



California Authorizes Pharmacy Licenses for Ambulatory Surgery Centers

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On September 22, 2012, Governor Brown signed Senate Bill 1095, allowing Ambulatory Surgery Centers (“ASCs”) and other outpatient settings to purchase drugs at wholesale for administering and dispensing to patients. The law will take effect on January 1, 2013.

The inability to obtain a pharmacy permit was a consequence of the 2007 case *Capen v. Shewry*, which the California Department of Public Health (“DPH”) interpreted to mean that it no longer had authority to issue state licenses to ASCs owned in whole or in part by physicians. Because the law at the time only allowed the issuance of pharmacy permits to state-licensed entities, physician-owned ASCs (as entities) were unable to obtain pharmacy permits. Most ASCs addressed the issue by having an ASC physician order and maintain all of the ASC’s drugs in his or her own name, but this workaround was cumbersome from an operating perspective.

As a result of SB1095, physician-owned ASCs are treated just like licensed ASCs: they can obtain a permit to purchase drugs at wholesale for administering or dispensing to their patients under the direction of a physician. When they dispense, they are limited to dispensing a 72-hour supply. As with licensed ASCs, the Pharmacy Board is authorized to inspect a physician-owned ASC that has a limited pharmacy license at any time.

Every outpatient setting that is accredited is subject to inspection by its accrediting body. For any ASC with a limited license from the Pharmacy Board, the accrediting body is required to report reprimands or suspension or revocation of the accreditation to the Board of Pharmacy as well as to the Medical Board. This is consistent with the legislature’s recent expansion of the role of accrediting bodies in the regulation of ASC operations. Because the DPH has removed itself from oversight of physician-owned ASCs, the legislature has required the accrediting bodies to fill that void.

The enactment of SB 1095 is a victory for ASCs. The inability to obtain a pharmacy license was a significant consequence of the *Capen* decision that physician-owned surgery centers have been wrestling with for five years.



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