

BILL ANALYSIS

S.B. 1438
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Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

While some information relating to disciplinary reports on impaired pharmacists is confidential and not considered public information, interested parties assert that current law may present some ambiguity of this confidentiality under certain circumstances and that it is not clear whether some information may be subject to disclosure requirements, subpoena, or discovery. It is feared that this ambiguity may deter some pharmacists from seeking treatment for personal health issues and impede future career advancement. Additionally, there is concern that the current disciplinary process for pharmacists and pharmacy technicians requires improvements in efficiency, responsiveness, and flexibility to ensure effective disciplinary oversight.

S.B. 1438 seeks to clarify existing statutory language on the confidentiality of certain records related to the program to aid impaired pharmacists and pharmacy students and provide for more efficient disciplinary procedures for impaired pharmacists by amending current law relating to the program for impaired pharmacists and disciplinary proceedings conducted by the Texas State Board of Pharmacy.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

S.B. 1438 amends the Occupations Code to specify that the authorization to report relevant facts to the Texas State Board of Pharmacy relating to an action or omission of certain pharmacists or pharmacy students that might provide grounds for disciplinary action relating to an applicant or license holder who has developed an incapacity that prevents the applicant or license holder from practicing pharmacy with reasonable skill, competence, and safety to the public or who has used alcohol or drugs in an intemperate manner that could endanger a patient's life applies to an individual or entity, rather than a person, including a pharmaceutical peer review committee, who has knowledge of such an action or omission.

S.B. 1438 establishes that all records and proceedings of the board, an authorized agent of the board, or a pharmaceutical organization committee relating to the administration of statutory provisions regarding the program to aid impaired pharmacists and pharmacy students and pharmacy peer review are confidential and not considered public information and removes language limiting that confidentiality to certain reports relating to an impaired pharmacist or pharmacy student. The bill establishes that records considered confidential for such purposes include the following:

- information relating to a report made of an action or omission of a pharmacist or certain pharmacy students that might provide grounds for disciplinary action, including the identity of the individual or entity making the report;
- the identity of an impaired pharmacist or pharmacy student participating in a program to

aid impaired pharmacists and pharmacy students, with certain exceptions;

- a report, interview, statement, memorandum, evaluation, communication, or other information possessed by the board, an authorized agent of the board, or a pharmaceutical organization committee, related to a potentially impaired pharmacist or pharmacy student;
- a policy or procedure of an entity that contracts with the board relating to personnel selection; and
- a record relating to the operation of the board, an authorized agent of the board, or a pharmaceutical organization committee, as the record relates to a potentially impaired pharmacist or pharmacy student.

The bill establishes that such a record or proceeding is not subject to disclosure, subpoena, or discovery, except to a member of the board or an authorized agent of the board involved in the discipline of an applicant or license holder.

S.B. 1438 revises the circumstances under which the board is authorized to disclose such confidential information to authorize disclosure during a proceeding conducted by the State Office of Administrative Hearings (SOAH), the board, or a panel of the board, rather than only in a disciplinary hearing before the board. The bill authorizes the board to disclose such confidential information to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a disciplinary proceeding against an applicant or license holder, if the information is necessary for preparation for, or a presentation in, the proceeding. The bill establishes that confidential information that is disclosed under applicable provisions of law remains confidential and is not subject to discovery or subpoena in a civil suit and prohibits such information from being introduced as evidence in any action other than an appeal of a board action. The bill establishes that information regarding the administration of provisions of law relating to the program to aid impaired pharmacists and pharmacy students and pharmacy peer review that is confidential under the bill's provisions and that is admitted under seal in a proceeding conducted by the SOAH is confidential information for the purpose of a subsequent trial or appeal.

S.B. 1438 includes disciplinary action for an applicant or license holder who has used alcohol or drugs in an intemperate manner that could endanger a patient's life as an action for which the board or an authorized agent of the board on probable cause, as determined by the board or agent, is required to request a pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant to submit to a mental or physical examination by a physician or other health care professional designated by the board. The bill requires the executive director of the board, in addition to the board, to issue an order requiring the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant who refuses to submit to the examination, to show cause why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant will not submit to the examination and requires the executive director of the board, in addition to the board, to schedule a hearing on the order within the specified time period. The bill specifies that the hearing on the order is before a panel of three members of the board appointed by the president of the board. The bill establishes that the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant has the burden of proof to show why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant should not be required to submit to the examination. The bill sets a deadline of not later than the 60th day after the date of the order by which the panel is required to require a pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant to submit to the physical or mental examination.

S.B. 1438 authorizes information or material compiled by the board in connection with an investigation of a violation under the Texas Pharmacy Act to be disclosed during any proceeding conducted by the SOAH, to the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order and to a person providing a service to the board, including an expert witness, investigator, or employee of an entity that contracts with the board, related to a

disciplinary proceeding against an applicant or license holder, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding, rather than to a person involved with the board in a disciplinary action against the license holder. The bill authorizes such information or material to be disclosed under a court order.

S.B. 1438 removes language making provisions of law governing the temporary suspension or restriction of a license or registration under the Texas Pharmacy Act applicable only to a license under the act. The bill, in a provision of law authorizing a disciplinary panel to temporarily suspend a license under certain circumstances, authorizes the panel to restrict, as an alternative to suspending, such a license and specifies that such a license may be suspended or restricted on a determination of the panel that the license holder by continuation in the operation of a pharmacy, in addition to continuation in practice of pharmacy, would constitute a continuing threat to the public welfare. The bill authorizes the disciplinary panel to suspend or restrict a license after a hearing conducted by the panel after the 10th day after the date the notice of the hearing is provided to the license holder. The bill specifies that the panel's authority to suspend or restrict a license without notice or hearing is contingent on whether a hearing to determine whether a temporary suspension or restriction should be continued is scheduled under certain conditions and removes a provision of law making that authority contingent on the scheduling of a hearing before the panel on whether disciplinary proceedings should be initiated. The bill requires the board, not later than the 90th day after the date of the temporary suspension or restriction, to initiate a disciplinary action against the license holder. The bill extends from not later than the 60th day after the date of the suspension to not later than the 90th day after the date of the temporary suspension or restriction the deadline by which a contested case hearing is required to be held by the SOAH.

S.B. 1438 authorizes an authorized agent of the board, as an alternative to the board, to request a pharmacy technician, pharmacy technician applicant, pharmacy technician trainee, or pharmacy technician trainee applicant to submit to a mental or physical examination in enforcing specified disciplinary actions for an applicant or license holder and adds to those disciplinary actions violation of the pharmacy or drug laws or rules of Texas, another state, or the United States. The bill specifies that the authority for such action is based on probable cause as determined by the board or agent. The bill requires the executive director of the board, in the alternative to the board, to issue an order requiring the pharmacy technician, pharmacy technician applicant, pharmacy technician trainee, or pharmacy technician trainee applicant, if the person refuses to submit to the examination, to show cause why the person will not submit to the examination and to schedule a hearing on the order within a specified time period. The bill specifies that the hearing on such an order is to be conducted before a panel of three members of the board appointed by the president of the board. The bill establishes that the pharmacy technician, pharmacy technician applicant, pharmacy technician trainee, or pharmacy technician trainee applicant has the burden of proof to show why the person should not be required to submit to the examination. The bill, in a provision of law requiring a disciplinary panel by order to require the pharmacy technician, pharmacy technician applicant, pharmacy technician trainee, or pharmacy technician trainee applicant to submit to the examination or withdraw the request for examination after the hearing, specifies that the person is required to submit to the examination not later than the 60th day after the date of the order.

S.B. 1438 requires the president of the board to appoint a disciplinary panel consisting of three board members to determine whether a pharmacy technician registration should be temporarily suspended or restricted. The bill requires the panel to temporarily suspend or restrict the registration if a majority of the panel determines from evidence or information presented to the panel that the registrant by continuation in practice as a pharmacy technician would constitute a continuing threat to the public welfare. The bill authorizes the disciplinary panel to temporarily suspend or restrict the registration after a hearing conducted by the panel after the 10th day after the date notice of the hearing is provided to the registrant or without notice or hearing if, at the time the suspension or restriction is ordered, a hearing before the panel is scheduled to be held not later than the 14th day after the date of the temporary suspension or restriction to determine

whether the suspension or restriction should be continued. The bill requires the board, not later than the 90th day after the date of the temporary suspension or restriction, to initiate a disciplinary action and requires a contested case hearing to be held by the SOAH. The bill provides that if the SOAH does not hold the hearing within the required time frame, the suspended or restricted registration is automatically reinstated. The bill authorizes the panel to hold a meeting by telephone conference call if immediate action is required and convening the panel at one location is inconvenient for any member of the disciplinary panel.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.