

3 of 9 DOCUMENTS

DEERING'S CALIFORNIA CODES ANNOTATED
Copyright (c) 2008 by Matthew Bender & Company, Inc.
a member of the LexisNexis Group.
All rights reserved.

*** THIS DOCUMENT REFLECTS ALL URGENCY LEGISLATION ENACTED ***
THROUGH 2007-2008 THIRD EXTRAORDINARY SESSION CH. 6 AND
CH. 12 OF THE 2008 REGULAR SESSION APPROVED 4/29/08

HEALTH AND SAFETY CODE
Division 10. Uniform Controlled Substances Act
Chapter 6. Offenses and Penalties
Article 4. Miscellaneous Offenses and Provisions

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Health & Saf Code § 11368 (2007)

§ 11368. Illegal prescription for narcotic drug

Every person who forges or alters a prescription or who issues or utters an altered prescription, or who issues or utters a prescription bearing a forged or fictitious signature for any narcotic drug, or who obtains any narcotic drug by any forged, fictitious, or altered prescription, or who has in possession any narcotic drug secured by a forged, fictitious, or altered prescription, shall be punished by imprisonment in the county jail for not less than six months nor more than one year, or in the state prison.

HISTORY:

Added Stats 1972 ch 1407 § 3. Amended Stats 1973 ch 1078 § 17, effective October 1, 1973; Stats 1976 ch 1139 § 78, operative July 1, 1977; Stats 1990 ch 43 § 1 (AB 1577).

NOTES:

Amendments:

1973 Amendment:

(1) Deleted the comma after "alters a prescription"; (2) added "or utters an altered prescription, or who issues or utters"; and (3) added "drug" after "narcotic" wherever it appears.

1976 Amendment:

Deleted "for not more than six years, and for each subsequent offense shall be imprisoned in the state prison for not

more than 10 years" at the end of the section.

1990 Amendment:

(1) Substituted "a" for "such" after "secured by"; and (2) deleted "for the first offense" after "prescription, shall".

Historical Derivation:

(a) Former H & S C § 11715, as enacted Stats 1939 ch 60, amended Stats 1st Ex Sess 1940 ch 9 § 39, Stats 1945 ch 955 § 37, Stats 1949 ch 1475 § 23.

(b) Stats 1929 ch 216 § 9.

Cross References:

"Narcotic drug": *H & S C § 11019*.

"Prescription": *H & S C § 11027*.

Filling prescription showing evidence of alteration: *H & S C § 11166*.

Acts and statements prohibited in obtaining controlled substances: *H & S C § 11173*.

Use of marijuana for medical purposes: *H & S C § 11362.5*.

When probation or suspended sentence prohibited: *H & S C § 11370*.

Imposition of fine in addition to term of imprisonment for violating this section: *H & S C § 11372*.

Payment of criminal laboratory fee after conviction under this section: *H & S C § 11372.5*.

Registration of controlled substance offenders: *H & S C § 11590*.

"Controlled substance offense" as encompassing violation of former Section 11557: *Ed C §§ 44011, 87011*.

Unspecified felony punishment: *Pen C § 18*.

Forgery and counterfeiting: *Pen C §§ 470 et seq*.

Collateral References:

Cal Forms Pl & Practice (Matthew Bender) ch 214 "Drugs and Pharmacists".

Cal Criminal Defense Practice (Matthew Bender) ch 145 "Narcotics and Alcohol Offenses".

Witkin & Epstein, *Criminal Law* (3d ed), Crimes Against Property §§ 152, 153, 154, 155.

Witkin & Epstein, Criminal Law (3d ed), Crimes Against Public Peace and Welfare §§ 119, 120, 323.

Witkin & Epstein, Criminal Law (3d ed), Pretrial Proceedings §§ 342, 343, 344, 346, 351, 353.

Witkin & Epstein, Criminal Law (3d ed), Punishment § 512.

Cal Jur 3d (Rev) Criminal Law §§ 1539, 2376; Druggists § 10.

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2320, Forged Prescription for Narcotic

Judicial Council of California Criminal Jury Instructions (LexisNexis Matthew Bender), CALCRIM No. 2321, Forged Prescription for Narcotic: With Possession of Drug

Acquisition of controlled substances by fraud or forgery: *21 USCS § 843*.

Forms:

Suggested form is set out below, following notes of decisions.

Law Review Articles:

Striking prior convictions in narcotics cases. 33 St BJ 378.

Attorney General's Opinions:

Minimum and maximum penalties to be imposed in case of prior conviction of felony. 3 *Ops. Cal. Atty. Gen.* 269.

Hierarchy Notes:

Div. 10 Note

Div. 10, Ch. 6 Note

Div. 10, Ch. 6, Art. 4 Note

NOTES OF DECISIONS

Decisions Under Current Law

Decisions Under Former H & S C § 11715

1. In General 2. Particular Applications

Decisions Under Current Law

Forging or presenting a forged prescription to obtain drugs, in violation of *H & S C § 11368*, does not fall under Cal. Proposition 36. *People v. Foreman* (2005, Cal App 1st Dist) 126 Cal App 4th 338, 23 Cal Rptr 3d 714, 2005 Cal App LEXIS 132.

Forgery of a prescription in violation of *H & S C § 11368*, even when intended to obtain drugs thereby entirely for personal use, does not come within the term "nonviolent drug possession offense" as defined by *Pen C § 1210(a)*. *People v. Wheeler* (2005, Cal App 3d Dist) 127 Cal App 4th 873, 26 Cal Rptr 3d 138, 2005 Cal App LEXIS 391, review denied (2005, Cal) 2005 Cal LEXIS 6990.

Decisions Under Former H & S C § 11715 1. In General

The crime defined by § 7 of the former State Poison Act did not include an intent to defraud as one of the elements of the corpus delicti; therefore an information charging a violation of the section was not insufficient because it failed to charge an intent to defraud. *People v. Beesly* (1931, Cal App) 119 Cal App 82, 6 P2d 114, 1931 Cal App LEXIS 114, rehearing denied (1931, Cal App) 119 Cal App 82, 6 P2d 970.

An information was not insufficient because of its failure to set forth that the drug called for by the forged prescription was one of those enumerated in § 8 of the former *State Poison Act*. *People v. Beesly* (1931, Cal App) 119 Cal App 82, 6 P2d 114, 1931 Cal App LEXIS 114, rehearing denied (1931, Cal App) 119 Cal App 82, 6 P2d 970.

Specific intent to defraud is not element of crime of forging prescription for narcotics to be proved independently of act of writing false prescription to serve as record of transaction. *People v. Katz* (1962, Cal App 2d Dist) 207 Cal App 2d 739, 24 Cal Rptr 644, 1962 Cal App LEXIS 1962.

Where there is proof that prescription was forged by defendant with intent to make use of it as valid prescription, it would be immaterial whether drug were actually dispensed. *People v. Katz* (1962, Cal App 2d Dist) 207 Cal App 2d 739, 24 Cal Rptr 644, 1962 Cal App LEXIS 1962.

Writing by pharmacist of prescription that is wholly false is forgery. *People v. Katz* (1962, Cal App 2d Dist) 207 Cal App 2d 739, 24 Cal Rptr 644, 1962 Cal App LEXIS 1962.

Record of what purports to be authorized oral prescription may be subject of forgery of narcotic prescription. *People v. Katz* (1962, Cal App 2d Dist) 207 Cal App 2d 739, 24 Cal Rptr 644, 1962 Cal App LEXIS 1962.

2. Particular Applications

A prescription for a poisonous or narcotic drug is the subject of forgery; and the intent to defraud is made manifest by the act of obtaining the narcotic by means of the false writing, the fraud being upon the public as a whole. *People v. Brown* (1931, Cal App) 113 Cal App 492, 298 P 503, 1931 Cal App LEXIS 889.

There was no merit in the defendant's contention on appeal that the amendment of the information, in changing the allegation that the defendant was accused of forgery to the averment that he was accused of a violation of the Narcotics Act, did not change the substance of the charge, where, as a charge of forgery, the information was defective in that it failed to allege an intent to defraud, an element essential to the crime, but, with the charge changed to a violation of a Narcotics Act, which did not require an intent to defraud as an element of the crime, the failure to charge that intent ceased to be a defect. *People v. Beesly* (1931, Cal App) 119 Cal App 82, 6 P2d 114, 1931 Cal App LEXIS 114, rehearing denied (1931, Cal App) 119 Cal App 82, 6 P2d 970.

In prosecution for forgery of prescription for narcotic, testimony of practicing physician that "percodan," subject matter of forged prescription, was trade name for complicated compound in which codenone was principal ingredient, that codenone was related closely to codeine, chemically and physiologically, and that codenone was narcotic established that "percodan" is compound containing narcotic under statute. *People v. Pendarvis* (1961, Cal App 1st Dist)

189 Cal App 2d 180, 10 Cal Rptr 923, 1961 Cal App LEXIS 2161.

In prosecution for forgery of prescription for narcotic, court's instruction as to definition of narcotic was not misleading and prejudicial where court properly instructed jury in terms of statutory provisions (§ former 11002) that term "narcotic" included codeine and any salt derivative or compound of codeine or any preparation or compound containing codeine or salt derivative or compound thereof, and where defendant did not object to instruction at time it was given or offer other instructions. *People v. Pendarvis (1961, Cal App 1st Dist) 189 Cal App 2d 180, 10 Cal Rptr 923, 1961 Cal App LEXIS 2161.*

It was not error to refuse requested instruction that to find defendant guilty of claimed forgery, jurors must find that he committed forgery with intent to defraud; this section does not require proof of intent to defraud. *People v. Katz (1962, Cal App 2d Dist) 207 Cal App 2d 739, 24 Cal Rptr 644, 1962 Cal App LEXIS 1962.*

Former § 11501, prohibiting sale of narcotics without written prescription, and this section are specific sections prescribing punishment as for felonies and are, therefore, taken out of operation of former § 11716, which denominates as misdemeanors violations of provisions of division 10 of Health and Safety Code for which no other punishment is specially prescribed. *People v. Katz (1962, Cal App 2d Dist) 207 Cal App 2d 739, 24 Cal Rptr 644, 1962 Cal App LEXIS 1962.*

SUGGESTED FORMS

Allegation Charging Forging or the Like of Prescription for Narcotic Drug