



TEXAS FEDERATION OF DRUG STORES

"The Voice of Chain Pharmacy in the State of Texas"



NATIONAL ASSOCIATION OF
CHAIN DRUG STORES

January 31, 2011

Ms. Allison Benz, R.Ph., M.S.
Director of Professional Services
Texas State Board of Pharmacy
333 Guadalupe Street, Suite 3-600
Austin, Texas 78701

**Re: Proposed Changes to 22 TAC §291.32 (Personnel)
Proposed Changes to 22 TAC §281.2 (Confidential Address of Record)**

Dear Ms. Benz:

On behalf of our 27 members throughout the state of Texas operating 2,720 drug stores, supermarket pharmacies, and mass merchant pharmacies, the Texas Federation of Drug Stores (Federation) and the National Association of Chain Drug Stores (NACDS) thank the Texas State Board of Pharmacy ("TSBP") for the opportunity to submit comments on proposed revisions to 22 TAC §291.32 that would limit the duties that clerks, cashiers and delivery personnel could perform in a pharmacy. We appreciate TSBP considering our input on this matter.

Under 22 TAC §291.32 (d)(2)(D), TSBP has proposed language that would prohibit anyone other than a registered pharmacy technician or pharmacy technician trainee, a licensed pharmacist, or a registered pharmacist intern from performing the list of nonjudgmental technical duties associated with the preparation and distribution of prescription drugs. TSBP has further proposed under 22 TAC §291.32 (d)(2)(C)(xi-xiii) to expand this list of duties to include stocking the prescription department with prescription drugs; returning filled prescriptions not picked up by patients to shelves in the prescription department; and selling non-prescription insulin to a patient after verification by a pharmacist.

We do not believe it is appropriate to prohibit clerks, cashiers and delivery personnel from engaging in the stocking activities under 22 TAC §291.32 (d)(2)(D)(xi-xii). While it is justifiable to limit who can perform duties related to prescription preparation and dispensing to include only those individuals who have been appropriately educated and trained for the process, the stocking activities do not warrant being held to that standard. These are tasks that are truly administrative in nature and are not related to prescription preparation and dispensing. Moreover, the ability to perform these tasks does not require the special skill or knowledge possessed by a pharmacist, intern, pharmacy technician or pharmacy technician trainee.

We also note that the regulations governing class C pharmacies (22 TAC §291.73 (e)(2)) do not specifically limit stocking activities to pharmacy technicians and pharmacy technician trainees, and we question the need to place this type of restriction on community pharmacies. If the Board's intent with imposing restrictions on who may stock is to reduce the incidence of drug theft by pharmacy employees, such an approach would be excessive considering that of the 220 cases of

employee theft reported on DEA 106 forms in Texas in 2009, only 4 of those cases (2%) were attributed to theft by a clerk.¹

Additionally, we do not believe it is necessary to limit who can conduct a sale of non-prescription insulin under 22 TAC §291.32 (d)(2)(D)(xiii). Pharmacies already have processes in place to educate and train pharmacy personnel and processes in place, such as having the patient and/or patient's representative visually confirm they are receiving the correct insulin product prior to sale, to ensure that patients who purchase these types of products receive the correct medication. According, limiting who can conduct sales of non-prescription insulin would be unnecessary.

Prohibiting clerks, cashiers and delivery personnel from performing the administrative duties specified in 22 TAC §291.32 (d)(2)(C)(xi-xiii) could impact the ability of pharmacies to best serve their patients. Particularly in high volume pharmacies, such restrictions could impede the prescription filling process.

For these reasons, we ask the Board not to further amend the proposed regulations as follows:

(d) Pharmacy Technicians and Pharmacy Technician Trainees.

(2) Duties.

(C) Pharmacy technicians and pharmacy technician trainees may perform only nonjudgmental technical duties associated with the preparation and distribution of prescription drugs, as follows:

- ~~(xi) stocking the prescription department with prescription drugs;~~
- ~~(xii) returning filled prescriptions not picked up by patient to shelves in the prescription department; and~~
- ~~(xiii) selling non-prescription insulin to a patient after verification by a pharmacist.~~

Under 22 TAC §281.2, TSBP has proposed language that would require the home address be provided by each individual, who is a licensee, registrant, or pharmacy owner, and would be kept confidential. Additionally, an alternative address is required to be provided, which will be released to the public, as set forth in §555.001(d) of the Act, and is subject to disclosure under the Public Information Act. Our concern is that if the licensee or registrant fails to provide an alternate address, the confidential address of record will be publicly available.

Our concern is that there have been incidents where patients have become belligerent, or in some cases, stalk pharmacists. It may be that it is simply an oversight by a pharmacist at time of licensure or renewal to provide an alternative address that could eventually lead to a pharmacist's home address becoming public record. We ask that TSBP address this concern.

¹ TSBP 2009 Annual Report (p. 81)

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The Federation and NACDS thank you for consideration of our comments. Please do not hesitate to contact either of us with any questions. Brad Shields can be reached at (512) 658-1990 or brad2@bradshields.com. Mary Staples can be reached at 817-442-1155 or mstaples@nacds.org.

Sincerely,



Mary Staples
National Association of Chain Drug Stores



Brad T. Shields II
Texas Federation of Drug Stores