

RULE ANALYSIS

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

Short Title: Considerations for Criminal Offenses.

Rule Number: §281.63

Statutory Authority: Texas Pharmacy Act, Chapters 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, update the board's disciplinary guidelines concerning the imprisonment of a licensee, a registrant, or an owner of a pharmacy following a felony conviction or deferred adjudication, in accordance with Senate Bill 1080 and clarify certain provisions to align more closely to existing statute.

TITLE 22 EXAMINING BOARDS
PART 15 TEXAS STATE BOARD OF PHARMACY
CHAPTER 281 ADMINISTRATIVE PRACTICE AND PROCEDURES
SUBCHAPTER C DISCIPLINARY GUIDELINES

§ 281.63. Considerations for Criminal Offenses.

(a) The purpose of this section is to establish guidelines and criteria on the eligibility of persons with criminal backgrounds to obtain a license or registration from the board and on the disciplinary actions taken by the board. The section applies to all criminal convictions and to all deferred adjudication community supervisions or deferred dispositions, as authorized by the Act, for all types of licenses and registrations.

(b) The board may suspend, revoke, or impose other authorized disciplinary action on a current license or registration, disqualify a person from receiving a license or registration, or deny to a person the opportunity to be examined for a license or registration because of a person's conviction or deferred adjudication of a crime that serves as a ground for discipline under the Act, and that the board determines directly relates to the duties and responsibilities of a licensee, a registrant, or of an owner of a pharmacy. This subsection applies to persons who are not imprisoned at the time the board considers the conviction or deferred adjudication.

(c) **The board may revoke a license or registration upon the imprisonment of the licensee, the registrant, or the owner of a pharmacy following a felony conviction or deferred adjudication.** The board shall revoke a license or registration upon the imprisonment of the licensee, the registrant, or the owner of a pharmacy following a ~~felony conviction or deferred adjudication, or revocation of felony community supervision, parole, or mandatory supervision.~~

(1) felony conviction or deferred adjudication for:

(A) an offense that directly relates to the occupation of a licensee or registrant, or the operation of a pharmacy;

(B) an offense listed in Article 42.054, Code of Criminal Procedure; or

(C) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure;

(2) felony community supervision revocation;

(3) revocation of parole; or

(4) revocation of mandatory supervision.

(d) A person in prison is not eligible for a license or registration.

(e) An applicant for a license or registration from the board shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of application. A current licensee or registrant shall disclose in writing to the board any conviction or deferred adjudication against him or her at the time of renewal.

(f) The board **has determined that the criminal offenses listed in subsection (i) of this section**~~shall by rule determine and list in this section which criminal offenses~~ directly relate to the occupation of a licensee or registrant, or the operation of a pharmacy. For all other offenses

not listed in this section, in considering whether a criminal conviction or deferred adjudication directly relates to the **duties and responsibilities of a licensee, a registrant, or of an owner of a pharmacy**~~[occupation of a licensee or a registrant, or the operation of a pharmacy]~~, the board shall consider **the following factors**:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license or registration to engage in the occupation of the licensee or registrant, or the operation of a pharmacy;

(3) the extent to which a license or registration might afford the licensee or registrant an opportunity to repeat the criminal activity in which the person had been involved;~~and~~

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensee or registrant;~~and~~

(5) any correlation between the elements of the crime and the duties and responsibilities of the license or registration.

(g) The board has the authority to impose disciplinary action as authorized by the Act, for those criminal offenses that provide grounds for discipline under the Act. In reaching a decision regarding the severity of the disciplinary sanction to impose on a license or registration, the board shall, in its discretion and unless otherwise specified in §281.64 of this title (relating to Sanctions for Criminal Offenses), also determine the person's fitness to perform the duties and discharge the responsibilities of a licensee or registrant by evaluating and balancing these factors in the following priority with the first being the highest priority:

(1) the extent and nature of the person's past criminal activity;

(2) the amount of time that has elapsed since the person's last criminal activity;

(3) the person's rehabilitation or rehabilitative effort while incarcerated or following release as corroborated by extrinsic evidence;

(4) the age of the person at the time of the commission of the crime, if younger than 21 years of age at the time of the crime;

(5) the conduct and work activity of the person prior to and following the criminal activity;~~and~~

(6) evidence of the person's compliance with any conditions of community supervision, parole, or mandatory supervision; and

~~(7)~~~~(6)~~ other evidence of the person's present fitness, including letters of recommendation ~~from:~~

~~[(A) prosecution, law enforcement, and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;]~~

~~[(B) the sheriff and chief of police in the community where the person resides; and]~~

~~[(C) any other persons in contact with the person.]~~

(h) In order to establish the factors in subsection (g) of this section, a person with a conviction or deferred adjudication shall:

(1) to the extent possible, secure and provide to the board the recommendations ~~[of the prosecution, law enforcement, and correctional authorities]~~ specified in subsection (g)(7) ~~[(g)(6)]~~ of this section;

(2) cooperate with the board by providing the information required by this section, including proof that he or she has:

(A) maintained a record of steady employment, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction or deferred adjudication and/or release from imprisonment;

(B) supported his or her dependents, as evidenced by salary stubs, income tax records or other employment records for the time since the conviction or deferred adjudication and/or release from imprisonment, and a recommendation from the spouse or either parent;

(C) maintained a record of good conduct as evidenced by recommendations, absence of other criminal activity or documentation of community service since conviction or deferred adjudication;

(D) paid all outstanding court costs, supervision fees, fines, and restitution as may have been ordered in all criminal cases in which he or she has been convicted, as evidenced by certified copies of a court release or other documentation from the court system that all monies have been paid; and

(E) obtained appropriate treatment and/or counseling, if applicable.

(i) The board has determined that the following crimes directly relate to duties and responsibilities of board licensees or registrants. The commission of each indicates an inability or a tendency for the person to be unable to perform or to be unfit for licensure or registration, because commission of such crimes indicates a lack of integrity and respect for one's fellow human being and the community at large. Even if the commission of these crimes did not occur while the licensee or registrant was on-duty or employed at a pharmacy, the board has determined that the crimes directly relate to the practice of pharmacy based on a lack of integrity and good moral character exhibited by the commission of the crimes. In addition, the direct relationship to a license or registration is presumed when any crime occurs in connection with the practice of pharmacy or the operation of a pharmacy. The crimes are as follows:

(1) practicing or operating a pharmacy without a license or registration and other violations of the Pharmacy Act;

(2) deceptive business practices under the Texas Penal Code;

(3) Medicare or Medicaid fraud;

(4) a misdemeanor or felony offense under the Texas Penal Code involving:

(A) murder;

(B) assault;

(C) burglary;

(D) robbery;

115 (E) theft;
116 (F) sexual assault;
117 (G) injury to a child;
118 (H) injury to an elderly person;
119 (I) child abuse or neglect;
120 (J) tampering with a governmental record;
121 (K) forgery;
122 (L) perjury;
123 (M) failure to report abuse;
124 (N) bribery;
125 (O) harassment;
126 (P) insurance claim fraud;
127 (Q) driving while intoxicated;
128 (R) solicitation of professional employment under the Penal Code §38.12(d) or Occupations
129 Code, Chapter 102;
130 (S) mail fraud; or
131 (T) any criminal offense which requires the individual to register with the Department of Public
132 Safety as a sex offender under Chapter 62, Code of Criminal Procedure.
133 (5) any crime of moral turpitude;
134 (6) a misdemeanor or felony offense under Chapters 431 and 481 through 486, Health and
135 Safety Code and the Comprehensive Drug Abuse Prevention and Control Act of 1970; or
136 (7) other misdemeanors or felonies which serve as grounds for discipline under the Act,
137 including violations of the Penal Code, Titles 4, 5, 6, 7, 8, 9, and 10, which indicate an inability
138 or tendency for the person to be unable to perform as a licensee or registrant, or to be unfit for
139 licensure or registration, if action by the board will promote the intent of the Pharmacy Act,
140 board rules including this chapter, and Occupations Code, Chapter 53.

AN ACT

relating to the revocation of an occupational license from certain license holders and the issuance of an occupational license to certain applicants with criminal convictions.

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

SECTION 1. Section 51.4014, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(a) Notwithstanding any other law and subject to Subsection (a-1), the department may accept an application from an applicant who is an inmate imprisoned in the Texas Department of Criminal Justice except that the department may not issue the license until the applicant has been released.

(a-1) The department may issue a license to an applicant who is an inmate imprisoned in the Texas Department of Criminal Justice and who is enrolled in or has completed an educational program described by Section 53.0211(b-1)(2) before the applicant has been released.

SECTION 2. Section 53.021, Occupations Code, is amended by adding Subsection (a-2) and amending Subsection (b) to read as follows:

(a-2) A licensing authority may revoke a license holder's license on the grounds of the license holder's imprisonment following a felony conviction.

(b) A license holder's license shall be revoked on the license holder's imprisonment following a:

(1) felony conviction for:

(A) an offense that directly relates to the duties and responsibilities of the licensed occupation;

(B) an offense listed in Article 42A.054, Code of Criminal Procedure; or

(C) a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure;

(2) [~~r~~] felony community supervision revocation;

(3) [~~r~~] revocation of parole; [~~r~~] or

(4) revocation of mandatory supervision.

SECTION 3. Section 53.0211, Occupations Code, is amended by amending Subsections (b) and (c) and adding Subsections (b-1) and (h) to read as follows:

(b) Notwithstanding any law other than Subsection (a) and unless the applicant has been convicted of an offense described by Section 53.021(a), a licensing authority shall issue to an otherwise qualified applicant who has been convicted of an offense:

(1) the license for which the applicant applied; or

(2) a provisional license under Subsection (b-1) valid for a term of 12 months [~~described by Subsection (c)~~].

(b-1) A licensing authority may issue a provisional license to an applicant who has been convicted of an offense, including an applicant who:

(1) is:

(A) an inmate imprisoned in the Texas Department

1 of Criminal Justice; or

2 (B) a person released on parole or mandatory
3 supervision and residing at a place described by Section 508.118 or
4 508.119, Government Code; and

5 (2) is enrolled in or has completed an educational
6 program offered by:

7 (A) the Windham School District; or

8 (B) an institution of higher education, as
9 defined by Section 61.003, Education Code.

10 (c) The term of a provisional license issued to an applicant
11 who is an inmate imprisoned in the Texas Department of Criminal
12 Justice begins on the date the applicant is released ~~[A licensing~~
13 ~~authority may issue a provisional license for a term of six months~~
14 ~~to an applicant who has been convicted of an offense].~~

15 (h) On request of a licensing authority, the Texas
16 Department of Criminal Justice shall provide to the licensing
17 authority information regarding an applicant who is an inmate
18 imprisoned in the Texas Department of Criminal Justice for purposes
19 of determining the inmate's eligibility for a license.

20 SECTION 4. Section 508.313(c), Government Code, is amended
21 to read as follows:

22 (c) The department, on request or in the normal course of
23 official business, shall provide information that is confidential
24 and privileged under Subsection (a) to:

25 (1) the governor;

26 (2) a member of the board or a parole commissioner;

27 (3) the Criminal Justice Policy Council in performing

1 duties of the council under Section 413.017; ~~or~~]

2 (4) a licensing authority requesting information
3 concerning an inmate or releasee who has submitted an application
4 for an occupational license to the licensing authority; or

5 (5) an eligible entity requesting information for a
6 law enforcement, prosecutorial, correctional, clemency, or
7 treatment purpose.

8 SECTION 5. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2025.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1080 passed the Senate on April 16, 2025, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 12, 2025, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1080 passed the House, with amendment, on May 8, 2025, by the following vote: Yeas 147, Nays 0, two present not voting.

Chief Clerk of the House

Approved:

Date

Governor