

TEXAS STATE BOARD OF PHARMACY

RECOMMENDATIONS FOR LEGISLATIVE ACTION APPROVED BY THE BOARD

Pharmacy Practice Issues

1. **Drug therapy management authority** — Amend the Texas Pharmacy Act and Chapter 157 of the Medical Practice Act to allow pharmacists the authority to carry-out or sign prescription drug orders under written protocol from a physician.
2. **Administration of drugs** — Amend the Texas Pharmacy Act to clarify a pharmacist's authority to administer medications.
3. **Pharmacist professional discretion** — Clarify that pharmacists have professional discretion when deciding to dispense a prescription or medication order.
4. **Pharmacy Peer Review** — Amend the Texas Pharmacy Act to specify the Board has the authority to mandate pharmacy peer review (Continuous Quality Improvement) programs in pharmacies.
5. **Preventing medication errors by requiring prescriptions to be legible** — Amend the Texas Pharmacy and other Practice Acts to require written prescriptions to be legible and encourage all prescriptions to be transmitted electronically.
6. **Pharmacist Service in Small Hospitals** — Amend the Texas Pharmacy Act to require all Class C Pharmacies (other than ASCs) to have the services of a full-time pharmacist (or alternatively, to require all Class C Pharmacies located in hospitals with more than 50 beds to have a full-time pharmacist).
7. **Substitution of Dosage Forms.** Amend Section 562.012 of the Texas Pharmacy Act to remove the requirement that the practitioner be notified of a substitution of dosage form when the patient consents and the product substituted contains the identical amount of the drug, is not an enteric-coated or timed release product, and does not alter the desired clinical outcomes.

Enforcement Related Issues

8. **Disciplinary sanctions for interns** — Amend the Texas Pharmacy Act to allow for a greater range of disciplinary sanctions, such as reprimand, administrative penalty, or probation, similar to the sanctions allowed for other licensees. This change allows the Board to discipline a pharmacist-intern for minor violations without either restricting the internship or denying the ability to participate in the internship completely.
9. **Maintenance of pharmacy records** — Amend the Texas Pharmacy Act to provide for a specific record retention period for prescription records maintained by a pharmacy of a minimum of 3 years from the date of dispensing for the original prescription and 5 years for electronic records.
10. **Cancellation of license** — Return the ability to cancel a license by amending Section

565.051 of the Texas Pharmacy Act.

11. **Authorization for inspections** — Expand the Board's inspection authority to include the ability to enter a pharmacy for general regulation purposes.
12. **Access to Financial and Pricing Data** – Amend the Pharmacy Act to allow the Board access to financial records.
13. **Disciplinary Sanctions for All Licensees/Registrants** – Amend Texas Pharmacy Act to add the following to the grounds for discipline for all licensees/registrants:
 - (a) committing a criminal offense that requires registration as a sex offender as a ground for discipline for all types of licensees/registrants; and
 - (b) disciplinary action by another health licensing board in Texas or in another state to the grounds for disciplinary action for pharmacists and technicians/trainees. (Currently disciplinary action by another state's pharmacy board is grounds for discipline.)
14. **Reporting of Incapacity** – Amend the Texas Pharmacy Act to allow licensees/registrants to report another licensee/registrant for any incapacity that prevents safe practice (including abuse of alcohol or drugs) with civil immunity if reported in good faith.
15. **Reporting Positive Drug Screens** – Amend the Texas Pharmacy Act to require employers to report a drug screen that is positive for alcohol or non-prescribed drugs when conducted by pharmacy employers with civil immunity if reported in good faith.
16. **Second Orders Against Impaired Pharmacists** – Amend the Texas Pharmacy Act to allow the Board the discretion of making public a second order against a person who has a chemical, physical, or mental impairment.
17. **Amount of Civil Penalty** – Amend the Texas Pharmacy Act to increase the amount of the civil penalty authorized in the Pharmacy Act.

Pharmacy Technician Enforcement Issues

18. **Requirement to be a Pharmacy Technician/Trainee** – Amend the Texas Pharmacy Act, Section 568.001 of the Texas Pharmacy Act to require a pharmacy technician or pharmacy technician trainee to be of "good moral character." [Note: This requirement for pharmacists exists under Section 558.051(a)].
19. **Grounds for Discipline of a Pharmacy Technician/Trainee** – Amend the Texas Pharmacy Act to add the following to the grounds for discipline of a pharmacy technician/technician trainee:
 - (a) violations of a disciplinary order as a ground for disciplinary action for pharmacy technicians and pharmacy technician trainees. [Note: This ground for discipline of a pharmacist exists under Section 565.001(a)(17)].

- (b) an impairment ground [same as 565.001(a)(4)] to disciplinary grounds for technicians/trainees, and change the "drug or alcohol dependency" ground to be the same as the "intemperate use" ground for pharmacists [same as 565.001(a)(7)].
 - (c) unprofessional conduct, as that term is defined by the rules of the Board; and
 - (d) performing acts that only a pharmacist may perform, as defined by the rules of the Board.
- 20. Mandatory Evaluations for Pharmacy Technicians/Trainees** – Amend the Texas Pharmacy Act to provide for mechanism to require technicians to undergo mandatory evaluations by mental health professional if probable cause for impairment exists (Currently allowed for pharmacists).
- 21. Pharmacy Technician/Trainee Disciplinary Action** – Amend the Texas Pharmacy Act to add a provision that a disciplinary action taken against a trainee stays in place as the individual becomes registered as a technician (i.e. that we don't have to take disciplinary action again for the same criminal history).
- 22. Continuing Jurisdiction after Expiration Date of Registration** – Amend the Texas Pharmacy Act to provide for continued jurisdiction over pharmacy technicians/trainees with pending investigations beyond the date of expiration of the registration. (Note: The Act currently allows this for pharmacists and pharmacies).

Miscellaneous Issues

- 23. Reinstatement of License/Registration** – Amend the Texas Pharmacy Act to clarify that in licensure, reinstatement, or modification cases, the applicant/licensee has the burden of proof to demonstrate that the board should take the requested action (i.e. grant a license, reinstate a license, etc.).
- 24. Licensing procedures** – Modify Sections 558.051 and 558.101 of the Texas Pharmacy Act for pharmacists' qualifications for license and Section 568.002 for pharmacy technicians to include a provision that the applicants be in the United States legally and be legally able to work prior to issuing a license for pharmacists and pharmacy technicians.
- 25. Peace Officers ability to carry a firearm and arrest** – Amend the Pharmacy Act to allow peace officers to carry a firearm in limited situations and to make arrests. The ability to carry a firearm would be limited to carrying the firearm outside a pharmacy unless a life-threatening situation exists.
- 26. Repeal of Chapter 567** – Amend the Texas Pharmacy Act to either repeal the chapter or locate the chapter in another part of the code that deals with manufacturing or repackaging, since these activities are not regulated by the Pharmacy Board.
- 27. Regulation of Wholesale Drug Distributors** – Amend the Texas Food, Drug, and Cosmetic Act to transfer the authority to license and discipline wholesale drug distributors to the Pharmacy Board.

28. **Regulatory Authority over Pharmacists/Technician Relief Services** – Amend the Texas Pharmacy Act to give the Board regulatory authority over pharmacist-relief services, especially, requiring them to tell us where a pharmacist is working on any given day.
29. **Notification of Address Change** – Amend the Texas Pharmacy Act to require interns and pharmacy technicians to notify the Board of a change of address.
30. **Costs of Investigations/Litigation** – Amend the Texas Pharmacy Act to allow the Board to recover the costs of:
 - (a) investigations when disciplining a licensee; and
 - (b) litigation from licensees if successfully prosecuted at SOAH.
31. **Patient Access to Records** – Amend the Texas Pharmacy Act to clarify that patients have a right to access their pharmacy records in a reasonable time and for a reasonable charge (and allow the board to define "reasonable").
32. **Self-Directed Semi-Independent Agency Status** – Seek legislative authority to become a Self-Directed Semi-Independent Agency.
33. **Delegation to the Executive Director** – Amend the Pharmacy Act to clarify that the Board may delegate certain duties to the Executive Director as currently authorized in the Medical and Nursing Practice Acts.
34. **30-Day Emergency** – Amend the Texas Dangerous Drug Act to incorporate authority for pharmacists to provide 30-day supply of drugs during a declared disaster. (Note: SB 1658 passed by the 2007 Texas Legislature amended the Pharmacy Act and the Texas Controlled Substances Act, but not Section 483.047 of the Texas Dangerous Drug Act).
35. **Confidentiality of Compounding Formula Information.** Amend the Texas Pharmacy Act to make formulas for compounded products confidential and not subject to open records requests.

Staff Suggestion for Law Changes

Currently there is nothing in the Pharmacy Act that would prohibit a pharmacist whose license has been revoked in Texas or any other state from applying and becoming a pharmacy technician. TSBP has a rule that makes it a ground for discipline for a pharmacy to allow access to prescription drugs to a person who has had a license as a pharmacist, intern, or pharmacy technician revoked. However, we do currently have the ability to deny a registration as a pharmacy technician based on the revoked license.

In addition, for both pharmacists and technicians, the Pharmacy Act specifies that it is a ground for disciplinary action against the pharmacist or technician if they have subject to disciplinary action against the pharmacist or technician license in another state. Currently, the act does not allow discipline if the pharmacist or pharmacy technician has had a license disciplined by another health professions licensing agency in Texas or another state.

Recommendation

Amend Section 565.001 and Section 568.003 to make it a ground for discipline for both pharmacists and pharmacy technicians to have "had a license or registration revoked, surrendered, or suspended by a health licensing agency in this state or in any other state for conduct substantially similar to conduct described in Section 565.001 or Section 568.003."