

## RULE ANALYSIS

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

**Short Title:** Mental or Physical Examination

**Rule Numbers:** §281.6

**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, specifies the procedures to follow for a mental or physical examination.

**Background:** Board staff presents the amendments to clarify procedures for mental or physical examinations.

**The Board reviewed and voted to propose the amendments during the May 7, 2013, meeting. The proposed amendments were published in the June 28, 2013, issue of the *Texas Register* at 38 TexReg 4134.**

1 **PART 15. TEXAS STATE BOARD OF PHARMACY**

2 **CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES**

3 **SUBCHAPTER A. GENERAL PROVISIONS**

4 **§281.6**

5 The Texas State Board of Pharmacy proposes amendments to §281.6, concerning a Mental or  
6 Physical Examination. The amendments, if adopted, specify the procedures to follow for a  
7 mental or physical examination.

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 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 rule will be to update and clarify  
13 the procedures for mental and physical examinations. There is no fiscal impact for individuals,  
14 small or large businesses, or to other entities which are required to comply with this section.

15 Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S.,  
16 Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite  
17 3-600, Austin, Texas 78701, FAX (512) 305-8008. Comments must be received by 5:00 p.m.,  
18 July 31, 2013.

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

24 The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 566 and 568 -  
25 569, Texas Occupations Code.

26 ***§281.6. Mental or Physical Examination.***

27 For the purposes of the Act, §§565.001(a)(4), 565.052, 568.003(a)(5), and 568.0036, shall be  
28 applied as follows.

29 (1) (No change.)

30 (2) Upon a finding of probable cause, as determined by the board or an authorized agent of the  
31 board, that the applicant, licensee, or registrant has developed an incapacity that in the estimation  
32 of the board would prevent a pharmacist from engaging in the practice of pharmacy or a

33 pharmacy technician or pharmacy technician trainee from practicing with a level of skill and  
34 competence that ensures the public health, safety, and welfare, the following is applicable.

35 (A) The executive director/secretary, legal counsel of the agency, or other representative of the  
36 agency as designated by the executive director/secretary, shall request the applicant, licensee, or  
37 registrant to submit to a mental or physical examination by a physician or other healthcare  
38 professional designated by the board. The individual providing the examination shall be  
39 approved by the board. Such examination shall be coordinated through the entity that contracts  
40 with the board to aid impaired pharmacists and pharmacy students. The applicant, licensee, or  
41 registrant shall: ~~[follow the procedures of such entity for each examination conducted.]~~

42 (i) provide the entity with written notice of the appointment at least three days prior to the  
43 appointment;

44 (ii) execute and return to the entity an authorization for release of relevant information on the  
45 form required by the entity, within ten days of receipt of request for the release from the entity;  
46 and

47 (iii) follow all other procedures of the entity for each examination.

48 (B) - (D) (No change.)

49 (3) (No change.)

50 This agency hereby certifies that the proposal has been reviewed by legal counsel and found to  
51 be within the agency's legal authority to adopt.

52 Filed with the Office of the Secretary of State on June 17, 2013.

53 TRD-201302504

54 Gay Dodson, R.Ph.

55 Executive Director/Secretary

56 Texas State Board of Pharmacy

57 Earliest possible date of adoption: July 28, 2013

58 For further information, please call: (512) 305-8028