

RULE ANALYSIS

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

Short Title: Grounds for Discipline for a Pharmacy Technician or a Pharmacy Technician Trainee.

Rule Numbers: §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, remove failing to repay a student loan as a ground for discipline of a pharmacy technician or a pharmacy technician trainee registration, in accordance with SB 37.

1 **TITLE 22 EXAMINING BOARDS**
2 **PART 15 TEXAS STATE BOARD OF PHARMACY**
3 **CHAPTER 281 ADMINISTRATIVE PRACTICE AND PROCEDURES**
4 **SUBCHAPTER A GENERAL PROVISIONS**

5 **§281.9. Grounds for Discipline for a Pharmacy Technician or a Pharmacy**
6 **Technician Trainee.**

7 (a) Pharmacy technicians and pharmacy technician trainees shall be subject to all disciplinary
8 grounds set forth in §568.003 of the Act.

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

11 (1) delivering or offering to deliver a prescription drug or device in violation of this Act, the
12 Controlled Substances Act, the Dangerous Drug Act, or rules promulgated pursuant to these
13 Acts;

14 (2) acquiring or possessing or attempting to acquire or possess prescription drugs in violation
15 of this Act, the Controlled Substances Act, or Dangerous Drug Act or rules adopted pursuant to
16 these Acts;

17 (3) failing to perform the duties of a pharmacy technician or pharmacy technician trainee in an
18 acceptable manner consistent with the public health and welfare, which contributes to a
19 prescription not being dispensed or delivered accurately;

20 (4) obstructing a board employee in the lawful performance of his duties of enforcing the Act;

21 (5) violating the provisions of an agreed board order or board order, including accessing
22 prescription drugs with a revoked or suspended pharmacy technician or pharmacy technician
23 trainee registration;

24 (6) abusive, intimidating, or threatening behavior toward a board member or employee during
25 the performance of such member's or employee's lawful duties; **or**

26 ~~[(7) failing to repay a guaranteed student loan, as provided in the Texas Education Code,~~
27 ~~§57.491; or]~~

28 ~~(7)~~[(8)] failing to respond and to provide all requested records within the time specified in an
29 audit of continuing education records under §297.8 of this title (relating to Continuing Education
30 Requirements).

31 (c) For the purposes of the Act, §568.003(a)(2), the term "gross immorality" shall include, but
32 not be limited to:

33 (1) conduct which is willful, flagrant, and shameless, and which shows a moral indifference to
34 standards of the community;

35 (2) engaging in an act which is a felony;

36 (3) engaging in an act that constitutes sexually deviant behavior; or

37 (4) being required to register with the Department of Public Safety as a sex offender under
38 Chapter 62, Code of Criminal Procedure.

AN ACT

relating to a prohibition on the use of student loan default or breach of a student loan repayment or scholarship contract as a ground for refusal to grant or renew an occupational license or other disciplinary action in relation to an occupational license.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 56, Occupations Code, is amended to read as follows:

CHAPTER 56. DISCIPLINARY ACTION AGAINST RECIPIENTS OF STUDENT
FINANCIAL ASSISTANCE PROHIBITED

SECTION 2. Sections 56.001(3), (4), (5), and (6), Occupations Code, are amended to read as follows:

(3) "Licensing authority" means a department, commission, board, office, or other agency of the state or of a political subdivision of the state that issues a license.

(4) "Scholarship contract" means an agreement by this state, an agency of this state, a political subdivision of this state, or the United States to make a grant to a person to support the person while attending a public or private institution of higher education or other postsecondary educational establishment

in exchange for the person's agreement to perform a service obligation.

(5) "Student loan" means a loan made to a person by a public or private entity to support the person while attending a public or private institution of higher education or other postsecondary educational establishment [~~that is:~~

~~[(A) owed to this state, an agency of this state, or the United States; or~~

~~[(B) guaranteed by this state, an agency of this state, or the United States].~~

(6) "Student loan repayment contract" means an agreement by this state, an agency of this state, a political subdivision of this state, or the United States to repay all or part of a person's student loan in exchange for the person's agreement to perform a service obligation.

SECTION 3. Section 56.003, Occupations Code, is amended to read as follows:

Sec. 56.003. DISCIPLINARY [~~AUTHORITY TO TAKE~~] ACTION IN EVENT OF DEFAULT OR BREACH PROHIBITED. A [~~On receipt of information from an administering entity that a person has defaulted on a student loan or has breached a student loan repayment contract or scholarship contract by failing to perform the person's service obligation under the contract, a~~] licensing authority may not take disciplinary action against a person based

on the person's default on a student loan or breach of a student loan repayment contract or scholarship contract, including by:

- (1) denying [~~deny~~] the person's application for a license or license renewal;
- (2) suspending [~~suspend~~] the person's license; or
- (3) taking [~~take~~] other disciplinary action against the person.

SECTION 4. Sections 157.015(f) and (g), Finance Code, are amended to read as follows:

(f) The commissioner may deny the renewal application for a residential mortgage loan originator license for the same reasons and grounds on which the commissioner could have denied an original application for a license, other than on the basis of the person's default on a student loan.

(g) The commissioner may deny the renewal application for a residential mortgage loan originator license if:

(1) the person seeking the renewal of the residential mortgage loan originator license is in violation of this chapter, Chapter 156, or Chapter 180, an applicable rule adopted under this chapter, Chapter 156, or Chapter 180, or any order previously issued to the person by the commissioner;

(2) the person seeking renewal of the residential mortgage loan originator license is in default in the payment of any administrative penalty, fee, charge, or other indebtedness

owed under this title; or

~~(3) [the person seeking the renewal of the residential mortgage loan originator license is in default on a student loan administered by the Texas Guaranteed Student Loan Corporation, under Section 57.491, Education Code; or~~

~~[(4)]~~ during the current term of the license, the commissioner becomes aware of any fact that would have been grounds for denial of an original license if the fact had been known by the commissioner on the date the license was granted.

SECTION 5. Section 180.055(d), Finance Code, is amended to read as follows:

(d) For purposes of Subsection (a)(3), an individual is considered not to be financially responsible if the individual has shown a lack of regard in managing the individual's own financial affairs or condition. A determination that an individual has not shown financial responsibility may not be based on the individual's default on a student loan but may include:

(1) an outstanding judgment against the individual, other than a judgment imposed solely as a result of medical expenses;

(2) an outstanding tax lien or other governmental liens and filings;

(3) a foreclosure during the three-year period preceding the date of the license application; and

(4) a pattern of seriously delinquent accounts, other than student loan accounts, during the three-year period preceding the date of the application.

SECTION 6. Sections 466.155(a) and (g), Government Code, are amended to read as follows:

(a) After a hearing, the director shall deny an application for a license or the commission shall suspend or revoke a license if the director or commission, as applicable, finds that the applicant or sales agent:

(1) is an individual who:

(A) has been convicted of a felony, criminal fraud, gambling or a gambling-related offense, or a misdemeanor involving moral turpitude, if less than 10 years has elapsed since the termination of the sentence, parole, mandatory supervision, or probation served for the offense;

(B) is or has been a professional gambler;

(C) is married to an individual:

(i) described in Paragraph (A) or (B); or

(ii) who is currently delinquent in the payment of any state tax;

(D) is an officer or employee of the commission or a lottery operator; or

(E) is a spouse, child, brother, sister, or parent residing as a member of the same household in the principal place

of residence of a person described by Paragraph (D);

(2) is not an individual, and an individual described in Subdivision (1):

(A) is an officer or director of the applicant or sales agent;

(B) holds more than 10 percent of the stock in the applicant or sales agent;

(C) holds an equitable interest greater than 10 percent in the applicant or sales agent;

(D) is a creditor of the applicant or sales agent who holds more than 10 percent of the applicant's or sales agent's outstanding debt;

(E) is the owner or lessee of a business that the applicant or sales agent conducts or through which the applicant will conduct a ticket sales agency;

(F) shares or will share in the profits, other than stock dividends, of the applicant or sales agent; or

(G) participates in managing the affairs of the applicant or sales agent;

(3) has been finally determined to be[+]

~~[(A)]~~ delinquent in the payment of a tax or other money collected by the comptroller, the Texas Workforce Commission, or the Texas Alcoholic Beverage Commission;

~~[(B)] in default on a loan made under Chapter 52,~~

~~Education Code; or~~

~~[(C) in default on a loan guaranteed under Chapter 57, Education Code;]~~

(4) is a person whose location for the sales agency is:

(A) a location licensed for games of bingo under Chapter 2001, Occupations Code;

(B) on land that is owned by:

(i) this state; or

(ii) a political subdivision of this state and on which is located a public primary or secondary school, an institution of higher education, or an agency of the state; or

(C) a location for which a person holds a wine and beer retailer's permit, mixed beverage permit, mixed beverage late hours permit, private club registration permit, or private club late hours permit issued under Chapter 25, 28, 29, 32, or 33, Alcoholic Beverage Code, other than a location for which a person holds a wine and beer retailer's permit issued under Chapter 25, Alcoholic Beverage Code, that derives less than 30 percent of the location's gross receipts from the sale or service of alcoholic beverages; or

(5) has violated this chapter or a rule adopted under this chapter.

(g) For purposes of Subsection (a)(3), the comptroller, Texas Workforce Commission, and Texas Alcoholic Beverage

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Commission[, ~~Texas Higher Education Coordinating Board, and Texas Guaranteed Student Loan Corporation~~] shall each provide the executive director with a report of persons who have been finally determined to be delinquent in the payment of any money owed to or collected by that agency. The commission shall adopt rules regarding the form and frequency of reports under this subsection.

SECTION 7. The following laws are repealed:

- (1) Section 57.491, Education Code;
- (2) Section 82.022(c), Government Code;
- (3) Section 154.110(e), Government Code; and
- (4) Sections 56.001(1), 56.002, 56.004, 56.005, and 56.006, Occupations Code.

SECTION 8. A disciplinary action proceeding under Chapter 56, Occupations Code, that was initiated before the effective date of this Act and that is pending on the effective date of this Act is terminated on that date.

SECTION 9. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2019.

President of the Senate

S.B. No. 37
Speaker of the House

I hereby certify that S.B. No. 37 passed the Senate on April 16, 2019, by the following vote: Yeas 29, Nays 2.

Secretary of the Senate

I hereby certify that S.B. No. 37 passed the House on May 21, 2019, by the following vote: Yeas 146, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor

39 (d) For the purposes of the Act, §568.003(a)(3), the terms "fraud," "deceit," or
40 "misrepresentation" shall apply to an individual seeking a registration as a pharmacy technician,
41 as well as making an application to any entity that certifies or registers pharmacy technicians,
42 and shall be defined as follows:

43 (1) "Fraud" means an intentional perversion of truth for the purpose of inducing the board in
44 reliance upon it to issue a registration; a false representation of a matter of fact, whether by
45 words or by conduct, by false or misleading allegations, or by concealment of that which should
46 have been disclosed, which deceives or is intended to deceive the board.

47 (2) "Deceit" means the assertion, as a fact, of that which is not true by any means whatsoever
48 to deceive or defraud the board.

49 (3) "Misrepresentation" means a manifestation by words or other conduct which is a false
50 representation of a matter of fact.