



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, RPh, MS
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, RPh, 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

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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,

/s/ Richard E. Beck, R. Ph.

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cc: Texas Pharmacy Business Council Directors (via Email)