

## RULE ANALYSIS

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

**Short Title:** Operation of a Pharmacy.

**Rule Number:** §291.11

**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, correct citation references and a short title reference.

**The Board reviewed and voted to propose the amendments during the February 2, 2021 meeting. The proposed amendments were published in the April 2, 2021, issue of the *Texas Register* at 46 TexReg 2144.**

1 **TITLE 22. EXAMINING BOARDS**  
2 **PART 15. TEXAS STATE BOARD OF PHARMACY**  
3 **CHAPTER 291. PHARMACIES**  
4 **SUBCHAPTER A. ALL CLASSES OF PHARMACIES**

5 **§291.11. Operation of a Pharmacy.**

6 The Texas State Board of Pharmacy proposes amendments to §291.11, concerning Operation  
7 of a Pharmacy. The amendments, if adopted, correct citation references and a short title  
8 reference.

9 Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary, has determined that,  
10 for the first five-year period the rules are in effect, there will be no fiscal implications for state or  
11 local government as a result of enforcing or administering the rule. Ms. Benz has determined  
12 that, for each year of the first five-year period the rule will be in effect, the public benefit  
13 anticipated as a result of enforcing the amendments will be correct and clear regulatory  
14 language. There is no anticipated adverse economic impact on large, small or micro-businesses  
15 (pharmacies), rural communities, or local or state employment. Therefore, an economic impact  
16 statement and regulatory flexibility analysis are not required.

17 For each year of the first five years the proposed amendments will be in effect, Ms. Benz has  
18 determined the following:

- 19 (1) The proposed amendments do not create or eliminate a government program;
- 20 (2) Implementation of the proposed amendments does not require the creation of new employee  
21 positions or the elimination of existing employee positions;
- 22 (3) Implementation of the proposed amendments does not require an increase or decrease in  
23 the future legislative appropriations to the agency;
- 24 (4) The proposed amendments do not require an increase or decrease in fees paid to the  
25 agency;
- 26 (5) The proposed amendments do not create a new regulation;
- 27 (6) The proposed amendments do not limit or expand an existing regulation;
- 28 (7) The proposed amendments do not increase or decrease the number of individuals subject to  
29 the rule's applicability; and
- 30 (8) The proposed amendments do not positively or adversely affect this state's economy.

31 Written comments on the amendments may be submitted to Megan G. Holloway, Deputy  
32 General Counsel, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-500, Austin,  
33 Texas 78701, FAX (512) 305-8061. Comments must be received by 5:00 p.m., May 4, 2021.

34 The amendments are proposed under §§551.002 and 554.051 of the Texas Pharmacy Act  
35 (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing

36 the agency to protect the public through the effective control and regulation of the practice of  
37 pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the  
38 proper administration and enforcement of the Act.

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

41 §291.11. Operation of a Pharmacy.

42 (a) For the purposes of **§565.002(a)(7)** [~~§565.002(7)~~] of the Texas Pharmacy Act, the following  
43 words and terms shall be defined as follows.

44 (1) "Failure to engage in the business described in the application for a license" means the  
45 holder of a pharmacy license has not commenced operating the pharmacy within six months of  
46 the date of issuance of the license.

47 (2) "Ceased to engage in the business described in the application for a license" means the  
48 holder of a pharmacy license, once it has been in operation, discontinues operating the  
49 pharmacy for a period of 30 days or longer unless the pharmacy experiences a fire or disaster,  
50 in which case the pharmacy must comply with **§291.3(g)** [~~§291.3(f)~~] of this title (relating to  
51 **Required** Notifications).

52 (b) For the purposes of this section, the term "operating the pharmacy" means the pharmacy  
53 shall demonstrate observable pharmacy business activity on a regular, routine basis, including a  
54 sufficient number of transactions of receiving, processing, or dispensing prescription drug orders  
55 or medication drug orders.

56 (c) No person may operate a pharmacy in a personal residence.