

By: Schwertner

S.B. No. 460

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the licensing and regulation of pharmacists and
3 pharmacies.

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

5 SECTION 1. Section 483.047, Health and Safety Code, is
6 amended by amending Subsection (a) and adding Subsections (b-1) and
7 (b-2) to read as follows:

8 (a) Except as authorized by Subsections [~~Subsection~~] (b)
9 and (b-1), a pharmacist commits an offense if the pharmacist
10 refills a prescription unless:

11 (1) the prescription contains an authorization by the
12 practitioner for the refilling of the prescription, and the
13 pharmacist refills the prescription in the manner provided by the
14 authorization; or

15 (2) at the time of refilling the prescription, the
16 pharmacist is authorized to do so by the practitioner who issued the
17 prescription.

18 (b-1) Notwithstanding Subsection (b), in the event of a
19 natural or manmade disaster, a pharmacist may dispense not more
20 than a 30-day supply of a dangerous drug without the authorization
21 of the prescribing practitioner if:

22 (1) failure to refill the prescription might result in
23 an interruption of a therapeutic regimen or create patient
24 suffering;

1 (2) the natural or manmade disaster prohibits the
2 pharmacist from being able to contact the practitioner;

3 (3) the governor has declared a state of disaster
4 under Chapter 418, Government Code; and

5 (4) the board, through the executive director, has
6 notified pharmacies in this state that pharmacists may dispense up
7 to a 30-day supply of a dangerous drug.

8 (b-2) The prescribing practitioner is not liable for an act
9 or omission by a pharmacist in dispensing a dangerous drug under
10 Subsection (b-1).

11 SECTION 2. Section 555.002(a), Occupations Code, is amended
12 to read as follows:

13 (a) The board by rule shall establish methods by which
14 consumers and service recipients are notified of the name, mailing
15 address, and telephone number of the board for the purpose of
16 directing complaints to the board. The board may provide for that
17 notice:

18 (1) on each registration form, application, or written
19 contract for services of a person regulated by the board;

20 (2) on a sign prominently displayed in the place of
21 business of each person regulated by the board; ~~[or]~~

22 (3) on an electronic messaging system in a font
23 specified by board rule prominently displayed in the place of
24 business of each person regulated by the board; or

25 (4) in a bill for service provided by a person
26 regulated by the board.

27 SECTION 3. Section 556.051, Occupations Code, is amended to

1 read as follows:

2 Sec. 556.051. AUTHORIZATION TO ENTER AND INSPECT. The
3 board or a representative of the board may enter and inspect a
4 facility relative to the following:

5 (1) drug storage and security;

6 (2) equipment;

7 (3) components used in compounding, finished and
8 unfinished products, containers, and labeling of any item;

9 (4) sanitary conditions; ~~or~~

10 (5) records, reports, or other documents required to
11 be kept or made under this subtitle, Chapter 481 or 483, Health and
12 Safety Code, or the Comprehensive Drug Abuse Prevention and Control
13 Act of 1970 (21 U.S.C. Section 801 et seq.) or rules adopted under
14 one of those laws; or

15 (6) financial records relating to the operation of the
16 facility.

17 SECTION 4. Section 556.054, Occupations Code, is amended to
18 read as follows:

19 Sec. 556.054. CONFIDENTIALITY OF CERTAIN INFORMATION
20 [LIMITATION ON INSPECTION]. The following information obtained by
21 the board during an inspection of a facility is confidential and not
22 subject to disclosure under Chapter 552, Government Code [Unless
23 the owner, pharmacist, or agent in charge of a facility consents in
24 writing, an inspection of the facility authorized by this chapter
25 may not extend to]:

26 (1) financial data;

27 (2) sales data, other than shipment data; and ~~or~~

1 (3) pricing data.

2 SECTION 5. Subchapter B, Chapter 556, Occupations Code, is
3 amended by adding Section 556.057 to read as follows:

4 Sec. 556.057. INSPECTION OF PHARMACIST RECORDS. A
5 pharmacist shall provide to the board, on request, records of the
6 pharmacist's practice that occurs outside of a pharmacy. The
7 pharmacist shall provide the records at a time specified by board
8 rule.

9 SECTION 6. Sections 558.055(a) and (b), Occupations Code,
10 are amended to read as follows:

11 (a) An applicant who on the applicant's first attempt fails
12 the examination may take the examination four [~~two~~] additional
13 times.

14 (b) Before an applicant who has failed the examination five
15 [~~three~~] times is allowed to retake the examination, the applicant
16 must provide documentation from a college of pharmacy that the
17 applicant has successfully completed additional college course
18 work in each examination subject area the applicant failed.

19 SECTION 7. Section 560.052(b), Occupations Code, is amended
20 to read as follows:

21 (b) To qualify for a pharmacy license, an applicant must
22 submit to the board:

23 (1) a license fee set by the board, except as provided
24 by Subsection (d); and

25 (2) a completed application that:

26 (A) is on a form prescribed by the board;

27 (B) is given under oath;

1 (C) includes proof that:

2 (i) a pharmacy license held by the
3 applicant in this state or another state, if applicable, has not
4 been restricted, suspended, revoked, or surrendered for any reason;
5 and

6 (ii) no owner of the pharmacy for which the
7 application is made has held a pharmacist license in this state or
8 another state, if applicable, that has been restricted, suspended,
9 revoked, or surrendered for any reason; and

10 (D) includes a statement of:

11 (i) the ownership;

12 (ii) the location of the pharmacy;

13 (iii) the license number of each pharmacist
14 who is employed by the pharmacy, if the pharmacy is located in this
15 state, or who is licensed to practice pharmacy in this state, if the
16 pharmacy is located in another state;

17 (iv) the pharmacist license number of the
18 pharmacist-in-charge; and

19 (v) any other information the board
20 determines necessary.

21 SECTION 8. Section 561.003(e), Occupations Code, is amended
22 to read as follows:

23 (e) If a pharmacy's license has been expired for 91 days
24 [~~one year~~] or more, the pharmacy may not renew the license. The
25 pharmacy may obtain a new license by complying with the
26 requirements and procedures for obtaining an original license.

27 SECTION 9. Sections 562.056(a) and (a-1), Occupations Code,

1 are amended to read as follows:

2 (a) Before dispensing a prescription, a pharmacist shall
3 determine, in the exercise of sound professional judgment, that the
4 prescription is a valid prescription. A pharmacist may not
5 dispense a prescription drug if the pharmacist knows or should know
6 that the prescription was issued [~~on the basis of an Internet-based~~
7 ~~or telephonic consultation~~] without a valid practitioner-patient
8 relationship as provided by Texas Medical Board rule.

9 (a-1) To be a valid prescription, a prescription [~~for a~~
10 ~~controlled substance~~] must be issued for a legitimate medical
11 purpose by a practitioner acting in the usual course of the
12 practitioner's professional practice. The responsibility for the
13 proper prescribing and dispensing of prescription drugs
14 [~~controlled substances~~] is on the prescribing practitioner, but a
15 corresponding responsibility rests with the pharmacist who fills
16 the prescription.

17 SECTION 10. Section [562.106](#), Occupations Code, is amended
18 by amending Subsection (a) and adding Subsection (a-1) to read as
19 follows:

20 (a) A pharmacy shall report in writing to the board not
21 later than the 10th day after the date of:

- 22 (1) a permanent closing of the pharmacy;
- 23 (2) a change of ownership of the pharmacy;
- 24 (3) [~~a change of location of the pharmacy,~~
- 25 [~~4~~] a change of the person designated as the
- 26 pharmacist-in-charge of the pharmacy;
- 27 (4) [~~5~~] a sale or transfer of any controlled

1 substance or dangerous drug as a result of the permanent closing or
2 change of ownership of the pharmacy;

3 (5) [~~(6)~~] any matter or occurrence that the board
4 requires by rule to be reported;

5 (6) [~~(7)~~] as determined by the board, an out-of-state
6 purchase of any controlled substance;

7 (7) [~~(8)~~] a final order against the pharmacy license
8 holder by the regulatory or licensing agency of the state in which
9 the pharmacy is located if the pharmacy is located in another state;
10 or

11 (8) [~~(9)~~] a final order against a pharmacist who is
12 designated as the pharmacist-in-charge of the pharmacy by the
13 regulatory or licensing agency of the state in which the pharmacy is
14 located if the pharmacy is located in another state.

15 (a-1) A pharmacy shall report in writing to the board not
16 later than the 30th day before the date of a change of location of
17 the pharmacy.

18 SECTION 11. Subchapter A, Chapter 565, Occupations Code, is
19 amended by adding Section 565.004 to read as follows:

20 Sec. 565.004. FAILURE OF PHARMACY LICENSE HOLDER TO ENGAGE
21 IN LICENSED ACTIVITY. The board may revoke a pharmacy license if
22 the license holder:

23 (1) does not, on or before the 180th day after the date
24 the license is issued, begin to engage in an activity for which the
25 license is required; or

26 (2) ceases to engage in all activities for which the
27 license is required for a period of 30 days or more.

1 SECTION 12. Section 565.060(d), Occupations Code, is
2 amended to read as follows:

3 (d) If a license holder complies with and successfully
4 completes the terms of a remedial plan, the board shall remove all
5 records of the remedial plan from the board's records at the end of
6 the state fiscal year in which ~~on~~ the fifth anniversary of the
7 date the board issued the terms of the remedial plan occurs.

8 SECTION 13. Section 565.061(a), Occupations Code, is
9 amended to read as follows:

10 (a) Except as provided by Chapter 564, a disciplinary action
11 taken by the board ~~[under Section 565.060 or]~~ on the basis of a
12 ground for discipline under Subchapter A is governed by Chapter
13 2001, Government Code, and the rules of practice and procedure
14 before the board.

15 SECTION 14. The following provisions of the Occupations
16 Code are repealed:

- 17 (1) Section 561.003(d);
- 18 (2) Section 562.009(a-1);
- 19 (3) Section 562.051;
- 20 (4) Sections 562.151(1) and (3);
- 21 (5) Section 562.152; and
- 22 (6) Section 562.153.

23 SECTION 15. The change in law made by this Act to Section
24 483.047, Health and Safety Code, applies only to an offense
25 committed on or after the effective date of this Act. An offense
26 committed before the effective date of this Act is governed by the
27 law in effect on the date the offense was committed, and the former

1 law is continued in effect for that purpose. For purposes of this
2 section, an offense was committed before the effective date of this
3 Act if any element of the offense occurred before that date.

4 SECTION 16. Section 560.052(b), Occupations Code, as
5 amended by this Act, applies only to an application for a pharmacy
6 license submitted on or after the effective date of this Act. An
7 application submitted before the effective date of this Act is
8 governed by the law in effect on the date the application was
9 submitted, and the former law is continued in effect for that
10 purpose.

11 SECTION 17. Section 561.003(e), Occupations Code, as
12 amended by this Act, and the repeal by this Act of Section
13 561.003(d), Occupations Code, apply only to a pharmacy license that
14 expires on or after the effective date of this Act. A pharmacy
15 license that expired before the effective date of this Act is
16 governed by the law in effect on the date the license expired, and
17 the former law is continued in effect for that purpose.

18 SECTION 18. Section 562.106(a), Occupations Code, as
19 amended by this Act, and Section 562.106(a-1), Occupations Code, as
20 added by this Act, apply only to a pharmacy that changes location on
21 or after October 1, 2015. A pharmacy that changes location before
22 that date is governed by the law in effect immediately before the
23 effective date of this Act, and the former law is continued in
24 effect for that purpose.

25 SECTION 19. The change in law made by this Act to Section
26 565.061(a), Occupations Code, is a clarification of existing law
27 and does not imply that existing law may be construed as

1 inconsistent with the law as amended by this Act.

2 SECTION 20. This Act takes effect September 1, 2015.