

## RULE ANALYSIS

**Introduction:** THE AMENDMENTS ARE SUBMITTED TO THE BOARD FOR CONSIDERATION AS A ADOPTED RULE

**Short Title:** Sanctions for Criminal Offenses

**Rule Numbers:** §281.64

**Statutory Authority:** Texas Pharmacy Act, Chapter 551-566 and 568-569, Occupations Code:

- (1) Section 551.002 specifies that the purpose of the Act is to protect the public through the effective control and regulation of the practice of pharmacy; and
- (2) Section 554.051 gives the Board the authority to adopt rules for the proper administration and enforcement of the Act.

**Purpose:** The amendments, if adopted, update the sanctions for criminal offenses involving drugs and alcohol to be in line with the DSM5 guidelines.

**Background:** Board staff recommends updating the sanctions for criminal offenses.

1 **PART 15. TEXAS STATE BOARD OF PHARMACY**  
2 **CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES**  
3 **SUBCHAPTER C. DISCIPLINARY GUIDELINES**

4 **22 TAC §281.64**

5 The Texas State Board of Pharmacy proposes amendments to §281.64, concerning Sanctions for  
6 Criminal Offenses. The proposed amendments to §281.64, if adopted, update the sanctions for  
7 offenses involving drugs and alcohol to be in line with the DSM5 guidelines.

8 Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year  
9 period the rule is in effect, there will be no fiscal implications for state or local government as a  
10 result of enforcing or administering the rule.

11 Ms. Dodson has also determined that, for each year of the first five-year period the rule will be in  
12 effect, the public benefit anticipated as a result of enforcing the amendments will ensure  
13 appropriate disciplinary sanctions for individuals with offenses involving drugs and alcohol.

14 Written comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director  
15 of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600,  
16 Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m., April 30,  
17 2014.

18 The amendments are proposed under §551.002 and §554.051, of the Texas Pharmacy Act  
19 (Chapters 551 - 566, 568, and 569, Texas Occupations Code). The Board interprets §551.002 as  
20 authorizing the agency to protect the public through the effective control and regulation of the  
21 practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules  
22 for the proper administration and enforcement of the Act.

23 The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566, 568, and  
24 569, Texas Occupations Code.

25 §281.64. Sanctions for Criminal Offenses.

26 (a) - (b) (No change.)

27 (c) The board has determined that the nature and seriousness of certain crimes outweigh other  
28 factors to be considered in §281.63(g) of this title (relating to Considerations for Criminal  
29 Offenses) and necessitate the disciplinary action listed in paragraphs (1) - (3) of this subsection.  
30 In regard to the crimes enumerated in this rule, the board has weighed the factors, which are  
31 required to be considered from §281.63(g) of this title, in a light most favorable to the individual,  
32 and even if these factors were present, the board has concluded that the following sanctions  
33 apply to individuals with the criminal offenses as described in paragraphs (1) - (3) of this  
34 subsection:

35 (1) - (2) (No change.)

36 (3) Misdemeanor offenses:

37 (A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety Code:

38 (i) Offenses involving manufacture, delivery, or possession with intent to deliver:

39 (I) Currently on probation--denial or revocation;

40 (II) 0-10 years since date of disposition--30- to 180-day suspension followed by 5 years  
41 probation;

42 (III) 11-20 years since date of disposition--1 year probation;

43 (ii) Offenses involving possession of drugs, fraudulent prescriptions, or theft of drugs:

44 (I) Pharmacists:

45 (-a-) 0-5 years since date of disposition--5 years probation;

46 (-b-) 6-10 years since date of disposition--3 years probation;

47 (II) Pharmacy Technicians and Pharmacy Technician Trainees:

48 (-a-) 0-5 years since date of disposition and offense determined to be in violation of  
49 §568.003(a)(5) or (9) of the Act--5 years probation;

50 (-b-) 0-5 years since date of disposition and determined not to be in violation of §568.003(a)(5)  
51 or (9) of the Act [~~have a drug or alcohol dependency~~]--1 year probation;

52 (-c-) 6-10 years since date of disposition and offense determined to be in violation of  
53 §568.003(a)(5) or (9) of the Act--3 years probation;

54 (III) If 0-5 years since date of disposition, and the offense did not involve only personal use of  
55 the drugs and/or chemical impairment, an additional 30- to 90-day suspension will be imposed  
56 preceding the probation for the offenses in this clause;

57 (B) Intoxication and alcoholic beverage offenses as defined in the Texas Penal Code, if two such  
58 offenses involving intoxication due to ingestion of alcohol occurred in the previous five [~~ten~~]  
59 years or if one such offense involving intoxication due to ingestion of controlled substances or  
60 dangerous drugs occurred in the previous five [~~ten~~] years:

61 (i) Pharmacists:

62 [~~(A)~~] 0-5 years since date of disposition and offense determined to be in violation of  
63 §565.001(a)(4) or (7) of the Act--5 years probation;

64 [~~(B)~~] ~~6-10 years since date of disposition and offense determined to be in violation of~~  
65 ~~§565.001(a)(4) or (7) of the Act--3 years probation;]~~

66 (ii) Pharmacy Technicians and Pharmacy Technician Trainees: 0-5 years since date of  
67 disposition and offense determined to be in violation of §568.003(a)(5) or (9) of the Act--5 years  
68 probation;

69 (C) Other misdemeanor offenses involving moral turpitude: 0-5 years since date of disposition--  
70 reprimand.

71 (d) When an individual has multiple criminal offenses or other violations, the board shall  
72 consider imposing additional more severe types of disciplinary sanctions, as deemed necessary.

73 (e) An individual who suffers from an impairment as described by §565.001(a)(4) or (7) or  
74 §568.003(a)(5) or (9), may provide mitigating information including treatment, counseling, and  
75 monitoring in order to mitigate the sanctions imposed.

76 The agency certifies that legal counsel has reviewed the proposal and found it to be within the  
77 state agency's legal authority to adopt.