



January 13, 2011

Allison Benz, R.Ph., M.S.
Director of Professional Services
Texas State Board of Pharmacy
William P. Hobby Building
333 Guadalupe Street, Suite 3-600
Austin, Texas 78701-3942

Re: § 291.32 Personnel

Dear Ms. Benz:

H-E-B thanks the Board of Pharmacy for the opportunity to submit comments regarding the proposed new rules under § 291.32 Personnel that adds specific duties that may only be performed by Pharmacy Technicians and Pharmacy Technician Trainees.

H-E-B currently operates 218 pharmacies in the state of Texas and employs over 700 pharmacists, 1300 registered pharmacy technicians and pharmacy technician trainees, and 400 non-registered individuals. Our pharmacies provide prescription services along with other professional healthcare activities such as immunizations, disease state management, and health screenings to the citizens of Texas.

§ 291.32 Personnel

(d) Pharmacy Technicians and Pharmacy Technician Trainees

(2) (C) (xi) stocking the prescription department with prescription drugs

(xii) returning fill prescriptions not picked up by patient to shelves in the prescription department

In § 291.33 Operational Standards, the Rules address the security of the prescription department. Each pharmacist is responsible for the security of the department which includes implementing and enforcing provisions for effective control against theft or diversion of prescription drugs. In the event of drug diversion, the Board has disciplinary authority over the pharmacy license and individual pharmacist. Additionally, pharmacy technicians and pharmacy technician trainees along with non-registered employees are under the direct supervision of the pharmacist.

Current rules address duties that may only be performed by Pharmacists along with duties that may be delegated to pharmacy technicians and pharmacy technician trainees. The current duties for technicians and technician trainees are appropriately well-focused on non-judgmental activities involved in the preparation of prescription drug orders.

We recognize and share the Board's focus on drug diversion in pharmacy by pharmacy personnel and are committed to aggressively implementing procedures and oversight that mitigate the possibility of diversion in addition to prosecuting any individuals identified as being involved in drug diversion.

From our experience, requiring a Board "registered" individual to perform the clerical activity of stocking pharmacy inventory will not diminish the possibility of drug diversion in our pharmacies or deter individuals who may be inclined to steal and divert prescription drugs. Adding these additional duties to registered technicians and technicians in training will divert their focus away from their primary role of assisting in the preparation and delivery of prescription orders, which is essential to accurately fulfilling prescription orders, addressing patient safety, and serving our patients in a timely manner. When addressing an issue of "stocking" product on the shelf, it is important that the training and competency of the individual performing the activity be considered. Current rules place this burden on the supervising pharmacist(s). As a result, current rules and regulations adequately address the issue of security as it relates to personnel in our pharmacies.

Rules and regulations should not be adopted unless there is a clear and definitive outcome associated with the requirement along with a clear process for enforcement of the rule that is not subjective in nature. It is important not to inadvertently create un-intended consequences as a result of rule and regulation adoption.

We respectfully request that the two duties addressing stocking of prescription product not be adopted.

§ 291.32 Personnel

(d) Pharmacy Technicians and Pharmacy Technician Trainees

(2) (C) (xiii) Selling non-prescription insulin to a patient after verification by a pharmacist

It is essential that patients receive the correct medication. The education and training of pharmacy personnel is the responsibility of the Class A Pharmacy owner along with the Pharmacist in Charge. Along with training, all activities are performed under the direct supervision of a pharmacist.

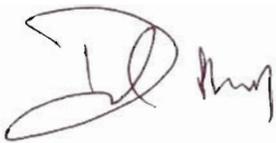
Regulating the “selling” of non-prescription insulin to only a registered pharmacy technician or technician in training and only after verification by a pharmacist does not necessarily ensure greater patient safety than existing rules that address the pharmacy environment and pharmacy/pharmacist supervision and training requirements. Without greater documentation requirements than exist today, enforcement of this regulation would be difficult along with determining specific individual accountability.

Current individual pharmacy processes and procedures, such as having the patient and/or patient’s representative visually confirm they are receiving the correct insulin product prior to sale, are in place to ensure that patient receive correct medications. Requiring additional checks and balances does not appear to diminish the possibility of a breakdown in meeting our obligation.

We request that the Board reconsider the adoption of this particular duty restricting the sale of non-prescription insulin as current rules and regulations address the responsibility of providing proper medication to each patient.

Thank you for consideration of our comments. Please do not hesitate to contact me with any questions or further assistance.

Sincerely,



Doug Read, Pharm.D.
H.E.B.
Director of Pharmacy Compliance
3481 Fredericksburg Rd Suite #2
San Antonio, TX 78201

CC: Craig Norman, R.Ph., H.E.B. Senior Vice President of Pharmacy



Ensuring patient access to quality pharmacy care services, the viability of community pharmacy and the pharmacy profession.

January 24, 2011

Via facsimile transmission (512) 305-8008

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

Re: December 24, 2010 Texas Register

Dear Ms. Benz:

My name is Richard E. Beck, R.Ph., and I am the Executive Director of the Texas Pharmacy Business Council (TPBC), which is a collaborative organization between American Pharmacies and the Academy of Independent Pharmacists—Texas. TPBC represents independent pharmacists and small business owners dedicated to preserving the independent pharmacy profession. Our mission is ensuring access to quality pharmacy services, the viability of community pharmacy and the pharmacy profession.

I am writing to submit TPBC's formal, written comments in regard to the Texas State Board of Pharmacy's (TSBP) proposed amendments to 22 TAC §291.32, concerning Personnel. The proposed amendments to §291.32, if adopted, specify the duties that may be performed by pharmacy technicians and clarify duties that may not be performed other individuals. These proposed amendments were published in the December 24, 2010 issue of the *Texas Register*.

Specifically, the aforementioned rules indicate that TSBP will require that *only* pharmacy technicians may perform certain additional duties (and that non-pharmacy technician personnel may *not* perform these duties):

- stocking the prescription department with prescription drugs;
- returning filled prescriptions not picked up by patient to shelves in the prescription department; and
- selling nonprescription insulin to a patient after pharmacist verification.

TPBC opposes the proposed amendments in regard to specifying that a non-pharmacy technician personnel member may *not* perform these specific duties. This represents a dramatic shift in the business operations of an independent pharmacy, and a significant departure from non-pharmacy technician personnel's imperative role in a pharmacy's day-to-day practice.

Pharmacy clerks and non-pharmacy technician personnel spend the majority of their time stocking the prescription department with prescription drugs, including maintaining an adequate stock and storing those prescriptions in a safe and secure manner. This delegation and division of duties allows pharmacists the time necessary to efficiently and effectively serve patients and focus on professional judgment decisions. In regard to returning prescriptions not picked up to the prescription department, it is important to acknowledge that whether the pharmacist has a staff member or pharmacist technician perform that duty, that current rules state that the ultimate responsibility for final approval of any new prescription prepared in the absence of the pharmacist remains with the pharmacist, and the prescription cannot be delivered to the patient without the pharmacist's final approval. The proposed amendments do not appropriately take into account the existing accountability that remains solely with the pharmacist. In regard to the sale of nonprescription insulin to a patient after pharmacist verification, regular nonprescription insulin does require pharmacist verification, but it is still an over-the counter medication. Because the pharmacist is verifying the insulin product, and the ultimate responsibility lies with the pharmacist. There is no basis to prohibit a nonpharmacist technician personnel member from performing this duty, the sale of an over-the-counter medication.

The proposed amendments are overreaching, unnecessary and extremely burdensome to independent pharmacy owners operating on razor-thin margins and utilizing their less costly non-pharmacist technician personnel for tasks that do not require the professional judgment capabilities of a pharmacist. For these reasons, American Pharmacies requests that the proposed amendment be withdrawn and eliminated or re-written.

I appreciate the Board's consideration of TPBC's written comments. Please do not hesitate to contact me with questions; my contact information is below.

Sincerely,

A handwritten signature in blue ink, appearing to read "Richard Beck", with a long horizontal flourish extending to the right.

/s/ Richard E. Beck, R. Ph.
Executive Director, Texas Pharmacy Business Council
1001 Congress Avenue, Suite 250
Austin, Texas 78701
Phone 512-992-1291
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rbeck@txrxCouncil.org

cc: Texas Pharmacy Business Council Directors (via Email)

From: Brian Bates [mailto:mattdrug@sbcglobal.net]
Sent: Wednesday, January 26, 2011 11:09 AM
To: Paul Holder
Subject: Propose Regulations on Pharmacy Techs!

My Dear Friends,

I have been practicing pharmacy since 1965 and have seen a lot of water go under the bridge (a lot of good and a lot of bad water!). I have read the proposed new regulations for pharmacy techs and what they can and cannot do in the pharmacy. The proposed rules to prevent them from helping control inventory by stocking the shelves in the pharmacy, returning Rx's not picked up to the inventory, and prevention from selling non-RX insulin are absurd and totally unfounded proposed rules. Our techs are totally capable of these tasks and are a boon to assist with these functions. So, please consider pulling down these proposed rules and look for more meaningful and functional issues to impose.

Respectfully,
Jim Bates, R.Ph.
License # 16730



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)

Ms. Allison Benz, R.Ph., M.S.
Director of Professional Services
Texas State Board of Pharmacy
Page 3 of 3

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