

RULE ANALYSIS

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

Short Title: Prescription Records

Rule Numbers: §291.34

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, clarify that prescriptions must be transferred within four business hours; and update the rules regarding distributions to include dangerous drugs.

1 **TITLE 22 EXAMINING BOARDS**
2 **PART 15 TEXAS STATE BOARD OF PHARMACY**
3 **CHAPTER 291 PHARMACIES**
4 **SUBCHAPTER B COMMUNITY PHARMACY (CLASS A)**

5
6 **§291.34 Records**
7

8 (a) – (f) (No change.)
9

10 (g) Transfer of prescription drug order information. For the purpose of initial or refill dispensing,
11 the transfer of original prescription drug order information is permissible between pharmacies,
12 subject to the following requirements.
13

14 (1) The transfer of original prescription drug order information for controlled substances listed
15 in Schedule III, IV, or V is permissible between pharmacies on a one-time basis only. However,
16 pharmacies electronically sharing a real-time, on-line database may transfer up to the maximum
17 refills permitted by law and the prescriber's authorization.
18

19 (2) The transfer of original prescription drug order information for dangerous drugs is
20 permissible between pharmacies without limitation up to the number of originally authorized
21 refills.
22

23 (3) The transfer is communicated orally by telephone or via facsimile directly by a pharmacist
24 to another pharmacist; by a pharmacist to a student-intern, extended-intern, or resident-intern;
25 or by a student-intern, extended-intern, or resident-intern to another pharmacist.
26

27 (4) Both the original and the transferred prescription drug orders are maintained for a period of
28 two years from the date of last refill.
29

30 (5) The individual transferring the prescription drug order information shall ensure the following
31 occurs:
32

33 (A) write the word "void" on the face of the invalidated prescription or the prescription is
34 voided in the data processing system;
35

36 (B) record the name, address, if for a controlled substance, the DEA registration number of
37 the pharmacy to which it was transferred, and the name of the receiving individual on the
38 reverse of the invalidated prescription or stored with the invalidated prescription drug order in
39 the data processing system;
40

41 (C) record the date of the transfer and the name of the individual transferring the information;
42 and
43

44 (D) if the prescription is transferred electronically, provide the following information:
45

46 (i) date of original dispensing and prescription number;
47

48 (ii) number of refills remaining and if a controlled substance, the date(s) and location(s) of
49 previous refills;
50

51 (iii) name, address, and if a controlled substance, the DEA registration number of the
52 transferring pharmacy;

53
54 (iv) name of the individual transferring the prescription; and

55
56 (v) if a controlled substance, name, address and DEA registration number, and prescription
57 number from the pharmacy that originally dispensed the prescription, if different.

58
59 (6) The individual receiving the transferred prescription drug order information shall:

60
61 (A) write the word "transfer" on the face of the prescription or the prescription record indicates
62 the prescription was a transfer; and

63
64 (B) reduce to writing all of the information required to be on a prescription as specified in
65 subsection (b)(7) of this section (relating to Prescriptions) and including the following
66 information;

67
68 (i) date of issuance and prescription number;

69
70 (ii) original number of refills authorized on the original prescription drug order;

71
72 (iii) date of original dispensing;

73
74 (iv) number of valid refills remaining and if a controlled substance, date(s) and location(s) of
75 previous refills;

76
77 (v) name, address, and if for a controlled substance, the DEA registration number of the
78 transferring pharmacy;

79
80 (vi) name of the individual transferring the prescription; and

81
82 (vii) name, address, and if for a controlled substance, the DEA registration number, of the
83 pharmacy that originally dispensed the prescription, if different; or

84
85 (C) if the prescription is transferred electronically, create an electronic record for the
86 prescription that includes the receiving pharmacist's name and all of the information transferred
87 with the prescription including all of the information required to be on a prescription as specified
88 in subsection (b)(7) of this section (relating to Prescriptions) and the following:

89
90 (i) date of original dispensing;

91
92 (ii) number of refills remaining and if a controlled substance, the prescription number(s),
93 date(s) and location(s) of previous refills;

94
95 (iii) name, address, and if for a controlled substance, the DEA registration number;

96
97 (iv) name of the individual transferring the prescription; and

98
99 (v) name, address, and if for a controlled substance, the DEA registration number, of the
100 pharmacy that originally filled the prescription.

101

102 (7) Both the individual transferring the prescription and the individual receiving the prescription
103 must engage in confirmation of the prescription information by such means as:

104 (A) the transferring individual faxes the hard copy prescription to the receiving individual; or

105 (B) the receiving individual repeats the verbal information from the transferring individual and
106 the transferring individual verbally confirms that the repeated information is correct.

107 (8) Pharmacies transferring prescriptions electronically shall comply with the following:

108 (A) Prescription drug orders may not be transferred by non-electronic means during periods
109 of downtime except on consultation with and authorization by a prescribing practitioner;
110 provided however, during downtime, a hard copy of a prescription drug order may be made
111 available for informational purposes only, to the patient or a pharmacist, and the prescription
112 may be read to a pharmacist by telephone.

113 (B) The original prescription drug order shall be invalidated in the data processing system for
114 purposes of filling or refilling, but shall be maintained in the data processing system for refill
115 history purposes.

116 (C) If the data processing system does not have the capacity to store all the information as
117 specified in paragraphs (5) and (6) of this subsection, the pharmacist is required to record this
118 information on the original or transferred prescription drug order.

119 (D) The data processing system shall have a mechanism to prohibit the transfer or refilling of
120 controlled substance prescription drug orders that have been previously transferred.

121 (E) Pharmacies electronically accessing the same prescription drug order records may
122 electronically transfer prescription information if the following requirements are met.

123 (i) The original prescription is voided and the pharmacies' data processing systems shall
124 store all the information as specified in paragraphs (5) and (6) of this subsection.

125 (ii) Pharmacies not owned by the same entity [~~person~~] may electronically access the same
126 prescription drug order records, provided the owner, chief executive officer, or designee of each
127 pharmacy signs an agreement allowing access to such prescription drug order records.

128 (iii) An electronic transfer between pharmacies may be initiated by a pharmacist intern,
129 pharmacy technician, or pharmacy technician trainee acting under the direct supervision of a
130 pharmacist.

131 (9) An individual may not refuse to transfer original prescription information to another
132 individual who is acting on behalf of a patient and who is making a request for this information
133 as specified in this subsection. The transfer of original prescription information must be
134 **completed within four business hours of the request.** [~~done in a timely manner.~~]

135 (10) When transferring a compounded prescription, a pharmacy is required to provide all of the
136 information regarding the compounded preparation including the formula unless the formula is
137 patented or otherwise protected, in which case, the transferring pharmacy shall, at a minimum,
138 provide the quantity or strength of all of the active ingredients of the compounded preparation.

153 **(11)** ~~{(10)}~~ The electronic transfer of multiple or bulk prescription records between two
154 pharmacies is permitted provided:

155
156 (A) a record of the transfer as specified in paragraph (5) of this section is maintained by the
157 transferring pharmacy;

158
159 (B) the information specified in paragraph (6) of this subsection is maintained by the receiving
160 pharmacy; and

161
162 (C) in the event that the patient or patient's agent is unaware of the transfer of the
163 prescription drug order record, the transferring pharmacy must notify the patient or patient's
164 agent of the transfer and must provide the patient or patient's agent with the telephone number
165 of the pharmacy receiving the multiple or bulk prescription drug order records.

166
167 (h) Distribution of **prescription drugs** ~~{controlled substances}~~ to another registrant. A pharmacy
168 may distribute **prescription drugs** ~~{controlled substances}~~ to a practitioner, another pharmacy,
169 or other registrant, without being registered to distribute, under the following conditions.

170
171 (1) **If the distribution is for a controlled substance, the** ~~{The}~~ registrant to whom the
172 controlled substance is to be distributed is registered under the Controlled Substances Act to
173 **possess** ~~{dispense}~~ that controlled substance.

174
175 (2) The total number of dosage units of **prescription drugs** ~~{controlled substances}~~ distributed
176 by a pharmacy may not exceed 5.0% of all **prescription drugs** ~~{controlled substances}~~
177 dispensed and distributed by the pharmacy during the 12-month period in which the pharmacy
178 is registered; if at any time it does exceed 5.0%, the pharmacy is required to obtain an
179 additional registration to distribute **prescription drugs** ~~{controlled substances}~~.

180
181 (3) If the distribution is for a **dangerous drug, a record shall be maintained that indicates**
182 **the:**

183
184 **(A) date of distribution;**

185
186 **(B) name, strength, and quantity of dangerous drug distributed;**

187
188 **(C) name and address of the distributing pharmacy; and**

189
190 **(D) name and address of the pharmacy, practitioner, or other registrant to whom the**
191 **dangerous drugs are distributed.**

192
193 **(4) If the distribution is for a** Schedule III, IV, or V controlled substance, a record shall be
194 maintained that indicates **the:**

195
196 (A) ~~{the actual}~~ date of distribution;

197
198 (B) ~~{the}~~ name, strength, and quantity of controlled substances distributed;

199
200 (C) ~~{the}~~ name, address, and DEA registration number of the distributing pharmacy; and

201
202 (D) ~~{the}~~ name, address, and DEA registration number of the pharmacy, practitioner, or other
203 registrant to whom the controlled substances are distributed.

204
205 **(5)** ~~[(4)]~~ If the distribution is for a Schedule II controlled substance, the following is applicable.
206
207 (A) The pharmacy, practitioner, or other registrant who is receiving the controlled substances
208 shall issue Copy 1 and Copy 2 of a DEA order form (DEA 222) to the distributing pharmacy.
209
210 (B) The distributing pharmacy shall:
211
212 (i) complete the area on the DEA order form (DEA 222) titled "To Be Filled in by Supplier";
213
214 (ii) maintain Copy 1 of the DEA order form (DEA 222) at the pharmacy for two years; and
215
216 (iii) forward Copy 2 of the DEA order form (DEA 222) to the Divisional Office of the Drug
217 Enforcement Administration.
218
219 (i) – (l) (No change.)