

RULE ANALYSIS

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

Short Title: Notification

Rule Numbers: §291.3

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, update the notification for a pharmacy that changes managing officers to include copies of the managing officers drivers' licenses, state issued photo identification or passport; clarifies the requirements for a change of ownership; and eliminates the references to pharmacies owned by management companies. The amendments, if adopted, also add class A-S and C-S pharmacies to the change of pharmacist-in-charge notification requirements.

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
6 **§291.3 Required Notifications**
7

8 (a) (No change.)
9

10 (b) Change of Managing Officers.

11
12 (1) The owner of a pharmacy shall notify the board in writing within 10 days of a change of any
13 managing officer of a partnership or corporation which owns a pharmacy. The written
14 notification shall include the effective date of such change and the following information for all
15 managing officers:

16
17 (A) name and title;

18
19 (B) home address and telephone number;

20
21 (C) date of birth; ~~and~~

22
23 (D) a copy of social security card; however, if an individual is unable to obtain a social
24 security number, an individual taxpayer identification number may be provided in lieu of
25 a social security number along with documentation indicating why the individual is
26 unable to obtain a social security number and; ~~[number]~~
27

28 (E) a copy of current driver's license, state issued photo identification card, or
29 passport.
30

31 (2) For purposes of this subsection, managing officers are defined as the top four executive
32 officers, including the corporate officer in charge of pharmacy operations, who are designated
33 by the partnership or corporation to be jointly responsible for the legal operation of the
34 pharmacy.
35

36 (c) Change of Ownership.

37
38 (1) When a pharmacy changes ownership, a new pharmacy application must be filed with
39 the board following the procedures as specified in §291.1 of this title (relating to
40 Pharmacy License Application). In addition, a copy of the purchase contract or mutual
41 agreement between the buyer and seller must be submitted. ~~[a new/completed pharmacy~~
42 ~~application must be filed with the board and the license issued to previous owner shall be~~
43 ~~returned to the board.]~~
44

45 (2) The license issued to the previous owner must be returned to the board. ~~[The new~~
46 ~~application shall include the following information:]~~
47

48 ~~[(A) the name and address of pharmacy;~~

49 ~~—(B) the type of ownership;~~
50
51

52 ~~—(C) the names, home addresses, dates of birth, phone numbers, and social security numbers~~
53 ~~of all owners; if a partnership or corporation, the name, title, home address, home phone~~
54 ~~number, date of birth, [and] social security number of all managing officers;~~

55
56 ~~—(D) the name and license number of the pharmacist in charge and of other pharmacists~~
57 ~~employed by the pharmacy;~~

58
59 ~~—(E) a copy of lease agreement or if the location of the pharmacy is owned by the applicant, a~~
60 ~~notarized statement certifying such location ownership;~~

61
62 ~~—(F) a copy of the purchase contract or mutual agreement between the buyer and seller[, or a~~
63 ~~notarized statement of intent to convey ownership signed by both the buyer and seller, stating~~
64 ~~the proposed date of ownership change];~~

65
66 ~~—(G) the signature of the pharmacist in charge;~~

67
68 ~~—(H) the notarized signature of the owner, or if the pharmacy is owned by a partnership or~~
69 ~~corporation, the notarized signature of an owner or managing officer;~~

70
71 ~~—(I) federal tax ID number;~~

72
73 ~~—(J) description of business services that will be offered;~~

74
75 ~~—(K) name and address of malpractice insurance carrier or statement that the business will be~~
76 ~~self-insured;~~

77
78 ~~—(L) the certificate of authority, if applicant is an out-of-state corporation;~~

79
80 ~~—(M) the articles of incorporation, if the applicant is a corporation;~~

81
82 ~~—(N) a current Texas Franchise Tax Certificate of Good Standing; and~~

83
84 ~~—(O) any other information requested on the application]~~

85
86 (3) ~~[Paragraph (4) of this subsection applies to all change of ownership applications for Class~~
87 ~~A (Community pharmacies, Class C (Institutional) pharmacies, or Class F Freestanding~~
88 ~~Emergency Medical Care Center) pharmacies, owned by a management company with the~~
89 ~~following exceptions:]~~

90
91 ~~[(A) Paragraph (4) of this subsection does not apply to a change of ownership application~~
92 ~~submitted by an entity which already owns a pharmacy licensed in Texas.~~

93
94 ~~—(B) Paragraph (4)(A) and (C) of this subsection do not apply to each individual owner or~~
95 ~~managing officer listed on a new pharmacy application if the individual possesses an active~~
96 ~~pharmacist license in Texas.]~~

97
98 ~~[(4) If the pharmacy is to be licensed as a Class A (Community) pharmacy, a Class C~~
99 ~~(Institutional) pharmacy, or a Class F (Freestanding Emergency Medical Care Center)~~
100 ~~pharmacy owned by a management company, the applicant must submit copies of the following~~
101 ~~documents in addition to the information required in paragraph (2) of this subsection:]~~

102

103 ~~[(A) the birth certificate, passport, or other document proving the date of birth of the owner, or,~~
104 ~~if the pharmacy is owned by a partnership or a closely held corporation:~~

105
106 ~~—(i) one of these documents for each managing officer; and~~

107
108 ~~—(ii) a list of all owners of the corporation;~~

109
110 ~~—(B) an approved credit application from a primary wholesaler or other documents showing~~
111 ~~credit worthiness as approved by the board; and~~

112
113 ~~—(C) a current driver license or state issued photo ID card of each individual owner, or, if the~~
114 ~~pharmacy is owned by a partnership or a closely held corporation, a current driver license or~~
115 ~~state issued photo ID card for each managing officer.]~~

116
117 ~~[(5)]~~A fee as specified in §291.6 of this title will be charged for issuance of a new license.

118
119 (d) Change of Pharmacist Employment.

120
121 (1) Change of pharmacist employed in a pharmacy. When a change in pharmacist employment
122 occurs, the pharmacist shall report such change in writing to the board within 10 days.

123
124 (2) Change of pharmacist-in-charge of a pharmacy.

125
126 (A) On the date of change of the pharmacist-in-charge of a Class A ~~[(Community)],~~ **Class A-**
127 **S,** Class C ~~[(Institutional)],~~ **Class C-S,** or Class F ~~[(Freestanding Emergency Medical Care~~
128 ~~Center)]~~ pharmacy, an inventory specified in §291.17 of this title (relating to Inventory
129 Requirements) shall be taken.

130
131 (B) This inventory shall constitute, for the purpose of this section, the closing inventory of the
132 departing pharmacist-in-charge and the beginning inventory of the incoming pharmacist-in-
133 charge.

134
135 (C) If the departing and the incoming pharmacists-in-charge are unable to conduct the
136 inventory together, a closing inventory shall be conducted by the departing pharmacist-in-
137 charge and a new and separate beginning inventory shall be conducted by the incoming
138 pharmacist-in-charge.

139
140 (D) The incoming pharmacist-in-charge shall be responsible for notifying the board within 10
141 days in writing on a form provided by the board that a change of pharmacist-in-charge has
142 occurred. The notification shall include the following:

143
144 (i) the name and license number of the departing pharmacist-in-charge;

145
146 (ii) the name and license number of the incoming pharmacist-in-charge;

147
148 (iii) the date the incoming pharmacist-in-charge became the pharmacist-in-charge; and

149
150 (iv) a statement signed by the incoming pharmacist-in-charge attesting that:

152 (I) an inventory has been conducted by the departing and incoming pharmacists-in-charge;
153 if the inventory was not taken by both pharmacists, the statement shall provide an explanation;
154 and

155
156 (II) the incoming pharmacist-in-charge has read and understands the laws and rules
157 relating to this class of pharmacy.

158
159 (e) (No change.)

160
161 (f) Fire or Other Disaster. If a pharmacy experiences a fire or other disaster, the following
162 requirements are applicable.

163
164 (1) Responsibilities of the pharmacist-in-charge.

165
166 (A) The pharmacist-in-charge shall be responsible for reporting the date of the fire or other
167 disaster which may affect the strength, purity, or labeling of drugs, medications, devices, or
168 other materials used in the diagnosis or the treatment of the injury, illness, and disease; such
169 notification shall be immediately reported to the board, but in no event shall exceed 10 days
170 from the date of the disaster.

171
172 (B) The pharmacist-in-charge or designated agent shall comply with the following procedures.

173
174 (i) If controlled substances, dangerous drugs, or Drug Enforcement Administration (DEA)
175 order forms are lost or destroyed in the disaster, the pharmacy shall:

176
177 (I) notify the DEA, Department of Public Safety (DPS), and Texas State Board of Pharmacy
178 (board) of the loss of the controlled substances or order forms. A pharmacy shall be in
179 compliance with this section by submitting to each of these agencies a copy of the DEA's report
180 of theft or loss of controlled substances, DEA Form-106, immediately on discovery of the loss;
181 and

182
183 (II) notify the **board** [~~Texas State Board of Pharmacy~~] in writing of the loss of the
184 dangerous drugs by submitting a list of the dangerous drugs lost.

185
186 (ii) If the extent of the loss of controlled substances or dangerous drugs is not able to be
187 determined, the pharmacy shall:

188
189 (I) take a new, complete inventory of all remaining drugs specified in §291.17(c) of this title
190 (relating to Inventory Requirements);

191
192 (II) submit to DEA and DPS a statement attesting that the loss of controlled substances is
193 indeterminable and that a new, complete inventory of all remaining controlled substances was
194 conducted and state the date of such inventory; and

195
196 (III) submit to the board a statement attesting that the loss of controlled substances and
197 dangerous drugs is indeterminable and that a new, complete inventory of the drugs specified in
198 §291.17(c) of this title was conducted and state the date of such inventory.

199
200 (C) If the pharmacy changes to a new, permanent location, the pharmacist-in-charge shall
201 comply with subsection (a) of this section.

202

203 (D) If the pharmacy moves to a temporary location, the pharmacist shall comply with
204 subsection (a) of this section. If the pharmacy returns to the original location, the pharmacist-in-
205 charge shall again comply with subsection (a) of this section.
206

207 (E) If the pharmacy closes due to fire or other disaster, the pharmacy may not be closed for
208 longer than 90 days as specified in §291.11 of this title (relating to **Operation of** [~~Operating~~] a
209 Pharmacy).
210

211 (F) If the pharmacy discontinues business (ceases to operate as a pharmacy), the
212 pharmacist-in-charge shall comply with §291.5 of this title (relating to Closing a Pharmacy).
213

214 (G) The pharmacist-in-charge shall maintain copies of all inventories, reports, or notifications
215 required by this section for a period of two years.
216

217 (2) (No change.)
218

219 (g) – (h) (No change.)