinstatement or modification of penalty, including modification or termination of probation, after not less than the following minimum periods have elapsed from the effective date of the decision ordering disciplinary action:

(1) At least three years for reinstatement of a revoked license.

(2) At least two years for early termination of probation of three years or more.

(3) At least one year for modification of a condition, or reinstatement of a license revoked for mental or physical illness, or termination of probation of less than three years.

(b) The petition shall state any facts required by the board, and the petition shall be accompanied by two or more verified recommendations from holders of licenses issued by the board to which the petition is addressed, and two or more recommendations from citizens, each having personal knowledge of the disciplinary penalty imposed by the board and the activities of the petitioner since the disciplinary penalty was imposed.

(c) The petition may be heard by the board sitting with an administrative law judge, or a committee of the board sitting with an administrative law judge, or the board may assign the petition to an administrative law judge. Where the petition is heard by a committee of the board sitting with an administrative law judge or by an administrative law judge sitting alone, the decision shall be subject to review by the board pursuant to Section 11517 of the Government **Code**.

(d) In considering reinstatement or modification of penalty, the board, committee of the board, or the administrative law judge hearing the petition may consider factors including, but not limited to, all of the following:

(1) All the activities of the petitioner since the disciplinary action was taken.

(2) The offense for which the petitioner was disciplined.

(3) The petitioner's activities during the time the license was in good standing.

(4) The petitioner's documented rehabilitative efforts.

(5) The petitioner's general reputation for truth and professional ability.

(e) The hearing may be continued from time to time as the board, committee of the board, or the administrative law judge designated in Section 11371 of the Government **Code** finds necessary.

(f) The board, committee of the board, or administrative law judge may impose necessary terms and conditions on the licensee in reinstating the license.

(g) No petition under this section shall be considered while the petitioner is under sentence for any criminal offense, including any period during which the petitioner is on court-imposed probation or parole. No petition shall be considered while there is an accusation or petition to revoke probation pending against the person. The board may deny without a hearing or argument any petition filed pursuant to this section within a period of two years from the effective date of the prior decision following a hearing under this section.

(h) Nothing in this section shall be deemed to amend or otherwise change the effect or application of Sections 822 and 823.

(i) The board may investigate any and all matters pertaining to the petition and documents submitted with or in connection with the application.

4310. Immediately upon the denial of any application for a license the board shall notify the applicant in writing. Within 10 days after the board mails the notice, the applicant may present his or her written petition for a license to the board. Upon receipt by the board of the written petition, proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government **Code**.

4311. (a) Any license issued by the board, or the holder thereof, shall be suspended automatically during any time that the person is incarcerated after conviction of a felony, regardless of whether the conviction has been appealed. The board, immediately upon receipt of a certified copy of a record of a criminal conviction, shall determine whether the person has been automatically suspended by virtue of incarceration pursuant to a felony conviction and, if so, the duration of that suspension. The board shall notify the person so suspended of the suspension and that the person has a right to request a hearing, solely as to whether he or she is incarcerated pursuant to a felony conviction, in writing at that person's address of record with the board and at the facility in which the person is incarcerated.

(b) In addition to any suspension under subdivision (a), the board shall summarily suspend any license issued by the board where a conviction of the holder of the license meets the requirements of paragraphs (1) and (2).

(1) A felony that was either of the following:

(A) Committed in the course of a business or practice for which the board issues a license.

(B) Committed in a manner that a client, customer, or patient of the licensee was a victim.

(2) Where an element of the offense involves either of the following:

(A) The specific intent to deceive, defraud, steal, or make a false statement.

(B) The illegal sale or possession for sale of or trafficking in any controlled substance.

(3) The suspension shall continue until the time for appeal has elapsed, if no appeal is taken, or until the judgment of conviction has been affirmed on appeal or has otherwise become final, and until further order of the board.

(4) The board shall immediately send notice in writing of the suspension to the licensee, or the holder of any other board-issued license, at his or her address of record and, if incarcerated at the time, at the facility in which the person is incarcerated. The notice shall include notification of that person's right to elect to have the issue of penalty heard as provided in paragraph (2) of subdivision (d), and of the right to request a hearing to contest the summary suspension. Any request for a hearing under this paragraph must be received by the board within 15 days following receipt of the notice provided for by this paragraph.

(5) The hearing shall be before an administrative law judge, a committee of the board sitting with an administrative law judge, or the board sitting with an administrative law judge, at the board's discretion, and shall be subject to review by the board, at its discretion. The hearing shall be limited to (A) whether there has been a felony conviction as stated in the board's notice, and (B) whether the conviction meets the criteria of this subdivision, except where the licensee chooses to proceed as provided by paragraph (2) of subdivision (d), or where the board has also filed and served an accusation as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and given notice of the hearing as required by that chapter; provided that if an accusation under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code is also to be heard, only an administrative law judge sitting alone or the board, sitting with an administrative law judge, may hear the case.

(c) In addition to any suspension under subdivision (a), the board shall also suspend any license issued by the board, or the holder thereof, if the board determines that the felony conviction of the holder of the license is substantially related to the qualifications,

functions, or duties of the licensee.

(1) Notice of the board's determination shall be sent to the licensee, or the holder thereof, at that person's address of record with the board and, if the person is incarcerated at the time, the facility in which the person is incarcerated. The notice shall advise the person that the license shall be suspended without hearing unless, within 15 days following receipt of the notice, a written request for hearing is delivered to the board.

(2) Upon receipt of a timely request for hearing, a notice of hearing shall be sent to the person at least 10 days before the date scheduled for the hearing. The notice of hearing shall include notification of that person's right to elect to have the issue of penalty heard as provided in paragraph (2) of subdivision (d).

(3) The hearing to determine whether a felony conviction is substantially related for purposes of an interim suspension under this subdivision shall be separate from any hearing on an accusation under the Administrative Procedure Act, except where the licensee elects to proceed under paragraph (2) of subdivision (d), or where the board has filed and served an accusation as provided by Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government **Code** and given notice of hearing as required by that chapter. The hearing on whether the felony conviction is substantially related shall be heard either by an administrative law judge sitting alone, by a committee of the board sitting with an administrative law judge, or by the board sitting with an administrative law judge, at the board's discretion, and shall be subject to review by the board, at its discretion. However, if an accusation under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government **Code** is also to be heard, only an administrative law judge sitting alone or the board, sitting with an administrative law judge, may hear the case. Except where a person proceeds under paragraph (2) of subdivision (d), or the board proceeds with an accusation at the same time, any suspension imposed under this subdivision shall continue until an accusation is filed under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government **Code** and a final decision is rendered by the board.

(4) A conviction of any crime referred to in Section **4301**, or for violation of Section 187, 261, or 288 of the Penal **Code**, shall be conclusively presumed to be substantially related to the qualifications, functions, or duties of a licensee of the board. Upon its own motion or for good cause shown the board may decline to impose a suspension under this subdivision or may set aside a suspension previously imposed when it appears to be in the interest of justice to do so, with due regard to maintaining the integrity of and confidence in the practice of pharmacy and the handling of dangerous drugs and devices.

(d) (1) Discipline may be ordered in accordance with Section 4300 or an application denied when the time for appeal has elapsed, the judgment of conviction has been affirmed on appeal, or 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 his or her plea of guilty and to enter a plea of not guilty, setting aside the verdict of guilty, or dismissing the accusation, complaint, information, or indictment.

(2) The issue of penalty shall be heard by an administrative law judge sitting alone or with a committee of the board or with the board itself, at the board's discretion, and any decision shall be subject to review by the board, at its discretion. The hearing shall not be held until the judgment of conviction has become final or, irrespective of a subsequent order under Section 1203.4 of the Penal **Code**, an order granting probation has been made suspending the imposition of sentence, provided that a licensee may, at his or her option, elect to have the issue of penalty decided before those time periods have elapsed. Where the licensee so elects, the issue of

penalty shall be heard in the manner described in this section at the hearing to determine whether the conviction was substantially related to the qualifications, functions, or duties of the licensee. If the conviction of a licensee who has made this election is overturned on appeal, any discipline ordered pursuant to this section shall automatically cease. Nothing in this subdivision shall prohibit the board from pursuing disciplinary action based on any cause, including the facts underlying the conviction, other than the overturned conviction.

(3) The record of the proceedings resulting in the criminal conviction, including a transcript of any testimony taken in connection with the proceeding, may be received in evidence in any administrative proceeding to the extent the testimony would otherwise be admissible under Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government **Code**. A certified copy of the criminal conviction shall be conclusive proof of the fact of the conviction.

(e) Other provisions of this chapter setting forth procedures for the suspension or revocation of a license issued by the board shall not apply to proceedings conducted pursuant to this section, except as specifically provided in this section.

(f) For purposes of this section, a crime is a felony if it is specifically declared to be so or is made a felony by subdivision (a) of Section 17 of the Penal **Code**, unless it is charged as a misdemeanor pursuant to paragraph (4) or (5) of subdivision (b) of Section 17 of the Penal **Code**, irrespective of whether in a particular case the crime may be considered a misdemeanor as a result of postconviction proceedings. For purposes of this section, a felony also includes a conviction under federal law, or the law of any other state of the United States, of the District of Columbia, or of any territory or possession of the United States. A conviction includes a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(g) The board may delegate the authority to issue a suspension under subdivision (a) or (b) or a notice of suspension under subdivision (c) to the executive officer of the board.

4312. (a) The board may cancel the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer if the licensed premises remain closed, as defined in subdivision (e), other than by order of the board. For good cause shown, the board may cancel a license after a shorter period of closure. To cancel a license pursuant to this subdivision, the board shall make a diligent, good faith effort to give notice by personal service on the licensee. If a written objection is not received within 10 days after personal service is made or a diligent, good faith effort to give notice by personal service on the licensee has failed, the board may cancel the license without the necessity of a hearing. If the licensee files a written objection, the board shall file an accusation based on the licensee remaining closed. Proceedings shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government **Code**, and the board shall have all the powers granted in that chapter.

(b) In the event that the license of a wholesaler, pharmacy, or veterinary food-animal drug retailer is cancelled pursuant to subdivision (a) or revoked pursuant to Article 19 (commencing with Section 4300), or a wholesaler, pharmacy, or veterinary food-animal drug retailer notifies the board of its intent to remain closed or to discontinue business, the licensee shall, within 10 days thereafter, arrange for the transfer of all dangerous drugs and controlled substances or dangerous devices to another licensee authorized to possess the dangerous drugs and controlled substances or dangerous devices. The licensee transferring the dangerous drugs and controlled

substances or dangerous devices shall immediately confirm in writing to the board that the transfer has taken place.

(c) If a wholesaler, pharmacy, or veterinary food-animal drug retailer fails to comply with subdivision (b), the board may seek and obtain an order from the superior court in the county in which the wholesaler, pharmacy, or veterinary food-animal drug retailer is located, authorizing the board to enter the wholesaler, pharmacy, or veterinary food-animal drug retailer and inventory and store, transfer, sell, or arrange for the sale of, all dangerous drugs and controlled substances and dangerous devices found in the wholesaler, pharmacy, or veterinary food-animal drug retailer.

(d) In the event that the board sells or arranges for the sale of any dangerous drugs, controlled substances, or dangerous devices pursuant to subdivision (c), the board may retain from the proceeds of the sale an amount equal to the cost to the board of obtaining and enforcing an order issued pursuant to subdivision (c), including the cost of disposing of the dangerous drugs, controlled substances, or dangerous devices. The remaining proceeds, if any, shall be returned to the licensee from whose premises the dangerous drugs or controlled substances or dangerous devices were removed.

(1) The licensee shall be notified of his or her right to the remaining proceeds by personal service or by certified mail, postage prepaid.

(2) If a statute or regulation requires the licensee to file with the board his or her address, and any change of address, the notice required by this subdivision may be sent by certified mail, postage prepaid, to the latest address on file with the board and service of notice in this manner shall be deemed completed on the 10th day after the mailing.

(3) If the licensee is notified as provided in this subdivision, and the licensee fails to contact the board for the remaining proceeds within 30 calendar days after personal service has been made or service by certified mail, postage prepaid, is deemed completed, the remaining proceeds shall be deposited by the board into the Pharmacy Board Contingent Fund. These deposits shall be deemed to have been received pursuant to Chapter 7 (commencing with Section 1500) of Title 10 of Part 3 of the **Code** of Civil Procedure and shall be subject to claim or other disposition as provided in that chapter.

(e) For the purposes of this section, "closed" means not engaged in the ordinary activity for which a license has been issued for at least one day each calendar week during any 120-day period.

(f) Nothing in this section shall be construed as requiring a pharmacy to be open seven days a week.

4313. In determining whether to grant an application for licensure or whether to discipline or reinstate a license, the board shall give consideration to evidence of rehabilitation. However, public protection shall take priority over rehabilitation and, where evidence of rehabilitation and public protection are in conflict, public protection shall take precedence.

4314. (a) The board may issue citations containing fines and orders of abatement for any violation of Section 733, for any violation of this chapter or regulations adopted pursuant to this chapter, or for any violation of Division 116 (commencing with Section 150200) of the Health and Safety **Code**, in accordance with Sections 125.9, 148, and 4005 and the regulations adopted pursuant to those sections.

(b) Where appropriate, a citation issued by the board, as specified in this section, may subject the person or entity to whom the citation is issued to an administrative fine.

(c) Notwithstanding any other provision of law, where appropriate,

a citation issued by the board may contain an order of abatement. The order of abatement shall fix a reasonable time for abatement of the violation. It may also require the person or entity to whom the citation is issued to demonstrate how future compliance with the Pharmacy Law, and the regulations adopted pursuant thereto, will be accomplished. A demonstration may include, but is not limited to, submission of a corrective action plan, and requiring completion of up to six hours of continuing education courses in the subject matter specified in the order of abatement. Any continuing education courses required by the order of abatement shall be in addition to those required for license renewal.

(d) Nothing in this section shall in any way limit the board from issuing a citation, fine, and order of abatement pursuant to Section 4067 or Section 56.36 of the Civil **Code**, and the regulations adopted pursuant to those sections.

4315. (a) The executive officer, or his or her designee, may issue a letter of admonishment to a licensee for failure to comply with Section 733, for failure to comply with this chapter or regulations adopted pursuant to this chapter, or for failure to comply with Division 116 (commencing with Section 150200) of the Health and Safety **Code**, directing the licensee to come into compliance.

(b) The letter of admonishment shall be in writing and shall describe in detail the nature and facts of the violation, including a reference to the statutes or regulations violated.

(c) The letter of admonishment shall inform the licensee that within 30 days of service of the order of admonishment the licensee may do either of the following:

(1) Submit a written request for an office conference to the executive officer of the board to contest the letter of admonishment.

(A) Upon a timely request, the executive officer, or his or her designee, shall hold an office conference with the licensee or the licensee's legal counsel or authorized representative. Unless so authorized by the executive officer, or his or her designee, no individual other than the legal counsel or authorized representative of the licensee may accompany the licensee to the office conference.

(B) Prior to or at the office conference, the licensee may submit to the executive officer declarations and documents pertinent to the subject matter of the letter of admonishment.

(C) The office conference is intended to be an informal proceeding and shall not be subject to the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340), Chapter 4 (commencing with Section 11370), Chapter 4.5 (commencing with Section 11400), and Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government **Code**).

(D) The executive officer, or his or her designee, may affirm, modify, or withdraw the letter of admonishment. Within 14 calendar days from the date of the office conference, the executive officer, or his or her designee, shall personally serve or send by certified mail to the licensee's address of record with the board a written decision. This decision shall be deemed the final administrative decision concerning the letter of admonishment.

(E) Judicial review of the decision may be had by filing a petition for a writ of mandate in accordance with the provisions of Section 1094.5 of the **Code** of Civil Procedure within 30 days of the date the decision was personally served or sent by certified mail. The judicial review shall extend to the question of whether or not there was a prejudicial abuse of discretion in the issuance of the letter of admonishment.

(2) Comply with the letter of admonishment and submit a written corrective action plan to the executive officer documenting compliance. If an office conference is not requested pursuant to this section, compliance with the letter of admonishment shall not constitute an admission of the violation noted in the letter of

admonishment.

(d) The letter of admonishment shall be served upon the licensee personally or by certified mail at the licensee's address of record with the board. If the licensee is served by certified mail, service shall be effective upon deposit in the United States mail.

(e) The licensee shall maintain and have readily available a copy of the letter of admonishment and corrective action plan, if any, for at least three years from the date of issuance of the letter of admonishment.

(f) Nothing in this section shall in any way limit the board's authority or ability to do either of the following:

(1) Issue a citation pursuant to Section 125.9, 148, or 4067 or pursuant to Section 1775 of Title 16 of the California **Code** of Regulations.

(2) Institute disciplinary proceedings pursuant to Article 19 (commencing with Section 4300).