

OCCUPATIONS CODE

TITLE 3. HEALTH PROFESSIONS

SUBTITLE J. PHARMACY AND PHARMACISTS

CHAPTER 565. DISCIPLINARY ACTIONS AND PROCEDURES; REINSTATEMENT OF  
LICENSE

SUBCHAPTER A. GROUNDS FOR DISCIPLINE OF APPLICANT OR LICENSE HOLDER

Sec. 565.001. APPLICANT FOR OR HOLDER OF LICENSE TO PRACTICE PHARMACY. (a) The board may discipline an applicant for or the holder of a current or expired license to practice pharmacy if the board finds that the applicant or license holder has:

(1) violated this subtitle or a board rule adopted under this subtitle;

(2) engaged in unprofessional conduct as defined by board rule;

(3) engaged in gross immorality as defined by board rule;

(4) developed an incapacity that prevents or could prevent the applicant or license holder from practicing pharmacy with reasonable skill, competence, and safety to the public;

(5) engaged in fraud, deceit, or misrepresentation, as defined by board rule, in practicing pharmacy or in seeking a license to practice pharmacy;

(6) been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

(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;

(7) used alcohol or drugs in an intemperate manner that, in the board's opinion, could endanger a patient's life;

(8) failed to maintain records required by this subtitle or failed to maintain complete and accurate records of

purchases or disposals of drugs listed in 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.);

(9) violated any provision of:

(A) 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 rules relating to one of those laws; or

(B) Section 485.031, 485.032, 485.033, or 485.034, Health and Safety Code;

(10) aided or abetted an unlicensed person in the practice of pharmacy if the pharmacist knew or reasonably should have known that the person was unlicensed at the time;

(11) refused entry into a pharmacy for an inspection authorized by this subtitle if the pharmacist received notification from which the pharmacist knew or reasonably should have known that the attempted inspection was authorized;

(12) violated any pharmacy or drug statute or rule of this state, another state, or the United States;

(13) been negligent in the practice of pharmacy;

(14) failed to submit to an examination after hearing and being ordered to do so by the board under Section 565.052;

(15) dispensed a prescription drug while acting outside the usual course and scope of professional practice;

(16) been disciplined by a pharmacy board or by another health regulatory board of this state or another state for conduct substantially equivalent to conduct described under this subsection;

(17) violated a disciplinary order, including a confidential order or contract under the program to aid impaired pharmacists and pharmacy students under Chapter 564;

(18) failed to adequately supervise a task delegated to a pharmacy technician or pharmacy technician trainee;

(19) inappropriately delegated a task delegated to a pharmacy technician or pharmacy technician trainee;

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

(21) been convicted or adjudicated of a criminal

offense that requires registration as a sex offender under Chapter 62, Code of Criminal Procedure.

(b) A certified copy of the record of the state taking action described by Subsection (a)(16) is conclusive evidence of the action taken by that state.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1254, Sec. 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1463, Sec. 3, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 25, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 15, eff. June 14, 2013.

Sec. 565.002. APPLICANT FOR OR HOLDER OF PHARMACY LICENSE.

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

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

(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 business described in the application for a license;

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

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

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

(A) operating a pharmacy;

(B) applying for a license to operate a pharmacy;

or

(C) dispensing drugs for nontherapeutic purposes;

(11) violated a disciplinary order;

(12) been responsible for a drug audit shortage;

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

(14) waived, discounted, or reduced, or offered to

waive, discount, or reduce, a patient copayment or deductible for a compounded drug in the absence of:

(A) a legitimate, documented financial hardship of the patient; or

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

(b) This subsection applies only to an applicant or license holder that is a legal business entity. The board may discipline an applicant for or the holder of a pharmacy license, including a Class E pharmacy license, if the board finds that a managing officer of the applicant or license holder has been convicted of or placed on deferred adjudication community supervision or deferred disposition or the applicable federal equivalent for:

(1) a misdemeanor:

(A) involving moral turpitude; or

(B) 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

(2) a felony.

(c) A certified copy of the record of the state taking action described by Subsection (a)(13) is conclusive evidence of the action taken by that state.

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

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 26, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 11, eff. September 1, 2015.

Acts 2019, 86th Leg., R.S., Ch. 895 (H.B. 3496), Sec. 3, eff. January 1, 2020.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. 2174), Sec. 15

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. 3284), Sec. 9, see other Sec. 565.003.

Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless

compliance would violate the pharmacy or drug statutes or rules in the state in which the pharmacy is located, the board may discipline an applicant for or the holder of a nonresident pharmacy license if the board finds that the applicant or license holder has failed to comply with:

(1) Section [481.074](#), [481.075](#), [481.0755](#), [481.0756](#), [481.076](#), [481.0761](#), [481.0762](#), [481.0763](#), [481.07635](#), [481.07636](#), [481.0764](#), [481.0765](#), or [481.0766](#), Health and Safety Code;

(2) Texas substitution requirements regarding:

(A) the practitioner's directions concerning generic substitution;

(B) the patient's right to refuse generic substitution; or

(C) notification to the patient of the patient's right to refuse substitution;

(3) any board rule relating to providing drug information to the patient or the patient's agent in written form or by telephone; or

(4) any board rule adopted under Section [554.051\(a\)](#) and determined by the board to be applicable under Section [554.051\(b\)](#).

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

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. [410](#)), Sec. 45, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. [1100](#)), Sec. 7, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1105 (H.B. [2174](#)), Sec. 15, eff. September 1, 2019.

Text of section as amended by Acts 2019, 86th Leg., R.S., Ch. 1166  
(H.B. [3284](#)), Sec. 9

For text of section as amended by Acts 2019, 86th Leg., R.S., Ch.  
1105 (H.B. [2174](#)), Sec. 15, see other Sec. 565.003.

Sec. 565.003. ADDITIONAL GROUNDS FOR DISCIPLINE REGARDING APPLICANT FOR OR HOLDER OF NONRESIDENT PHARMACY LICENSE. Unless compliance would violate the pharmacy or drug statutes or rules in

the state in which the pharmacy is located, the board may discipline an applicant for or the holder of a nonresident pharmacy license if the board finds that the applicant or license holder has failed to comply with:

- (1) Subchapter C, Chapter [481](#), Health and Safety Code;
- (2) Texas substitution requirements regarding:
  - (A) the practitioner's directions concerning generic substitution;
  - (B) the patient's right to refuse generic substitution; or
  - (C) notification to the patient of the patient's right to refuse substitution;
- (3) any board rule relating to providing drug information to the patient or the patient's agent in written form or by telephone; or
- (4) any board rule adopted under Section [554.051\(a\)](#) and determined by the board to be applicable under Section [554.051\(b\)](#).

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

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. [410](#)), Sec. 45, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. [1100](#)), Sec. 7, eff. September 1, 2013.

Acts 2019, 86th Leg., R.S., Ch. 1166 (H.B. [3284](#)), Sec. 9, eff. September 1, 2019.

#### SUBCHAPTER B. DISCIPLINARY ACTIONS AND PROCEDURES

Sec. 565.051. DISCIPLINE AUTHORIZED. On a determination that a ground for discipline exists under Subchapter A, or that a violation of this subtitle or a rule adopted under this subtitle has been committed by a license holder or applicant for a license or renewal of a license, the board may:

- (1) suspend the person's license;
- (2) revoke the person's license;
- (3) restrict the person's license to prohibit the

person from performing certain acts or from practicing pharmacy or operating a pharmacy in a particular manner for a term and under conditions determined by the board;

(4) impose an administrative penalty under Chapter 566;

(5) refuse to issue or renew the person's license;

(6) place the offender's license on probation and supervision by the board for a period determined by the board and impose a requirement that the license holder:

(A) report regularly to the board on matters that are the basis of the probation;

(B) limit practice to the areas prescribed by the board;

(C) continue or review professional education until the license holder attains a degree of skill satisfactory to the board in each area that is the basis of the probation; or

(D) pay the board a probation fee to defray the costs of monitoring the license holder during the period of probation;

(7) reprimand the person;

(8) retire the person's license as provided by board rule; or

(9) impose more than one of the sanctions listed in this subsection.

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

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 27, eff. September 1, 2005.

Sec. 565.052. SUBMISSION TO MENTAL OR PHYSICAL EXAMINATION.

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

(b) If the pharmacist, pharmacist applicant,



pharmacist-intern, or pharmacist-intern applicant refuses to submit to the examination, the board or the executive director of the board shall issue an order requiring the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant to show cause why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant will not submit to the examination and shall schedule a hearing before a panel of three members of the board appointed by the president of the board on the order not later than the 30th day after the date notice is served on the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant. The pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant shall be notified by either personal service or certified mail with return receipt requested.

(c) At the hearing, the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant and an attorney are entitled to present testimony or other evidence to show why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant should not be required to submit to the examination. The pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant has the burden of proof to show why the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant should not be required to submit to the examination.

(d) After the hearing, the panel shall by order require the pharmacist, pharmacist applicant, pharmacist-intern, or pharmacist-intern applicant to submit to the examination not later than the 60th day after the date of the order or withdraw the request for examination, as applicable.

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. 5, eff. June 17, 2011.

Sec. 565.053. DISCIPLINE OF NONRESIDENT PHARMACY; NOTICE TO RESIDENT STATE. The board shall give notice of a disciplinary action by the board against a license holder located in another

state to the regulatory or licensing agency of the state in which the pharmacy is located.

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

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 28, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 8, eff. September 1, 2013.

Sec. 565.054. SERVICE OF PROCESS ON NONRESIDENT PHARMACY.

(a) Service of process on a nonresident pharmacy under Section 565.058 or 566.051 or for disciplinary action taken by the board under Section 565.061 shall be on the owner and pharmacist-in-charge of the pharmacy, as designated on the pharmacy's license application.

(b) The complaining party shall mail by certified mail, return receipt requested and postage prepaid, a copy of the process served to the license holder at the address of the license holder designated on the license application.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 9, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 608 (S.B. 1100), Sec. 10, eff. September 1, 2013.

Sec. 565.055. INVESTIGATION; CONFIDENTIALITY OF INFORMATION. (a) The board or the board's authorized representative may investigate and gather evidence concerning any alleged violation of this subtitle or a board rule.

(b) Information or material compiled by the board in connection with an investigation, including an investigative file of the board, is confidential and not subject to:

- (1) disclosure under Chapter 552, Government Code; or
- (2) any means of legal compulsion for release, including disclosure, discovery, or subpoena, to anyone other than the board or a board employee or board agent involved in discipline

of a license holder.

(c) Notwithstanding Subsection (b), information or material compiled by the board in connection with an investigation may be disclosed:

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

(2) 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, or a subsequent trial or appeal, if the information is necessary for preparation for, or a presentation in, the proceeding;

(3) to an entity in another jurisdiction that:

(A) licenses or disciplines pharmacists or pharmacies; or

(B) registers or disciplines pharmacy technicians or pharmacy technician trainees;

(4) to a pharmaceutical or pharmacy peer review committee as described under Chapter 564;

(5) to a law enforcement agency;

(6) to a person engaged in bona fide research, if all information identifying a specific individual has been deleted; or

(7) to an entity that administers a board-approved pharmacy technician certification examination.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.311(a), eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 6, eff. June 17, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 16, eff. June 14, 2013.

Sec. 565.0551. SURETY BOND. (a) The executive director of the board may require a license holder to submit a surety bond to

the board in an amount as prescribed by board rule, not to exceed \$25,000.

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

Added by Acts 2019, 86th Leg., R.S., Ch. 895 (H.B. 3496), Sec. 4, eff. January 1, 2020.

Sec. 565.056. INFORMAL PROCEEDINGS. (a) The board by rule shall adopt a procedure governing:

(1) informal disposition of a contested case under Chapter 2001, Government Code; and

(2) an informal proceeding held in compliance with Chapter 2001, Government Code.

(b) A rule adopted under this section must:

(1) provide the complainant, if applicable and permitted by law, and the license holder an opportunity to be heard;

(2) require the presence of an attorney to advise the board or a board employee; and

(3) if an informal meeting will be held, require notice of the time and place of the informal meeting to be given to the license holder not later than the 45th day before the date the informal meeting is held.

(c) The attorney must be a member of the board's legal staff, if the board has a legal staff. If the board does not have a legal staff, the attorney must be an employee of the office of the attorney general.

(d) The notice required by Subsection (b)(3) must be accompanied by a written statement of the nature of the allegations against the license holder and the information the board intends to use at the informal meeting. If the board does not provide the statement or information when the notice is provided, the license holder may use that failure as grounds for rescheduling the informal meeting. The license holder must provide to the board the

license holder's rebuttal not later than the 15th day before the date of the meeting in order for that information to be considered at the meeting.

(e) On request by a license holder under review, the board shall make a recording of the informal meeting. The recording is a part of the investigative file and may not be released to a third party unless authorized under this subtitle. The board may charge the license holder a fee to cover the cost of recording the meeting. The board shall provide a copy of the recording to the license holder on the license holder's request.

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

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 3, eff. September 1, 2013.

Sec. 565.057. MONITORING OF LICENSE HOLDER. (a) The board shall develop a policy and procedure for monitoring a license holder's compliance with this subtitle.

(b) A policy or procedure adopted under this section must include a procedure to:

(1) monitor for compliance a license holder who is ordered by the board to perform a certain act; and

(2) identify and monitor a license holder who represents a risk to the public.

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

Sec. 565.058. SUBPOENA AUTHORITY. (a) The board or an officer of the board may:

(1) issue subpoenas ad testificandum or subpoenas duces tecum to compel the attendance of witnesses or the production of items, including books, records, or documents;

(2) administer oaths; and

(3) take testimony concerning matters in the board's or officer's jurisdiction.

(b) A person designated in the subpoena may serve the subpoena.

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

Sec. 565.059. TEMPORARY SUSPENSION OR RESTRICTION OF LICENSE. (a) The president of the board shall appoint a three-member disciplinary panel consisting of board members to determine whether a license under this subtitle should be temporarily suspended or restricted. If a majority of the disciplinary panel determines from evidence or information presented to the panel that the holder of a license by continuation in the practice of pharmacy or in the operation of a pharmacy would constitute a continuing threat to the public welfare, the panel shall temporarily suspend or restrict the license as provided by Subsection (b).

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

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

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

(c) Not later than the 90th day after the date of the temporary suspension or restriction, the board shall initiate a disciplinary action against the license holder, and a contested case hearing shall be held by the State Office of Administrative Hearings. If the State Office of Administrative Hearings does not hold the hearing in the time required by this subsection, the suspended or restricted license is automatically reinstated.

(d) Notwithstanding Chapter 551, Government Code, the disciplinary panel may hold a meeting by telephone conference call if immediate action is required and convening of the panel at one location is inconvenient for any member of the disciplinary panel. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 1345 (S.B. 410), Sec. 29, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 7, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 923 (S.B. 1438), Sec. 8, eff. June 17, 2011.

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

(b) The notice must:

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

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

(c) Not later than the 20th day after the date the license holder receives the notice of revocation under this section, the license holder may submit a written request for a hearing to contest the revocation.

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

(1) enter an order revoking the license; and

(2) notify the license holder of the order.

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

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

(1) enter an order revoking the license; and

(2) notify the license holder of the order.

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

Added by Acts 2019, 86th Leg., R.S., Ch. 895 (H.B. 3496), Sec. 4, eff. January 1, 2020.

Added by Acts 2019, 86th Leg., R.S., Ch. 965 (S.B. 683), Sec. 6,

eff. September 1, 2019.

Sec. 565.060. REMEDIAL PLAN. (a) The board may issue and establish the terms of a remedial plan to resolve the investigation of a complaint relating to this subtitle.

(b) A remedial plan may not be imposed to resolve a complaint:

(1) concerning:

(A) a death;

(B) a hospitalization;

(C) the commission of a felony; or

(D) any other matter designated by board rule; or

(2) in which the appropriate resolution may involve a restriction on the manner in which a license holder practices pharmacy.

(c) The board may not issue a remedial plan to resolve a complaint against a license holder if the license holder has entered into a remedial plan with the board in the preceding 24 months for the resolution of a different complaint relating to this subtitle.

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

(e) The board may assess a fee against a license holder participating in a remedial plan in an amount necessary to recover the costs of administering the plan.

(f) The board shall adopt rules necessary to implement this section.

Added by Acts 2013, 83rd Leg., R.S., Ch. 522 (S.B. 404), Sec. 4, eff. September 1, 2013.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 12, eff. September 1, 2015.

Sec. 565.061. ADMINISTRATIVE PROCEDURE. (a) Except as



provided by Chapter 564, a disciplinary action taken by the board on the basis of a ground for discipline under Subchapter A is governed by Chapter 2001, Government Code, and the rules of practice and procedure before the board.

(b) A final decision of the board under this chapter is subject to judicial review under Chapter 2001, Government Code. Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 599 (S.B. 460), Sec. 13, eff. September 1, 2015.

Sec. 565.062. BURDEN OF PROOF. (a) In a proceeding under this subtitle, including a trial or hearing, the state is not required to negate an exemption or exception set forth by this subtitle in a pleading, including in a complaint, information, or indictment.

(b) The burden of going forward with the evidence with respect to an exemption or exception is on the person claiming the benefit of the exemption or exception.

(c) In the absence of proof that a person is the authorized holder of an appropriate license issued under this subtitle, the person is presumed not to be the holder of the license. The presumption is subject to rebuttal by a person charged with an offense under this subtitle.

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

Sec. 565.063. LIABILITY. This subtitle does not impose liability on an authorized board employee or person acting under the supervision of a board employee, or on a state, county, or municipal officer, engaged in the lawful enforcement of this subtitle.

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

Sec. 565.064. CONSTRUCTION. This subtitle does not bar a criminal prosecution for a violation of this subtitle if the violation is a criminal offense under another law of this state or a law of the United States.

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

SUBCHAPTER C. PETITION FOR REINSTATEMENT OR REMOVAL OF RESTRICTION

Sec. 565.101. PETITION FOR REINSTATEMENT OR REMOVAL OF RESTRICTION. (a) A person whose pharmacy license, license to practice pharmacy, pharmacy technician registration, or pharmacy technician trainee registration in this state has been revoked or restricted under this subtitle, whether voluntarily or by board action, may, after the first anniversary of the effective date of the revocation or restriction, petition the board for reinstatement or removal of the restriction of the license or registration.

(b) The petition must be in writing and in the form prescribed by the board.

(c) A person petitioning for reinstatement or removal of a restriction has the burden of proof.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.312(a), eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 583 (S.B. 869), Sec. 17, eff. June 14, 2013.

Sec. 565.102. ACTION BY BOARD. (a) On investigation and review of a petition under this subchapter, the board may grant or deny the petition or may modify the board's original finding to reflect a circumstance that has changed sufficiently to warrant the modification.

(b) If the board denies the petition, the board may not consider a subsequent petition from the petitioner until the first anniversary of the date of denial of the previous petition.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.312(a), eff. Sept. 1, 2001.

Sec. 565.103. CONDITION FOR REINSTATEMENT OR REMOVAL OF RESTRICTION. The board may require a person to pass one or more

examinations to reenter the practice of pharmacy.

Acts 1999, 76th Leg., ch. 388, Sec. 1, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1420, Sec. 14.312(a), eff. Sept. 1, 2001.