

RULE ANALYSIS

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

Short Title: Grounds for Discipline

Rule Numbers: §§281.7, 281.9

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 grounds for discipline for pharmacists and pharmacy technicians to include abusive, intimidating, or threatening behavior toward a board employee during the performance of such employee's lawful duties; and adds failure to respond to a continuing education audit to the grounds for discipline for a pharmacy technician.

The Board reviewed and voted to propose the amendments during the August 4, 2015, meeting. The proposed amendments were published in the September 25, 2015, issue of the *Texas Register* at 40 TexReg 6501.

1 **CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES**

2 **SUBCHAPTER A. GENERAL PROVISIONS**

3 **22 TAC §281.7, §281.9**

4 The Texas State Board of Pharmacy proposes amendments to §281.7 concerning Grounds for
5 Discipline for a Pharmacist License and §281.9 concerning Grounds for Discipline for a
6 Pharmacy Technician or a Pharmacy Technician Trainee. The amendments, if adopted, update
7 the grounds for discipline for pharmacists and pharmacy technicians to include abusive,
8 intimidating, or threatening behavior toward a board member or employee during the
9 performance of such member's or employee's lawful duties; and add failure to respond to a
10 continuing education audit to the grounds for discipline for a pharmacy technician.

11 Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year
12 period the rules are in effect, there will be no fiscal implications for state or local government as
13 a result of enforcing or administering the rules.

14 Ms. Dodson has determined that, for each year of the first five-year period the rules will be in
15 effect, the public benefit anticipated as a result of enforcing the amendments will ensure
16 pharmacists and pharmacy technicians are not acting in an unprofessional manner. There is no
17 fiscal impact for individuals, small or large businesses, or to other entities which are required to
18 comply with these sections.

19 Written comments on the amendments may be submitted to Allison Benz, R.Ph., M.S., Director
20 of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600,
21 Austin, Texas 78701, FAX (512) 305-6778. Comments must be received by 5:00 p.m., October
22 30, 2015.

23 The amendments are proposed under §§551.002, 554.051 and 565.001 of the Texas Pharmacy
24 Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as
25 authorizing the agency to protect the public through the effective control and regulation of the
26 practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules
27 for the proper administration and enforcement of the Act. The Board interprets §565.001(a)(2) as
28 authorizing the agency to adopt rules regarding conduct that is determined to be unprofessional.

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

31 ***§281.7. Grounds for Discipline for a Pharmacist License.***

32 (a) For the purposes of the Act, §565.001(a)(2), "unprofessional conduct" is defined as engaging
33 in behavior or committing an act that fails to conform with the standards of the pharmacy
34 profession, including, but not limited to, criminal activity or activity involving moral turpitude,
35 dishonesty, or corruption. This conduct shall include, but not be limited to:

36 (1) - (21) (No change.)
37 (22) abusive, intimidating, or threatening behavior toward [~~physically abusing~~] a board member
38 or employee during the performance of such member's or employee's lawful duties;

39 (23) - (32) (No change.)

40 (b) - (c) (No change.)

41 ***§281.9. Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee.***

42 (a) (No change.)

43 (b) For the purposes of the Act, §568.003(a)(10), "negligent, unreasonable, or inappropriate
44 conduct" shall include, but not be limited to:

45 (1) - (5) (No change.)

46 (6) abusive, intimidating, or threatening behavior toward [~~physically abusing~~] a board member or
47 employee during the performance of such member's or employee's lawful duties; [ø]

48 (7) failing to repay a guaranteed student loan, as provided in the Texas Education Code, §57.491;
49 or[-]

50 (8) failing to respond and to provide all requested records within the time specified in an audit of
51 continuing education records under §297.8 of this title (relating to Continuing Education
52 Requirements).

53 (c) - (d) (No change.)

54 The agency certifies that legal counsel has reviewed the proposal and found it to be within the
55 state agency's legal authority to adopt.

56 Filed with the Office of the Secretary of State on September 14, 2015.

57 TRD-201503734

58 Gay Dodson, R.Ph.

59 Executive Director

60 Texas State Board of Pharmacy

61 Earliest possible date of adoption: October 25, 2015

62 For further information, please call: (512) 305-8028