

## RULE ANALYSIS

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

**Short Title:** Application for Reissuance or Removal of Restrictions of a License or Registration.

**Rule Numbers:** §281.66

**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 arrests as an item the board may consider in determining the reinstatement of an applicant's previously revoked or canceled license or registration, in accordance with SB 1217.

1   **TITLE 22 EXAMINING BOARDS**  
2   **PART 15 TEXAS STATE BOARD OF PHARMACY**  
3   **CHAPTER 281 ADMINISTRATIVE PRACTICE AND PROCEDURES**  
4   **SUBCHAPTER C DISCIPLINARY GUIDELINES**

5   **§281.66.      Application for Reissuance or Removal of Restrictions of a License or**  
6   **Registration.**

7   (a) A person whose pharmacy license, pharmacy technician registration, or license or  
8   registration to practice pharmacy has been canceled, revoked, or restricted, whether voluntary  
9   or by action of the board, may, after 12 months from the effective date of such cancellation,  
10   revocation, or restriction, apply to the board for reinstatement or removal of the restriction of the  
11   license or registration.

12   (1) The application shall be given under oath and on the form prescribed by the board.

13   (2) A person applying for reinstatement or removal of restrictions may be required to meet all  
14   requirements necessary in order for the board to access the criminal history record information,  
15   including submitting fingerprint information and being responsible for all associated costs.

16   (3) A person applying for reinstatement or removal of restrictions has the burden of proof.

17   (4) On investigation and hearing, the board may in its discretion grant or deny the application  
18   or it may modify its original finding to reflect any circumstances that have changed sufficiently to  
19   warrant the modification.

20   (5) If such application is denied by the board, a subsequent application may not be considered  
21   by the board until 12 months from the date of denial of the previous application.

22   (6) The board in its discretion may require a person to pass an examination or examinations to  
23   reenter the practice of pharmacy.

24   (7) The fee for reinstatement of a license or registration shall be \$100 which is to be paid to the  
25   Texas State Board of Pharmacy and includes the processing of the reinstatement application.

26   (b) In reinstatement cases not involving criminal offenses, the board may consider the following  
27   items in determining the reinstatement of an applicant's previously revoked or canceled license  
28   or registration:

29   (1) moral character in the community;

30   (2) employment history;

31   (3) financial support to his/her family;

32   (4) participation in continuing education programs or other methods of maintaining currency  
33   with the practice of pharmacy;

34   (5) criminal history record[, including arrests, indictments, and convictions relating to felonies  
35   or misdemeanors involving moral turpitude];

36   (6) offers of employment in pharmacy;

37   (7) involvement in public service activities in the community;

38 (8) failure to comply with the provisions of the board order revoking or canceling the applicant's  
39 license or registration;

40 (9) action by other state or federal regulatory agencies;

41 (10) any physical, chemical, emotional, or mental impairment;

42 (11) the gravity of the offense for which the applicant's license or registration was canceled,  
43 revoked, or restricted and the impact the offense had upon the public health, safety and welfare;

44 (12) the length of time since the applicant's license or registration was canceled, revoked or  
45 restricted, as a factor in determining whether the time period has been sufficient for the  
46 applicant to have rehabilitated himself/herself to be able to practice pharmacy in a manner  
47 consistent with the public health, safety and welfare;

48 (13) competency to engage in the practice of pharmacy; or

49 (14) other rehabilitation actions taken by the applicant.

50 (c) If a reinstatement case involves criminal offenses, the sanctions specified in §281.64 of this  
51 chapter (relating to Sanctions for Criminal Offenses) apply.

AN ACT

relating to the consideration of certain arrests in determining an applicant's eligibility for an occupational license.

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

SECTION 1. Subchapter B, Chapter 53, Occupations Code, is amended by adding Section 53.0231 to read as follows:

Sec. 53.0231. LIMITATION REGARDING CONSIDERATION OF CERTAIN ARRESTS. For purposes of determining a person's fitness to perform the duties and discharge the responsibilities of the licensed occupation, a licensing authority may not consider an arrest that did not result in the person's conviction or placement on deferred adjudication community supervision.

SECTION 2. 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.

S.B. No. 1217

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President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1217 passed the Senate on May 8, 2019, by the following vote: Yeas 31, Nays 0.

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— Secretary of the Senate

I hereby certify that S.B. No. 1217 passed the House on May 22, 2019, by the following vote: Yeas 141, Nays 3, two present not voting.

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— Chief Clerk of the House

Approved:

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Date

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Governor