

## RULE ANALYSIS

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

**Short Title:** Sanctions for Criminal Offenses

**Rule Numbers:** §281.64

**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, update the sanctions for criminal offenses involving drugs and alcohol to be in line with the DSM5 guidelines.

**Background:** Board staff recommends updating the sanctions for criminal offenses.

1 **CHAPTER 281 ADMINISTRATIVE PRACTICE AND PROCEDURES**  
2 **SUBCHAPTER C DISCIPLINARY GUIDELINES**

3  
4 **§281.64 Sanctions for Criminal Offenses**  
5

6  
7 (a) – (No change.)  
8

9 (c) The board has determined that the nature and seriousness of certain crimes outweigh other  
10 factors to be considered in §281.63(g) of this title (relating to Considerations for Criminal  
11 Offenses) and necessitate the disciplinary action listed in paragraphs (1) - (3) of this subsection.  
12 In regard to the crimes enumerated in this rule, the board has weighed the factors, which are  
13 required to be considered from §281.63(g), in a light most favorable to the individual, and even if  
14 these factors were present, the board has concluded that the following sanctions apply to  
15 individuals with the criminal offenses as described in paragraphs (1) - (3) of this subsection:  
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17 (1) – (2) (No change.)  
18

19 (3) Misdemeanor offenses:  
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21 (A) Drug-related offenses, such as those listed in Chapter 481 or 483, Health and Safety  
22 Code:  
23

24 (i) Offenses involving manufacture, delivery, or possession with intent to deliver:  
25

26 (I) Currently on probation--denial or revocation;  
27

28 (II) 0-10 years since date of disposition--30- to 180-day suspension followed by 5 years  
29 probation;  
30

31 (III) 11-20 years since date of disposition--1 year probation;  
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33 (ii) Offenses involving possession of drugs, fraudulent prescriptions, or theft of drugs:  
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35 (I) Pharmacists:  
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37 (-a-) 0-5 years since date of disposition--5 years probation;  
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39 (-b-) 6-10 years since date of disposition--3 years probation;  
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41 (II) Pharmacy Technicians and Pharmacy Technician Trainees:  
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43 (-a-) 0-5 years since date of disposition and offense determined to be in violation of  
44 §568.003(a)(5) or (9) of the Act--5 years probation;  
45

46 (-b-) 0-5 years since date of disposition and determined not to **be in violation of**  
47 **§568.003(a)(5) or (9) of the Act** [~~have a drug or alcohol dependency~~]--1 year probation;  
48

49 (-c-) 6-10 years since date of disposition and offense determined to be in violation of  
50 §568.003(a)(5) or (9) of the Act--3 years probation;  
51

52 (III) If 0-5 years since date of disposition, and the offense did not involve only personal use  
53 of the drugs and/or chemical impairment, an additional 30- to 90-day suspension will be  
54 imposed preceding the probation for the offenses in this clause;  
55

56 (B) Intoxication and alcoholic beverage offenses as defined in the Texas Penal Code, if two  
57 such offenses involving intoxication due to ingestion of alcohol occurred in the previous **five**  
58 ~~ten~~ years or if one such offense involving intoxication due to ingestion of controlled substances  
59 or dangerous drugs occurred in the previous **five** ~~ten~~ years:  
60

61 (i) Pharmacists:

62  
63 ~~[(I)]~~ 0-5 years since date of disposition and offense determined to be in violation of  
64 §565.001(a)(4) or (7) of the Act--5 years probation;  
65

66 ~~[(II)] 6-10 years since date of disposition and offense determined to be in violation of~~  
67 ~~§565.001(a)(4) or (7) of the Act--3 years probation;]~~  
68

69 (ii) Pharmacy Technicians and Pharmacy Technician Trainees: 0-5 years since date of  
70 disposition and offense determined to be in violation of §568.003(a)(5) or (9) of the Act--5 years  
71 probation;  
72

73 (C) Other misdemeanor offenses involving moral turpitude: 0-5 years since date of  
74 disposition--reprimand.  
75

76 (d) When an individual has multiple criminal offenses or other violations, the board shall  
77 consider imposing additional more severe types of disciplinary sanctions, as deemed  
78 necessary.  
79

80 (e) An individual who suffers from an impairment as described by §565.001(a)(4) or (7) or  
81 §568.003(a)(5) **or (9)**, may provide mitigating information including treatment, counseling, and  
82 monitoring in order to mitigate the sanctions imposed.  
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