

RULE ANALYSIS

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

Short Title: Notifications

Rule Numbers: §291.3

Statutory Authority: Texas Pharmacy Act, Chapter 551-569, 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, implement provisions of SB 460 requiring pharmacies to notify the board at least 30 days prior to changing location and allow pharmacies to notify consumers regarding complaints against the practice of pharmacy in an electronic messaging system; update the change of pharmacist employment requirements; and include Veterinary-Verified Pharmacy Practice Sites (Vet-VIPPS) as being in compliance with internet notifications.

1 **TITLE 22 EXAMINING BOARDS**
2 **PART 15 TEXAS STATE BOARD OF PHARMACY**
3 **CHAPTER 291 PHARMACIES**
4 **SUBCHAPTER A ALL CLASSES OF PHARMACIES**

5
6 **§291.3 Required Notifications**
7

8 (a) Change of Location and/or Name.

9
10 (1) When a pharmacy changes location and/or name, the following is applicable.

11
12 (A) A new completed pharmacy application containing the information outlined in §291.1 of
13 this title (relating to Pharmacy License Application), must be filed with the board **not later than**
14 **30 days before the date** [~~within 10 days~~] of the change of location of the pharmacy.

15
16 (B) The previously issued license must be returned to the board office.

17
18 (C) An amended license reflecting the new location and/or name of the pharmacy will be
19 issued by the board; and

20
21 (D) A fee as specified in §291.6 of this title (relating to Pharmacy License Fees) will be
22 charged for issuance of the amended license.

23
24 (2) At least 14 days prior to the change of location of a pharmacy that dispenses prescription
25 drug orders, the pharmacist-in-charge shall post a sign in a conspicuous place indicating that
26 the pharmacy is changing locations. Such sign shall be in the front of the prescription
27 department and at all public entrance doors to the pharmacy and shall indicate the date the
28 pharmacy is changing locations.

29
30 (3) Disasters, accidents, and emergencies which require the pharmacy to change location shall
31 be immediately reported to the board. If a pharmacy changes location suddenly due to
32 disasters, accidents, or other emergency circumstances and the pharmacist-in-charge cannot
33 provide notification 14 days prior to the change of location, the pharmacist-in-charge shall
34 comply with the provisions of paragraph (2) of this subsection as far in advance of the change of
35 location as allowed by the circumstances.

36
37 (b) Change of Managing Officers.

38
39 (1) The owner of a pharmacy shall notify the board in writing within 10 days of a change of any
40 managing officer of a partnership or corporation which owns a pharmacy. The written
41 notification shall include the effective date of such change and the following information for all
42 managing officers:

43
44 (A) name and title;

45
46 (B) home address and telephone number;

47
48 (C) date of birth;

49
50 (D) a copy of social security card or other official document showing the social security
51 number as approved by the board; however, if an individual is unable to obtain a social security

52 number, an individual taxpayer identification number may be provided in lieu of a social security
53 number along with documentation indicating why the individual is unable to obtain a social
54 security number; and

55
56 (E) a copy of current driver's license, state issued photo identification card, or passport.

57
58 (2) For purposes of this subsection, managing officers are defined as the top four executive
59 officers, including the corporate officer in charge of pharmacy operations, who are designated
60 by the partnership or corporation to be jointly responsible for the legal operation of the
61 pharmacy.

62
63 (c) Change of Ownership.

64
65 (1) When a pharmacy changes ownership, a new pharmacy application must be filed with the
66 board following the procedures as specified in §291.1 of this title (relating to Pharmacy License
67 Application). In addition, a copy of the purchase contract or mutual agreement between the
68 buyer and seller must be submitted.

69
70 (2) The license issued to the previous owner must be returned to the board.

71
72 (3) A fee as specified in §291.6 of this title will be charged for issuance of a new license.

73
74 (d) Change of Pharmacist Employment.

75
76 (1) Change of pharmacist employed in a pharmacy. When a change in pharmacist employment
77 occurs, the pharmacist shall report such change in writing to the board within 10 days.

78
79 (2) Change of pharmacist-in-charge of a pharmacy.

80
81 ~~[(A) On the date of change of the pharmacist-in-charge of a Class A, Class A-S, Class C,~~
82 ~~Class C-S, or Class F pharmacy, an inventory specified in §291.17 of this title (relating to~~
83 ~~Inventory Requirements) shall be taken.]~~

84
85 ~~[(B) This inventory shall constitute, for the purpose of this section, the closing inventory of the~~
86 ~~departing pharmacist-in-charge and the beginning inventory of the incoming pharmacist-in-~~
87 ~~charge.]~~

88
89 ~~[(C) If the departing and the incoming pharmacists-in-charge are unable to conduct the~~
90 ~~inventory together, a closing inventory shall be conducted by the departing pharmacist-in-~~
91 ~~charge and a new and separate beginning inventory shall be conducted by the incoming~~
92 ~~pharmacist-in-charge.]~~

93
94 ~~[(D)]~~ The incoming pharmacist-in-charge shall be responsible for notifying the board within 10
95 days in writing on a form provided by the board that a change of pharmacist-in-charge has
96 occurred. The notification shall include the following:

97
98 **(A)** ~~[(i)]~~ the name and license number of the departing pharmacist-in-charge;

99
100 **(B)** ~~[(ii)]~~ the name and license number of the incoming pharmacist-in-charge;

101
102 **(C)** ~~[(iii)]~~ the date the incoming pharmacist-in-charge became the pharmacist-in-charge; and

103
104 (D) ~~[(iv)]~~ a statement signed by the incoming pharmacist-in-charge attesting that:

105
106 (i) ~~[(#)]~~ an inventory, **as specified in §291.17 of this title (relating to Inventory**
107 **Requirements)**, has been conducted by the departing and incoming pharmacists-in-charge; if
108 the inventory was not taken by both pharmacists, the statement shall provide an explanation;
109 and

110
111 (ii) ~~[(#)]~~ the incoming pharmacist-in-charge has read and understands the laws and rules
112 relating to this class of pharmacy.

113
114 (e) Notification of Theft or Loss of a Controlled Substance or a Dangerous Drug.

115
116 (1) Controlled substances. For the purposes of the Act, §562.106, the theft or significant loss of
117 any controlled substance by a pharmacy shall be reported in writing to the board immediately on
118 discovery of such theft or loss. A pharmacy shall be in compliance with this subsection by
119 submitting to the board a copy of the Drug Enforcement Administration (DEA) report of theft or
120 loss of controlled substances, DEA Form 106, or by submitting a list of all controlled substances
121 stolen or lost.

122
123 (2) Dangerous drugs. A pharmacy shall report in writing to the board immediately on discovery
124 the theft or significant loss of any dangerous drug by submitting a list of the name and quantity
125 of all dangerous drugs stolen or lost.

126
127 (f) Fire or Other Disaster. If a pharmacy experiences a fire or other disaster, the following
128 requirements are applicable.

129
130 (1) Responsibilities of the pharmacist-in-charge.

131
132 (A) The pharmacist-in-charge shall be responsible for reporting the date of the fire or other
133 disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or
134 other materials used in the diagnosis or the treatment of the injury, illness, and disease; such
135 notification shall be immediately reported to the board, but in no event shall exceed 10 days
136 from the date of the disaster.

137
138 (B) The pharmacist-in-charge or designated agent shall comply with the following procedures.

139
140 (i) If controlled substances, dangerous drugs, or Drug Enforcement Administration (DEA)
141 order forms are lost or destroyed in the disaster, the pharmacy shall:

142
143 (I) notify the DEA, Department of Public Safety (DPS), and Texas State Board of Pharmacy
144 (board) of the loss of the controlled substances or order forms. A pharmacy shall be in
145 compliance with this section by submitting to each of these agencies a copy of the DEA's report
146 of theft or loss of controlled substances, DEA Form-106, immediately on discovery of the loss;
147 and

148
149 (II) notify the board in writing of the loss of the dangerous drugs by submitting a list of the
150 dangerous drugs lost.

151
152 (ii) If the extent of the loss of controlled substances or dangerous drugs is not able to be
153 determined, the pharmacy shall:

154
155 (I) take a new, complete inventory of all remaining drugs specified in §291.17(c) of this title
156 (relating to Inventory Requirements);

157
158 (II) submit to DEA and DPS a statement attesting that the loss of controlled substances is
159 indeterminable and that a new, complete inventory of all remaining controlled substances was
160 conducted and state the date of such inventory; and

161
162 (III) submit to the board a statement attesting that the loss of controlled substances and
163 dangerous drugs is indeterminable and that a new, complete inventory of the drugs specified in
164 §291.17(c) of this title was conducted and state the date of such inventory.

165
166 (C) If the pharmacy changes to a new, permanent location, the pharmacist-in-charge shall
167 comply with subsection (a) of this section.

168
169 (D) If the pharmacy moves to a temporary location, the pharmacist shall comply with
170 subsection (a) of this section. If the pharmacy returns to the original location, the pharmacist-in-
171 charge shall again comply with subsection (a) of this section.

172
173 (E) If the pharmacy closes due to fire or other disaster, the pharmacy may not be closed for
174 longer than 90 days as specified in §291.11 of this title (relating to Operation of a Pharmacy).

175
176 (F) If the pharmacy discontinues business (ceases to operate as a pharmacy), the
177 pharmacist-in-charge shall comply with §291.5 of this title (relating to Closing a Pharmacy).

178
179 (G) The pharmacist-in-charge shall maintain copies of all inventories, reports, or notifications
180 required by this section for a period of two years.

181
182 (2) Drug stock.

183
184 (A) Any drug which has been exposed to excessive heat, smoke, or other conditions which
185 may have caused deterioration shall not be dispensed.

186
187 (B) Any potentially adulterated or damaged drug shall only be sold, transferred, or otherwise
188 distributed pursuant to the provisions of the Texas Food Drug and Cosmetics Act (Chapter 431,
189 Health and Safety Code) administered by the Bureau of Food and Drug Safety of the Texas
190 Department of State Health Services.

191
192 (g) Notification to Consumers.

193
194 (1) Pharmacy.

195
196 (A) Every licensed pharmacy shall provide notification to consumers of the name, mailing
197 address, Internet site address, and telephone number of the board for the purpose of directing
198 complaints concerning the practice of pharmacy to the board. Such notification shall be provided
199 as follows.

200
201 (i) If the pharmacy serves walk-in customers, the pharmacy shall either:

202
203 (I) post in a prominent place that is in clear public view where prescription drugs are
204 dispensed;

205
206 ~~(-a)~~ a sign ~~[furnished by the board]~~ which notifies the consumer that complaints
207 concerning the practice of pharmacy may be filed with the board and list the board's name,
208 mailing address, Internet site address, telephone number ~~[of the board]~~, and ~~[if applicable]~~ a toll-
209 free telephone number for filing complaints;-or

210
211 **(-b) an electronic messaging system in a type size no smaller than ten-point Times**
212 **Roman which notifies the consumer that complaints concerning the practice of**
213 **pharmacy may be filed with the board and list the board's name, mailing address,**
214 **Internet site address, telephone number, and a toll-free number for filing complaints; or**
215

216 (II) provide with each dispensed prescription a written notification in a type size no smaller
217 than ten-point Times Roman which states the following: "Complaints concerning the practice of
218 pharmacy may be filed with the Texas State Board of Pharmacy at: (list the mailing address,
219 Internet site address, telephone number of the board, and if applicable a toll-free telephone
220 number for filing complaints)."
221

222 (ii) If the prescription drug order is delivered to patients at their residence or other designated
223 location, the pharmacy shall provide with each dispensed prescription a written notification in
224 type size no smaller than ten-point Times Roman which states the following: "Complaints
225 concerning the practice of pharmacy may be filed with the Texas State Board of Pharmacy at:
226 (list the mailing address, Internet site address, telephone number ~~[of the board]~~, and ~~[if~~
227 ~~applicable]~~ a toll-free telephone number for filing complaints)." If multiple prescriptions are
228 delivered to the same location, only one such notice shall be required.
229

230 (iii) The provisions of this subsection do not apply to prescriptions for patients in facilities
231 where drugs are administered to patients by a person required to do so by the laws of the state
232 (i.e., nursing homes).
233

234 (B) A pharmacy that maintains a generally accessible site on the Internet that is located in
235 Texas or sells or distributes drugs through this site to residents of this state shall post the
236 following information on the pharmacy's initial home page and on the page where a sale of
237 prescription drugs occurs.
238

239 (i) Information on the ownership of the pharmacy, to include at a minimum, the:

240
241 (I) owner's name or if the owner is a partnership or corporation, the partnership's or
242 corporation's name and the name of the chief operating officer;

243
244 (II) owner's address;

245
246 (III) owner's telephone number; and

247
248 (IV) year the owner began operating pharmacies in the United States.
249

250 (ii) The Internet address and toll free telephone number that a consumer may use to:

251
252 (I) report medication/device problems to the pharmacy; and

253
254 (II) report business compliance problems.
255

256 (iii) Information about each pharmacy that dispenses prescriptions for this site, to include at
257 a minimum, the:

258
259 (I) pharmacy's name, address, and telephone number;

260
261 (II) name of the pharmacist responsible for operation of the pharmacy;

262
263 (III) Texas pharmacy license number for the pharmacy and a link to the Internet site
264 maintained by the Texas State Board of Pharmacy; and

265
266 (IV) the names of all other states in which the pharmacy is licensed, the license number in
267 that state, and a link to the Internet site of the entity that regulates pharmacies in that state, if
268 available.

269
270 (C) A pharmacy whose Internet site has been awarded a Verified Internet Pharmacy Practice
271 Sites (VIPPS) **or Veterinary-Verified Internet Pharmacy Practice Sites (Vet-VIPPS)**
272 **accreditation** [certification] by the National Association of Boards of Pharmacy shall be in
273 compliance with subparagraph (B) of this paragraph by displaying the VIPPS **or Vet-VIPPS** seal
274 on the pharmacy internet site.

275
276 (2) Texas State Board of Pharmacy. On or before January 1, 2005, the board shall establish a
277 pharmacy profile system as specified in §2054.2606, Government Code.

278
279 (A) The board shall make the pharmacy profiles available to the public on the agency's
280 Internet site.

281
282 (B) A pharmacy profile shall contain at least the following information:

283
284 (i) name, address, and telephone number of the pharmacy;

285
286 (ii) pharmacy license number, licensure status, and expiration date of the license;

287
288 (iii) the class and type of the pharmacy;

289
290 (iv) ownership information for the pharmacy;

291
292 (v) names and license numbers of all pharmacists working at the pharmacy;

293
294 (vi) whether the pharmacy has had prior disciplinary action by the board;

295
296 (vii) whether the pharmacy's consumer service areas are accessible to disabled persons, as
297 defined by law;

298
299 (viii) the type of language translating services, including translating services for persons with
300 impairment of hearing, that the pharmacy provides for consumers; and

301
302 (ix) insurance information including whether the pharmacy participates in the state Medicaid
303 program.

304
305 (C) The board shall gather this information on initial licensing and update the information in
306 conjunction with the license renewal for the pharmacy.

307
308 (h) Notification of Licensees or Registrants Obtaining Controlled Substances or Dangerous
309 Drugs by Forged Prescriptions. If a licensee or registrant obtains controlled substances or
310 dangerous drugs from a pharmacy by means of a forged prescription, the pharmacy shall report
311 in writing to the board immediately on discovery of such forgery. A pharmacy shall be in
312 compliance with this subsection by submitting to the board the following:

313
314 (1) name of licensee or registrant obtaining controlled substances or dangerous drugs by
315 forged prescription;

316
317 (2) date(s) of forged prescription(s);

318
319 (3) name(s) and amount(s) of drug(s); and

320
321 (4) copies of forged prescriptions.

AN ACT

relating to the licensing and regulation of pharmacists and pharmacies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 483.047, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (b-1) and (b-2) to read as follows:

(a) Except as authorized by Subsections [~~Subsection~~] (b) and (b-1), a pharmacist commits an offense if the pharmacist refills a prescription unless:

(1) the prescription contains an authorization by the practitioner for the refilling of the prescription, and the pharmacist refills the prescription in the manner provided by the authorization; or

(2) at the time of refilling the prescription, the pharmacist is authorized to do so by the practitioner who issued the prescription.

(b-1) Notwithstanding Subsection (b), in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day supply of a dangerous drug without the authorization of the prescribing practitioner if:

(1) failure to refill the prescription might result in an interruption of a therapeutic regimen or create patient suffering;

1 (2) the natural or manmade disaster prohibits the
2 pharmacist from being able to contact the practitioner;

3 (3) the governor has declared a state of disaster
4 under Chapter 418, Government Code; and

5 (4) the board, through the executive director, has
6 notified pharmacies in this state that pharmacists may dispense up
7 to a 30-day supply of a dangerous drug.

8 (b-2) The prescribing practitioner is not liable for an act
9 or omission by a pharmacist in dispensing a dangerous drug under
10 Subsection (b-1).

11 SECTION 2. Section 555.002(a), Occupations Code, is amended
12 to read as follows:

13 (a) The board by rule shall establish methods by which
14 consumers and service recipients are notified of the name, mailing
15 address, and telephone number of the board for the purpose of
16 directing complaints to the board. The board may provide for that
17 notice:

18 (1) on each registration form, application, or written
19 contract for services of a person regulated by the board;

20 (2) on a sign prominently displayed in the place of
21 business of each person regulated by the board; ~~[or]~~

22 (3) on an electronic messaging system in a font
23 specified by board rule prominently displayed in the place of
24 business of each person regulated by the board; or

25 (4) in a bill for service provided by a person
26 regulated by the board.

27 SECTION 3. Section 556.051, Occupations Code, is amended to

1 read as follows:

2 Sec. 556.051. AUTHORIZATION TO ENTER AND INSPECT. (a) The
3 board or a representative of the board may enter and inspect a
4 facility relative to the following:

5 (1) drug storage and security;

6 (2) equipment;

7 (3) components used in compounding, finished and
8 unfinished products, containers, and labeling of any item;

9 (4) sanitary conditions; ~~or~~

10 (5) records, reports, or other documents required to
11 be kept or made under this subtitle, Chapter 481 or 483, Health and
12 Safety Code, or the Comprehensive Drug Abuse Prevention and Control
13 Act of 1970 (21 U.S.C. Section 801 et seq.) or rules adopted under
14 one of those laws; or

15 (6) subject to Subsection (b), financial records
16 relating to the operation of the facility.

17 (b) The board or a representative of the board may inspect
18 financial records under Subsection (a) only in the course of the
19 investigation of a specific complaint. The board or representative
20 may inspect only records related to the specific complaint. The
21 inspection is subject to Section 565.055.

22 SECTION 4. Section 556.054, Occupations Code, is amended to
23 read as follows:

24 Sec. 556.054. CONFIDENTIALITY OF CERTAIN INFORMATION
25 [LIMITATION ON INSPECTION]. The following information obtained by
26 the board during an inspection of a facility is confidential and not
27 subject to disclosure under Chapter 552, Government Code [Unless

1 ~~the owner, pharmacist, or agent in charge of a facility consents in~~
2 ~~writing, an inspection of the facility authorized by this chapter~~
3 ~~may not extend to]:~~

- 4 (1) financial data;
- 5 (2) sales data, other than shipment data; and ~~[or]~~
- 6 (3) pricing data.

7 SECTION 5. Subchapter B, Chapter 556, Occupations Code, is
8 amended by adding Section 556.057 to read as follows:

9 Sec. 556.057. INSPECTION OF PHARMACIST RECORDS. A
10 pharmacist shall provide to the board, on request, records of the
11 pharmacist's practice that occurs outside of a pharmacy. The
12 pharmacist shall provide the records at a time specified by board
13 rule.

14 SECTION 6. Sections 558.055(a) and (b), Occupations Code,
15 are amended to read as follows:

16 (a) An applicant who on the applicant's first attempt fails
17 the examination may take the examination four ~~[two]~~ additional
18 times.

19 (b) Before an applicant who has failed the examination five
20 ~~[three]~~ times is allowed to retake the examination, the applicant
21 must provide documentation from a college of pharmacy that the
22 applicant has successfully completed additional college course
23 work in each examination subject area the applicant failed.

24 SECTION 7. Section 560.052(b), Occupations Code, is amended
25 to read as follows:

26 (b) To qualify for a pharmacy license, an applicant must
27 submit to the board:

1 (1) a license fee set by the board, except as provided
2 by Subsection (d); and

3 (2) a completed application that:

4 (A) is on a form prescribed by the board;

5 (B) is given under oath;

6 (C) includes proof that:

7 (i) a pharmacy license held by the
8 applicant in this state or another state, if applicable, has not
9 been restricted, suspended, revoked, or surrendered for any reason;
10 and

11 (ii) no owner of the pharmacy for which the
12 application is made has held a pharmacist license in this state or
13 another state, if applicable, that has been restricted, suspended,
14 revoked, or surrendered for any reason; and

15 (D) includes a statement of:

16 (i) the ownership;

17 (ii) the location of the pharmacy;

18 (iii) the license number of each pharmacist
19 who is employed by the pharmacy, if the pharmacy is located in this
20 state, or who is licensed to practice pharmacy in this state, if the
21 pharmacy is located in another state;

22 (iv) the pharmacist license number of the
23 pharmacist-in-charge; and

24 (v) any other information the board
25 determines necessary.

26 SECTION 8. Section 561.003(e), Occupations Code, is amended
27 to read as follows:

1 (e) If a pharmacy's license has been expired for 91 days
2 [~~one year~~] or more, the pharmacy may not renew the license. The
3 pharmacy may obtain a new license by complying with the
4 requirements and procedures for obtaining an original license.

5 SECTION 9. Sections 562.056(a) and (a-1), Occupations Code,
6 are amended to read as follows:

7 (a) Before dispensing a prescription, a pharmacist shall
8 determine, in the exercise of sound professional judgment, that the
9 prescription is a valid prescription. A pharmacist may not
10 dispense a prescription drug if the pharmacist knows or should know
11 that the prescription was issued [~~on the basis of an Internet-based~~
12 ~~or telephonic consultation~~] without a valid practitioner-patient
13 relationship.

14 (a-1) To be a valid prescription, a prescription [~~for a~~
15 ~~controlled substance~~] must be issued for a legitimate medical
16 purpose by a practitioner acting in the usual course of the
17 practitioner's professional practice. The responsibility for the
18 proper prescribing and dispensing of prescription drugs
19 [~~controlled substances~~] is on the prescribing practitioner, but a
20 corresponding responsibility rests with the pharmacist who fills
21 the prescription.

22 SECTION 10. Section 562.106, Occupations Code, is amended
23 by amending Subsection (a) and adding Subsection (a-1) to read as
24 follows:

25 (a) A pharmacy shall report in writing to the board not
26 later than the 10th day after the date of:

27 (1) a permanent closing of the pharmacy;

- 1 (2) a change of ownership of the pharmacy;
- 2 (3) [~~a change of location of the pharmacy,~~
- 3 [~~(4)~~] a change of the person designated as the
- 4 pharmacist-in-charge of the pharmacy;
- 5 (4) [~~(5)~~] a sale or transfer of any controlled
- 6 substance or dangerous drug as a result of the permanent closing or
- 7 change of ownership of the pharmacy;
- 8 (5) [~~(6)~~] any matter or occurrence that the board
- 9 requires by rule to be reported;
- 10 (6) [~~(7)~~] as determined by the board, an out-of-state
- 11 purchase of any controlled substance;
- 12 (7) [~~(8)~~] a final order against the pharmacy license
- 13 holder by the regulatory or licensing agency of the state in which
- 14 the pharmacy is located if the pharmacy is located in another state;
- 15 or
- 16 (8) [~~(9)~~] a final order against a pharmacist who is
- 17 designated as the pharmacist-in-charge of the pharmacy by the
- 18 regulatory or licensing agency of the state in which the pharmacy is
- 19 located if the pharmacy is located in another state.
- 20 (a-1) A pharmacy shall report in writing to the board not
- 21 later than the 30th day before the date of a change of location of
- 22 the pharmacy.

23 SECTION 11. Section [565.002\(a\)](#), Occupations Code, is

24 amended to read as follows:

25 (a) The board may discipline an applicant for or the holder

26 of a pharmacy license, including a Class E pharmacy license subject

27 to Section [565.003](#) [~~[565.003\(b\)](#)~~], if the board finds that the

1 applicant or license holder has:

2 (1) been convicted of or placed on deferred
3 adjudication community supervision or deferred disposition or the
4 applicable federal equivalent for:

5 (A) a misdemeanor:

6 (i) involving moral turpitude; or

7 (ii) under Chapter 481 or 483, Health and
8 Safety Code, or the Comprehensive Drug Abuse Prevention and Control
9 Act of 1970 (21 U.S.C. Section 801 et seq.); or

10 (B) a felony;

11 (2) advertised a prescription drug or device in a
12 deceitful, misleading, or fraudulent manner;

13 (3) violated any provision of this subtitle or any
14 rule adopted under this subtitle or that an owner or employee of a
15 pharmacy has violated any provision of this subtitle or any rule
16 adopted under this subtitle;

17 (4) sold without legal authorization a prescription
18 drug or device to a person other than:

19 (A) a pharmacy licensed by the board;

20 (B) a practitioner;

21 (C) a person who procures a prescription drug or
22 device for lawful research, teaching, or testing, and not for
23 resale;

24 (D) a manufacturer or wholesaler licensed by the
25 commissioner of public health as required by Chapter 431, Health
26 and Safety Code; or

27 (E) a carrier or warehouseman;

1 (5) allowed an employee who is not a pharmacist to
2 practice pharmacy;

3 (6) sold an adulterated or misbranded prescription or
4 nonprescription drug;

5 (7) failed to engage in or ceased to engage in the
6 business described in the application for a license;

7 (8) failed to maintain records as required by this
8 subtitle, Chapter 481 or 483, Health and Safety Code, the
9 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
10 U.S.C. Section 801 et seq.), or any rule adopted under this subtitle
11 or Chapter 483, Health and Safety Code;

12 (9) failed to establish and maintain effective
13 controls against diversion of prescription drugs into other than a
14 legitimate medical, scientific, or industrial channel as provided
15 by this subtitle, another state statute or rule, or a federal
16 statute or rule;

17 (10) engaged in fraud, deceit, or misrepresentation as
18 defined by board rule in operating a pharmacy or in applying for a
19 license to operate a pharmacy;

20 (11) violated a disciplinary order;

21 (12) been responsible for a drug audit shortage; [~~or~~]

22 (13) been disciplined by the regulatory board of
23 another state for conduct substantially equivalent to conduct
24 described under this subsection; or

25 (14) waived, discounted, or reduced, or offered to
26 waive, discount, or reduce, a patient copayment or deductible for a
27 compounded drug in the absence of:

1 (A) a legitimate, documented financial hardship
2 of the patient; or

3 (B) evidence of a good faith effort to collect
4 the copayment or deductible from the patient.

5 SECTION 12. Section 565.060(d), Occupations Code, is
6 amended to read as follows:

7 (d) If a license holder complies with and successfully
8 completes the terms of a remedial plan, the board shall remove all
9 records of the remedial plan from the board's records at the end of
10 the state fiscal year in which ~~on~~ the fifth anniversary of the
11 date the board issued the terms of the remedial plan occurs.

12 SECTION 13. Section 565.061(a), Occupations Code, is
13 amended to read as follows:

14 (a) Except as provided by Chapter 564, a disciplinary action
15 taken by the board ~~[under Section 565.060 or]~~ on the basis of a
16 ground for discipline under Subchapter A is governed by Chapter
17 2001, Government Code, and the rules of practice and procedure
18 before the board.

19 SECTION 14. The following provisions of the Occupations
20 Code are repealed:

- 21 (1) Section 561.003(d);
- 22 (2) Section 562.009(a-1); and
- 23 (3) Section 562.051.

24 SECTION 15. The change in law made by this Act to Section
25 483.047, Health and Safety Code, applies only to an offense
26 committed on or after the effective date of this Act. An offense
27 committed before the effective date of this Act is governed by the

1 law in effect on the date the offense was committed, and the former
2 law is continued in effect for that purpose. For purposes of this
3 section, an offense was committed before the effective date of this
4 Act if any element of the offense occurred before that date.

5 SECTION 16. Section 560.052(b), Occupations Code, as
6 amended by this Act, applies only to an application for a pharmacy
7 license submitted on or after the effective date of this Act. An
8 application submitted before the effective date of this Act is
9 governed by the law in effect on the date the application was
10 submitted, and the former law is continued in effect for that
11 purpose.

12 SECTION 17. Section 561.003(e), Occupations Code, as
13 amended by this Act, and the repeal by this Act of Section
14 561.003(d), Occupations Code, apply only to a pharmacy license that
15 expires on or after the effective date of this Act. A pharmacy
16 license that expired before the effective date of this Act is
17 governed by the law in effect on the date the license expired, and
18 the former law is continued in effect for that purpose.

19 SECTION 18. Section 562.106(a), Occupations Code, as
20 amended by this Act, and Section 562.106(a-1), Occupations Code, as
21 added by this Act, apply only to a pharmacy that changes location on
22 or after October 1, 2015. A pharmacy that changes location before
23 that date is governed by the law in effect immediately before the
24 effective date of this Act, and the former law is continued in
25 effect for that purpose.

26 SECTION 19. The change in law made by this Act to Section
27 565.002(a), Occupations Code, applies only to conduct that occurs

1 on or after the effective date of this Act. Conduct that occurs
2 before that date is governed by the law in effect on the date the
3 conduct occurred, and the former law is continued in effect for that
4 purpose.

5 SECTION 20. The change in law made by this Act to Section
6 565.061(a), Occupations Code, is a clarification of existing law
7 and does not imply that existing law may be construed as
8 inconsistent with the law as amended by this Act.

9 SECTION 21. This Act takes effect September 1, 2015.

S.B. No. 460

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 460 passed the Senate on April 14, 2015, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 460 passed the House on May 22, 2015, by the following vote: Yeas 137, Nays 3, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor