

CHAPTER 298

S.B. No. 483

An Act relating to certain reports made by pharmaceutical peer review or pharmaceutical organization committees that result in possible disciplinary or remedial action by the Texas State Board of Pharmacy and to certain powers of the board; relating to immunity from liability and presumption of good faith; amending Section 27A, Texas Pharmacy Act, as amended (Article 4542a-1, Vernon's Texas Civil Statutes).

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 27A, Texas Pharmacy Act, as amended (Article 4542a-1, Vernon's Texas Civil Statutes), is amended to read as follows:

"Section 27A. (a) Any pharmaceutical peer review committee may report relevant facts to the board relating to the acts of any pharmacist in this state *or student of pharmacy who is enrolled in the last three years of a professional pharmacy program at an accredited college of*

pharmacy, if in the opinion of the peer review committee, they have knowledge relating to the pharmacist or *pharmacy student* which might provide grounds for disciplinary action as specified in Subdivision (4) or (7) of Subsection (a) of Section 26 of this Act.

“(b) Any committee of a professional society comprised primarily of pharmacists, its staff, or any district or local intervenor participating in a program established to aid pharmacists or *eligible pharmacy students* impaired by chemical abuse or mental or physical illness may report in writing to the board the name of the impaired pharmacist or *pharmacy student* together with the pertinent information relating to the [his] impairment. The board may report to any committee of such professional society or the society’s designated staff information which it may receive with regard to any pharmacist or *pharmacy student* who may be impaired by chemical abuse or mental or physical illness.

“(c) On a determination by the board that a report submitted by a peer review committee or pharmaceutical organization committee is without merit, the report shall be expunged from the pharmacist’s or *pharmacy student’s* individual record in the board’s office. A pharmacist, *pharmacy student*, or an [his] authorized representative of the pharmacist or student shall be entitled on request to examine the [pharmacist’s] 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 with respect to any information existing in the report.

“(d) The records and proceedings of the board, its authorized agents, or any pharmaceutical organization committee as set out in Subsections (a) and (b) of this section shall be confidential and are not considered open records for the purposes of Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6252-17a, Vernon’s Texas Civil Statutes); provided, however, the board may disclose this confidential information only:

“(1) in a disciplinary hearing before the board or in a subsequent trial or appeal of a board action or order;

“(2) to the pharmacist licensing or disciplinary authorities of other jurisdictions; or

“(3) pursuant to an order of a court of competent jurisdiction.

“(e) An [No] employee or member of the board, peer review committee member, pharmaceutical organization committee member, pharmaceutical organization district or local intervenor furnishing information, data, reports, or records for the purpose of aiding the impaired pharmacist or *pharmacy student* shall by reason of furnishing such information in good faith, be immune from civil liability ~~be liable in damages to any person~~. This immunity from civil liability shall be liberally construed to accomplish the purpose of this section and is in addition to other immunity provided by law.

“(f) An [No] employee or member of the board or such committee, staff, or intervenor program is presumed to have acted in good faith. A person alleging a lack of good faith has the burden of proof on that issue ~~shall be liable in damages to any person for any action taken or recommendation made within the scope of the functions of such board, committee, or staff, if such member acts without malice and in the reasonable belief that such action or recommendation is warranted by the facts known to him~~.

“(g) The board may add a surcharge of not more than \$1 to a license or license renewal fee authorized under this Act to fund the program to aid impaired pharmacists or *pharmacy students*.

“(h) The board may accept, transfer, and expend funds made available by the federal or state government or by another public or private source to be used in the program authorized by this section.

“(i) Funds collected under this section may be used to administer the program authorized by this section, including the provision of initial evaluation and referral services of a qualified health professional to an impaired pharmacist or *pharmacy student*, but not for costs incurred subsequent to such initial evaluation and referral services.”

SECTION 2. This Act takes effect September 1, 1985.

SECTION 3. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended, and that this Act take effect and be in force from and after its passage, and it is so enacted.

Passed the Senate on May 2, 1985, by the following vote: Yeas 31, Nays 0; passed the House on May 17, 1985, by the following vote: Yeas 134, Nays 0, one present not voting.

Approved: June 7, 1985

Effective: September 1, 1985