

Mandatory CURES Consultation Effective October 2

Insights

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Beginning October 2, 2018, California health care professionals authorized to prescribe, order, administer or furnish controlled substances must consult the state's prescription drug monitoring database (the [Controlled Substance Utilization Review and Evaluation System](#), or CURES) prior to prescribing, ordering, administering or furnishing Schedule II-IV controlled substances, unless an exemption applies.[1] The duty to consult takes effect almost two years after the law was initially enacted, and six months after the California Department of Justice (DOJ) certified CURES as ready for statewide use.

The database, which is administered by the Office of the Attorney General in the DOJ, offers a current accounting of a patient's controlled substances prescription history, the practitioners who prescribed the controlled substances, and the pharmacies that filled them. The intent of providing access to such information is to help prescribers recognize and prevent controlled substance abuse. The database also gives law enforcement and regulatory agencies a way in which to track and control potential abuse and diversion of controlled substances.

Under the new mandate, prescribers will now be required to consult CURES:

- Whenever prescribing, ordering, administering, or furnishing a controlled substance to a patient for the first time;
- At least once every four months thereafter if that substance remains part of the patient's treatment plan; and
- Prior to subsequently prescribing a controlled substance, if previously exempted from consulting CURES.

Where required to consult, prescribers must do so no earlier than 24 hours or the previous business day before prescribing, ordering, administering or furnishing of a controlled substance to the patient.

The law provides certain exemptions to the mandatory consulting requirement. For example, a prescriber need not consult if doing so would result in the patient's inability to obtain a prescription in a timely manner and adversely impact the patient's condition, as long as the quantity of the controlled substance does not exceed a five-day supply. Additionally, where accessing CURES is not reasonably possible or if there are technical difficulties, such as if CURES were to become temporarily unavailable, a prescriber is not required to check CURES. Lastly, prescribers will not be held to the duty to consult when prescribing to patients who are:

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- Admitted to, or during an emergency transfer between, a licensed clinic, outpatient setting, health facility or county medical facility;
- In the emergency department of a general acute care hospital, as long as the controlled substance does not exceed a seven-day supply;
- Receiving the medication as part of treatment for a surgical procedure in a clinic, outpatient setting, health facility county medical facility, or place of practice, and the controlled substance does not exceed a five-day supply; or
- Receiving hospice care.

While most exemptions do not require a prescriber document in the patient's record that he or she did not consult CURES, documentation is required where it is not reasonably possible for a prescriber to access CURES. Regardless, we recommend that prescribers document the reason for not consulting CURES in the patient's record when issuing a covered prescription.

If a health care practitioner violates the mandatory consult requirement, the practitioner's licensing board has the discretion to issue sanctions. The Medical Board, for example, has [suggested](#) that a physician's failure to consult CURES could result in the issuance of a citation and fine, or may be listed as a cause of action in an accusation leading to disciplinary action against the physician. We presently have no indication whether a mandatory consult requirement violation will be a priority of the Medical Board in terms of initiating disciplinary action, but the authority is present.

¹ Cal. Health & Saf. Code § 11165.1.

For questions regarding the mandatory CURES consulting requirements or CURES generally, please contact: [Ross Campbell](#), [Steve Phillips](#) and [Andrea Frey](#) in San Francisco at 415.875.8500; [Amy Joseph](#) in Boston at 617.532.2702, or your regular Hooper, Lundy & Bookman

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