

RULE ANALYSIS

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

1 TITLE 22 EXAMINING BOARDS
2 PART 15 TEXAS STATE BOARD OF PHARMACY
3 CHAPTER 281 ADMINISTRATIVE PRACTICE AND PROCEDURES
4 SUBCHAPTER B GENERAL PROCEDURES IN A CONTESTED CASE
5

6 **§281.31. Burden of Proof.**
7

8 (a) In a contested case hearing at the State Office of Administrative Hearings involving grounds
9 for disciplinary action, the board has the burden to prove that grounds to discipline respondent
10 exist. However, the party that claims any exemption or exception, including mitigating factors as
11 specified in §281.62 of this chapter, has the burden to prove that the exemption or exception
12 should be applied.
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14 (b) In a contested case hearing at the State Office of Administrative Hearings involving a petition
15 for reinstatement or removal of restriction, the petitioner has the burden to prove that the license
16 should be reinstated or that a restriction on the license should be removed in accordance with
17 §281.66 of the chapter.
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19 (c) In a show cause **order** hearing **before a panel of the board** [~~at the State Office of~~
20 ~~Administrative Hearings]~~ involving an applicant, licensee, or registrant who has been previously
21 ordered by the board to submit to a mental or physical examination under §565.052 or
22 §568.0036 of the Act, the applicant, licensee, or registrant has the burden to prove that the
23 applicant, licensee, or registrant should not be required to submit to the examination.