

RULE ANALYSIS

Introduction: THESE AMENDMENTS ARE SUBMITTED TO THE BOARD FOR CONSIDERATION AS ADOPTED RULES

Short Title: Fees

Rule Numbers: §§291.6, 295.5, and 297.4

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, will raise pharmacy and pharmacist license fees and pharmacy technician registration fees to increase TSBP revenue to cover increased staff/expenses associated with the passage of certain legislation.

The Board reviewed and voted to propose the amendments during the August 6, 2013, meeting. The proposed amendments were published in the August 23, 2013, issue of the *Texas Register* at 38 TexReg 5410, 38 TexReg 5411, and 38 TexReg 5412. A correction of error to proposed amendments to §297.4, concerning Fees, was published in the September 20, 2013, issue of the *Texas Register* at 38 TexReg 6336.

1 **CHAPTER 291. PHARMACIES**
2 **SUBCHAPTER A. ALL CLASSES OF PHARMACIES**
3 **§291.6**

4 The Texas State Board of Pharmacy proposes amendments to §291.6 concerning Pharmacy
5 License Fees. The proposed amendments to §291.6, if adopted, raise pharmacy license fees to
6 generate revenue to support the Fiscal Year 2014-2015 budget.

7 Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year
8 period the amendments to §291.6 are in effect, there will be fiscal implications for state
9 government as a result of enforcing or administering the amended rule as follows:

10 Revenue Increase

11 FY2014 = \$289,416

12 FY2015 = \$434,000

13 FY2016 = \$434,000

14 FY2017 = \$434,000

15 FY2018 = \$434,000

16 There are no anticipated fiscal implications for local government.

17 Ms. Dodson has determined that, for each year of the first five-year period the amendments to
18 §291.6 will be in effect, the public benefit anticipated as a result of enforcing the rule will be
19 assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission.
20 The effect on large, small or micro-businesses (pharmacies) will be the same as the economic
21 cost to an individual.

22 Economic cost to persons who are required to comply with the amended rule will be an increase
23 for a two-year license of \$127 for an initial license and \$124 for the renewal of a license.

24 Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S.,
25 Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite
26 3-600, Austin, Texas 78701, fax (512) 305-8008. Comments must be received by 5:00 p.m.,
27 October 25, 2013.

28 The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act
29 (Chapters 551 - 566, 568 and 569, Texas Occupations Code). The Board interprets §551.002 as
30 authorizing the agency to protect the public through the effective control and regulation of the
31 practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules
32 for the proper administration and enforcement of the Act.

33 The statutes affected by this amendment are Texas Pharmacy Act, Chapters 551 - 566, 568 and
34 569, Texas Occupations Code.

35 **§291.6. Pharmacy License Fees.**

36 (a) Initial License Fee.

37 (1) The fee for an initial license shall be \$500 [~~\$384~~] for the initial registration period and for
38 processing the application and issuance of the pharmacy license as authorized by the Act
39 §554.006.

40 (2) In addition, the following fees shall be collected:

41 (A) \$15 [~~\$13~~] surcharge to fund a program to aid impaired pharmacists and pharmacy students as
42 authorized by the Act §564.051;

43 (B) \$15 [~~\$12~~] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I,
44 Government Code; and

45 (C) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101,
46 Subchapter G, Occupations Code.

47 (b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal
48 of all pharmacy licenses provided under the Act §561.002.

49 (c) Renewal Fee.

50 (1) The fee for biennial renewal of a pharmacy license shall be \$500 [~~\$384~~] for processing the
51 application and issuance of the pharmacy license as authorized by the Act §554.006.

52 (2) In addition, the following fees shall be collected:

53 (A) \$15 [~~\$13~~] surcharge to fund a program to aid impaired pharmacists and pharmacy students as
54 authorized by the Act §564.051;

55 (B) \$15 [~~\$12~~] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I,
56 Government Code; and

57 (C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101,
58 Subchapter G, Occupations Code.

59 (d) Duplicate or Amended Certificates. The fee for issuance of an amended pharmacy license
60 renewal certificate shall be \$20.

1 **CHAPTER 295. PHARMACISTS**
2 **§295.5**

3 The Texas State Board of Pharmacy proposes amendments to §295.5 concerning Pharmacist
4 License or Renewal Fees. The proposed amendments to §295.5, if adopted, will raise pharmacist
5 license fees to generate revenue to support the agency's Fiscal Year 2014-2015 budget.

6 Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year
7 period the amendments to §295.5 are in effect, there will be fiscal implications for state
8 government as a result of enforcing or administering the amended rule as follows:

9 Revenue Increase

10 FY2014 = \$688,586

11 FY2015 = \$1,125,060

12 FY2016 = \$1,125,060

13 FY2017 = \$1,125,060

14 FY2018 = \$1,125,060

15 There are no anticipated fiscal implications for local government.

16 Ms. Dodson has determined that, for each year of the first five-year period the amendments to
17 §295.5 will be in effect, the public benefit anticipated as a result of enforcing the rule will be
18 assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission.
19 The effect on large, small or micro-businesses (pharmacies) will be the same as the economic
20 cost to an individual, if the pharmacy chooses to pay the fee for the individual.

21 Economic cost to persons who are required to comply with the amended rule will be an increase
22 for the two-year license of \$71 for an initial license and \$68 for the renewal of a license.

23 Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S.,
24 Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite
25 3-600, Austin, Texas 78701, fax (512) 305-8008. Comments must be received by 5:00 p.m.,
26 October 25, 2013.

27 The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act
28 (Chapters 551 - 566, 568 and 569, Texas Occupations Code). The Board interprets §551.002 as
29 authorizing the agency to protect the public through the effective control and regulation of the
30 practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules
31 for the proper administration and enforcement of the Act.

32 The statutes affected by this amendment are Texas Pharmacy Act, Chapters 551 - 566, 568 and
33 569, Texas Occupations Code.

34 **§295.5. Pharmacist License or Renewal Fees.**

35 (a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of
36 all pharmacist licenses provided under the Pharmacy Act, §559.002.

37 (b) Initial License Fee.

38 (1) The fee for the initial license shall be \$281 [~~\$215~~] for a two year registration and for
39 processing the application and issuance of the pharmacist license as authorized by the Act,
40 §554.006.

41 (2) In addition, the following fees shall be collected:

42 (A) \$13 [~~\$11~~] surcharge to fund a program to aid impaired pharmacists and pharmacy students as
43 authorized by the Act, §564.051;

44 (B) \$5 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government
45 Code; and

46 (C) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101,
47 Subchapter G, and Occupations Code.

48 (3) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated
49 based on the assigned expiration date.

50 (c) Renewal Fee.

51 (1) The fee for biennial renewal of a pharmacist license shall be \$281 [~~\$215~~] for processing the
52 application and issuance of the pharmacist license as authorized by the Act, §554.006.

53 (2) In addition, the following fees shall be collected:

54 (A) \$13 [~~\$11~~] surcharge to fund a program to aid impaired pharmacists and pharmacy students as
55 authorized by the Act, §564.051;

56 (B) \$5 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government
57 Code; and

58 (C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101,
59 Subchapter G, Occupations Code.

60 (d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State
61 Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without

62 payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal
63 certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose
64 license is renewed pursuant to this subsection may not engage in the active practice of pharmacy
65 without first paying the renewal fee as set out in subsection (b) of this section.

66 (e) Duplicate or Amended Certificates.

67 (1) The fee for issuance of an amended pharmacist's license renewal certificate shall be \$20.

68 (2) The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or
69 renewal certificate and wall certificate shall be \$35.

1 **CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN**
2 **TRAINEES**
3 **§297.4**

4 The Texas State Board of Pharmacy proposes amendments to §297.4 concerning Fees. The
5 proposed amendments to §297.4, if adopted, will raise pharmacy technician and pharmacy
6 technician trainee fees to generate revenue to support the Fiscal Year 2014-2015 budget.

7 Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year
8 period the amendments are in effect, there will be fiscal implications for state government as a
9 result of enforcing or administering the amended rule as follows:

10 Revenue Increase

11 FY2014 = \$395,016

12 FY2015 = \$592,500

13 FY2016 = \$592,500

14 FY2017 = \$592,500

15 FY2018 = \$592,500

16 There are no anticipated fiscal implications for local government.

17 Ms. Dodson has determined that, for each year of the first five-year period the amendments to
18 §297.4 will be in effect, the public benefit anticipated as a result of enforcing the rule will be
19 assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission.
20 The effect on large, small or micro-businesses (pharmacies) will be the same as the economic
21 cost to an individual, if the pharmacy chooses to pay the fee for the individual.

22 Economic cost to pharmacy technicians required to comply with the amended rule will be an
23 increase for a two-year registration of \$28 for an initial registration and \$25 for a renewal
24 registration. The economic cost for pharmacy technician trainees will be an increase for a two-
25 year registration of \$15.

26 Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S.,
27 Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite
28 3-600, Austin, Texas 78701, fax (512) 305-8008. Comments must be received by 5:00 p.m.,
29 October 25, 2013.

30 The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act
31 (Chapters 551 - 566, 568 and 569, Texas Occupations Code). The Board interprets §551.002 as
32 authorizing the agency to protect the public through the effective control and regulation of the

33 practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules
34 for the proper administration and enforcement of the Act.

35 The statutes affected by this amendment are Texas Pharmacy Act, Chapters 551 - 566, 568 and
36 569, Texas Occupations Code.

37 **§297.4.Fees.**

38 (a) Pharmacy technician trainee. The fee for registration shall be \$62 [~~\$47~~] and is composed of
39 the following fees:

40 (1) \$55 [~~\$40~~] for processing the application and issuance of the pharmacy technician trainee
41 registration as authorized by the Act, §568.005;

42 (2) \$2 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government
43 Code; and

44 (3) \$5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101,
45 Subchapter G, Occupations Code.

46 (b) Pharmacy technician.

47 (1) Biennial Registration. The board shall require biennial renewal of all pharmacy technician
48 registrations provided under Chapter 568 of the Act.

49 (2) Initial Registration Fee. The fee for initial registration shall be \$96 [~~\$75~~] for a two year
50 registration and is composed of the following fees:

51 (A) \$91 [~~\$67~~] for processing the application and issuance of the pharmacy technician registration
52 as authorized by the Act, §568.005;

53 (B) \$3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government
54 Code; and

55 (C) \$2 [~~\$5~~] surcharge to fund the Office of Patient Protection as authorized by Chapter 101,
56 Subchapter G, Occupations Code.

57 (3) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be \$96
58 [~~\$74~~] and is composed of the following:

59 (A) \$91 [~~\$67~~] for processing the application and issuance of the pharmacy technician registration
60 as authorized by the Act, §568.005;

61 (B) \$3 [~~\$2~~] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I,
62 Government Code; and

63 (C) \$2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101,
64 Subchapter G, Occupations Code.

65 (c) Duplicate or Amended Certificates. The fee for issuance of a duplicate or amended pharmacy
66 technician trainee registration certificate or pharmacy technician registration renewal certificate
67 shall be \$20.

-----Original Message-----

From: Jeff Carson

Sent: Monday, August 19, 2013 2:08 PM

To: Becky Damon

Subject: Technician ratios in the state of Texas

To whom it may concern,

My family has owned and operated pharmacies in the San Antonio area for over forty years. We have seen a lot of changes in that time, some good and some bad. This is a potential change that could be both. I certainly agree that in today's practice of pharmacy technicians can do a lot of great things and decrease the overall burden to pharmacists. However, there needs to be a limit or that decrease in burden could become an increase in liability. Our pharmacies are what you would call hybrids. We do both conventional pharmacy as well as prescription compounding both sterile and non-sterile. In the regular dispensing pharmacy, there are only so many prescriptions a pharmacist can SAFELY check. At some point, you can have too many technicians producing too many prescriptions for one pharmacist to check. So in this instance, my experience tells me that having more than 4 techs per one pharmacist is about maxed out. I don't see where it is either efficient or safe for technicians to produce more completed, ready to check prescriptions than the pharmacist can check in a reasonable amount of time. This does NOT free up the pharmacist to provide more cognitive services like counseling. It simply pushes more and more prescriptions thru the workflow faster than the pharmacist can do final verifications. Having huge piles of prescriptions waiting final verification sitting around in piles creates a cluttered environment that is more likely to result in a dispensing error than a clean and organized environment.

However, there are other pharmacy environments that could see significant benefit from increased ratios beyond 3 or 4 per pharmacist. For example, long term care specialty pharmacies are quite different from traditional dispensing pharmacies. Since there is very little contact (if any) with the patient, and therefore very little interruptions in the process of final verification being completed by the pharmacist on duty, there would be an appropriate need for say up to 6 technicians per pharmacist. You may even be able to argue for 7. Also, in the pharmacy engaged in compounding both sterile and non-sterile, there could also be some significant advantages. In order to stay compliant with USP guidelines, as well as state and federal guidelines, there are a significant and growing number of continuous quality improvement and control issues that require an ever increasing amount of time to complete and stay up to date with. It would be of significant benefit to have say up to 6 technicians per pharmacist to help with this. But here again, at some point there are just too many technicians producing too much finished product for one pharmacist to keep track of.

At some point more is not better. At some point more is actually dangerous. I just cannot support going from a restricted 3 all the way to unlimited! That just isn't a rational change. I am always for change that improves outcomes. But have we not learned our lessons from the past that too much change too fast leads to human failures?

I am very excited about adding the new class of pharmacy A-S. Let's go one step further and add Class A-NS (non-sterile compounder) and Class A-SNS (sterile and non-sterile compounder) as well as Class-ALTC (long term care specialty). Then we can assign appropriate technician ratios to each category as well as start training our compliance officers in the specific areas of expertise.

In addition, I would also be in support of increased fees with each of these new categories in order to provide more resources to the TSBP in hopes of improving it's ability to regulate in these areas of expertise.

Sincerely,

Jeff Carson, R.Ph.

Chief-of-Staff

Oakdell Pharmacy, Inc.

210-240-8316 cell