

By: Van de Putte

S.B. No. 1438

A BILL TO BE ENTITLED

AN ACT

relating to the program for impaired pharmacists and disciplinary proceedings conducted by the Texas State Board of Pharmacy.

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

SECTION 1. Subsections (a) and (b), Section 564.001, Occupations Code, are amended to read as follows:

(a) An individual or entity [~~A person~~], including a pharmaceutical peer review committee, who has knowledge relating to an action or omission of a pharmacist in this state or a pharmacy student who is enrolled in the professional sequence of an accredited pharmacy degree program approved by the board that might provide grounds for disciplinary action under Section 565.001(a)(4) or (7) may report relevant facts to the board.

(b) A committee of a professional society composed primarily of pharmacists, the staff of the committee, or a district or local intervenor participating in a program established to aid pharmacists or [~~eligible~~] pharmacy students impaired by chemical abuse or mental or physical illness may report in writing to the board the name of an impaired pharmacist or pharmacy student and the relevant information relating to the impairment.

SECTION 2. Section 564.002, Occupations Code, is amended to read as follows:

Sec. 564.002. CONFIDENTIALITY. (a) All [~~The~~] records and proceedings of the board, an authorized agent of the board, or a

1 pharmaceutical organization committee relating to the
2 administration of this chapter [~~described under Section 564.001(a)~~
3 ~~or (b), in connection with a report under Section 564.001(a) or~~
4 ~~(b),~~] are confidential and are not considered public information
5 for purposes of Chapter 552, Government Code. Records considered
6 confidential under this section include:

7 (1) information relating to a report made under
8 Section 564.001, including the identity of the individual or entity
9 making the report;

10 (2) the identity of an impaired pharmacist or pharmacy
11 student participating in a program administered under this chapter,
12 except as provided by Section 564.003;

13 (3) a report, interview, statement, memorandum,
14 evaluation, communication, or other information possessed by the
15 board, an authorized agent of the board, or a pharmaceutical
16 organization committee, related to a potentially impaired
17 pharmacist or pharmacy student;

18 (4) a policy or procedure of an entity that contracts
19 with the board relating to personnel selection; and

20 (5) a record relating to the operation of the board, an
21 authorized agent of the board, or a pharmaceutical organization
22 committee, as the record relates to a potentially impaired
23 pharmacist or pharmacy student.

24 (b) A record or proceeding described by this section is not
25 subject to disclosure, subpoena, or discovery, except to a member
26 of the board or an authorized agent of the board involved in the
27 discipline of an applicant or license holder.

1 SECTION 3. Section 564.003, Occupations Code, is amended by
2 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
3 read as follows:

4 (a) The board may disclose information confidential under
5 Section 564.002 only:

6 (1) during a proceeding conducted by [in a
7 disciplinary hearing before] the State Office of Administrative
8 Hearings, the board, or a panel of the board, or in a subsequent
9 trial or appeal of a board action or order;

10 (2) to a pharmacist licensing or disciplinary
11 authority of another jurisdiction;

12 (3) under a court order; ~~or~~

13 (4) to a person providing a service to the board,
14 including an expert witness, investigator, or employee of an entity
15 that contracts with the board, related to a disciplinary proceeding
16 against an applicant or license holder, if the information is
17 necessary for preparation for, or a presentation in, the
18 proceeding; or

19 (5) as provided by Subsection (b).

20 (a-1) Information that is disclosed under Subsection (a)
21 remains confidential and is not subject to discovery or subpoena in
22 a civil suit and may not be introduced as evidence in any action
23 other than an appeal of a board action.

24 (a-2) Information that is confidential under Section
25 564.002 and that is admitted under seal in a proceeding conducted by
26 the State Office of Administrative Hearings is confidential
27 information for the purpose of a subsequent trial or appeal.

1 SECTION 4. Subsection (a), Section 564.004, Occupations
2 Code, is amended to read as follows:

3 (a) Any person, including a board employee or member, peer
4 review committee member, pharmaceutical organization committee
5 member, or pharmaceutical organization district or local
6 intervenor, who provides information, reports, or records under
7 Section 564.001[~~(a) or (b)~~] to aid an impaired pharmacist or
8 pharmacy student is immune from civil liability if the person
9 provides the information in good faith.

10 SECTION 5. Section 565.052, Occupations Code, is amended to
11 read as follows:

12 Sec. 565.052. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION.

13 (a) In enforcing Section 565.001(a)(4) or (7), the board or an
14 authorized agent of the board on probable cause, as determined by
15 the board or agent, shall request a pharmacist, pharmacist
16 applicant, pharmacist-intern, or pharmacist-intern applicant to
17 submit to a mental or physical examination by a physician or other
18 health care professional designated by the board.

19 (b) If the pharmacist, pharmacist applicant,
20 pharmacist-intern, or pharmacist-intern applicant refuses to
21 submit to the examination, the board or the executive director of
22 the board shall issue an order requiring the pharmacist, pharmacist
23 applicant, pharmacist-intern, or pharmacist-intern applicant to
24 show cause why the pharmacist, pharmacist applicant,
25 pharmacist-intern, or pharmacist-intern applicant will not submit
26 to the examination and shall schedule a hearing before a panel of
27 three members of the board appointed by the president of the board

1 on the order not later than the 30th day after the date notice is
2 served on the pharmacist, pharmacist applicant, pharmacist-intern,
3 or pharmacist-intern applicant. The pharmacist, pharmacist
4 applicant, pharmacist-intern, or pharmacist-intern applicant shall
5 be notified by either personal service or certified mail with
6 return receipt requested.

7 (c) At the hearing, the pharmacist, pharmacist applicant,
8 pharmacist-intern, or pharmacist-intern applicant and an attorney
9 are entitled to present testimony or other evidence to show why the
10 pharmacist, pharmacist applicant, pharmacist-intern, or
11 pharmacist-intern applicant [~~pharmacist-intern-applicant~~] should
12 not be required to submit to the examination. The pharmacist,
13 pharmacist applicant, pharmacist-intern, or pharmacist-intern
14 applicant has the burden of proof to show why the pharmacist,
15 pharmacist applicant, pharmacist-intern, or pharmacist-intern
16 applicant should not be required to submit to the examination.

17 (d) After the hearing, the panel [~~board~~] shall by order
18 require the pharmacist, pharmacist applicant, pharmacist-intern,
19 or pharmacist-intern applicant to submit to the examination not
20 later than the 60th day after the date of the order or withdraw the
21 request for examination, as applicable.

22 SECTION 6. Subsection (c), Section 565.055, Occupations
23 Code, is amended to read as follows:

24 (c) Notwithstanding Subsection (b), information or material
25 compiled by the board in connection with an investigation may be
26 disclosed [~~to~~]:

27 (1) during any proceeding conducted by the State

1 Office of Administrative Hearings, to the board, or a panel of the
2 board, or in a subsequent trial or appeal of a board action or
3 order;

4 (2) to a person providing a service to the board,
5 including an expert witness, investigator, or employee of an entity
6 that contracts with the board, related to a disciplinary proceeding
7 against an applicant or license holder, or a subsequent trial or
8 appeal, if the information is necessary for preparation for, or a
9 presentation in, the proceeding [~~involved with the board in a~~
10 ~~disciplinary action against the license holder~~];

11 (3) to [~~(2)~~] an entity in another jurisdiction that
12 licenses or disciplines pharmacists or pharmacies;

13 (4) to [~~(3)~~] a pharmaceutical or pharmacy peer review
14 committee as described under Chapter 564;

15 (5) to [~~(4)~~] a law enforcement agency; [~~or~~]

16 (6) to [~~(5)~~] a person engaged in bona fide research, if
17 all information identifying a specific individual has been deleted;
18 or

19 (7) under a court order.

20 SECTION 7. The heading to Section 565.059, Occupations
21 Code, is amended to read as follows:

22 Sec. 565.059. TEMPORARY SUSPENSION OR RESTRICTION OF
23 LICENSE [~~OR REGISTRATION~~].

24 SECTION 8. Subsections (a), (b), and (c), Section 565.059,
25 Occupations Code, are amended to read as follows:

26 (a) The president of the board shall appoint a three-member
27 disciplinary panel consisting of board members to determine whether

1 a license [~~or registration~~] under this subtitle should be
2 temporarily suspended or restricted. If a majority of the
3 disciplinary panel determines from evidence or information
4 presented to the panel that the holder of a license [~~or~~
5 ~~registration~~] by continuation in the practice of pharmacy or in the
6 operation of a pharmacy would constitute a continuing threat to the
7 public welfare, the panel shall temporarily suspend or restrict the
8 license as provided by Subsection (b) [~~or registration~~].

9 (b) The disciplinary panel may temporarily suspend or
10 restrict the license:

11 (1) after a hearing conducted by the panel after the
12 10th day after the date notice of the hearing is provided to the
13 license holder; or

14 (2) [~~or registration~~] without notice or hearing if, at
15 the time the suspension or restriction is ordered, a hearing before
16 the panel [~~on whether disciplinary proceedings under this chapter~~
17 ~~should be initiated against the holder of a license or~~
18 ~~registration~~] is scheduled to be held not later than the 14th day
19 after the date of the temporary suspension or restriction to
20 determine whether the suspension or restriction should be
21 continued.

22 (c) Not later than the 90th day after the date of the
23 temporary suspension or restriction, the board shall initiate a
24 disciplinary action against the license holder, and a contested
25 case [~~A second~~] hearing [~~on the suspended license or registration~~]
26 shall be held by the State Office of Administrative Hearings [~~not~~
27 ~~later than the 60th day after the date of the suspension~~]. If the

1 State Office of Administrative Hearings does not hold the [~~second~~]
2 hearing in the time required by this subsection, the suspended or
3 restricted license [~~or registration~~] is automatically reinstated.

4 SECTION 9. Subsections (b), (c), (e), and (f), Section
5 568.0036, Occupations Code, are amended to read as follows:

6 (b) In enforcing Section 568.003(a)(5) or (7), the board or
7 an authorized agent of the board[~~7~~] on probable cause, as
8 determined by the board or agent, may request a person subject to
9 this section to submit to a mental or physical examination by a
10 physician or other health care professional designated by the
11 board.

12 (c) If the person refuses to submit to the examination, the
13 board or the executive director of the board shall:

14 (1) issue an order requiring the person to show cause
15 why the person will not submit to the examination; and

16 (2) schedule a hearing before a panel of three members
17 of the board appointed by the president of the board on the order
18 not later than the 30th day after the date notice of the order is
19 served on the person under Subsection (d).

20 (e) At the hearing, the person and the person's counsel may
21 present testimony or other evidence to show why the person should
22 not be required to submit to the examination. The person has the
23 burden of proof to show why the person should not be required to
24 submit to the examination.

25 (f) After the hearing, as applicable, the panel [~~board~~]
26 shall, by order:

27 (1) require the person to submit to the examination

1 not later than the 60th day after the date of the order; or

2 (2) withdraw the request for examination.

3 SECTION 10. Chapter 568, Occupations Code, is amended by
4 adding Section 568.0037 to read as follows:

5 Sec. 568.0037. TEMPORARY SUSPENSION OR RESTRICTION OF
6 REGISTRATION. (a) The president of the board shall appoint a
7 disciplinary panel consisting of three board members to determine
8 whether a registration under this chapter should be temporarily
9 suspended or restricted. If a majority of the panel determines from
10 evidence or information presented to the panel that the registrant
11 by continuation in practice as a pharmacy technician would
12 constitute a continuing threat to the public welfare, the panel
13 shall temporarily suspend or restrict the registration as provided
14 by Subsection (b).

15 (b) A disciplinary panel may temporarily suspend or
16 restrict the registration:

17 (1) after a hearing conducted by the panel after the
18 10th day after the date notice of the hearing is provided to the
19 registrant; or

20 (2) without notice or hearing if, at the time the
21 suspension or restriction is ordered, a hearing before the panel is
22 scheduled to be held not later than the 14th day after the date of
23 the temporary suspension or restriction to determine whether the
24 suspension or restriction should be continued.

25 (c) Not later than the 90th day after the date of the
26 temporary suspension or restriction, the board shall initiate a
27 disciplinary action under this chapter, and a contested

1 case hearing shall be held by the State Office of Administrative
2 Hearings. If the State Office of Administrative Hearings does not
3 hold the hearing in the time required by this subsection, the
4 suspended or restricted registration is automatically reinstated.

5 (d) Notwithstanding Chapter 551, Government Code, the
6 disciplinary panel may hold a meeting by telephone conference call
7 if immediate action is required and convening the panel at one
8 location is inconvenient for any member of the disciplinary panel.

9 SECTION 11. The changes in law made by this Act relating to
10 the Texas State Board of Pharmacy's disciplinary authority apply
11 only to conduct that occurs on or after the effective date of this
12 Act. Conduct that occurs before the effective date of this Act is
13 governed by the law in effect on the date the conduct occurs, and
14 the former law is continued in effect for that purpose.

15 SECTION 12. This Act takes effect immediately if it
16 receives a vote of two-thirds of all the members elected to each
17 house, as provided by Section 39, Article III, Texas Constitution.
18 If this Act does not receive the vote necessary for immediate
19 effect, this Act takes effect September 1, 2011.