

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE J. PHARMACY AND PHARMACISTS

CHAPTER 564. PROGRAM TO AID IMPAIRED PHARMACISTS AND PHARMACY
STUDENTS; PHARMACY PEER REVIEW

SUBCHAPTER A. REPORTING AND CONFIDENTIALITY

Sec. 564.001. REPORTS. (a) An individual or entity, 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 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.

(c) The board may report to a committee of the professional society or the society's designated staff information that the board receives relating to a pharmacist or pharmacy student who may be impaired by chemical abuse or mental or physical illness.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. [1438](#)), Sec. 1, eff. June 17, 2011.

Sec. 564.002. CONFIDENTIALITY. (a) All records and proceedings of the board, an authorized agent of the board, or a pharmaceutical organization committee relating to the administration of this chapter are confidential and are not considered public information for purposes of Chapter [552](#), Government Code. Records considered confidential under this

section include:

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

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

(3) 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;

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

(5) 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.

(b) A record or proceeding described by this section 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.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 2, eff. June 17, 2011.

Sec. 564.003. DISCLOSURE OF CERTAIN INFORMATION. (a) The board may disclose information confidential under Section 564.002 only:

(1) during a proceeding conducted by the State Office of Administrative Hearings, the board, or a panel of the board, or in a subsequent trial or appeal of a board action or order;

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

(3) under a court order;

(4) 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; or

(5) as provided by Subsection (b).

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

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

(b) The board may disclose that the license of a pharmacist who is the subject of an order of the board that is confidential under Section [564.002](#) is suspended, revoked, canceled, restricted, or retired or that the pharmacist is in any other manner limited in the practice of pharmacy. The board may not disclose the nature of the impairment or other information that resulted in the board's action.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(a-1), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. [1438](#)), Sec. 3, eff. June 17, 2011.

Sec. 564.004. IMMUNITY. (a) Any person, including a board employee or member, peer review committee member, pharmaceutical organization committee member, or pharmaceutical organization district or local intervenor, who provides information, reports, or records under Section [564.001](#) to aid an impaired pharmacist or pharmacy student is immune from civil liability if the person provides the information in good faith.

(b) Subsection (a) shall be liberally construed to accomplish the purposes of this subchapter, and the immunity

provided under that subsection is in addition to any other immunity provided by law.

(c) A person who provides information or assistance to the board under this subchapter is presumed to have acted in good faith. A person who alleges a lack of good faith has the burden of proof on that issue.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 4, eff. June 17, 2011.

Sec. 564.005. RECORD OF REPORT. On a determination by the board that a report submitted by a peer review committee or pharmaceutical organization committee under Section 564.001(a) or (b) is without merit, the board shall expunge the report from the pharmacist's or pharmacy student's individual record in the board's office.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Sec. 564.006. EXAMINATION OF REPORT. A pharmacist, a pharmacy student, or an authorized representative of the pharmacist or student is entitled on request to examine the peer review or the pharmaceutical organization committee report submitted to the board and to place into the record a statement of reasonable length of the pharmacist's or pharmacy student's view concerning information in the report.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER B. PROGRAM ADMINISTRATION

Sec. 564.051. PROGRAM AUTHORIZATION; FUNDING. (a) The board may add a surcharge of not more than \$10 for each 12 months in a license period to a license or license renewal fee authorized under this subtitle to fund a program to aid impaired pharmacists and pharmacy students.

(b) The board may accept, transfer, and spend funds from the federal or state government, from another public source, or from a

private source to be used in the program authorized by this section.

(c) Funds and surcharges collected under this section shall be deposited in the general revenue fund and may only be used by the board to administer the program authorized by this section, including providing for initial evaluation and referral of an impaired pharmacist or pharmacy student by a qualified health professional and paying the administrative costs incurred by the board in connection with that funding. The money may not be used for costs incurred for treatment or rehabilitation after initial evaluation and referral.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.309(a), eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 24, eff. September 1, 2005.

Sec. 564.052. RULES OR CRITERIA. In administering and enforcing this subchapter, the board shall adopt rules or minimum criteria that are at least as strict as the rules or minimum criteria for the administration or enforcement of a peer assistance program adopted by the Texas Commission on Alcohol and Drug Abuse under Chapter 467, Health and Safety Code.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

SUBCHAPTER C. PHARMACY PEER REVIEW

Sec. 564.101. DEFINITIONS. In this subchapter:

(1) "Pharmacy peer review committee" means:

(A) a pharmacy peer review, judicial, or grievance committee of a pharmacy society or association that is authorized to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care; or

(B) a pharmacy peer review committee established by a person who owns a pharmacy or employs pharmacists that is authorized to evaluate the quality of pharmacy services or the

competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care.

(2) "Pharmacy society or association" means a membership organization of pharmacists that is incorporated under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) or that is exempt from the payment of federal income taxes under Section 501(c) of the Internal Revenue Code of 1986.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.102. PHARMACY PEER REVIEW COMMITTEE. (a) A pharmacy peer review committee may be established to evaluate the quality of pharmacy services or the competence of pharmacists and suggest improvements in pharmacy systems to enhance patient care.

(b) The committee may review documentation of quality-related activities in a pharmacy, assess system failures and personnel deficiencies, determine facts, and make recommendations or issue decisions in a written report that can be used for continuous quality improvement purposes.

(c) A pharmacy peer review committee includes the members, employees, and agents of the committee, including assistants, investigators, attorneys, and any other agent that serves the committee in any capacity.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.103. CONFIDENTIALITY. (a) Except as otherwise provided by this subchapter, all proceedings and records of a pharmacy peer review committee are confidential and all communications made to a pharmacy peer review committee are privileged.

(b) If a court makes a preliminary finding that a proceeding, record, or communication described by Subsection (a) is relevant to an anticompetitive action or an action brought under federal civil rights provisions under 42 U.S.C. Section 1983, then the proceeding, record, or communication is not confidential to the

extent it is considered to be relevant.

(c) The final report of, and any written or oral communication made to, a pharmacy peer review committee and the records and proceedings of the committee may be disclosed to another pharmacy peer review committee, appropriate state or federal agencies, national accreditation bodies, or the state board of registration or licensure of this or any other state.

(d) Disclosure to the affected pharmacist of confidential pharmacy peer review committee information pertinent to the matter under review does not constitute waiver of the confidentiality provisions provided by this section.

(e) If a pharmacy peer review committee takes action that could result in censure, license suspension, restriction, limitation, or revocation by the board or denial of membership or privileges in a health care entity, the affected pharmacist must be provided a written copy of the recommendation of the pharmacy peer review committee and a copy of the pharmacy peer review committee's final decision, including a statement of the basis for the decision.

(f) Unless disclosure is required or authorized by law, records or determinations of, or communications to, a pharmacy peer review committee are not subject to subpoena or discovery and are not admissible as evidence in any civil, judicial, or administrative proceeding without waiver of the privilege of confidentiality executed in writing by the committee. The evidentiary privilege created by this section may be invoked by any person or organization in any civil, judicial, or administrative proceeding unless the person or organization has secured a waiver of the privilege executed in writing by the presiding officer, assistant presiding officer, or secretary of the affected pharmacy peer review committee.

(g) Reports, information, or records received and maintained by the board under this subchapter are considered investigative files and are confidential and may only be released as specified in Section [565.055](#).

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.104. USE OF INFORMATION IN CIVIL AND CRIMINAL ACTIONS. (a) If a pharmacy peer review committee, a person participating in peer review, or any organization named as a defendant in any civil action filed as a result of participation in peer review may use otherwise confidential information in the committee's, person's, or organization's own defense or in a claim or suit under Section 564.106(b), a plaintiff in the proceeding may disclose records or determinations of, or communications to, a peer review committee in rebuttal to information supplied by the defendant.

(b) Any person seeking access to privileged information must plead and prove waiver of the privilege.

(c) A member, employee, or agent of a pharmacy peer review committee who provides access to otherwise privileged communications or records in cooperation with a law enforcement authority in a criminal investigation is not considered to have waived any privilege established under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.105. COMPLIANCE WITH SUBPOENA. All persons, including governing bodies and medical staffs of health care entities, shall comply fully with a subpoena issued by the board for documents or information as otherwise authorized by law. The disclosure of documents or information under the subpoena does not constitute a waiver of the privilege associated with a pharmacy peer review committee proceeding. Failure to comply with the subpoena is grounds for disciplinary action against the facility or individual by the appropriate licensing board.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.

Sec. 564.106. IMMUNITY. (a) A cause of action does not accrue against the members, agents, or employees of a pharmacy peer review committee from any act, statement, determination, or recommendation made or act reported, without malice, in the course

of peer review according to this subchapter.

(b) A pharmacy peer review committee, a person participating in peer review, or a health care entity named as a defendant in any civil action filed as a result of participation in peer review may use otherwise confidential information obtained for legitimate internal business and professional purposes, including use in the committee's, person's, or entity's own defense. The use of the information does not waive the confidential and privileged nature of pharmacy peer review committee proceedings.

Added by Acts 2001, 77th Leg., ch. 1420, Sec. 14.310(b), eff. Sept. 1, 2001.