

TEXAS STATUTES AND CODES

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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 C. PHARMACY PEER REVIEW

Tex. Occ. Code § 564.101 (2002)

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.

§ 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.