

## RULE ANALYSIS

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

**Short Title:** Administrative Penalties

**Rule Numbers:** §281.65

**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, add an administrative penalty for operating a Class E or Class E-S pharmacy without a Texas licensed pharmacist.

**TITLE 22  
PART 15  
CHAPTER 281  
SUBCHAPTER C**

**EXAMINING BOARDS  
TEXAS STATE BOARD OF PHARMACY  
ADMINISTRATIVE PRACTICE AND PROCEDURES  
DISCIPLINARY GUIDELINES**

**§281.65 Schedule of Administrative Penalties**

The board has determined that the assessment of an administrative penalty promotes the intent of §551.002 of the Act. In disciplinary matters, the board may assess an administrative penalty in addition to any other disciplinary action in the circumstances and amounts as follows:

- (1) (No change.)
- (2) The following violations by a pharmacy may be appropriate for disposition with an administrative penalty with or without additional sanctions or restrictions:
  - (A) failing to provide patient counseling: \$1,500;
  - (B) failing to conduct a drug regimen review or inappropriate drug regimen reviews provided by §291.33(c)(2)(A) of this title (relating to Operational Standards): \$1,500;
  - (C) failing to clarify a prescription with the prescriber: \$1,500;
  - (D) failing to properly supervise or improperly delegating a duty to a pharmacy technician: \$1,500;
  - (E) failing to identify the dispensing pharmacist on required pharmacy records: \$500;
  - (F) failing to maintain records of prescriptions: \$500;
  - (G) failing to provide or providing false or fraudulent information on any application, notification, or other document required under this Act, the Dangerous Drug Act, or Controlled Substances Act, or rules adopted pursuant to those Acts: \$1,000;
  - (H) following an accountability audit, shortages of prescription drugs: up to \$5,000;
  - (I) dispensing a prescription drug pursuant to a forged, altered, or fraudulent prescription: up to \$5,000;
  - (J) dispensing unauthorized prescriptions: up to \$5,000;
  - (K) dispensing controlled substances or dangerous drugs to an individual or individuals in quantities, dosages, or for periods of time which grossly exceed standards of practice, approved labeling of the federal Food and Drug Administration, or the guidelines published in professional literature: up to \$5,000;
  - (L) violating a disciplinary order of the Board: \$1,000 - \$5,000;
  - (M) failing to report or to assure the report of a malpractice claim: up to \$1,000;
  - (N) failing to respond within the time specified on a warning notice to such warning notice issued as a result of a compliance inspection or responding to a warning notice as a result of a compliance inspection in a manner that is false or misleading: up to \$1,000;
  - (O) allowing a pharmacist to practicing pharmacy with a delinquent license: \$250 - \$1,000;
  - (P) operating a pharmacy with a delinquent license: \$1,000 - \$5,000;
  - (Q) allowing an individual to perform the duties of a pharmacy technician without a valid registration: \$500 - \$3,000;
  - (R) failing to comply with the requirements of the Official Prescription Program: up to \$1,000;
  - (S) aiding and abetting the unlicensed practice of pharmacy, if an employee of the pharmacy knew or reasonably should have known that the person engaging in the practice of pharmacy was unlicensed at the time: up to \$5,000;
  - (T) receiving a conviction or deferred adjudication for a misdemeanor or felony which serves as a ground for discipline under the Act: up to \$5,000;
  - (U) unauthorized substitutions: \$1,000;

(V) submitting false or fraudulent claims to third parties for reimbursement of pharmacy services: up to \$5,000;

(W) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of misbranded prescription drugs or prescription drugs beyond the manufacturer's expiration date: up to \$1,000;

(X) possessing or engaging in the sale, purchase, or trade or the offer to sell, purchase, or trade of prescription drug samples as provided by §281.8(b)(2) of this title (relating to Grounds for Discipline for a Pharmacy License): up to \$1,000;

(Y) failing to keep, maintain or furnish an annual inventory as required by §291.17 of this title (relating to Inventory Requirements): \$1,000;

(Z) failing to obtain training on the preparation of sterile pharmaceutical compounding: \$1,500;

(AA) failing to maintain the confidentiality of prescription records: \$1,000 - \$5,000;

(BB) failing to inform the board of any notification or information required to be reported by the Act or rules: \$250 - \$500; ~~and~~

(CC) failing to operate a pharmacy as specified in ~~provided by~~ §291.11 of this title (relating to Operation of a Pharmacy): \$3,000; and

(DD) operating a Class E or Class E-S pharmacy without a Texas licensed pharmacist-in-charge: \$1,000 - \$5,000.

(3) – (6) (No change.)