

1-1 By: Van de Putte S.B. No. 1438
1-2 (In the Senate - Filed March 10, 2011; March 22, 2011, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 April 21, 2011, reported favorably by the following vote: Yeas 9,
1-5 Nays 0; April 21, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the program for impaired pharmacists and disciplinary
1-9 proceedings conducted by the Texas State Board of Pharmacy.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Subsections (a) and (b), Section 564.001,
1-12 Occupations Code, are amended to read as follows:

1-13 (a) An individual or entity [~~A person~~], including a
1-14 pharmaceutical peer review committee, who has knowledge relating to
1-15 an action or omission of a pharmacist in this state or a pharmacy
1-16 student who is enrolled in the professional sequence of an
1-17 accredited pharmacy degree program approved by the board that might
1-18 provide grounds for disciplinary action under Section
1-19 565.001(a)(4) or (7) may report relevant facts to the board.

1-20 (b) A committee of a professional society composed
1-21 primarily of pharmacists, the staff of the committee, or a district
1-22 or local intervenor participating in a program established to aid
1-23 pharmacists or [~~eligible~~] pharmacy students impaired by chemical
1-24 abuse or mental or physical illness may report in writing to the
1-25 board the name of an impaired pharmacist or pharmacy student and the
1-26 relevant information relating to the impairment.

1-27 SECTION 2. Section 564.002, Occupations Code, is amended to
1-28 read as follows:

1-29 Sec. 564.002. CONFIDENTIALITY. (a) All [~~The~~] records and
1-30 proceedings of the board, an authorized agent of the board, or a
1-31 pharmaceutical organization committee relating to the
1-32 administration of this chapter [~~described under Section 564.001(a)~~
1-33 ~~or (b), in connection with a report under Section 564.001(a) or~~
1-34 ~~(b),]~~ are confidential and are not considered public information
1-35 for purposes of Chapter 552, Government Code. Records considered
1-36 confidential under this section include:

1-37 (1) information relating to a report made under
1-38 Section 564.001, including the identity of the individual or entity
1-39 making the report;

1-40 (2) the identity of an impaired pharmacist or pharmacy
1-41 student participating in a program administered under this chapter,
1-42 except as provided by Section 564.003;

1-43 (3) a report, interview, statement, memorandum,
1-44 evaluation, communication, or other information possessed by the
1-45 board, an authorized agent of the board, or a pharmaceutical
1-46 organization committee, related to a potentially impaired
1-47 pharmacist or pharmacy student;

1-48 (4) a policy or procedure of an entity that contracts
1-49 with the board relating to personnel selection; and

1-50 (5) a record relating to the operation of the board, an
1-51 authorized agent of the board, or a pharmaceutical organization
1-52 committee, as the record relates to a potentially impaired
1-53 pharmacist or pharmacy student.

1-54 (b) A record or proceeding described by this section is not
1-55 subject to disclosure, subpoena, or discovery, except to a member
1-56 of the board or an authorized agent of the board involved in the
1-57 discipline of an applicant or license holder.

1-58 SECTION 3. Section 564.003, Occupations Code, is amended by
1-59 amending Subsection (a) and adding Subsections (a-1) and (a-2) to
1-60 read as follows:

1-61 (a) The board may disclose information confidential under
1-62 Section 564.002 only:

1-63 (1) during a proceeding conducted by [~~in a~~
1-64 ~~disciplinary hearing before~~] the State Office of Administrative

2-1 Hearings, the board, or a panel of the board, or in a subsequent
2-2 trial or appeal of a board action or order;
2-3 (2) to a pharmacist licensing or disciplinary
2-4 authority of another jurisdiction;
2-5 (3) under a court order; ~~or~~
2-6 (4) to a person providing a service to the board,
2-7 including an expert witness, investigator, or employee of an entity
2-8 that contracts with the board, related to a disciplinary proceeding
2-9 against an applicant or license holder, if the information is
2-10 necessary for preparation for, or a presentation in, the
2-11 proceeding; or

2-12 (5) as provided by Subsection (b).

2-13 (a-1) Information that is disclosed under Subsection (a)
2-14 remains confidential and is not subject to discovery or subpoena in
2-15 a civil suit and may not be introduced as evidence in any action
2-16 other than an appeal of a board action.

2-17 (a-2) Information that is confidential under Section
2-18 564.002 and that is admitted under seal in a proceeding conducted by
2-19 the State Office of Administrative Hearings is confidential
2-20 information for the purpose of a subsequent trial or appeal.

2-21 SECTION 4. Subsection (a), Section 564.004, Occupations
2-22 Code, is amended to read as follows:

2-23 (a) Any person, including a board employee or member, peer
2-24 review committee member, pharmaceutical organization committee
2-25 member, or pharmaceutical organization district or local
2-26 intervenor, who provides information, reports, or records under
2-27 Section 564.001~~[(a) or (b)]~~ to aid an impaired pharmacist or
2-28 pharmacy student is immune from civil liability if the person
2-29 provides the information in good faith.

2-30 SECTION 5. Section 565.052, Occupations Code, is amended to
2-31 read as follows:

2-32 Sec. 565.052. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION.

2-33 (a) In enforcing Section 565.001(a)(4) or (7), the board or an
2-34 authorized agent of the board on probable cause, as determined by
2-35 the board or agent, shall request a pharmacist, pharmacist
2-36 applicant, pharmacist-intern, or pharmacist-intern applicant to
2-37 submit to a mental or physical examination by a physician or other
2-38 health care professional designated by the board.

2-39 (b) If the pharmacist, pharmacist applicant,
2-40 pharmacist-intern, or pharmacist-intern applicant refuses to
2-41 submit to the examination, the board or the executive director of
2-42 the board shall issue an order requiring the pharmacist, pharmacist
2-43 applicant, pharmacist-intern, or pharmacist-intern applicant to
2-44 show cause why the pharmacist, pharmacist applicant,
2-45 pharmacist-intern, or pharmacist-intern applicant will not submit
2-46 to the examination and shall schedule a hearing before a panel of
2-47 three members of the board appointed by the president of the board
2-48 on the order not later than the 30th day after the date notice is
2-49 served on the pharmacist, pharmacist applicant, pharmacist-intern,
2-50 or pharmacist-intern applicant. The pharmacist, pharmacist
2-51 applicant, pharmacist-intern, or pharmacist-intern applicant shall
2-52 be notified by either personal service or certified mail with
2-53 return receipt requested.

2-54 (c) At the hearing, the pharmacist, pharmacist applicant,
2-55 pharmacist-intern, or pharmacist-intern applicant and an attorney
2-56 are entitled to present testimony or other evidence to show why the
2-57 pharmacist, pharmacist applicant, pharmacist-intern, or
2-58 pharmacist-intern applicant [pharmacist-intern-applicant] should
2-59 not be required to submit to the examination. The pharmacist,
2-60 pharmacist applicant, pharmacist-intern, or pharmacist-intern
2-61 applicant has the burden of proof to show why the pharmacist,
2-62 pharmacist applicant, pharmacist-intern, or pharmacist-intern
2-63 applicant should not be required to submit to the examination.

2-64 (d) After the hearing, the panel [board] shall by order
2-65 require the pharmacist, pharmacist applicant, pharmacist-intern,
2-66 or pharmacist-intern applicant to submit to the examination not
2-67 later than the 60th day after the date of the order or withdraw the
2-68 request for examination, as applicable.

2-69 SECTION 6. Subsection (c), Section 565.055, Occupations

3-1 Code, is amended to read as follows:

3-2 (c) Notwithstanding Subsection (b), information or material
3-3 compiled by the board in connection with an investigation may be
3-4 disclosed ~~[to]~~:

3-5 (1) during any proceeding conducted by the State
3-6 Office of Administrative Hearings, to the board, or a panel of the
3-7 board, or in a subsequent trial or appeal of a board action or
3-8 order;

3-9 (2) to a person providing a service to the board,
3-10 including an expert witness, investigator, or employee of an entity
3-11 that contracts with the board, related to a disciplinary proceeding
3-12 against an applicant or license holder, or a subsequent trial or
3-13 appeal, if the information is necessary for preparation for, or a
3-14 presentation in, the proceeding ~~[involved with the board in a~~
3-15 disciplinary action against the license holder];

3-16 (3) to ~~[(2)]~~ an entity in another jurisdiction that
3-17 licenses or disciplines pharmacists or pharmacies;

3-18 (4) to ~~[(3)]~~ a pharmaceutical or pharmacy peer review
3-19 committee as described under Chapter 564;

3-20 (5) to ~~[(4)]~~ a law enforcement agency; ~~[or]~~

3-21 (6) to ~~[(5)]~~ a person engaged in bona fide research, if
3-22 all information identifying a specific individual has been deleted;
3-23 or

3-24 (7) under a court order.

3-25 SECTION 7. The heading to Section 565.059, Occupations
3-26 Code, is amended to read as follows:

3-27 Sec. 565.059. TEMPORARY SUSPENSION OR RESTRICTION OF
3-28 LICENSE ~~[OR REGISTRATION]~~.

3-29 SECTION 8. Subsections (a), (b), and (c), Section 565.059,
3-30 Occupations Code, are amended to read as follows:

3-31 (a) The president of the board shall appoint a three-member
3-32 disciplinary panel consisting of board members to determine whether
3-33 a license ~~[or registration]~~ under this subtitle should be
3-34 temporarily suspended or restricted. If a majority of the
3-35 disciplinary panel determines from evidence or information
3-36 presented to the panel that the holder of a license ~~[or~~
3-37 ~~registration]~~ by continuation in the practice of pharmacy or in the
3-38 operation of a pharmacy would constitute a continuing threat to the
3-39 public welfare, the panel shall temporarily suspend or restrict the
3-40 license as provided by Subsection (b) ~~[or registration]~~.

3-41 (b) The disciplinary panel may temporarily suspend or
3-42 restrict the license:

3-43 (1) after a hearing conducted by the panel after the
3-44 10th day after the date notice of the hearing is provided to the
3-45 license holder; or

3-46 (2) ~~[or registration]~~ without notice or hearing if, at
3-47 the time the suspension or restriction is ordered, a hearing before
3-48 the panel ~~[on whether disciplinary proceedings under this chapter~~
3-49 ~~should be initiated against the holder of a license or~~
3-50 ~~registration]~~ is scheduled to be held not later than the 14th day
3-51 after the date of the temporary suspension or restriction to
3-52 determine whether the suspension or restriction should be
3-53 continued.

3-54 (c) Not later than the 90th day after the date of the
3-55 temporary suspension or restriction, the board shall initiate a
3-56 disciplinary action against the license holder, and a contested
3-57 case [A second] hearing ~~[on the suspended license or registration]~~
3-58 shall be held by the State Office of Administrative Hearings ~~[not~~
3-59 later than the 60th day after the date of the suspension]. If the
3-60 State Office of Administrative Hearings does not hold the ~~[second]~~
3-61 hearing in the time required by this subsection, the suspended or
3-62 restricted license ~~[or registration]~~ is automatically reinstated.

3-63 SECTION 9. Subsections (b), (c), (e), and (f), Section
3-64 568.0036, Occupations Code, are amended to read as follows:

3-65 (b) In enforcing Section 568.003(a)(5) or (7), the board or
3-66 an authorized agent of the board~~[r]~~ on probable cause, as
3-67 determined by the board or agent, may request a person subject to
3-68 this section to submit to a mental or physical examination by a
3-69 physician or other health care professional designated by the

4-1 board.

4-2 (c) If the person refuses to submit to the examination, the
4-3 board or the executive director of the board shall:

4-4 (1) issue an order requiring the person to show cause
4-5 why the person will not submit to the examination; and

4-6 (2) schedule a hearing before a panel of three members
4-7 of the board appointed by the president of the board on the order
4-8 not later than the 30th day after the date notice of the order is
4-9 served on the person under Subsection (d).

4-10 (e) At the hearing, the person and the person's counsel may
4-11 present testimony or other evidence to show why the person should
4-12 not be required to submit to the examination. The person has the
4-13 burden of proof to show why the person should not be required to
4-14 submit to the examination.

4-15 (f) After the hearing, as applicable, the panel [~~board~~]
4-16 shall, by order:

4-17 (1) require the person to submit to the examination
4-18 not later than the 60th day after the date of the order; or

4-19 (2) withdraw the request for examination.

4-20 SECTION 10. Chapter 568, Occupations Code, is amended by
4-21 adding Section 568.0037 to read as follows:

4-22 Sec. 568.0037. TEMPORARY SUSPENSION OR RESTRICTION OF
4-23 REGISTRATION. (a) The president of the board shall appoint a
4-24 disciplinary panel consisting of three board members to determine
4-25 whether a registration under this chapter should be temporarily
4-26 suspended or restricted. If a majority of the panel determines from
4-27 evidence or information presented to the panel that the registrant
4-28 by continuation in practice as a pharmacy technician would
4-29 constitute a continuing threat to the public welfare, the panel
4-30 shall temporarily suspend or restrict the registration as provided
4-31 by Subsection (b).

4-32 (b) A disciplinary panel may temporarily suspend or
4-33 restrict the registration:

4-34 (1) after a hearing conducted by the panel after the
4-35 10th day after the date notice of the hearing is provided to the
4-36 registrant; or

4-37 (2) without notice or hearing if, at the time the
4-38 suspension or restriction is ordered, a hearing before the panel is
4-39 scheduled to be held not later than the 14th day after the date of
4-40 the temporary suspension or restriction to determine whether the
4-41 suspension or restriction should be continued.

4-42 (c) Not later than the 90th day after the date of the
4-43 temporary suspension or restriction, the board shall initiate a
4-44 disciplinary action under this chapter, and a contested
4-45 case hearing shall be held by the State Office of Administrative
4-46 Hearings. If the State Office of Administrative Hearings does not
4-47 hold the hearing in the time required by this subsection, the
4-48 suspended or restricted registration is automatically reinstated.

4-49 (d) Notwithstanding Chapter 551, Government Code, the
4-50 disciplinary panel may hold a meeting by telephone conference call
4-51 if immediate action is required and convening the panel at one
4-52 location is inconvenient for any member of the disciplinary panel.

4-53 SECTION 11. The changes in law made by this Act relating to
4-54 the Texas State Board of Pharmacy's disciplinary authority apply
4-55 only to conduct that occurs on or after the effective date of this
4-56 Act. Conduct that occurs before the effective date of this Act is
4-57 governed by the law in effect on the date the conduct occurs, and
4-58 the former law is continued in effect for that purpose.

4-59 SECTION 12. This Act takes effect immediately if it
4-60 receives a vote of two-thirds of all the members elected to each
4-61 house, as provided by Section 39, Article III, Texas Constitution.
4-62 If this Act does not receive the vote necessary for immediate
4-63 effect, this Act takes effect September 1, 2011.

4-64 * * * * *