



## The New Drug Threat

### *Prescription Drug Abuse Is Getting Texas Workers Hooked, And Killed*

According to the Centers for Disease Control in 2010, the number of opiate pain killers prescribed could medicate every man, woman and child in America 24 hours a day for a month. That's a shocking statistic, and proof that the number of pain killer prescriptions have gotten out of hand.

Here's another shocking statistic: the number of deaths from pain killer overdoses has tripled in the last ten years.

The Legislature has taken some steps to try to address the problem. It's now a felony to doctor shop and very soon, with new technology it will be easier to catch people getting multiple prescriptions filled at different locations from different doctors. While that is a start, more needs to be done to address the problem.

One of the new laws that requires pain management clinics to register with the State so that they can be inspected, isn't getting to some of the so called "pill mills." Thanks to Senator Tommy Williams (the author of the legislation), 22 pill mills have been effectively shut down since the new law went into effect. Of

course, there are some bad actors who are finding ways to skirt the law. *The Houston Chronicle* recently reported that pill mills are avoiding state scrutiny by not calling themselves pain management clinics. Instead they are calling themselves "wellness" or "rehabilitation" clinics and there is even one pain clinic that is actually calling itself a "family practice" operation.

Despite the name change, one thing is clear; these clinics are set up solely to dispense prescriptions for addictive drugs.

The Texas Association of Business (TAB) has taken upon the task to do something



*The next major drug threat*

## WORKFORCE Q&A

*Can an employer discipline an employee for posting negative comments about the company on social media?*

(see page 2)

## SAVE THE DATE

*There is still time to register for TAB's Annual Conference. The Conference is February 1<sup>st</sup> and 2<sup>nd</sup> at Austin's AT&T Conference Center. There's a full agenda that includes a forum of US Senate candidates and our popular political round-up with some of the State's top reporters. We will also hear from Rice professor and former US Census Director and State Demographer, Dr. Steve Murdock. You can check out the full agenda and get registered for the event on our website, [www.txbiz.org](http://www.txbiz.org).*

## TAB MISSION

*To make the Texas business climate the best in the world.*

# WORKFORCE Q&A



Ron Chapman, Jr.,  
Ogletree, Deakins, Nash,  
Smoak & Stewart

## *Can an employer discipline an employee for posting negative comments about the company on social media?*

Although there is no constitutional right of free speech applicable in the private sector, the National Labor Relations Act (NLRA) protects non-supervisory employees who engage in concerted activity for the purpose of collective bargaining or “other mutual aid or protection.” Unfortunately, defining the parameters of that protection in the context of evolving technology is extremely difficult, leaving employers in need of greater clarity. However, until the National Labor Relations

Board and courts provide that clarity, here are a few guiding principles for employers when developing a social media policy or considering the discipline or termination of an employee because of a social media post:

- ★ Supervisory employees are not “employees” under the NLRA and generally not subject to its protections.
- ★ A social media post concerning a workplace complaint that generates comments by other employees likely will be protected.
- ★ A non-supervisory employee is likely protected even if no other employees respond to the post if the posting is on a site designed to be seen by fellow employees, there is a clear intent to initiate or further group action, and/or the grievance has been presented to management or discussed with fellow employees.
- ★ A non-supervisory employee is likely protected even if the post disparages the employer or management, includes profanity, or is rude or vulgar, unless the comments are maliciously or recklessly false or there is a clear intent to harm the company.
- ★ Purely personal gripes or posts to non-employee friends/relatives, even about work-related issues, may not be protected absent evidence of a clear intent to initiate or further group action among that individual’s fellow employees.
- ★ If the post advocates unlawful, discriminatory, or violent acts, the employee may not be protected.

Employers prefer bright-line rules. Unfortunately, this area of the law is fact-specific, evolving, and muddled. This leaves employers contemplating discipline or discharge in a difficult position of trying to determine issues such as whether an employee “intended to initiate or further group action.” Until future decisions provide more guidance, employers must assess each situation on a case-by-case basis, using the above principles as guidance.

### ***Employment Relations questions?***

***Don't forget to call TAB's Employment Relations Hotline for your next HR Question  
1.800.856.6721, ext. 164 or E-mail [smcgee@txbiz.org](mailto:smcgee@txbiz.org)***

# TEXAS BUSINESS REPORT

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## TAB STATEWIDE OFFICERS

Rudy Oeftering, *State Chairman*  
John Bass, *Chair Elect*  
Dale Young, *Treasurer*  
Bill Hammond, *President*

## TAB TEAM CONTACTS

Sandra McGee, *Senior Vice President*  
Employment Services & Finance  
[smcgee@txbiz.org](mailto:smcgee@txbiz.org)

Dan Cahalen, *Senior Vice President*  
Membership Development  
[dcahalen@txbiz.org](mailto:dcahalen@txbiz.org)

Aaron Cox, *Vice President*  
Chamber Relations  
[acox@txbiz.org](mailto:acox@txbiz.org)

Cathy DeWitt, *Vice President*  
Workers' Compensation, Tort Reform and  
Employment Relations  
[cdewitt@txbiz.org](mailto:cdewitt@txbiz.org)

Stephen Minick, *Vice President*  
Environmental Quality and Energy  
[sminick@txbiz.org](mailto:sminick@txbiz.org)

Kandice Sanaie, *Governmental Affairs  
Manager*  
Insurance & Health Care  
[ksanaie@txbiz.org](mailto:ksanaie@txbiz.org)

Nelson Salinas, *Governmental Affairs Manager*  
Education  
[nsalinas@txbiz.org](mailto:nsalinas@txbiz.org)

Robert Wood, *Communications Director*  
[rwood@txbiz.org](mailto:rwood@txbiz.org)

Lori Buntin, *Events Director*  
[lbuntin@txbiz.org](mailto:lbuntin@txbiz.org)

## TAB REGIONAL OFFICES

### Central Texas Area

Ron McGill  
[rmcgill@txbiz.org](mailto:rmcgill@txbiz.org) - (254) 913-0752

### North Texas Area

Mark Sadowski  
[msadowski@txbiz.org](mailto:msadowski@txbiz.org) - (214) 906-3361

### Northwest Texas Area

Marshall Jeffus  
[mjeffus@txbiz.org](mailto:mjeffus@txbiz.org) - (940) 642-5428

### Southeast Texas Area

Miles Resnick  
[mresnick@txbiz.org](mailto:mresnick@txbiz.org) - (409) 363-1481

Russ Penson  
[rpenon@txbiz.org](mailto:rpenon@txbiz.org) - (816) 286-9122

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# A Year Of Firsts At TAB's Annual Conference.

## Join Us In Austin February 1st and 2nd.

For the first time, those in attendance at TAB's Annual Conference will get to hear from experts on the prescription drug epidemic that is sweeping across the State and nation. TAB has launched a new effort to address this issue since it has a direct impact on employers. We will explore the issue fully and whether new legislation is needed to deal with the issue.

In another first, conference attendees also will hear about Texas' changing demographics and what that will mean for the State's political and economic future. One of the best demographers in the business, Rice University's Dr. Steve Murdock, will be giving the update. He's the former US census bureau director and former State demographer.

This is also the first major event put together by TAB's new Events Director Lori Buntin. "TAB's Annual Conference is a key place for state business leaders to gather together and talk about the priorities of 2012," said Buntin. "The forum with the candidates for US Senate is going to be excellent. We have confirmed with Lt. Gov. David Dewhurst, former Dallas Mayor Tom Leppert, former Solicitor General Ted Cruz and former ESPN College Football Analyst Craig James." Buntin said, "All of the topics are current and relevant for Texas business."

Buntin comes to TAB from the Vancouver, Washington Chamber of Commerce, where she was an events director. She's also coordinated events for the Robert Wood Johnson

Foundation on a national basis. "It's definitely different to be with a statewide organization planning an event, thinking about people coming from eight hours away to attend an event was something I had to consider at a local chamber," said Buntin.

In addition to the firsts, there will be some favorites returning to the conference this year, including the Capitol Press Corps panel and events featuring the House Speaker and State Comptroller. There also will be a discussion of something that will drive the State and Federal budgets in the coming years – entitlements – and how we should reform them.



*Annual Conference arms members with valuable information*

"I think the Annual Conference is an opportunity to create and renew business relationships," said Buntin. "The content and information offered at the Conference will be important and interesting, but building relationships might be even more important. I would take any opportunity available to attend TAB events and build these relationships that are so crucial."

There is still time to attend this year's Conference on Feb. 1 - 2. **Just click the registration link on TAB's webpage, [www.txbiz.org](http://www.txbiz.org).**

## New Drug Threat

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about this growing and deadly problem. TAB is forming a new group to look for ways to attack it, both legislatively and through strong education. The group - The Texas Alliance for Responsible Prescription Drug Use - will consist of all stakeholders who are interested in curbing the abuse of prescription pain pills. While much of the focus will be on injured workers in the workers' compensation system who are unnecessarily getting addicted to pain pills, TAB will also focus on the problem as a whole and hopes to make meaningful changes.

"The abuse of prescription pain pills creates a financial cost to our state, but more importantly it is costing lives. More people die from prescription pills than illegal drugs, such as cocaine, and we are committed to making a difference," said Cathy DeWitt, TAB's Vice President.

Last year in Harris County alone at least 188 people died from prescription drug overdoses.

"While the Alliance is still in its development stage, I've been overwhelmed by the support that we are receiving from business leaders, legislators and various stakeholders," said DeWitt. "It is clear that everyone understands that there is a problem and everyone seems to be committed to being a part of the solution."

TAB will be adding a special panel to its Annual Conference to start the dialogue on the issue with stakeholders from the pharmacy and medical community.

*For more information regarding the Alliance, please contact Cathy DeWitt at [cdewitt@txbiz.org](mailto:cdewitt@txbiz.org).*

# MEMBER PROFILE

## Amerex Energy Services

Amerex Energy Services (“AES”) is the retail energy consulting division of Amerex Brokers LLC (collectively referred to as “Amerex”), which is a wholly owned subsidiary of GFI Group Inc. (“GFI”) (NASDAQ: GFIG).

Amerex is one of the largest and most respected over-the-counter brokers of natural gas, electricity and emissions in North America. Amerex’s wholesale energy division brokers thousands of transactions per day, averaging seven million megawatt hours of electrical power, 170 billion cubic feet of natural gas and an estimated 35% of the volume in US renewable energy markets each business day.

By combining the results of thousands of natural gas, electricity, and emissions trades in all liquid U.S. and Canadian markets, Amerex’s proprietary daily *Market Data Report* is utilized by generators, hedge funds, investment banks, the F.E.R.C., and Retail Electric Suppliers. (Retail Electric Suppliers utilize Amerex’s Market Data, in addition to other data sources, to build their retail pricing curves to end users.)

Leveraging over 30 years experience in wholesale energy markets, Amerex’s retail division, AES, offers unmatched market intelligence and depth of experience in providing comprehensive energy price risk management services to commercial, industrial, governmental and institutional buyers in the development and implementation of long term energy purchasing strategies.

Complete access to wholesale power and gas markets (including proprietary Amerex Market Data) renders Amerex uniquely qualified to develop the best, customized risk-managed solution. Recommendations are supported by rigorous technical and fundamental evaluation. Amerex delivers justifiable economics and a purchasing decision that exhausts the market and achieves the best possible price (taking into account the customer’s specific risk tolerances and objectives) and services under the prevailing market conditions.

“With a focus on wholesale energy markets and business-to-business energy transactions, it is only natural that we

should support the goals of TAB,” said Scott Halperin, Amerex Senior Vice President.

TAB President and CEO Bill Hammond said, “Companies like Amerex make the Texas energy sector the strongest in the country and make TAB a stronger organization.”

AES is not affiliated with any particular energy supplier or financial entity; instead, Amerex represents buyers solely in the retail market.

### Pertinent Information about Amerex:

- ★ Founded in 1978 - brokered heating oil, gasoline and fuel oil.
- ★ Purchased by GFI in 2006. (ticker: GFIG)
- ★ Current employment – 116 full-time personnel in Sugar Land, Texas.
- ★ Amerex & GFI have been awarded the coveted No. 1 Energy & Commodity Broker of the Year in 2010 and 2011 by *Energy Risk* magazine. This designation was voted on and awarded by industry peers.

### Pertinent information about GFI:

- ★ Founded in 1987. Provides competitive wholesale market brokerage services in a multitude of global over-the-counter (“OTC”) and exchange-listed cash and derivatives markets for fixed income, equities, financials and commodities.
- ★ Instrumental in fostering standardization and liquidity in OTC credit derivatives markets
- ★ Leader in global markets for greenhouse gas emissions trading.

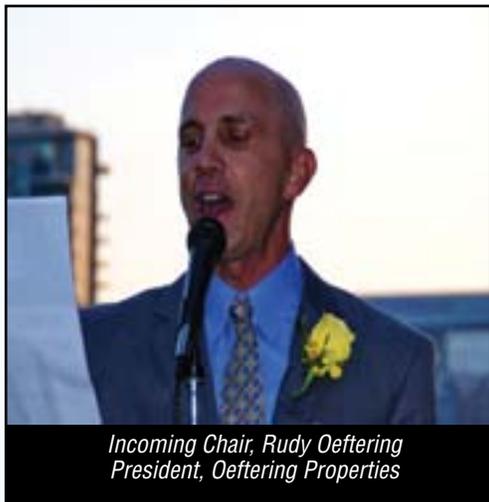
**“With a focus on wholesale energy markets and business-to-business energy transactions, it is only natural that we should support the goals of TAB ”**

**- Scott Halperin,  
Amerex Senior VP**



*Amerex is one of the leading brokers of natural gas, electricity and emissions*

# Message From 2012 TAB Chair Rudy Oeftering



*Incoming Chair, Rudy Oeftering  
President, Oeftering Properties*

2012 is here and we have much work to do. We need your help.

First, allow me to say that it is an honor to serve the Texas Association of Business as the 2012 Chairman of the Board. Second, I want to express a debt of gratitude on behalf of the entire Texas business community to the 2011 Chairman, Brett Graham, for his excellent year of leadership.

The 2011 Board produced an aggressive agenda titled *The TAB 2020 Lone Star Initiative*. This document contains bold objectives that, if achieved, will ensure that Texas remains a shining star of free enterprise and good government, as well as an example for the rest of the country and the world.

In order to achieve these critical initiatives, we must now identify goals, tasks, timelines and the resources necessary to accomplish

these goals. This is where you come in. I strongly encourage each of you to bring your talent and energy to this process. The Texas Association of Business has within its membership the deepest resource of knowledge and talent that Texas has to offer. It is my contention that this talent has not been fully utilized because it has not yet been called on. That will change.

TAB is the largest, broad-based business organization in Texas. We represent the entire spectrum of commerce within our state. From the self-employed plumber to employers with manufacturing facilities throughout the State, we stand for the free enterprise principles that allow all to prosper. The Texas Association of Business is poised in a unique place at a critical time in history to firmly defend the principles of government accountability and free markets.

It is worth remembering that since 1775 when the shopkeepers, merchants, and farmers of Concord and Lexington (arguably the first American "Chamber of Commerce") were called on to take risks for a better future, every generation has in some way been called to do the same.

I now call on you to give your time, talent and treasures to the cause of a better future for our state. Please do all that you can to offer your unique talents to help us achieve our goals. Future generations of Texans are counting on you.

## A NEW INSURANCE OPTION

Have you wanted to offer your employees health insurance but haven't been able to offer it? Small business owners with two to 50 employees can take advantage of Healthy Texas, a new health insurance product developed by the Texas Department of Insurance, which offers up to 30 percent lower premiums. To learn more about Healthy Texas benefits

and find out if your company is eligible, plan to attend the free Healthy Texas, Healthy Business Breakfast on January 20 at the InterContinental Houston near the Galleria presented by the Texas Department of Insurance, the Texas Association of Business, and the Greater Houston Partnership. **To register, visit [HealthyTexasHealthyBusiness.org](http://HealthyTexasHealthyBusiness.org).**

## QUOTES

**“Texas has a severe shortage of primary-care providers, and the problem will only get worse unless the state does something to remedy the situation.”**

– TAB President and CEO Bill Hammond, *Houston Chronicle*, Texas faces critical shortage of primary-care providers

**“In Texas for a long time we have successfully focused on access. We're spending a lot of money and not getting much in return.”**

– TAB President and CEO Bill Hammond, *Inside Higher Ed*, Behind the Billboards

**“The whole idea is not necessarily to pick on the community colleges but to point out that we have a problem here, and we must increase the productivity of these systems.”**

– TAB President and CEO Bill Hammond, *Dallas Morning News*, Grad rates billboard campaign hits Dallas



1209 Nueces Street  
Austin, Texas 78701  
(512) 477-6721 phone  
(512) 477-0836 fax  
[www.TXBIZ.org](http://www.TXBIZ.org)

# Talk **About** Business



Bill Hammond, TAB President

## Dear TEA: Make The Test Count

This should be a great time for public education in Texas. A new accountability system has been put into place. This means a new way to measure the progress of high school students by requiring end of course exams. Those exams should mean a better way to chart our students' educational improvement, and mean better training for our students in taking a final exam that really counts, just like in college.

There's only one problem – the end of course exams might not count for anything.

The Texas Education Code states that the end of course exam “shall” account for 15 percent of a student's final grade for the course. The Texas Education Agency (TEA), however, says that it doesn't have the power to enforce that rule. I would disagree, and argue that it certainly does. TEA is also leaving the grading policy of the exams to local school districts. This has led to some school districts adopting policies where the lowest grade a student can make on the test is a 69, meaning no real measurement of where a student is academically in the core courses. That also means that the new accountability system, based on those test scores, will be a lie, generating completely

meaningless results. It will create a system inherently unfair for a student striving for excellence.

Only when we are honest with ourselves in the fact that our education system still needs a lot of improvements can we actually start down the road to get there. If a student knows that all he or she has to do is sign his or her name, answer no questions, and receive a grade of 69, what is the use in even taking the test? For most, failing by one point won't make them fail the class as a whole. For that matter, what is the use of even spending the money and time to give the test in the first place?

The real problem is that we are creating a statewide accountability system without a uniform measurement. Unless TEA sets the same ground rules for all school districts, there will be a patchwork of over 1200 different grading systems. Everyone playing by different rules will make the system just as useless as allowing school districts to minimize the impact of failing the test.

TEA has the power to enforce the standards and should develop guidelines for the implementation of this important reform. There has always been a fear of revealing where students really are academically. But, how can we ever

hope to get better when we have no idea where we are now?

We've already gone down the road of using a misleading system to hold schools accountable. Remember the Texas Projection Measure (TPM)? It projected scores before they actually happened, and as it turns out, projected them wrong, showing that we were doing much better than we actually were. The TPM was an embarrassment and was rightfully dumped, which in turn led to scores dropping dramatically. Having a scatter-shot grading system where failing really isn't failing will mean falsely high scores.

The Legislature created this new accountability system in 2009, and resisted watering it down in 2011, with the goal of improving our high schools. Lawmakers were also hoping that the new accountability system would mean students being better prepared for life after high school, whether that meant higher education or going into the workforce. TEA has effectively endorsed a scheme that is inherently unfair to students, parents and taxpayers alike. Now is the time for us to stand up and not accept the status quo once again. We can't move forward if we don't know where we are.