

SUNSET COMMISSION DECISIONS



TEXAS STATE BOARD OF PHARMACY

May 2004

AGENCY INFORMATION

Agency at a Glance

The Texas State Board of Pharmacy's main purpose is to protect the public by ensuring that Texans receive safe and quality pharmaceutical care. The Board accomplishes this mission by regulating the practice of pharmacy, the operation of pharmacies, and the distribution of prescription drugs.

The State of Texas began regulating pharmacists more than a century ago, when the Legislature established district boards of pharmaceutical examiners to certify pharmacists. In 1907, the Legislature passed the Texas Pharmacy Act and established the Texas State Board of Pharmacy as an independent state regulatory board. To accomplish its goal, the Board licenses pharmacists and pharmacies, and regulates their activities through enforcement. The Board's main functions include:

- licensing qualified individuals to practice pharmacy or operate a pharmacy, and registering pharmacist-interns, preceptors, and pharmacy technicians;
- regulating the delivery or distribution of prescription drugs or devices;
- setting standards regarding the practice of pharmacy, including recognizing and approving pharmacy school degree requirements;
- investigating and resolving complaints against pharmacists and pharmacies; and
- enforcing the Texas Pharmacy Act and taking disciplinary action when necessary.

Key Facts

- **Funding.** In fiscal year 2003, the Board operated with a budget of about \$4 million. All costs are covered by licensing fees collected from the industry.
- **Staffing.** The Board has a staff of 48, with 38 based in Austin and the remaining 10 in the field across the state.
- **Licensing.** The Board regulates 21,570 pharmacists, 3,445 preceptors, 1,495 pharmacist-interns, and 5,794 pharmacies. In fiscal year 2004, the Board will begin registering an estimated 26,500 pharmacy technicians.
- **Enforcement.** The Board received 1,893 jurisdictional complaints in fiscal year 2003, and resolved 1,850. Of the resolved complaints, 220 resulted in disciplinary action, with the largest category of complaints relating to dispensing errors. The remaining complaints were dismissed or referred to another board, such as the Board of Medical Examiners.

ISSUES / RECOMMENDATIONS

Issue 1 The Board's Authority to Regulate Out-of-State Pharmacies Has Not Kept Pace With Changes in Technology.

Recommendations

Change in Statute

1.1 Require out-of-state pharmacies to meet the same standards for licensure as Texas-based pharmacies.

Under this recommendation, a pharmacy located outside of Texas would have to meet comparable standards as Texas-based pharmacies to receive a license from the Board. The Board would adopt rules outlining the requirements for licensure, which should include proof of credit worthiness and an inspection report that is no more than two years old. In addition, to maintain the license, a pharmacy must have on file with the Board an inspection report that is no more than three years old at any time. The Board should adopt rules that allow for a pharmacy located out of state to submit an inspection report conducted by an entity other than the pharmacy board in the pharmacy's state of physical location. This would ensure that should another state not have comparable inspection procedures to those in Texas, an out-of-state pharmacy would still be able to meet Texas' licensing requirements.

1.2 Clarify that the grounds for disciplinary action for out-of-state pharmacies include the same grounds as for Texas-based pharmacies.

The disciplinary grounds for out-of-state pharmacies would mirror those outlined in the Texas Pharmacy Act for in-state pharmacies, in addition to the grounds that already exist for out-of-state pharmacies. For example, the Board would have authority to discipline an applicant for or holder of an out-of-state – or Class E – pharmacy license for allowing an employee who is not a pharmacist to practice pharmacy or for failing to establish effective controls against drug diversion. As a result, this recommendation would make the grounds for disciplining out-of-state pharmacies, including Internet pharmacies, consistent with those for Texas-based pharmacies.

1.3 Authorize the Board to take disciplinary action on a pharmacy's license based on the action of another state board of pharmacy.

This recommendation would allow the Board to take disciplinary action against a pharmacy licensed in Texas when that pharmacy has been subject to disciplinary action by another jurisdiction's regulatory agency. As a result, the Board would be able to take disciplinary action without having to independently prove the merits of the case, based on the due process the pharmacy owner received in another state, as long as the violation is also a violation of Texas law. This change would help the Board to more effectively discipline pharmacies, particularly those whose operations cross multiple jurisdictions. In addition, the disciplinary grounds for pharmacies would be more consistent with those for pharmacists.

1.4 Authorize the Board to initiate disciplinary action against an out-of-state pharmacy at any time.

This recommendation would remove the time frames that the Board must adhere to before initiating disciplinary action against an out-of-state pharmacy that allegedly violated the Texas Pharmacy Act. As a result, the Board would not have to wait to see if the regulatory board in the state in which the

pharmacy is located takes disciplinary action against the pharmacy first. The Board would still be required to notify the other state pharmacy board about the alleged action, but action by the Texas Board would not be dependent on the other state's action.

1.5 Require pharmacies that use an Internet site to post information on filing a complaint with the Board.

A pharmacy that sells or distributes prescription drugs or devices through an Internet site would be required to include information about how to file a complaint with the Board on the site. The site would specifically mention complaints, so that consumers would be able to easily discern how to contact the Board. The online pharmacy would be able to include a general statement about filing complaints on its home page, but specific information about contacting the Texas Board would be no more than two links from the home page. At a minimum, the information would include the Board's phone number, address, and Web address.

1.6 Establish that a pharmacist or pharmacy may only distribute a prescription drug or device if a valid practitioner-patient relationship exists.

This recommendation would codify the Board's current requirement that pharmacists and pharmacies may not dispense prescription drugs or devices if a valid practitioner-patient relationship does not exist. Because the Texas State Board of Medical Examiners has jurisdiction over physicians, the Pharmacy Board would base any decisions or actions on the definition of practitioner-patient relationship established by the Medical Board.

1.7 Require the Board to list Internet pharmacies licensed in Texas on its Web site.

To provide consumers with simple, easy-to-obtain information about Internet pharmacies licensed in Texas, the Board would post a list of those pharmacies on the agency's Web site. The list should include the pharmacy's name, license number, and state of physical location. This list would be in addition to the Board's licensure verification database.

Fiscal Implication

These recommendations would have no fiscal impact to the State. Requiring out-of-state pharmacies to comply with the same licensing standards as Texas-based pharmacies may result in additional review of licensure applications, but the amount should be insignificant and would be absorbed by existing staff. Authorizing the Board to take disciplinary action on a pharmacy's license based on the action of another state board of pharmacy would free up enforcement staff, who no longer would have to duplicate efforts by the other state.

Responses

Agency

The Board supports these recommendations. (Gay Dodson, Executive Director – Texas State Board of Pharmacy)

For

Dennis Wiesner, R.Ph., Director of Privacy and Pharmacy Governmental Affairs – H.E. Butt Grocery, San Antonio

Against

None received.

Modifications

1. Provide for out-of-state pharmacies to be inspected less often than two years, as suggested in Recommendation 1.1, and instead be inspected depending on their record of compliance in previous inspections or in other actions. (Fred Brinkley, Jr., R.Ph., M.B.A., Vice President of Professional Affairs – Medco Health Solutions, Austin)
2. Apply the requirement of credit worthiness of out-of-state pharmacies contained in Recommendation 1.1 only to applicants for pharmacy licensure that do not hold a Class A (Community) or Class E (Nonresident) pharmacy license in Texas. (Fred Brinkley, Jr., R.Ph., M.B.A., Vice President of Professional Affairs – Medco Health Solutions, Austin)
3. Specifically list the grounds for disciplining out-of-state pharmacies in Recommendation 1.2 as allowing an employee who is not a pharmacist to practice pharmacy, advertising a prescription drug or device in a misleading or fraudulent manner, failing to maintain required records, being convicted of a misdemeanor involving moral turpitude or a felony under the laws of this state, another state, or the United States, and failing to establish effective controls against drug diversion. (Fred Brinkley, Jr., R.Ph., M.B.A., Vice President of Professional Affairs – Medco Health Solutions, Austin)
4. Specify that out-of-state pharmacies could not be disciplined for non-compliance with a Texas statute or rule if complying with that statute or rule should cause the pharmacy to be in violation of statutes or rules of the home state. If a conflict arises between the statute or rule of the home state and the Texas statute and rule, the home state statute or rule would prevail. (Fred Brinkley, Jr., R.Ph., M.B.A., Vice President of Professional Affairs – Medco Health Solutions, Austin)

Recommended Action: Adopt Recommendations 1.1 through 1.7 with Modification 4.

Commission Decision: Adopted Recommendations 1.1 through 1.7.

Issue 2 The Texas Pharmacy Act Does Not Give the Board Adequate Authority to Fully Protect the Public.

Recommendations

Change in Statute

2.1 Hold pharmacists accountable for oversight of activities delegated to technicians.

This recommendation would add disciplinary grounds to the Texas Pharmacy Act for inadequate pharmacist supervision of a pharmacy technician, ensuring that a pharmacist who delegates tasks to a technician oversees the work appropriately. If a pharmacist fails to adequately supervise delegated activities or delegates inappropriately, the Board would have grounds to take disciplinary action against the pharmacist. This recommendation would not change the supervisory relationship between pharmacists and technicians, which is already in statute. It also would not affect existing grounds for taking disciplinary action against pharmacy technicians, such as for fraud in becoming registered and violation of drug laws.

2.2 Clarify that a pharmacist or pharmacy that does not comply with a Board rule or order is in violation of the Texas Pharmacy Act and is subject to disciplinary action by the Board.

This recommendation would clarify that the Board may take disciplinary actions against a licensee who does not comply with Board rules or orders. Specifically, rule violations would be subject to the full range of sanctions available to the Board, allowing it to impose more significant sanctions, such as revocation, for serious rules violations. Violations of Board orders would be subject to penalties to provide the Board with needed authority to ensure sanctioned licensees comply with orders. This recommendation would also include clarification that Board orders include the confidential orders or contracts entered into through the Pharmacy Recovery Network peer assistance program.

2.3 Permit the Board to discipline a pharmacist or pharmacy owner who receives deferred adjudication for a felony or misdemeanor under any statute governing the practice of pharmacy.

This recommendation would permit the Board to discipline a pharmacist who receives deferred adjudication for misdemeanor offenses under the Controlled Substances Act, the Dangerous Drug Act, and the federal Comprehensive Drug Abuse Prevention and Control Act of 1970. This change would cover offenses such as forging or altering a prescription and misdemeanor drug possessions. It would also bring the Board's ability to discipline pharmacists and pharmacy owners more in line with new authority of the Board of Medical Examiner to discipline practitioners who receive deferred adjudication for relevant offenses.

2.4 Permit the Board to take action against a pharmacist license based on any action of another state board.

Under this recommendation, the Board would be able to apply sanctions to a Texas licensee who violates Texas pharmacy law based on a sanction or order in another state. The Board would be able to impose the full range of sanctions on the licensee without having to prove a case already prosecuted in another state.

2.5 Expand the Board's authority to discipline a pharmacy owner or pharmacist to include drug shortages.

The Board would be able to hold a pharmacist or pharmacy owner accountable for the more significant offense of drug audit shortages, rather than the currently available finding of inadequate record keeping. The Board could determine whether the licensee is accountable for the loss of controlled substances and apply a more severe penalty in cases where the public may be at greater risk.

Fiscal Implication

These recommendations will not have a fiscal impact to the State. The Board may incur some costs as a result of increased enforcement efforts, but these costs could not be estimated for this report.

Responses

Agency

The Board supports these recommendations, but offers the following comments.

Recommendation 2.3: The Texas Pharmacy Act allows the Board to suspend the license of a pharmacist receiving deferred adjudication for certain felony drug offenses, but not for misdemeanors under these same drug laws, and not for felonies under other laws.

Agency Modification

1. Allow the Board to discipline a pharmacist who received deferred adjudication for *any* felony, including felonies under the Controlled Substances Act, Dangerous Drug Act, or the Comprehensive Drug Abuse Prevention and Control Act of 1970. (Gay Dodson, Executive Director – Texas State Board of Pharmacy)

Recommendation 2.4: Current disciplinary grounds were developed at a time when pharmacies were primarily processing prescriptions for patients located in the same area as the pharmacy. Today, some pharmacies have evolved to handing prescriptions for individuals around the state and in other states in the country. When a pharmacy sends prescriptions to other states, most of these states also require that the pharmacy have a license in that state. If another state takes disciplinary action against a pharmacy located in Texas, the Board has no authority to take disciplinary action against the pharmacy based on that action, if that action was a violation of Texas law or Board rules. The Board has this authority for *pharmacists* licensed in another state.

Recommendation 2.5: The current disciplinary grounds for pharmacies includes failing to maintain required pharmacy records as a violation of the Texas Pharmacy Act. This disciplinary ground is the violation used by the Board to allege that the pharmacy is responsible for drug audit shortages. Rather than using this vague ground, the preferable method of charging this type of violation would be to specifically state that the pharmacy is responsible for and can be disciplined for audit shortages of prescription drugs, including controlled substances.

(Gay Dodson, Executive Director – Texas State Board of Pharmacy)

For

Dennis Wiesner, R.Ph., Director of Privacy and Pharmacy Governmental Affairs – H.E. Butt Grocery, San Antonio

Against

Opposes Recommendations 2.3, 2.4, and 2.5 – Carole Lundin, R.Ph. – Texas Pharmacy Practice Coalition, comprised of elected officers of the Texas Pharmacy Association, Texas Society of Health-System Pharmacies, and Texas Federation of Drug Stores, Austin

Recommended Action: Adopt Recommendations 2.1 through 2.5.

Commission Decision: Adopted Recommendations 2.1, 2.2, 2.4, and 2.5. Adopted Recommendation 2.3 with Agency Modification 1.

Issue 3 The Board Does Not Have Access to Key Sales and Pricing Information Needed to Prosecute Illegal Activity.

Recommendation

Change in Statute

3.1 Authorize the Board to access sales and pricing data during investigations that resulted from a complaint or previously failed inspection.

This recommendation would remove the limitation on the Board's access to sales and pricing data. However, the Board would be authorized to access this information only when the Board has reasonable cause to investigate a pharmacy or pharmacist for illegally dispensing drugs or for violating a provision of the Texas Pharmacy Act or Board rules, such as fraud cases. Any sales and pricing data collected by the Board would remain confidential during an investigation and in cases where no violation is found. The data would be subject to public information only if it is used in a disciplinary action by the Board.

Fiscal Implication

This recommendation will not have a fiscal impact to the State.

Responses

Agency

The Board supports this recommendation. (Gay Dodson, Executive Director – Texas State Board of Pharmacy)

For

None received.

Against

Carole Lundin, R.Ph. – Texas Pharmacy Practice Coalition, comprised of elected officers of the Texas Pharmacy Association, Texas Society of Health-System Pharmacies, and Texas Federation of Drug Stores, Austin

Dennis Wiesner, R.Ph., Director of Privacy and Pharmacy Governmental Affairs – H.E. Butt Grocery, San Antonio

Fred Brinkley, Jr., R.Ph., M.B.A., Vice President of Professional Affairs – Medco Health Solutions, Austin

Recommended Action: Adopt Recommendation 3.1.

Commission Decision: Adopted Recommendation 3.1.

Issue 4 Key Elements of the Board's Licensing and Regulatory Functions Do Not Conform to Commonly Applied Licensing Practices.

Recommendations

Licensing

Change in Statute

4.1 Require the Board to adopt procedures to ensure that its exams are accessible to persons with disabilities in accordance with the Americans with Disabilities Act.

Under this recommendation, the Board's statute would be amended to ensure that testing accommodations for the pharmacist licensing exams are in accordance with the Americans with Disabilities Act. The Board would need to adopt procedures regarding accessibility accommodations and work with the National Association of Boards of Pharmacy to ensure that these rules are followed.

4.2 Authorize the Board to establish policies regarding nonrefundable testing fees.

The Board would have the authority to retain all or part of examination processing fees should an applicant withdraw from an exam without reasonable advance notice or a satisfactory excuse, such as an emergency. In determining its refund policies, the Board should work to ensure that its policies do not conflict with the National Association of Boards of Pharmacy's (NABP's) policies.

4.3 Simplify the process for a pharmacist who holds an active license in another state to be licensed in Texas.

This recommendation would clarify the statutory provision that permits a pharmacist to receive a license if the pharmacist holds an active, unencumbered license in another state and complies with other statutory licensing requirements. The Texas Pharmacy Act would be clarified to provide for the Board to issue a license by reciprocity to a pharmacist who has passed any exams required by the Board, is licensed in good standing as a pharmacist in another state that has licensing requirements substantially equivalent to Texas, and meets other statutory requirements. The Board would no longer require a pharmacist to provide proof of an active license from the state in which the pharmacist was originally licensed.

4.4 Base delinquent license renewal fees on the Board's normally required renewal fee.

The renewal fee for pharmacists and pharmacies who are delinquent in renewing their license would be based on the normal renewal rate set by the Board, not the examination fee. To renew a license that has been expired for 90 days or less, the renewal fee would equal 1-1/2 times the standard renewal fee. If the license has been expired for more than 90 days, but less than one year, the renewal fee would equal two times the standard renewal fee.

Enforcement

Change in Statute

4.5 Authorize staff to dismiss baseless cases.

Under this recommendation, staff would have the ability to dismiss cases if the investigation shows no violation occurred or if the complaint does not fall under the Board's jurisdiction. Staff would regularly report administratively dismissed complaints to Board members at the Board's public meetings.

4.6 Increase the amount of the Board's administrative penalty authority and require the Board to adopt an administrative penalty matrix in rule.

The amount of an administrative penalty the Board would be able to impose on an individual who violates the Texas Pharmacy Act or Board rule would be increased to \$5,000 per violation per day from \$2,500 per violation per day. The provision that each day a violation continues or occurs is a separate violation for purposes of imposing the penalty would continue to apply. The amount for violations that involve controlled substances would remain the same, at \$5,000 per violation. This recommendation reflects the significant amounts of money that can be involved in pharmaceutical-related violations, and would pose as a larger deterrent than the existing penalty amount. The Board would also be required to adopt an administrative penalty matrix in agency rules to ensure that the Board develops administrative penalty sanctions that appropriately relate to different violations of the Board's Act or rules. By requiring the Board to adopt the matrix in rule, the public would have the opportunity to comment.

4.7 Remove the requirement that a majority of Board members must approve temporary suspension of a license and provide for the temporary suspension of pharmacies' licenses.

Under this recommendation, a panel of three Board members – and not a majority of five members – would be required to temporarily suspend a pharmacist or a pharmacy license. Extending temporary suspension authority to include pharmacies would fill a gap in the Board's enforcement authority. In addition, to the extent it complies with Chapter 551 of the Government Code concerning open meetings, the disciplinary panel would be authorized to 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 panel. These provisions would not change the existing provisions for a hearing on the suspension before the Board and a second hearing before the State Office of Administrative Hearings.

4.8 Authorize the Board to use cease-and-desist orders with regard to practicing pharmacy without a license.

The Board would issue cease-and-desist orders when it receives a complaint or otherwise hears of an individual or entity practicing pharmacy without a license. It could also assess administrative penalties against violators of these orders. The Board would still be authorized to refer these cases to local law enforcement agencies or the Attorney General for prosecution. However, the Board should count unauthorized practice cases as jurisdictional, and direct investigators to pursue and follow up with unlicensed individuals to ensure compliance. In addition, the Act would be clarified to state that the Attorney General, not the Board, petitions district court for an injunction. The Board would refer such cases to the Attorney General.

Policy Body

Change in Statute

4.9 Allow pharmacy faculty members to be eligible to serve on the Board.

This recommendation would remove the statutory prohibition against salaried faculty members at a college of pharmacy from serving on the Board as a pharmacist member. To be eligible to serve in one of the six pharmacist positions on the Board, a faculty member would have to meet the qualifications outlined in the Texas Pharmacy Act, including being actively practicing pharmacy.

4.10 Authorize Board members to receive reimbursement for travel expenses.

This recommendation would remove the conflict between the Texas Pharmacy Act and the General Appropriations Act. As a result, Board members would have clear authority to receive reimbursement for all travel expenses, including transportation, meals, and lodging expenses, incurred while conducting Board business.

4.11 Require the Board to establish guidelines for Board subcommittees.

This recommendation would direct the Board to establish formal policies outlining the structure, role, and responsibilities of committees consisting of Board members. Doing so would ensure that each committee's duties are clearly outlined, thus allowing the committees to operate consistently.

4.12 Eliminate the Pharmacy Board Operating Account.

Under this recommendation, the Board's dedicated account would be removed. The Board would deposit all funds into and receive appropriations from the General Revenue Fund.

Fiscal Implication

Eliminating the dedicated Pharmacy Board Operating Account would result in a one-time gain to the General Revenue Fund of about \$4.4 million at the end of 2006.

Responses

Agency

The Board supports these recommendations with the following exceptions.

Recommendation 4.3: The recommendation to simplify the process for a pharmacist licensed in another state to be licensed in Texas would eliminate the requirement that a pharmacist can only use, as the basis for reciprocity, a license that is active and in good standing and was issued based on an examination. The Board understands the logic behind the recommendation and agrees that it may be appropriate to implement it in a modified format at a future date. However, the recommendation would limit the ability of Texas pharmacists to transfer their license to another state, because Texas would no longer meet the uniform licensure agreement of all 50 states. As a result, other states will not recognize the license granted in Texas and will deny the person's application for licensure transfer should they decide to leave Texas, if they have not maintained their original license by examination.

Agency Modifications

1. Do not change the statute, but require the Board to submit a recommendation to the National Association of Boards of Pharmacy that the Constitution and Bylaws be formally changed to

recognize a reciprocal license as equivalent to licenses earned by examination, if such licenses were earned after 1979 (the year the national examination was established).

2. Delay implementation of Recommendation 4.3 until September 1, 2007, and specify that it would apply only to pharmacists who have taken the national examination.

(Gay Dodson, Executive Director – Texas State Board of Pharmacy)

Recommendation 4.12: The Board understands the logic behind the recommendation to eliminate its dedicated Pharmacy Board Operating Account, and agrees that it may be appropriate. However, the Board suggests that since all of the funds in this account were generated by fees collected from pharmacists and pharmacies, if the fund is eliminated, at least some of the funds should be used for a pharmacy-related endeavor.

Agency Modification:

3. The Board requests that the recommendation be modified to direct that \$850,000 from the fund balance be transferred to the Higher Education Coordinating Board to fund the Roberta High Memorial Pharmacy Residency Program and that the remaining funds be used to assist the Texas colleges of pharmacy in increasing class size to graduate more pharmacists.

(Gay Dodson, Executive Director – Texas State Board of Pharmacy)

For

Dennis Wiesner, R.Ph., Director of Privacy and Pharmacy Governmental Affairs – H.E. Butt Grocery, San Antonio

Against

None received.

Recommended Action: Adopt Recommendations 4.1 through 4.12.

Commission Decision: Adopted Recommendations 4.1 through 4.12.

Issue 5 Decide on Continuation of the Board After Completion of Sunset Reviews of Other Health Licensing Agencies.

Recommendation

Change in Statute

5.1 Decide on continuation of the Texas State Board of Pharmacy as a separate agency upon completion of upcoming Sunset reviews of other health-profession licensing agencies.

This recommendation would postpone the Sunset Commission’s decision on the status of the Board as a separate agency until completion of the Sunset reviews of other health-profession licensing agencies being reviewed this biennium.

Fiscal Implication

This recommendation will not have a fiscal impact to the State.

Responses

Agency

The Board supports this recommendation. (Gay Dodson, Executive Director – Texas State Board of Pharmacy)

For

None received.

Against

None received.

Modification – Board as an independent agency

1. Continue the Texas State Board of Pharmacy as an independent agency. (Dennis Wiesner, R.Ph., Director of Privacy and Pharmacy Governmental Affairs – H.E. Butt Grocery, San Antonio; Carole Lundin, R.Ph. – Texas Pharmacy Practice Coalition, comprised of elected officers of the Texas Pharmacy Association, Texas Society of Health-System Pharmacies, and Texas Federation of Drug Stores, Austin)

Modification – Consolidated Health Profession Licensing Board

2. Replace the Pharmacy Board with a consolidated health board, including nurses, dentists, physicians, and other related professions. (Martin Raabe, Jr., R.Ph.)

Recommended Action: None. The Sunset Commission has already decided to postpone action on the continuation of health licensing agencies until all such agencies have been reviewed.

Commission Decision: The Commission had already decided to postpone action on the continuation of all health licensing agencies until all such agencies have been reviewed.

ACROSS-THE-BOARD RECOMMENDATIONS

Texas State Board of Pharmacy	
Recommendations	Across-the-Board Provisions
Already in Statute	1. Require public membership on the agency's policymaking body.
Update	2. Require provisions relating to conflicts of interest.
Already in Statute	3. Require unbiased appointments to the agency's policymaking body.
Apply	4. Provide that the Governor designate the presiding officer of the policymaking body.
Already in Statute	5. Specify grounds for removal of a member of the policymaking body.
Update	6. Require training for members of the policymaking body.
Already in Statute	7. Require separation of policymaking and agency staff functions.
Already in Statute	8. Provide for public testimony at meetings of the policymaking body.
Update	9. Require information to be maintained on complaints.
Already in Statute	10. Require the agency to use technology to increase public access.
Already in Statute	11. Develop and use appropriate alternative rulemaking and dispute resolution procedures.

Recommended Action: Adopt staff recommendations.

Commission Decision: Adopted staff recommendations.

NEW ISSUES

New Issues

The following issues were raised in addition to the issues raised in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

6. Allow for a greater range of disciplinary sanctions for pharmacy technicians, such as reprimand, administrative penalty, restriction, or probation, similar to the sanctions allowed for other licensees. (Gay Dodson, Executive Director – Texas State Board of Pharmacy)
7. Require registration for pharmacy technician trainees. (Gay Dodson, Executive Director – Texas State Board of Pharmacy)
8. Give pharmacists the option of making their home addresses, maintained by the Pharmacy Board, confidential and exempt from open records requests. (Gay Dodson, Executive Director – Texas State Board of Pharmacy)
9. Eliminate the statutory prohibition against agency investigators who are commissioned peace officers from carrying a firearm. (Gay Dodson, Executive Director – Texas State Board of Pharmacy)
10. Transfer the regulation of wholesale drug distributors from the Texas Department of Health to the Pharmacy Board. (Gay Dodson, Executive Director – Texas State Board of Pharmacy; Carole Lundin, R.Ph., Chair, Sunset Review Advisory Committee – Texas Pharmacy Association, Austin)

Staff Comment: In public testimony, the Texas Wholesale Druggists Association expressed concern about the potential for conflict if the wholesale distributor industry is regulated by its customer, pharmacists. If this is done, the Association said that at least one wholesaler would need to be on the Board. (Sam Stone, Attorney – Texas Wholesale Druggists Association, Austin)

11. Create a separate pharmacy classification for compounding pharmacies. (Luther R. Parker – PARKERPOWER, Austin; Gary Osborn, R.Ph., President – ApothéCure, Inc., Dallas; Bob Bishop, R.Ph., Compounding Specialist – ApothéCure, Inc., Dallas)
12. Require out-of-state compounding pharmacies to submit to Texas State Board of Pharmacy inspections for being licensed in Texas. (Richard T. Roberts)
13. Statutorily permit compounding pharmacies to furnish compounded medication for prescriber office use. Prohibit the Board from capping or limit the amount of compounded medication a pharmacy can provide for office use.
 - Representative Jim Pitts – Waxahachie
 - Representative Mark Homer – Paris
 - Gary Osborn, R.Ph., President – ApothéCure, Inc., Dallas
 - Steven F. Hotze, M.D., Owner – Premier Pharmacy, LLP, Katy
 - Pat Downing, R.Ph., owner – Med-Shop Total Care Pharmacy, Longview representing Texas Pharmacy Association and Texas Academy of Compounding Pharmacists, Austin
 - John R. Rains, Pharmacist – Plum Creek Pharmaceuticals, Inc., Amarillo

- Pat Garrett, R.Ph., Pharmacy Operations Manager – Seton Healthcare Network, Austin
- Scott Tatum, Attorney at Law – Davis & Davis, P.C., Austin
- Felicia K. Macik, D.O. – Clifton Medical Clinic, Clifton
- Billy W. Woodward, R.Ph. – Temple
- Joel Osborn, M.D. – Cardiology Center of Amarillo, LLP, Amarillo
- Salil Trehan, M.D. – Amarillo
- Howard M. Hoffman, J.D. – Duane Morris, LLP, Chicago, Illinois
- Dennis Roy R.Ph. – Scott & White Health Plan, Temple
- Terrell Buchanan, D.V.M. – Brazos Valley Equine Hospital, Navasota
- Charles Buchanan, D.V.M. – Brazos Valley Equine Hospital, Navasota
- Mary Tanner, D.V.M. – Brazos Valley Equine Hospital, Navasota
- Justin Bruening, D.V.M. – Brazos Valley Equine Hospital, Navasota
- Carol Cody, F.N.P. – Central Family Practice, Austin
- T. Bryan Smitherman, M.D. – The Center for Orthopedic Surgery, Lubbock
- Richard K. Hurley, M.D. – The Pain Clinic, PA, Waco
- Andrew B. Burke, D.O., P.A. – Dallas
- Bryan M. Cox, M.D. – San Antonio
- Naga Bushan, M.D. – Arthritis & Osteoporosis Associates, Lubbock
- Daniel R. Theesfeld, M.D. – The Pain and Laser Center, Nacadoches
- Gregory R. Behrens, P.Ph., B.S., M.S.H.A., Network Pharmacy Director – Brackenridge Hospital, Austin
- B.J. Daneshfar, M.D. – Acute & Chronic Pain & Spinal Center, Amarillo
- Keith E. Dyer, M.D. – Amarillo
- Lewis Clarke, M.D. – Bay Area Rehabilitation Medicine Associates, Webster
- Alan B. Hurschman, M.D. – Fort Worth, Arlington
- John Taylor, D.O. – Doctors Clinic, Amarillo
- Salman Ahmad, M.D. – Cogdell Clinic, Floydada
- Barbara Wilson, M.D.
- Gerald Parker, D. O. – Doctors Clinic, Amarillo
- Andrew Brooker, M.D.
- Joseph H. Roosth, M.D. – Pearland Diagnostic Clinic, Pearland

- Chris Copeland, General Counsel / Governmental Relations Coordinator – Texas Veterinarian Medical Association, Austin
14. Permit compounding pharmacies to distribute compounded products to up to a limited number of commonly owned and controlled pharmacies.
- Steven F. Hotze, M.D., Owner – Premier Pharmacy, LLP, Katy
 - Representative Mark Homer – Paris
 - Pat Downing, R.Ph., owner – Med-Shop Total Care Pharmacy, Longview
 - Pat Garrett, R.Ph., Pharmacy Operations Manager – Seton Healthcare Network, Austin
 - Scott Tatum, Attorney at Law – Davis & Davis, P.C., Austin
 - Billy W. Woodward, R.Ph. – Temple
 - Dennis Roy R.Ph. – Scott & White Health Plan, Temple
 - Gregory R. Behrens, R.Ph., B.S., M.S.H.A., Network Pharmacy Director – Brackenridge Hospital, Austin

Staff Comment: A group of compounding interests, in working with the Board, has agreed to address compounding concerns in legislation separate from the Board’s Sunset legislation. Current discussions indicate agreement on pursuing legislation to amend the Texas Pharmacy Act and the Texas Food, Drug, and Cosmetic Act to include as a part of the practice of pharmacy compounding a reasonable quantity of a drug product for office use, and repackaging or compounding for pharmacies under common ownership.

The legislation would define “reasonable quantity” to include an amount that is sufficient for prescriber’s office use consistent with expiration date, reasonable considering intended use of drug and nature of practice, and an amount the pharmacy is capable of compounding in compliance within pharmaceutical standards. Office use would include compounding for administration by a physician in the office or at a health care facility.

15. Eliminate the statutory requirement for the Board to conduct an on-site inspection of Class C (Institutional) pharmacies before granting licensure. (Carole Lundin, R.Ph., Chair, Sunset Review Advisory Committee – Texas Pharmacy Association, Austin)

Staff Comment: Although the Pharmacy Act does not require the Board to conduct pre-inspections of Class C (Institutional) pharmacies, the Board previously adopted this requirement in rule. However, the Board has indicated that rules effective on December 23, 2003 provide for waiving pre-inspections for Class C (Institutional) and Class B (Nuclear) pharmacies on the basis that pre-inspections of these facilities are conducted by the Texas Department of Health.

16. Require pharmacists to report vaccination administration to the authorizing physician upon request, rather than within 24 hours as currently required in rule. (Carole Lundin, R.Ph., Chair, Sunset Review Advisory Committee – Texas Pharmacy Association, Austin)
17. Permit Class C (Institutional) pharmacies to repackage medications and deliver them to a commonly owned or controlled pharmacy. (Carole Lundin, R.Ph., Chair, Sunset Review Advisory Committee – Texas Pharmacy Association, Austin)

18. Permit physicians to fax prescriptions to a pharmacist for schedule II medications for hospice patients and eliminate the current statutory requirement that physicians provide a hard-copy of the prescription within seven days of issuing the faxed prescription. (Carole Lundin, R.Ph., Chair, Sunset Review Advisory Committee – Texas Pharmacy Association, Austin)
19. Eliminate the statutory requirement that pharmacies post a sign informing patients that generic drugs are as safe and effective as brand name drugs. (Carole Lundin, R.Ph., Chair, Sunset Review Advisory Committee – Texas Pharmacy Association, Austin)
20. Require that Pharmacy Board compliance officers be pharmacists. (Carole Lundin, R.Ph., Chair, Sunset Review Advisory Committee – Texas Pharmacy Association, Austin)
21. Limit Board appointments to two consecutive terms. (Carole Lundin, R.Ph., Chair, Sunset Review Advisory Committee – Texas Pharmacy Association, Austin)
Staff Comment: The Pharmacy Act already prevents Board members from serving more than two consecutive terms.
22. Prohibit the Board from extending the required period for pharmacists' record retention from two to five years. (Carole Lundin, R.Ph., Chair, Sunset Review Advisory Committee – Texas Pharmacy Association, Austin)
23. Expand pharmacists' current immunization authority to include childhood immunizations. (Mitch Lestico, Vice Chair, Council on Public Affairs – Texas Society of Health-System Pharmacists, Austin)
24. Permit pharmacists to sign a prescription in collaborative drug therapy management with a physician. (Mitch Lestico, Vice Chair, Council on Public Affairs – Texas Society of Health-System Pharmacists, Austin)

Recommended Action: Staff makes no recommendations on any of the New Issues.

Commission Decision: Adopted New Issues 6, 7, and 8.