

RULE ANALYSIS

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

Short Title: Burden of Proof

Rule Numbers: §281.31

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 the rules for show cause order hearings.

The Board reviewed and voted to propose the amendments during the May 3, 2016, meeting. The proposed amendments were published in the March 11, 2016, issue of the *Texas Register* at 41 TexReg 4590.

1 **SUBCHAPTER B. GENERAL PROCEDURES IN A CONTESTED CASE**

2 **22 TAC §281.31**

3 The Texas State Board of Pharmacy proposes amendments to §281.31, concerning Burden of
4 Proof. The amendments to §281.31, if adopted, clarify the rules for show cause order hearings.

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

8 Ms. Dodson has determined that, for each year of the first five-year period the rule will be in
9 effect, the public benefit anticipated as a result of enforcing the amendments will ensure hearings
10 comply with state laws. There is no fiscal impact for individuals, small or large businesses, or to
11 other entities which are required to comply with this section.

12 Written comments on the amendments may be submitted to Allison Vordenbaumen Benz, R.Ph.,
13 M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street,
14 Suite 3-600, Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00
15 p.m., August 1, 2016.

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

21 The statutes affected by these amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas
22 Occupations Code.

23 **§281.31. Burden of Proof.**

24 (a) In a contested case hearing at the State Office of Administrative Hearings involving grounds
25 for disciplinary action, the board has the burden to prove that grounds to discipline respondent
26 exist. However, the party that claims any exemption or exception, including mitigating factors as
27 specified in §281.62 of this chapter, has the burden to prove that the exemption or exception
28 should be applied.

29 (b) In a contested case hearing at the State Office of Administrative Hearings involving a petition
30 for reinstatement or removal of restriction, the petitioner has the burden to prove that the license
31 should be reinstated or that a restriction on the license should be removed in accordance with
32 §281.66 of the chapter.

33 (c) In a show cause order hearing before a panel of the board [~~at the State Office of~~
34 ~~Administrative Hearings~~] involving an applicant, licensee, or registrant who has been previously
35 ordered by the board to submit to a mental or physical examination under §565.052 or §568.0036

36 of the Act, the applicant, licensee, or registrant has the burden to prove that the applicant,
37 licensee, or registrant should not be required to submit to the examination.

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