

AN ACT

relating to the licensing and regulation of certain pharmacies;
providing an administrative penalty.

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

SECTION 1. Section 560.052(b), Occupations Code, is amended
to read as follows:

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

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

(2) a completed application that:

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

(B) includes notice that a surety bond may be
required under Section 565.0551;

(C) is given under oath;

(D) ~~(C)~~ includes proof that:

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

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

1 (E) [~~(D)~~] includes a statement of:

2 (i) the ownership;

3 (ii) the location of the pharmacy;

4 (iii) the license number of each pharmacist
5 who is employed by the pharmacy, if the pharmacy is located in this
6 state, or who is licensed to practice pharmacy in this state, if the
7 pharmacy is located in another state;

8 (iv) the pharmacist license number of the
9 pharmacist-in-charge; and

10 (v) any other information the board
11 determines necessary; and

12 (3) a disclosure statement required under Section
13 560.0521, unless:

14 (A) the pharmacy for which the application is
15 made is operated by a publicly traded company;

16 (B) the pharmacy for which the application is
17 made is wholly owned by a retail grocery store chain; or

18 (C) the applicant is applying for a Class B or
19 Class C pharmacy license.

20 SECTION 2. Subchapter B, Chapter 560, Occupations Code, is
21 amended by adding Section 560.0521 to read as follows:

22 Sec. 560.0521. SWORN DISCLOSURE STATEMENT. (a) A
23 disclosure statement included with an application under Section
24 560.052(b)(3) must include:

25 (1) the name of the pharmacy;

26 (2) the name of each person who has a direct financial
27 investment in the pharmacy;

1 (3) the name of each person who:

2 (A) is not an individual;

3 (B) has any financial investment in the pharmacy;

4 and

5 (C) is not otherwise disclosed under Subdivision

6 (2);

7 (4) the total amount or percentage of the financial
8 investment made by each person described by Subdivision (2); and

9 (5) the name of each of the following persons, if
10 applicable, connected to the pharmacy if the person is not
11 otherwise disclosed under Subdivision (2) or (3):

12 (A) a partner;

13 (B) an officer;

14 (C) a director;

15 (D) a managing employee;

16 (E) an owner or person who controls the owner;

17 and

18 (F) a person who acts as a controlling person of
19 the pharmacy through the exercise of direct or indirect influence
20 or control over the management of the pharmacy, the expenditure of
21 money by the pharmacy, or a policy of the pharmacy, including:

22 (i) a management company, landlord,
23 marketing company, or similar person who operates or contracts for
24 the operation of a pharmacy and, if the pharmacy is a publicly
25 traded corporation or is controlled by a publicly traded
26 corporation, an officer or director of the corporation but not a
27 shareholder or lender of the corporation;

1 (ii) an individual who has a personal,
2 familial, or other relationship with an owner, manager, landlord,
3 tenant, or provider of a pharmacy that allows the individual to
4 exercise actual control of the pharmacy; and

5 (iii) any other person the board by rule
6 requires to be included based on the person's exercise of direct or
7 indirect influence or control.

8 (b) An applicant shall notify the board not later than the
9 60th day after the date any administrative sanction or criminal
10 penalty is imposed against a person described by Subsection (a).

11 (c) The board may adopt rules regarding the disclosure of
12 the source of a financial investment under Subsection (a).

13 (d) A disclosure statement under this section shall be given
14 under oath as prescribed by board rule.

15 (e) Information contained in a disclosure statement under
16 this section is confidential and not subject to disclosure under
17 Chapter 552, Government Code.

18 SECTION 3. Section 565.002(a), Occupations Code, is amended
19 to read as follows:

20 (a) The board may discipline an applicant for or the holder
21 of a pharmacy license, including a Class E pharmacy license subject
22 to Section 565.003, if the board finds that the applicant or license
23 holder has:

24 (1) been convicted of or placed on deferred
25 adjudication community supervision or deferred disposition or the
26 applicable federal equivalent for:

27 (A) a misdemeanor:

(i) involving moral turpitude; or

(ii) under Chapter 481 or 483, Health and Safety Code, or the Comprehensive Drug Abuse Prevention and Control Act of 1970 (21 U.S.C. Section 801 et seq.); or

(B) a felony;

(2) advertised a prescription drug or device in a deceitful, misleading, or fraudulent manner;

(3) violated any provision of this subtitle or any rule adopted under this subtitle or that an owner or employee of a pharmacy has violated any provision of this subtitle or any rule adopted under this subtitle;

(4) sold without legal authorization a prescription drug or device to a person other than:

(A) a pharmacy licensed by the board;

(B) a practitioner;

(C) a person who procures a prescription drug or device for lawful research, teaching, or testing, and not for resale;

(D) a manufacturer or wholesaler licensed by the commissioner of public health as required by Chapter 431, Health and Safety Code; or

(E) a carrier or warehouseman;

(5) allowed an employee who is not a pharmacist to practice pharmacy;

(6) sold an adulterated or misbranded prescription or nonprescription drug;

(7) failed to engage in or ceased to engage in the

1 business described in the application for a license;

2 (8) failed to maintain records as required by this
3 subtitle, Chapter 481 or 483, Health and Safety Code, the
4 Comprehensive Drug Abuse Prevention and Control Act of 1970 (21
5 U.S.C. Section 801 et seq.), or any rule adopted under this subtitle
6 or Chapter 483, Health and Safety Code;

7 (9) failed to establish and maintain effective
8 controls against diversion of prescription drugs into other than a
9 legitimate medical, scientific, or industrial channel as provided
10 by this subtitle, another state statute or rule, or a federal
11 statute or rule;

12 (10) engaged in fraud, deceit, or misrepresentation as
13 defined by board rule in:

14 (A) operating a pharmacy;

15 (B) ~~[or in]~~ applying for a license to operate a
16 pharmacy; or

17 (C) dispensing drugs for nontherapeutic
18 purposes;

19 (11) violated a disciplinary order;

20 (12) been responsible for a drug audit shortage;

21 (13) been disciplined by the regulatory board of
22 another state for conduct substantially equivalent to conduct
23 described under this subsection; or

24 (14) waived, discounted, or reduced, or offered to
25 waive, discount, or reduce, a patient copayment or deductible for a
26 compounded drug in the absence of:

27 (A) a legitimate, documented financial hardship

1 of the patient; or

2 (B) evidence of a good faith effort to collect
3 the copayment or deductible from the patient.

4 SECTION 4. Subchapter B, Chapter 565, Occupations Code, is
5 amended by adding Sections 565.0551 and 565.0591 to read as
6 follows:

7 Sec. 565.0551. SURETY BOND. (a) The executive director of
8 the board may require a license holder to submit a surety bond to
9 the board in an amount as prescribed by board rule, not to exceed
10 \$25,000.

11 (b) The board may use a pharmacy's surety bond to secure the
12 payment of a fine, fee, or penalty imposed on the pharmacy or costs
13 incurred by the board in conducting an investigation of the
14 pharmacy only under Section 565.002(a)(7) or (10) if the pharmacy
15 fails to pay the fine, fee, penalty, or cost as prescribed by board
16 rule.

17 Sec. 565.0591. REVOCATION OF PHARMACY LICENSE FOR FAILURE
18 TO OPERATE. (a) On discovery by the board that a pharmacy licensed
19 under Chapter 560 has ceased to operate for a period of 30 days or
20 longer, the board shall notify the pharmacy that the license will be
21 revoked.

22 (b) The notice must:

23 (1) include a statement that the pharmacy license is
24 being revoked for violation of Section 565.002(a)(7); and

25 (2) inform the license holder of the license holder's
26 right to a hearing to contest the revocation.

27 (c) Not later than the 20th day after the date the license

1 holder receives the notice of revocation under this section, the
2 license holder may submit a written request for a hearing to contest
3 the revocation.

4 (d) If the license holder does not request a hearing within
5 the period prescribed by Subsection (c), the board shall:

6 (1) enter an order revoking the license; and

7 (2) notify the license holder of the order.

8 (e) If the license holder requests a hearing within the
9 period prescribed by Subsection (c), a panel of three board members
10 appointed by the president of the board shall conduct the hearing.
11 At the hearing the panel shall determine whether the license holder
12 has violated Section 565.002(a)(7).

13 (f) If the panel determines that the license holder
14 committed the violation, the board shall promptly:

15 (1) enter an order revoking the license; and

16 (2) notify the license holder of the order.

17 (g) Chapter 2001, Government Code, does not apply to a
18 determination under Subsection (e).

19 SECTION 5. Section 566.001, Occupations Code, is amended to
20 read as follows:

21 Sec. 566.001. IMPOSITION OF PENALTY. The board may impose
22 an administrative penalty on:

23 (1) a person licensed or regulated under this subtitle
24 who violates this subtitle or a rule or order adopted under this
25 subtitle; and

26 (2) an applicant who fails to submit a sworn
27 disclosure statement with an application if required by Section

1 560.052(b)(3).

2 SECTION 6. The changes in law made by this Act apply only to
3 an application for a pharmacy license that is submitted on or after
4 the effective date of this Act. An application for a pharmacy
5 license that was submitted before the effective date of this Act is
6 governed by the law in effect on the date the application was
7 submitted, and the former law is continued in effect for that
8 purpose.

9 SECTION 7. This Act takes effect January 1, 2020.

H.B. No. 3496

President of the Senate

Speaker of the House

I certify that H.B. No. 3496 was passed by the House on May 8, 2019, by the following vote: Yeas 140, Nays 7, 1 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 3496 was passed by the Senate on May 22, 2019, by the following vote: Yeas 30, Nays 1.

Secretary of the Senate

APPROVED: _____

Date

Governor