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TPBC is the advocacy arm of American Pharmacies, the dominant buying cooperative for the Texas Independent market.



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Tx AG Opinion Advances AWP Prospects; Says Courts Now Likely to Uphold Law

See the AG Opinion with Highlights

The Texas Attorney General's Office on Wednesday issued its highly awaited opinion on the Texas AWP law sought at TPBC's request by Rep. Todd Hunter and Sen. Charles Schwertner. The AG ruling did not find the Any Willing Pharmacy law (Article 21.52B of the Texas Insurance Code) enforceable in the absence of definitive court decision, but said that a court taking up the issue today would likely determine that the law is not pre-empted by ERISA, the central issue in Texas Department of Insurance's (TDI) longtime decision to not enforce the statute.

The AG's response was very encouraging for independent pharmacy, essentially providing a detailed road map for the courts to enforce the law should the issue be revisited in the court system. Attorney General Ken Paxton's opinion also pointed out that that the law has not been repealed by the Texas Legislature despite its frequent opportunities to do so.

"We thank Chairman Hunter and Chairman Schwertner for continuing to prove their support of independent pharmacy," TPBC Executive Director Michael Wright said. "We hope that AG Paxton's logical arguments will encourage TDI to start enforcing the law."

"Were a court to address the issue today, it would likely conclude that article 21.52B of the Texas Insurance Code ("Any Willing Pharmacy" statute) is saved from preemption under the federal Employee Retirement Income Security Act of 1974 ("ERISA"), pursuant to the test set forth by the U.S. Supreme Court in Kentucky Ass'n of Health Plans, Inc. v. Miller," the AG opinion summary states. "... Until a court affirmatively concludes that the statute is saved from preemption, we cannot conclude as a matter of law that article 21.52B is enforceable."



Rep. Hunter



Sen. Schwertner

AT TPBC's request, Rep. Hunter of Corpus Christi and Sen. Schwertner of Georgetown -- both strong TPBC allies -- requested the opinion on January 26. TPBC legal counsel helped the legislators draft their opinion requests and also briefed the AG staff.

The AWP law has been virtually unenforced since its enactment in 1991. The Fifth U.S. Circuit Court of Appeals ruled in 1997 (Tex.

Pharmacy Assn v. Prudential Ins. Co. of America) that Texas' AWP law is pre-empted by ERISA. However, the U.S. Supreme Court ruled in 2003 (Kentucky Assn of Health Plans, Inc. v. Miller) that ERISA did not pre-empt Kentucky's AWP law, and a 2008 decision of the Fifth Circuit reinforced that position. Despite those rulings, Texas Department of Insurance has declined to enforce the law.

Insurance plan designs increasingly restrict patient access to preferred networks that exclude independent pharmacies. Patients in these plans are often forced to change pharmacies or pay higher copayments to stick with their current pharmacy. TPBC strongly believes that the widespread exclusion of independents from such networks seriously threatens patient access to quality pharmacy care.

**"Network adequacy standards are no substitute for the AWP law and simply don't protect patient access to pharmacy care," Wright said. "We are very encouraged that the AG said that law would likely be validated by the courts now. TPBC is considering all its legislative and legal options in the wake of this opinion."**

TPBC has worked with TDI extensively since 2013 to identify enforcement challenges, and filed legislation in 2015 to strengthen the AWP law.

## **Magnolia Pharm.D. Steve Hoffart Appointed to TPBC Board**

***Alton Kanak Replaces Mike Muecke as Vice-Chair***

Magnolia pharmacist Steve Hoffart, Pharm.D., has been appointed to the TPBC Board to fill the unexpired term of Longview pharmacist Mike Pemberton, who died earlier this year.



Hoffart received his BS with highest honors in 1994 and his doctorate in pharmacy in 2004 from the University of Texas. **He owns and operated Magnolia Pharmacy north of Houston, one of only 18 Texas pharmacies that are accredited by the Pharmacy Compounding Accreditation Board.**

**He opened the pharmacy in 2002 with the goal of providing cutting-edge services with a hometown feel. He and his wife, Dana, were both born and raised in the area and are graduates of Magnolia High School. They have two sons, Ryan and Preston.**

***Steve Hoffart*** Working closely in a "triad" system with patients and doctors, the pharmacy offers sterile and non-sterile compounding, immunizations, health screenings, hormone and nutrition consulting and MTM services. **The operation was named 2010 GNP Pharmacy of the Year for the South Region in 2010 and won business of the year honors in 2006 from the Magnolia Chamber of Commerce.**

Hoffart is a national advisor to Good Neighbor Pharmacy and Prescribe Wellness, he is a member of NCPA, TPA, PCCA and the International Academy of Compounding Pharmacists. **He was named Pharmacist of the Year by Retail Pharmacy Management Solutions in 2008 and PCCA's Pharmacist of the Month in July 2012.**

**"Steve has a tremendous amount of experience in the pharmacy industry and in political engagement," TPBC Executive Director Michael Wright said. "He has certainly proved that he is willing to participate at a high level in the political process on behalf of independent pharmacy."**

In other TPBC Board news, the American Pharmacies (APRx) Board member Alton Kanak of Katy has been chosen to replace Bay City pharmacist Mike Muecke as vice-chair of the TPBC Board. The move allows Muecke to focus full attention on his duties as the newly elected chairman of the APRx Board.

The seven-member TPBC Board consists of four American Pharmacies Board members and three at-large directors nominated by TPBC and approved by the APRx Board.

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