

**TENNESSEE BOARD OF PHARMACY
JANUARY 20-21, 2010
227 FRENCH LANDING, POPULAR ROOM
NASHVILLE, TN**

BOARD MEMBERS PRESENT:

Todd Bess, D. Ph., President
Bettie Wilson, D. Ph., Vice President
Larry Hill, D. Ph.
Brenda Warren, D. Ph.
Joyce McDaniel, Consumer Member
Jason Kizer, D. Ph.
Charles Stephens, D.Ph.

STAFF PRESENT:

Kevin K. Eidson, Board of Pharmacy
Executive Director
Ben Mezer, Assistant General Counsel
Terry Grinder, Pharmacist Investigator
Tommy Chrisp, Pharmacist Investigator
Richard Hadden, Pharmacist Investigator
Scott Denaburg, Pharmacist Investigator
Elizabeth Miller, Director of Health Related
Board
Sheila Bush, Board of Pharmacy
Administrator

STAFF ABSENT:

Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Wednesday, January 20, 2010 in the Poplar Room, 227 French Landing, Nashville, TN. A quorum of the members being present, the meeting was called to order at 9:05 a.m., C.D.T., by Dr. Todd Bess.

Minutes

The minutes from the September 22-23, 2009 and the November 5-6, 2009 meeting were presented. Ms. McDaniel asked Dr. Eidson if he was still the executive director of the Board of Pharmacy. Dr. Eidson stated that he was and that it was an oversight. Ms. McDaniel made a motion to amend the November 5-6, 2009 minutes to state that Kevin Eidson as the Executive Director instead of director. Dr. Hill seconded the motion. The motion carried. Dr. Wilson made the motion to accept the November 5-6, 2009 minutes as amended. Dr. Stephens seconded the motion. Dr. Wilson abstained. The motion carried.

Dr. Wilson asked about the detailed financial report that was requested at the September 22-23, 2009 meeting for the 2008-2009 calendar years. Dr. Eidson explained that Bureau of Health Related Boards is working on the financial report. Dr. Eidson also explained that the State changed accounting systems and this is the cause for delay. Dr. Bess asked for a budget, since the board cannot get a financial report, for this meeting so that the board would know what the projection is for the year. Dr. Bess stated that he was surprised to find out that the Government Operations Committee holds the Board responsible for the financial situations. Dr. Bess also stated that the Board needs the financial report to show to the Government Operations

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Committee that the board is self-sufficient. Dr. Stephens stated that the copy of the audit received was very critical of the boards that are not self sufficient. Dr. Stephens stated that if the board does not have a copy of the financials then the board cannot make decisions to ensure that the board is not breaking the law according to the Government Operations Committee. Ms. McDaniel asked "Has the Department submitted their budget to the Governor?" Dr. Eidson stated that he did not know but assumed that it has been. Ms. McDaniel stated that the budget would have a breakdown of each board and committees. Ms. Miller stated that she didn't know and that the budget does not come down to Health Related Boards level, it is with the Department of Health. Ms. Elizabeth Miller stated that the financial report will be sent to the Board members' home and not held until the next meeting. Dr. Bess asked Ms. Miller if she has seen a copy of the budget for the board or any of the boards and she stated that she has not. Ms. Miller stated that once the Board receives the financial report for 2009, if they want to come up with a budget they can do so at their discretion. Dr. Stephens asked Ms. Miller, if the State of Tennessee gives the Department of Health a projected budget and as a part of that budget, if Health Related Boards is listed. Ms. Miller stated that the Department of Health is separate and has a separate budget from Health Related Boards because all the boards are self-sufficient and that all the funds are dedicated to support the boards unless there is a sweep that takes the board's surplus funds for the general fund. Dr. Stephens asked if Health Related Boards have a budget and Ms. Miller stated that if they do, it exists at a level beyond Health Related Boards and that she and Dr. Eidson do not have access to it. Ms. Miller also stated that budget is not within her job description and it happens elsewhere. Dr. Stephens asked if Assistant Commissioner Allen gives the boards their budgets and Ms. Miller stated that Ms. Allen does not give Health Related Boards a budget. Dr. Bess asked Ms. Miller when she gives a recommendation or requests to Ms. Allen is it being done without the knowledge of what is in the budget? Ms. Miller stated that after she approves the request she then submits the request to Ms. Allen and Ms. Allen has the final approval. Dr. Bess stated that he thinks that Health Related Boards has to be involved in the budget process because the Government Operations Committee holds the boards and committees responsible for their financial situation and it is not right that Health Related Board cannot help with this problem. Dr. Bess also stated that if Health Related Board cannot furnish financial reports or budget requests then it sets the boards up for failure. Dr. Warren asked Dr. Bess if the board will be held accountable for something that we don't have knowledge of or the tools needed to take to care of board's business? Dr. Bess answered yes. Ms. McDaniel asked if the board is self sustaining. Dr. Eidson stated that the board was self sustaining in 2008. Ms. McDaniel then asked when the Board receives the report, Dr. Eidson answered that the report was given to the Boards in November of 2008. Dr. Bess asked Ms. Miller what is the policy for Health Related Boards to make the financial report available to the boards or how often does it happen? Ms. Miller stated that once Health Related Boards receives the financial reports, they are mailed to the board members. There is not set policy for when the different boards receive the financial reports. Ms. McDaniel asked if the board has made a formal request asking for the financial report? Ms. Miller stated that every board has asked for their financial report and she will request that information from Ms. Allen. Ms. McDaniel asked about the surplus being transferred to general funds and did the board go to a zero balance? Ms. Miller stated that the boards were left with twenty percent of the board's surplus. Ms. McDaniel asked if the board has any control over how the board spends the money that is in the surplus?

Ms. Miller stated that the licensing fees are paid directly to the state and that the board does not have control over their funds. The board can make a request but it still must be approved by Ms. Miller and Ms. Allen as well as Finance and Administration. Dr. Wilson stated that the information in the Comptroller's Audit was for the fiscal year of 2008; that the surplus that was transferred to the general funds was about 1.834 million dollars; the board was left with a balance of roughly \$262,000 on June 30, 2008; and the board does not know what the finances are for fiscal year 2009. Ms. McDaniel stated that what bothers her most is that when the board submits a request that they feel is important and the request is denied due to budget constraints. Ms. Miller stated that a request has never been turned down due to budget constraints. Dr. Warren stated that it is frustrating since the money is there and then the request is denied. Ms. Miller stated that it must be a communication problem if the request is denied. Ms. McDaniel stated that they will take it up with Ms. Allen tomorrow. Dr. Wilson stated that she is extremely concerned that the board is held responsible for the financial situation of the board and the board does not have documentation to know the board's financial status. Dr. Bess stated that in the new board member orientation, the members need to know and understand that the board members are responsible for the financial status for their boards. Ms. McDaniel asked that the budget person come to the meeting on January 21, 2010 with Ms. Allen.

Dr. Bess asked what changes were made in the September minutes. Dr. Wilson stated that Dr. Stephens asked for recommendations in the September minutes. Ms. Miller stated that she thought that the revisions requested were to be done for future meetings and that Ms. Bush thought the same. Dr. Wilson asked Dr. Stephens what were the changes. Dr. Stephens stated that he wanted more information in the minutes concerning the motions and decisions that the board made during the contested cases. Dr. Wilson asked that when the amended minutes are brought back before the board that there be some type of indication that the section has been amended. Dr. Eidson stated that it will be done in the future.

Contested Cases

Stephanie Lynn Mosley, RT

Ms. Mosley was present but not represented by legal counsel. Mr. Benjamin Mezer represented the State. Mr. Steve Darnell was the Administrative Law Judge. Ms. Mosley has been charged with violating T.C.A. §53-10-104(a) and (b) and T.C.A. §53-10-105(a). Ms. Mosley admitted to creating and purchasing a prescription for phentermine for herself without authorization from a licensed prescriber. After discussion, Ms. McDaniel made the motion to place Ms. Mosley's registration on probation for three (3) years beginning January 20, 2010 until January 20, 2013. Dr. Wilson seconded the motion. The motion carried. Dr. Stephens made a motion to amend Ms. McDaniel's motion to include that Ms. Mosley must notify the board prior to changing jobs and/or her job description changes allowing her access to medication. Dr. Warren also added that Ms. Mosley not be able to sell or process prescriptions for herself or for family members.

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Dr. Kizer seconded the amended motion. The motion carried. Dr. Warren made a motion to accept the policy statement to indicate that the action taken is to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Hill seconded the motion. The motion carried.

April Dawn Woodby, RT

Ms. Woodby was not present nor represented by legal counsel. Mr. Mezer represented the State. Mr. Steve Darnell was the Administrative Law Judge. Mr. Mezer asked to proceed in default. Dr. Wilson made the motion to proceed in default. Dr. Hill seconded the motion. The motion carried. On the Notice of Charges, Ms. Woodby is being charged with violating T.C.A. §53-10-104(a) and (b) and T.C.A. §53-10-105(a). Ms. Woodby did admit to Kroger Risk Management Department, that she took hydrocodone from the pharmacy. After discussion, Dr. Wilson made the motion to revoke Ms. Woodby's registration based upon the evidence presented. Dr. Warren seconded the motion. The motion carried. Dr. Wilson made a motion to accept the policy statement to indicate that the action taken is to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Hill seconded the motion. The motion carried.

Dr. Bess wanted to know, when a pharmacy technician that comes before the board for a contested case, was there any previous criminal convictions noted on the pharmacy technician's application? Dr. Eidson stated that he believes that Dr. Warren was asking that question when she asked about previous discipline. Dr. Eidson also stated any application that the applicant answered yes to the question that asked "Have you been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?" has been brought before the board for their approval.

Mr. Mezer informed the Board that the rules pertaining to pharmacy technician registration have been signed by the Attorney General and will go into effect on March 23, 2010.

Election of Officers

Dr. Bess thanked the Board for their cooperation and help during his leadership as president of the Board. Dr. Hill thanked Dr. Bess and made the motion to nominate Dr. Wilson as president of the Board. Ms. McDaniel seconded the motion. The motion carried. Dr. Wilson thanked Dr. Bess for his service. Dr. Bess made the motion to nominate Dr. Hill as vice president of the Board. Ms. McDaniel seconded the motion. The motion carried.

Dr. Eidson asked the Board to elect the Roberts Rule of Order as the parliamentary guide. Dr. Warren made the motion to accept the Roberts Rule of Order as the parliamentary guide for the Board. Dr. Bess seconded the motion. The motion carried.

Dr. Stephens acknowledge Ms. McDaniel's reappointment to the Board of Pharmacy.

Legal Report

1. Case No.: L09-PHR-RBS-2009002561

Complaint alleges that respondent pharmacist is not filling whole prescriptions and taking the remainder for himself.

Respondent replied that he is filling TennCare patients' medications in accordance with TennCare rules, which prohibit filling the quantities of Hydrocodone that the nurse practitioner was prescribing.

Prior discipline: none

Recommendation: Dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Wilson seconded the motion. The motion carried.

2. Case No.: L09-PHR-RBS-2009002041

Complaint alleges that respondent manufacturer/wholesaler/distributor was operating an unlicensed distribution facility. The company had an out-of-state Tennessee wholesaler/manufacture/distributor license, for its out-of-state facilities shipping into Tennessee. The Tennessee facility was never inspected by pharmacy board investigators and has been operating in its Tennessee location without an in-state license since July 1, 2005. They ceased operations at the end of October, 2009. They apologized for their misunderstanding of the rules and assumed that since they were being inspected by the Department of Health for the Home Medical Equipment ("HME") license that they held, this was the same as the Board of Pharmacy.

Prior discipline: none

Recommendation: authorize formal hearing, \$10,200 civil penalty.

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$5,100.00 civil penalty. Dr. Stephens seconded the motion. The motion passed with Dr. Warren voting in the negative.

4. Case No.: L09-PHR-RBS-2009001151

Complaint was opened based on an FDA press release. Respondent facility only licenses with the Board of Pharmacy as a Manufacturer/Wholesaler/Distributor in order to comply with some other states' requirements in order to ship product and material into those states. The respondent ships and receives raw materials such as tree bark, shavings,

leaves, roots and herbs. There is no finished product kept at their facility. There are no prescription drugs or prescription devices kept at the facility. The filthy conditions mentioned in the FDA press release have never been observed by pharmacy board investigators during routine inspections and during the course of this investigation.

Prior discipline: none

Recommendation: Dismiss

Dr. Bess made the motion to **accept counsel's recommendation**. Dr. Stephens seconded the motion. The motion carried.

5. Case No.: L09-PHR-RBS-2009002311

Anonymous complainant alleges that respondent pharmacy has been shipping prescription medication and controlled substances into TN without a license. Complainant also alleges that the owner is under indictment for Medicare and insurance fraud in PA.

Respondent replied that they do not ship into TN and are in the process of submitting an application to be licensed as an out-of-state mail order pharmacy. They also contend that the pharmacist in question is not an owner but a staff pharmacist who is in good standing with the PA Board of Pharmacy and the criminal charges filed are going to be contested and he will plead not guilty. There are no records or proof of the respondent shipping into TN and the pharmacist in question is not listed as an owner on their application.

Prior discipline: none

Recommendation: Dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Warren seconded the motion. The motion carried.

6. Case No.: L09-PHR-RBS-2009002341

Respondent technician admitted to loss prevention to taking hydrocodone and alprazolam from the pharmacy without a valid prescription and without authorization, for personal use and resale.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Kizer made the motion to **authorize a formal hearing** for revocation. Dr. Bess seconded the motion. The motion carried.

7. Case No.: L09-PHR-RBS-2009002551

Respondent technician admitted to loss prevention to taking hydrocodone from the pharmacy without a valid prescription and without authorization, for personal use.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Warren made the motion to **authorize a formal hearing** for revocation. Dr. Kizer seconded the motion. The motion carried.

8. Case No.: L09-PHR-RBS-2009002301

Respondent technician was caught on video surveillance taking controlled substances from the pharmacy without a valid prescription and without authorization. Respondent was terminated for this action.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Bess made the motion to **authorize a formal hearing** for revocation. Dr. Hill seconded the motion. The motion carried.

9. Case No.: L09-PHR-RBS-2009002381

Respondent pharmacist was drug tested for reasonable suspicion. His drug screen was positive for opiates, morphine, oxycodone, and oxymorphone. He was not able to produce prescriptions for these drugs, but would not admit to any wrongdoing. He was terminated for cause. The pharmacy where he worked did not show a significant shortage of controlled substances.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Warren made the motion to **authorize a formal hearing** for revocation. Dr. Bess seconded the motion. The motion carried.

Ms. McDaniel left the meeting at 12:00 p.m. but returned at 1:30 p.m. A quorum was still present. Due to illness, Dr. Eidson left the meeting.

Reinstatements

Robert Michael King, D.Ph.

Dr. Eidson introduced Robert Michael King, D. Ph. to the Board. Dr. King is requesting that his license be reinstated. Dr. King's license was indefinitely suspended on July 6, 2009. After discussion, Dr. Warren made the motion to reinstate Dr. King's license. Dr. Hill seconded the motion. The motion carried. Dr. King's license will be placed on a five (5) year probation from January 20, 2010 until January 20, 2015, with the following conditions:

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. David Bryan, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from the physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have the valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior

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- (g) to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (h) The Respondent shall comply with all terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network (TPRN). Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (i) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (j) The Respondent shall provide written notice requesting an active license, satisfy all past due continuing pharmaceutical education, and pay all cumulative license renewal fees and any applicable penalties;

Ronnie Batchelor, D. Ph.

Dr. Eidson introduced Ronnie Batchelor, D. Ph. to the Board. Dr. Batchelor is requesting that his license be reinstated. Dr. Batchelor's license was indefinitely suspended on July 14, 2009. Dr. Batchelor voluntarily surrendered his license. After discussion, Dr. Warren made the motion to reinstate Dr. Batchelor's license. Ms. McDaniel seconded the motion. The motion carried. Dr. Batchelor's license will be placed on a five (5) year probation from January 20, 2010 until January 20, 2015, with the following conditions:

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Karen Davidson, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from the physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;

- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have the valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network (TPRN). Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (i) The Respondent shall provide written notice requesting an active license, satisfy all past due continuing pharmaceutical education, and pay all cumulative license renewal fees and any applicable penalties;

James A. Parker, D. Ph.

Dr. Eidson introduced James A. Parker, D. Ph. to the Board. Dr. Parker is requesting that his license be reinstated. Dr. Parker's license was indefinitely suspended on June 9, 2009. After discussion, Dr. Kizer made the motion to reinstate Dr. Parker's license. Ms. McDaniel seconded the motion. The motion carried. Dr. Parker's license will be placed on a ten (10) year probation from January 20, 2010 until January 20, 2020, with the following conditions:

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. John

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- (c) Larimore, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians;
- (d) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from the physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (e) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (f) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (g) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have the valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (h) The Respondent shall comply with all terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network (TPRN). Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (i) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (j) The Respondent shall provide written notice requesting an active license, satisfy all past due continuing pharmaceutical education, and pay all cumulative license renewal fees and any applicable penalties;

Board Appearance

Jason McKewen, D. Ph.

Dr. Terry Grinder, Pharmacist Investigator, introduced Dr. McKewen. Dr. McKewen asked to appear before the Board because he has been offered an opportunity to work in Tennessee. Dr. McKewen is licensed as a pharmacist in the State of Arkansas but his Arkansas pharmacist license is on probation for five (5) years. Dr. McKewen is an impaired pharmacist and has advocacy through the Arkansas Recovery Network. He has also been in contact with the Tennessee Professional Recovery Program (TPRN). Dr. McKewen's advocate with the Arkansas Recovery Network along with an advocate with TPRN were present. After discussion, Dr. Stephens made the motion to approve Dr. McKewen's request for licensure by reciprocity with a Consent Order mirroring the Arkansas Board's Order. Dr. Kizer seconded the motion. The motion carried. Dr. Warren was recused.

Dr. Bess made the motion to adjourn at 3:35 p.m. Dr. Kizer seconded the motion. The motion carried.

January 21, 2010

The Tennessee Board of Pharmacy reconvened on Thursday, January 21, 2010 in the Poplar Room, 227 French Landing, Nashville, TN. A quorum of the members being present, the meeting was called to order at 8:09 a.m., C.D.T., by Dr. Bettie Wilson. Dr. Eidson was absent and Dr. Grinder will officiate in his place.

Dr. Wilson asked that it be noted in the minutes that the official title for Dr. Eidson is Executive Director pursuant to T.C.A. §63-10-303 (c) which states that "The division shall employ on behalf of and in consideration of the recommendation of the board an executive director who shall be a pharmacist who has been licensed in Tennessee for a period of at least five (5) years."

Application Review

Elmer Lee Richardson, D. Ph.

Dr. Richardson is applying for licensure by reciprocity in the State of Tennessee. Dr. Richardson answered yes to the question that asked "Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated or otherwise been subject to disciplinary actions (public or private) by any board or pharmacy or other state authority?" After discussion, Dr. Warren made a motion to deny Dr. Richardson's request

for licensure by reciprocity due to his felony conviction. The motion died for lack of second. Dr. Bess made a motion to defer Dr. Richardson's request for licensure by reciprocity until the March 24-25, 2010 meeting and request that Dr. Richardson submit to a criminal background check using the Department of Health approved vendor along with the board's office speaking to the Louisiana Board of Pharmacy for verification of licensure. Dr. Kizer seconded the motion. The motion carried. Dr. Warren opposed.

Dr. Stephens arrived at 8:40 a.m.

Reinstatements

Stephen Goss, D.Ph.

Dr. Grinder introduced Stephen Goss, D. Ph. to the Board. Dr. Goss is requesting that his license be reinstated. Dr. Goss's license was indefinitely suspended on June 9, 2009. After discussion, Dr. Stephens made the motion to reinstate Dr. Goss's license. Dr. Hill seconded the motion. The motion carried. Dr. Goss's license will be placed on a five (5) year probation from January 20, 2010 until January 20, 2015, with the following conditions:

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Jose Malagon, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from the physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery

- (g) Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have the valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (h) The Respondent shall comply with all terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network (TPRN). Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (i) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (j) The Respondent shall provide written notice requesting an active license, satisfy all past due continuing pharmaceutical education, and pay all cumulative license renewal fees and any applicable penalties;

James E. King, Jr., D. Ph.

Dr. Grinder introduced James E. King, Jr., D. Ph. to the Board. Dr. King is requesting that his license be reinstated. Dr. King's license was revoked September, 2008. After discussion, Dr. Stephens made the motion to reinstate Dr. King's license. Dr. Hill seconded the motion. The motion carried. Dr. King's license will be placed on lifetime probation starting January 20, 2010:

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Alan Rice, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians;

- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from the physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have the valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network (TPRN). Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge: The respondent's pharmacist in charge shall submit to the board quarterly reports detailing Respondent's work performance for a period of three (3) years; the respondent may not work more than 40 hours over a 5 day period, however, the Respondent may petition the Board for a modification of this time limitation: The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (i) The Respondent shall provide written notice requesting an active license, satisfy all past due continuing pharmaceutical education; successfully complete the Multi-State Pharmacy Jurisprudence Examination (MPJE); pay all cumulative license renewal fees and any applicable penalties; complete a period of internship in Tennessee of forty (40) hours within two (2) weeks, since Respondent has completed one hundred and thirty (130) hours of internship hours at the request of Drs. Eidson and Black.

Financial Report

Dr. Wilson welcomed Christy Allen, Assistant Commissioner, Department of Health and Eugene Neubert, Assistant Commissioner for the Bureau of Administrative Services who came to discuss the Comptroller Sunset Audit and the Board's appearance with the Senate Government Operations Committee. Ms. Allen stated that we are still transitioning from one database to other. Ms. Allen distributed a financial report with actual revenues and expenditures for the 2008-2009 fiscal years and stated that the board was in good shape. Ms. Allen stated that the report does not have the indirect cost which usually consist of salaries, legal costs, investigative cost, cash office and some staff costs. Mr. Neubert stated that they have just finished running the 4th preliminary numbers for the fiscal year ending June 30, 2009. Mr. Neubert stated that this is a procedure that the state does before the closing of the books for the previous fiscal year. Mr. Neubert hopes within the next several weeks to have the indirect cost completed to distribute to the boards and the General Assembly. Ms. Allen pointed out that the fiscal year ending June 30, 2008 the boards actual revenue was 1.735 million and for fiscal year ending June 30, 2009 the actual revenue as 1.722 million and that she expected the expenditures to stay the same. Ms. Allen stated that the Board of Pharmacy has the largest reserve of all the boards in Health Related Boards. Ms. Allen stated that one thing that will change on the expenditures and is the amount that the board pays for rentals and insurance. It will be for the actual square footage that the board occupies and it will be more than \$495.00. The amount paid last fiscal year was 42,220. Dr. Hill asked if the \$42,200.00 fee for rental and insurance was more than the rental fee for the 2007-2008 fiscal year. Dr. Hill stated that it was a concern that the board brought up at that time. Mr. Neubert stated that if he was not mistaken the board was still under Commerce and Insurance at that time. Ms. Allen stated that the board was under Commerce and Insurance and was located in the David Crockett Building which is a state owned building. Ms. McDaniel asked what does the Professional Services cover and why is it \$78,000.00. Mr. Neubert stated that Professional Services covers contracts, and expenditures for professional associations. Ms. McDaniel asked for a break down of all costs associated with the Profession Services. Mr. Neubert stated that he could give the board a break down showing what is associated with Professional Services. Ms Allen stated that under Professional Services the associated cost consists of expenditures for professional and administrative services rendered by a non state agency, expenditures for professional associations, dues and subscriptions, any non state data processing for the board. Mr. Neubert stated for comparison purposes, the fee for Professional Services of \$62,0000 for 2008 and while the increase is high, it is the highest cost to the board. Ms. McDaniel also stated that as a consumer member of the board, if the board has over a million dollars in excess of what they need, and we are in hard economic times, that maybe the board need to consider cutting fees and helping out the pharmacists. Dr. Wilson stated that the Government Operations Committee spoke to other boards about being in a deficit and asked are they keeping up with expenses and increasing fees. Ms. Allen stated that some boards did decrease their fees and then found themselves in the red in a few years. She advised the

board that if they are thinking about decreasing fees for them to consider five (5) years ahead. Dr. Stephens stated that it is really hard to make those types of judgments without a budget and asked if the State does some type of budget down to the boards? Mr. Neubert stated that the State does not budget down to the board's level, but the budget does go to the Health Related Board division level. Mr. Neubert also stated that his office works with Ms. Allen's office to come up with a budget for each program within the boards. Dr. Stephens stated that the board was informed on yesterday, per Ms. Miller, that the budget does not go below the Bureau level and that it was not available to anyone below that level. Mr. Neubert stated that there is a budget for Health Related Boards in the printed Governor's document that is presented to the General Assembly for each of the three (3) divisions under Health Related Boards and then informally, the budget for the three (3) divisions under Health Related Board are broken down further to come up with a spending plan for each of the boards. Dr. Stephens asked if that information will be available for the board. Mr. Neubert stated that he can provide a copy to the board. Dr. Bess stated that he would like to have the financial report for every board meeting. Ms. Allen stated that she only has one person in her office that does the financial report and doesn't want to burden him down with supplying financial reports for each of the thirty (30) boards for every board meeting but is asking the board to consider a quarterly report with all the breakdowns requested. The board would accept the quarterly report as long as it has the breakdowns of the expenditures so that the board can make informed decisions concerning cost.

Application Review

Thomas Mastanduno

Dr. Mastanduno is applying for licensure by reciprocity in the State of Tennessee. Dr. Mastanduno answered yes to the question that asked "Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated or otherwise been subject to disciplinary actions (public or private) by any board or pharmacy or other state authority?" At the January 12-13, 2009 Tennessee Board of Pharmacy meeting, he requested the Board to approve his reciprocal application for pharmacist. Dr. Mastanduno did not reveal that he had disciplinary action by the New York Board of Pharmacy; however, the NABP provided documentation where he had disciplinary action. Dr. Brenda Warren motioned to deny the application due to falsifying his application. Dr. Bettie Wilson seconded the motion. All were in favor and the motion carried.

After discussion, Dr. Bess made the motion to approve Dr. Mastanduno's application once he has successfully completed all the requirements for licensure. Ms. McDaniel seconded the motion. The motion carried.

John Peter Sullivan

Dr. Sullivan is applying for licensure by reciprocity in the State of Tennessee. Dr. Sullivan answered yes to the question that asked “Have you ever been charged or convicted of a felony or misdemeanors (other than minor traffic violations) whether or not sentence was imposed, suspended, expunged or whether you were pardoned from any such offense?” After discussion, Ms. McDaniel made the motion to approve Dr. Sullivan’s application once he has successfully completed all the requirements for licensure. Dr. Bess seconded the motion. The motion carried.

Pamela R. Jorden

Dr. Jorden is applying for licensure by reciprocity in the State of Tennessee. Dr. Jorden answered yes to the question that asked “Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated or otherwise been subject to disciplinary actions (public or private) by any board or pharmacy or other state authority?” After discussion, Dr. Hill made the motion to approve Dr. Jorden’s application once she has successfully completed all the requirements for licensure. Dr. Warren seconded the motion. The motion carried.

Eddie Khoriaty

Dr. Khoriaty is applying for licensure by reciprocity in the State of Tennessee. Dr. Khoriaty answered yes to the question that asked “Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated or otherwise been subject to disciplinary actions (public or private) by any board or pharmacy or other state authority?” After discussion, Dr. Bess made the motion to approve Dr. Khoriaty’s application for licensure once he has successfully completed all the requirements for licensure and to send Dr. Khoriaty information concerning TPRN. Ms. McDaniel seconded the motion. The motion carried.

Brian Eric Steger

Dr. Steger is applying for licensure by reciprocity in the State of Tennessee. Dr. Steger answered yes to the question that asked “Have you ever been charged or convicted of a felony or misdemeanor whether or not sentence was imposed, suspended, expunged or whether you were pardoned from any such offense?” After discussion, Dr. Warren made the motion to approve Dr. Steger’s application for licensure once he has successfully completed all the requirements for licensure. Ms. McDaniel seconded the motion. The motion carried.

Pharmacy Technicians

Deborah K. Lovvorn

Ms. Lovvorn is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Lovvorn answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Ms. McDaniel made the motion to approve Ms. Lovvorn if she has been convicted of one (1) DUI and to deny Ms. Lovvorn’s application if she has been convicted of two (2) DUI’s. Documentation submitted does not clarify if she has been convicted of one or two DUI’s. Mr. Mezer will contact the court system for clarification. Dr. Kizer seconded the motion. The motion carried.

Deanna Dawn Smith

Ms. Smith is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Smith answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Dr. Kizer made the motion to deny Ms. Smith’s application for registration as a pharmacy technician. Dr. Bess seconded the motion. The motion carried. Dr. Warren recused.

Matthew Jason Porter

Mr. Porter is applying for registration as a pharmacy technician in the State of Tennessee. Mr. Porter answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Ms. McDaniel made the motion to approve Mr. Porter’s application for registration as a pharmacy technician. Dr. Warren seconded the motion. The motion carried.

Shana Jean Speck

Ms. Speck is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Speck answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Dr. Stephens made the motion to approve Ms. Speck’s application for registration as a pharmacy technician. Dr. Warren seconded the motion. The motion carried.

Candise Marie Melton

Ms. Melton is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Melton answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Dr. Kizer made the motion to approve Ms .Melton’s application for registration as a pharmacy technician. Dr. Bess seconded the motion. The motion carried

Angela Renee Davis

Ms. Davis is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Davis answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Ms. McDaniel made the motion to approve Ms Davis’s application for registration as a pharmacy technician. Dr. Warren seconded the motion. The motion carried

April Ann Gentry

Ms. Gentry is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Gentry answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Dr. Hill made the motion to approve Ms. Gentry’s application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Jason Adam White

Mr. White is applying for registration as a pharmacy technician in the State of Tennessee. Mr. White answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Dr. Stephens made the motion to approve Mr. White’s application for registration as a pharmacy technician. Dr. Warren seconded the motion. The motion carried.

Ian E. Hall

Mr. Hall is applying for registration as a pharmacy technician in the State of Tennessee. Mr. Hall answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Dr. Stephens made the motion

to approve Mr. Hall's application for registration as a pharmacy technician. Ms. McDaniel seconded the motion. The motion carried.

Carolyn Denise Hawkins

Ms. Hawkins is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Hawkins answered yes to the question that asked "Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?" After discussion, Dr. Hill made the motion to approve Ms. Hawkins's application for registration as a pharmacy technician. Dr. Bess seconded the motion. The motion carried.

Ronald Douglas Heyn

Mr. Heyn is applying for registration as a pharmacy technician in the State of Tennessee. Mr. Heyn answered yes to the question that asked "Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?" After discussion, Ms. McDaniel made the motion to approve Mr. Heyn's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried with Dr. Bess being opposed.

Bradley Harold Stout

Mr. Stout is applying for registration as a pharmacy technician in the State of Tennessee. Mr. Stout answered yes to the question that asked "Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?" After discussion, Dr. Bess made the motion to approve Mr. Stout's application for registration as a pharmacy technician. Dr. Bess seconded the motion. The motion carried.

Essie L. Butler

Ms. Butler is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Butler answered yes to the question that asked "Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?" After discussion, Dr. Bess made the motion to deny Ms. Butler's application for registration as a pharmacy technician. Dr. Hill seconded the motion. Ms. McDaniel made a motion to amend the motion and to defer Ms. Butler's application until the March 24-25, 2010 meeting. Dr. Stephens seconded the motion. The motion carried as amended.

LaShunnareka Vonneyette King

Ms. King is applying for registration as a pharmacy technician in the State of Tennessee. Ms. King answered yes to the question that asked “Have you ever been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Ms. McDaniel made the motion to approve Ms. King’s application for registration as a pharmacy technician. Dr. Kizer seconded the motion. The motion carried.

M/W/D Application Review

Owens & Minor, Louisville, Kentucky
Owens & Minor, Mechanicsville, Virginia
Owens & Minor, Kennesaw, Georgia

Owens & Minor submitted applications for manufacturer/wholesaler/distributor license in the State of Tennessee for their facilities located in Louisville, KY; Mechanicsville, VA ; and Kennesaw, GA. Owens & Minor answered yes to the question that asked “Are there any charges involving moral turpitude or violation of pharmacy, or any other laws pending against you?” Since mid 2008, Owens & Minor has been in settlement negotiations with the Hawaii Department of Commerce & Consumer Affairs regarding potential violation of Hawaii reporting regulations at the company’s outsourced distribution center in Kapolei, HI. On May 4, 2006 the California Board of Pharmacy fined the company \$250 for not notifying the Board of a change in facility designated representative. On July 25, 2007, the Florida Board of Pharmacy fined the company \$285,000 for licensing and drug pedigree violations. On April 11, 2002, the Louisiana Board of Pharmacy fined the company \$5,000 for selling or distributing drugs and devices to entities not authorized to possess drugs or devices. On May 22, 2008, the Missouri Board of Pharmacy placed the company on probation for 3 years for violations regarding temperature controls and monitoring at its Kansas City, Missouri distribution center.

After discussion, Ms. McDaniel made the motion to accept the applications of Owens & Minor, Louisville, KY, Owens & Minor, Mechanicsville, VA and Owens & Minor, Kennesaw, GA as manufacturer, wholesalers, distributor in the State of Tennessee. Dr. Kizer seconded the motion. The motion carried.

Waivers

Board rule 1140-1-.07 (3) (b) 3 and 5 (c) (ii)

Dr. Warren made the motion approve the request from **Christopher L. Smith, D.Ph.** to waive the internship hours needed for reinstatement. Dr. Smith must successfully take and pass the MPJE. Dr. Bess seconded the motion. The motion carried.

Dr. Stephens made the motion to approve the request from **Kelley C. Brown, D.Ph.** to waive the internship hours and the MPJE needed for reinstatement. Ms. McDaniel seconded the motion. The motion carried.

Dr. Bess made the motion to approve the request from **Steve Sheldon, D.Ph.** to waive the internship hours and the MPJE requirement needed for reinstatement and to grant Dr. Sheldon a three (3) month extension to submit the required continuing education hours. The thirty (30) hours with fifteen (15) of those hours being live will be used for the 2006-2008 calendar year and cannot be used for the 2008-2010 calendar year. Dr. Stephens seconded the motion. The motion carried.

Board rule 1140-5-.01

Dr. Hill made the motion to approve the request from **Terry G. Ratcliff, D.Ph.** to grant a six (6) months extension with the option to ask for additional extension for Dr. Ratcliff to complete the continuing education requirement effective today. The continuing education hours completed cannot be used for the 2009-2011 calendar year. Dr. Stephens seconded the motion. The motion carried.

Board rule 1140-3-.14

Dr. Warren made the motion to approve the request from **Arthur C. Harwood, D.Ph.** to be PIC at Pharmacy Home Delivery, LLC and P.H. Pharmacy, LLC for Patient Help Pharmacy. Dr. Stephens seconded the motion. The motion carried.

Ms. McDaniel made the motion to deny the request from **David N. Park D.Ph.** to being PIC at E. W. James & Sons Supermarkets Pharmacy #74. Dr. Park is currently on probation and his consent order prohibits him from practicing as a PIC. Dr. Stephens seconded the motion. The motion carried.

CONSENT ORDERS

Ms. McDaniel made the motion to accept the Consent Orders submitted. Dr. Bess seconded the motion. The motion carried.

VIOLATED BOARD RULE 1140-3-01(a) and (f)

CVS Pharmacy #2198-fined \$1000.00 civil penalty- paid
Rite Aid Pharmacy #7203-fined \$1000.00 civil penalty-paid
Rite Aid Pharmacy #11864-fined \$1000.00 civil penalty-paid
Super D Express #0027-fined \$1000.00 civil penalty-paid
Wal-Mart Pharmacy #10-0656-fined \$1000.00 civil penalty-paid
Wal-Mart Pharmacy #10-0682-fined \$1000.00 civil penalty-paid
Diana B. White, D.Ph.-fined \$500.00 civil penalty-paid
Shirlene Mullen, D. Ph.-fined \$500.00 civil penalty-paid
Kelly Woods, D.Ph.-fined \$500.00 civil penalty-paid
Allen Gray Campbell, D. Ph.-fined \$500.00 civil penalty-paid
Kenitra K. Washington, D.Ph.-fined \$500.00 civil penalty-paid
Jeffrey S. Alessio, D. Ph.-fined \$1000.00 civil penalty-paid

VIOLATED BOARD RULE 1140-3-.14(2) (a)

Fred's Pharmacy #3226-fined \$100.00 civil penalty-paid

VIOLATED BOARD RULE 1140-2-.02(1) and (2)

Rodney J. Burney, D.Ph. -fined \$200.00 civil penalty-paid
Don Gill, D.Ph. -fined \$900.00 civil penalty-paid
Adam Kail, RT-fined \$100.00 civil penalty-paid

VIOLATED BOARD T.C.A §53-11-308(a) and (b) and T.C.A. §63-10-207

Schnuck's Pharmacy -fined \$5720.00 civil penalty-paid

CONSENT ORDER FOR REVOCATION

Robert McLean, D.Ph.
Kara Michelle Watts, D.Ph.
Gregory Todd Lamberth, D.Ph.
Sheryl L. Terry, RT
James Roger Sells, D.Ph.
Erin Janene Killion, RT
Sara Ann Austill, RT
James S. Mason, III, D.Ph.
Alyson L. Waggoner, RT
Kathy J. Lawing, RT
Deborah Radford, RT
Lois D. Hoppstein, D. Ph

Director's Report

Telepharmacy

Dr. Karen Clawson, Director of Pharmacy with Cherokee Health Systems and Christine Grindstaff with the Tennessee Pharmacy Care Association appeared before the Board. Dr. Clawson updated the Board on the Telepharmacy Pilot Program outlined in Senate Bill 3122. Cherokee Health Systems opened two telepharmacy satellite sites at their Maynardville and Morristown clinics. Dr. Clawson stated that the program has been very successful. Dr. Clawson will present a report to the Senate and House committee of the General Assembly on February 1, 2010. Dr. Clawson is also asking the board for permission to open the pilot program to other Cherokee Health Systems. Dr. Warren asked Dr. Clawson about the logs that are kept by Cherokee Health Systems to ensure that the pharmacy technicians are informing the pharmacist of a new prescription and the need for patient counseling and are they audited and what were the findings? Dr. Clawson stated that the logs have been audited but that she has not personally audited the logs. Dr. Clawson stated that she can come back to the board with additional information concerning the patient counseling logs. Dr. Warren stated that it is valuable information and that it would be helpful to have that information considering that this is a pilot program. Dr. Bess asked Dr. Clawson if they have experienced any downtime with the AV link and patients not being able to pick up their prescription. Dr. Clawson stated that there has not been any down time with that AV link. Dr. Bess also asked if there have been any problems or any improvements that they have identified with the system. Dr. Clawson stated that in one location they had to build an area for the system and move some chairs around so that they were not in the area needed for patient counseling. Dr. Clawson does inspections twice a month for each site and the only thing that she found is that one clinic has some prescriptions that had been sitting there for over two weeks and had not picked up or returned to the pharmacy. A phone call was made to the patient and was told that the patient will pick up the prescriptions once they have gotten paid. Dr. Wilson asked Dr. Clawson about Cherokee Health Systems request to have telepharmacy in each of the other sixteen sites and if they had enough pharmacy technicians to work at those clinics. Dr. Clawson stated that they do not have enough pharmacy technicians at this time but would hire additional staff. Dr. Bess asked about the medication error process and how they would go about assessing this issue. Dr. Clawson stated that an incident report is written and signed off by Dr. Clawson. Cherokee Health Systems has not had any incident reports with the telepharmacy pilot program. Dr. Wilson suggested that Cherokee Health Systems do monthly inspections of any area where medication is stored instead of quarterly. Dr. Wilson thinks that quarterly is a little long to wait for the inspections. Dr. Wilson asked Dr. Clawson if Cherokee Health Systems was asking for approval for more clinics or does that come from the legislators. Ms. Grindstaff stated that the legislation gives the board the authority to expand the pilot program in any Federal Qualified Health Centers (FQHC). Dr. Clawson and Ms. Grindstaff will be making a report with the General Assembly, but the decision to expand the pilot program

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is up to the Board. Dr. Warren asked about how they measured patient satisfaction. Dr. Clawson stated that the technician has been instructed to ask patients how they felt about the program. Dr. Clawson stated that the patients are so thrilled about the cost being down and that the patients really appreciate the pharmacist talking to them. Dr. Warren stated that she would like to see a more formal survey than an informal one to have some type of matrix to go by. Dr. Warren also noted that if the pilot program is expanded the board will have to promulgate rules. Mr. Mezer stated that it was his understanding that the board wanted to wait to see how the pilot program did before they promulgate rules. Mr. Mezer stated that he would need to speak to the board's previous attorney so that he will know exactly what the board's intent was before he would feel comfortable guiding the board toward promulgating rules. Dr. Clawson stated that she can come back for the March meeting and presented the report that will be presented to the Senate and House Committees.

Dr. Hill made the motion to give the authorization to Dr. Wilson to decide on travel for meetings and events that may come up for the Executive Director. Dr. Warren seconded the motion. The motion carried.

Dr. Bess made the motion to allow Dr. Eidson to attend the TPA meeting in Nashville, TN. Ms. McDaniel seconded the motion. Dr. Kizer amended the motion to include Triparte and the House of Delegates. Ms. McDaniel seconded the amendment. The motion carried.

Based on the discussion with Assistant Commissioner Allen, Dr. Stephens asked that we send her a copy of the minutes. Dr. Bess suggested that anytime the board references any information to or for Ms. Allen, that staff corresponds with her directly concerning board issues. Mr. Mezer stated that he would make sure that Ms. Allen is aware of the motions.

Dr. Grinder presented a request from **Consuela Yousef, D.Ph.**, asking for the board's approval to receive three hours of live continuing education hours if she attends the Dubai International Pharmaceuticals and Technologies Conference and Exhibition (DUPHAT 2010) in March 2010. Dr. Yousef would like for the hours to be considered for the 6 non live hours. Dr. Yousef license will expire on July 31, 2010. After discussion, Dr. Bess made the motion to defer until she has the opportunity to email the board back showing that she has exhausted every avenue to find live continuing education hours via the internet. Dr. Warren seconded the motion.

Dr. Grinder presented a request from **Clara Cobb, MD** asking the board if it would be possible for a physician to hold a position as a non-compounding pharmacist for such entities as Walgreens and Rite Aid. Dr. Grinder stated that Dr. Eidson has explained to Dr. Cobb that a medical degree does not qualify a person to work as a pharmacist. After discussion, Dr. Hill made the motion to deny Dr. Cobb's request based on T.C.A. § 63-10-306(d) which states that "An applicant for licensure as a pharmacist shall be at least

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twenty-one (21) years of age, be a graduate of a school or college of pharmacy recognized by the board. Dr. Warren amended the motion asking that Dr. Cobb be informed of what she can do working in a pharmacy. Dr. Kizer seconded the motion along with the amended motion. The motion carried.

Dr. Grinder spoke to the board about ACPE site visit at East Tennessee State University College of Pharmacy that is scheduled for February 9-11, 2010. ACPE has invited a representative from the board to attend the site visit with them to see how they conduct the site visits. Dr. Bess suggested that Dr. Eidson attend the site visit. Dr. Stephens made the motion for Dr. Eidson or his designee to attend the site visit and that the travel expenses are paid by the State. Dr. Bess seconded the motion. The motion carried.

Dr. Grinder informed the board about the NABP Annual Meeting Delegate. After discussion, Dr. Bess nominated Dr. Kizer as the board's delegate and Dr. Wilson as the alternate delegate. Dr. Warren seconded the motion. The motion carried.

Dr. Bess a motion to send Ms. McDaniel as the public member to the NABP meeting. Dr. Bess stated that the board needs to support the consumer member understanding the practice of pharmacy. Dr. Hill seconded the motion. The motion carried.

Ms. McDaniel made the motion to send the entire board, legal counsel and the executive director to the NABP annual meeting. Dr. Bess stated that this meeting is very important and that the voting delegate is crucial. The meeting deals with national issues that concern the practice of pharmacy and the NABP model rules. Dr. Stephens seconded the motion. The motion carried.

Dr. Grinder informed the board about the NABP MPJE Item Writing Workshop scheduled for April 8-9, 2010. The workshops consist of reviews and suggestions for the MPJE. Dr. Hadden has attended several workshops. Dr. Wilson clarified that NABP will reimburse the board. Dr. Warren made the motion to send Dr. Hadden to the MPJE Item Writing Workshop. Dr. Hill seconded the motion. The motion carried.

Dr. Wilson asked about the Updates. Dr. Bess stated that the Board already had approval for Dr. Eidson to attend the updates. Dr. Wilson stated that the board will still need an alternate if Dr. Eidson is unable to attend. Dr. Bess stated that each board member needs to attempt to attend the meetings if it is in their respective areas. The updates will be in Nashville, Murfreesboro, Chattanooga, Johnson City, Knoxville, Cookeville, Jackson and Memphis. Dr. Bess stated that he plans to attend all the meeting and would be happy to be a back up for Dr. Eidson. Dr. Wilson stated that she will attend the Knoxville and Johnson City updates and Dr. Warren stated that she will attend the Memphis update and tentative for the Jackson update. Dr. Wilson stated that Dr. Eidson will be presenting the new pharmacy technician rules. The rules will go into effect March 23, 2010. Dr. Warren asked that Mr. Mezer email the copy of the rules be emailed to the board members.

Mr. Mezer informed the board of all the legislation that concerns the board. Mr. Mezer passed out a packet of legislation. Title 39 states that the TBI shall consult with the board for proper disposal of medication. Ms. McDaniel asked if the bills are for this year or left from last year. Mr. Mezer stated that the bill was from this year. Senate bill 2451 will allow the board to operate for another three (3) years. Senate bill 2541 deals with how prescriptions are handled when the prescribing physician or other lawful prescriber has died. Dr. Grinder stated that the DEA states that a controlled substance prescription dies with the prescriber.

Dr. Grinder asked the board to consider changing the September board meeting from September 8-9, 2010 to September 21-22, 2010. Mr. Mezer has a conflict. The board agreed.

Board Appearance

LaToya Randle

Dr. Grinder presented Ms. Randle's application for registration as a pharmacy technician to the Board. Ms. Randle did not appear but was scheduled to today's meeting. Ms. Randle's previous application for registration as a pharmacy technician was denied at the March 2008 board meeting because she had been convicted of a felony. Ms. Randle stated on the application that she had been convicted of setting an accidental fire. Ms. Randle also submitted documentation showing that she was placed on a 2 yr probation starting November 2003. She has resubmitted an application for registration as a pharmacy technician. After discussion, Dr. Stephens made the motion to defer her application until her appearance at the March 24-25, 2010 meeting. Dr. Warren seconded the motion. The motion carried.

Order Modification

William Bruce Badger

Dr. Grinder introduced Dr. Badger to the board. Dr. Badger's license is currently on probation for five (5) years from January 31, 2007 until January 31, 2012. Dr. Badger is requesting to be PIC at Fred's Pharmacy. According to Dr. Badger's consent order the three (3) year restriction that did not allow him to be PIC will expire on January 31, 2010. Dr. Hill made the motion to approve Dr. Badger's request to be PIC. Dr. Warren seconded the motion. The motion carried.

Legal Report

3. Case No.: L09-PHR-RBS-2009002031

Complaint alleges that respondent oxygen distributor is filling tanks for an unlicensed distribution facility. The company had an out-of-state Tennessee wholesaler/manufacturer/distributor license, for its out-of-state facilities shipping into Tennessee. The Tennessee facility was never inspected by pharmacy board investigators and has been operating in its Tennessee location without an in-state license since July 1, 2005. They ceased operations at the end of October, 2009.

Respondent replied that they do not see the problem with this since the unlicensed, in-state entity had an out-of-state Tennessee license. The respondent replied that “this is a licensing classification issue and not a problem arising from the lack of a license. Furthermore, the application and licensing distinction between in-state and out-of-state manufacturer/wholesaler/distributors is not significant.”

Prior discipline: none

Recommendation: authorize formal hearing, \$5,100 civil penalty.

Dr. Warren made the motion to **authorize a formal hearing** with a \$2550.00 civil penalty. Ms. McDaniel seconded the motion. The motion carried.

10. Case No.: L09-PHR-RBS-2009002281

Respondent technician was terminated for leaving a sticky note for another technician to order respondent some Prozac. The other technician admitted that she would order respondent Prozac without a prescription. It is alleged that this was not done with the pharmacist’s knowledge.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Stephens made the motion to **authorize a formal hearing** for revocation. Ms. McDaniel seconded the motion. The motion carried.

11. Case No.: L09-PHR-RBS-2009002451

Complaint arises from a routine inspection. Pharmacy board investigator discovered a technician working for 13 months without being registered.

Prior discipline: none

Recommendation: authorize formal hearing, \$1,100 civil penalty to PIC

Dr. Bess made the motion to **authorize a formal hearing** for \$1,100.00 civil penalty to the PIC. Ms. McDaniel seconded the motion. The motion carried.

12. Case No.: L09-PHR-RBS-2009002611

Respondent technician admitted to loss prevention to taking 54 stock bottles of hydrocodone from the pharmacy without a valid prescription and without authorization, for resale.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Stephens made the motion to **authorize a formal hearing** for revocation. Dr. Warren seconded the motion. The motion carried.

13. Case No.: L09-PHR-RBS-2009001951

Complaint arises from a routine inspection. Pharmacy board investigators discovered a technician working for 1 month without being registered. Pharmacy board investigators also observed 4 patients leave the pharmacy without an offer to counsel on the one refill and without counseling on the three new prescriptions.

Prior discipline: PIC-none

Pharmacy—Med error, dismissed 4/11/01; med shortage, dismissed 11/19/02; med error, 2007, still open; Rx Authorization, dismissed 5/5/08

Recommendation: authorize formal hearing; LoI to PIC for counseling; \$1,000 to dispensing pharmacist for counseling violations; \$4,000 to pharmacy for counseling violations with all but \$1,000 suspended pending the submission of an acceptable, store specific plan of correction.

Dr. Stephens made the motion to **authorize a formal hearing, a Letter of Warning to PIC for counseling, a \$1,000.00 to the dispensing pharmacist for counseling violations, and a \$4,000.00 civil penalty to the pharmacy for counseling violation with all but \$1,000.00 suspended pending the submission of an acceptable, store specific plan of corrections.** Ms. McDaniel seconded the motion. The motion carried.

14. Case No.: L09-PHR-RBS-2009002461

Complaint arises from a routine inspection. Pharmacy Board investigator found one tech working with an expired registration for 4 months. The investigator also observed 5 patients leave the pharmacy with not even an offer for counseling.

Prior discipline: PIC—none, Pharmacy—reg of pharm techs, \$100 cp, closed 1/30/07

Recommendation: authorize formal hearing, \$200 civil penalty to PIC for tech registration; \$100 to technician for lapsed registration; LoI to PIC for counseling violations; \$1,000 to dispensing pharmacist for counseling violations; \$5,000 to pharmacy for counseling violations with all but \$1,000 suspended pending the submission of an acceptable, store specific plan of correction.

Ms. McDaniel made the motion to **authorize a formal hearing** with \$200.00 civil penalty to the PIC for the technician registrations, a \$100.00 to the technician for lapsed registration; a **Letter of Instruction** to the PIC for counseling violation, a \$1,000.00 civil penalty to the dispensing pharmacist for counseling violations and a \$5,000.00 civil penalty to the pharmacy for counseling violation with all but \$1,000.00 suspended pending the submission of an acceptable store specific plan of correction. Dr. Bess seconded the motion. The motion carried.

15. Case No.: L09-PHR-RBS-2009002371

Respondent technician admitted to loss prevention to taking 1,138 hydrocodone pills and 186 alprazolam pills from the pharmacy without a valid prescription and without authorization, it is not clear if it was for personal use or for resale.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Warren made the motion to **authorize a formal hearing** for revocation. Dr. Kizer seconded the motion. The motion carried.

16. Case No.: L05-PHR-RBS-2005002281

Complaint arises from a physician whose patient's prescription for Neurontin 300mg was being filled as Neurontin 600mg after the first several refills.

Respondent pharmacist replied that the technician wrote in the system that the physician had verbally changed the dosage and that this was recorded several times in the record. The pharmacist stated that he will be more vigilant for such increases and changes to medication.

Prior discipline: none

Recommendation: authorize formal hearing, \$500 cp to dispensing for failure to verify order after huge increase in dosage and failure to perform a proper D.U.R.

Dr. Stephens made the **motion to dismiss**. Dr. Hill seconded the motion. The motion carried.

17. Case No.: L09-PHR-RBS-2009002261

Respondent pharmacy was believed to not have informed the Board of the change in PIC. Board records indicate that the PIC did notify the Board office, just gave the wrong (old) address for the pharmacy.

Prior discipline: none

Recommendation: dismiss

Dr. Stephens made the motion to **accept counsel's recommendation**. Dr. Kizer seconded the motion. The motion carried.

18. Case No.: L09-PHR-RBS-2009002161

Respondent internet pharmacy is shipping into Tennessee without a license

Prior discipline: none

Recommendation: C&D

Dr. Warren made the motion to **accept counsel's recommendation**. Dr. Hill seconded the motion. The motion carried.

19. Case No.: L09-PHR-RBS-2009002581

Complaint arises from a routine inspection. Pharmacy Board investigator found 2 technicians working without being registered, one worked for 12 months the other for 6. Also, PIC at this location did not notify the Board of her change in employment for 21 months.

Prior discipline: pharmacy—tech ratio, LoW closed 11/15/05

Recommendation: authorize formal hearing: \$1,400 to PIC for unregistered techs; \$100 cp to pharmacist for not reporting change of employment; \$100 to pharmacy for not reporting change in PIC.

Dr. Stephens made the motion to **authorize a formal hearing** with a \$1,400.00 civil penalty to the PIC for unregistered technicians, a \$100.00 civil penalty to the pharmacist for not reporting a change of employment and a \$100.00 civil penalty to the pharmacy for not reporting a change in PIC. Dr. Bess seconded the motion. The motion carried.

20. Case No.: L09-PHR-RBS-2009001171

Respondent technician was terminated for testing positive on a drug screen. She did not admit to taking any drugs and no DEA 106 form was provided. Loss prevention did not provide the name of the drug she tested positive for.

Prior discipline: none

Recommendation: dismiss

Ms. McDaniel made the motion to **accept counsel's recommendation**. Dr. Stephens seconded the motion. The motion carried.

21. Case No.: L09-PHR-RBS-2009002411

Complaint alleges that respondent pharmacy dispensed a Diastat Acudial that was not properly dialed and locked. The Diastat Acudial was for a patient at a group home who had 17 seizures that night.

PIC replied that she told the technician to ask the other pharmacist if he knew how to dial the Diastat Acudial and if he did not, to tell she and she would do it. The technician asked the other pharmacist, "are you supposed to do anything with this Acudial before it goes out?" The other pharmacist replied, "no I do not think so." He has sent a statement

stating that he never filled a prescription for this before. The patient's nurse picked up the Acudial and the pharmacists assumed that she knew how to use it, so no counseling was performed.

Prior discipline: none

Recommendation: LoI to PIC for counseling violation; authorize formal hearing, \$1,000 to both dispensing pharmacist for counseling violation; \$1,000 to pharmacy for counseling violation plus the submission of an acceptable, store specific plan of correction. LoW to both pharmacists for misfill.

Dr. Hill made the motion to **authorize a formal hearing** with a **Letter of Instruction** to the PIC for counseling violation, a \$1,000.00 civil penalty to both the dispensing pharmacist for counseling violations, a \$1,000.00 civil penalty to the pharmacy for counseling violation plus the submission of an acceptable store specific plan of correction and a **Letter of Warning** to both pharmacists for the misfill. Dr. Warren seconded the motion. The motion carried.

22. Case No.: L09-PHR-RBS-2009002471

Respondent pharmacist lost his TPRN advocacy based on a relapse and the recommended inpatient treatment for the relapse.

Prior discipline: 7/15/08, granted reciprocity with 5 year probation

Recommendation: authorize formal hearing, revoke

Dr. Bess made the motion to **authorize a formal hearing** for revocation. Ms. McDaniel seconded the motion. The motion carried.

23. Case No.: L09-PHR-RBS-2009002051

Complaint alleges that respondent pharmacist was rude and kicked her out of the pharmacy and belittled her.

Respondent replied that this patient would not pay her bills and he informed her that they would not fill them and bill her for later payment. They informed the patient's doctor of this decision when the next refill was called in.

Prior discipline: 2006, med error, LoW; 2007 unprofessional conduct, LoW

Recommendation: dismiss

Dr. Stephens made the motion to **accept counsel's recommendation**. Dr. Hill seconded the motion. The motion carried.

24. Case No.: L09-PHR-RBS-2009002251

Respondent pharmacist lost TPRN advocacy for testing positive for opiates and propoxyphene on a urinary drug screen.

Prior discipline: unprofessional conduct, 5 year probation 1/29/08

Recommendation: authorize formal hearing, revoke

Ms. McDaniel made the motion to **accept counsel's recommendation**. Dr. Bess seconded the motion. The motion carried.

25. Case No.: L09-PHR-RBS-2009002111

Complaint arises from a report from the TN Dept of health, communicable and environmental disease services. 3 patients that were injected with a syringe of Avastin that was compounded by this pharmacy developed symptoms of endophthalmitis. The patients' eye secretions were cultured and showed that alpha hemolytic strep was present. Samples of the batch of Avastin that was administered were analyzed and showed no contamination in the pharmacy product. The pharmacy was visited numerous times and no problems with aseptic techniques were noted.

Prior discipline: none

Recommendation: dismiss

Dr. Bess made the motion to **accept counsel's recommendation**. Dr. Hill seconded the motion. The motion carried.

26. Case No.: L10-PHR-RBS-2010000041

Respondent technician admitted to loss prevention to taking 4 or 5 bottles of hydrocodone from the pharmacy without a valid prescription and without authorization, it is not clear if it was for personal use or for resale.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Stephens made the motion to **authorize a formal hearing** for revocation. Dr. Bess seconded the motion. The motion carried.

27. Case No.: L09-PHR-RBS-2009002491

Respondent technician admitted to loss prevention to taking 4 bottles of Oxycodone from the pharmacy without a valid prescription and without authorization, for resale.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Ms. McDaniel made the motion to **authorize a formal hearing** for revocation. Dr. Warren seconded the motion. The motion carried.

28. Case No.: L09-PHR-RBS-2009002211

Complaint arises from a routine inspection. Pharmacy Board investigator found one technician working on an expired registration. Pharmacy Board records indicate that she was expired for 23 months.

Prior discipline: none

Recommendation: authorize formal hearing, \$2,100 cp to PIC; \$100 to technician for lapsed registration

Dr. Hill made the motion to **authorize a formal hearing** with \$2,100.00 civil penalty to the PIC and \$100.00 civil penalty to the technician for a lapsed registration. Dr. Warren seconded the motion. The motion carried.

29. Case No.: L09-PHR-RBS-2009002401

Complaint alleges that respondent pharmacy used the wrong physician's name on a renewal prescription for Hydrocodone.

Respondent pharmacist admitted to the error and stated that he had the correct patient and dose and strength but for some, unknown reason, put the wrong prescribing physician's name on the prescription. Respondent stated that he will make sure to be more careful

and instructed his staff to be more vigilant, although he took full responsibility for the error and stated it was not a technician's fault.

Prior discipline: none

Recommendation: LoW for med error

Ms. McDaniel made the motion to issue a **Letter of Warning** for the medication error. Dr. Bess seconded the motion. The motion carried.

30. Case No.: L08-PHR-RBS-2008000381

Complaint alleges that his wife's refill prescription for Hydrocodone was not filled as stated 2 hours earlier. When the complainant attempted to pick up the prescription, he was told it was not there and that he had to call the physician himself. He did and the prescription was filled. He also alleged that the pharmacist on duty was eating and drinking in the pharmacy.

Respondent pharmacists did not remember the incident.

Prior discipline: pharmacy, 2007 med error, dismissed 9/22/09

Recommendation: dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Warren seconded the motion. The motion carried.

31. Case No.: L09-PHR-RBS-2009002511

Complaint alleges that respondent pharmacy and pharmacists contributed to his addiction to controlled substances.

Pharmacy records indicate that complainant's medications were refilled early each month; Hydrocodone, between 3-14 days early; Diazepam, between 3-8 days early; Carisoprodol, between 1-10 days early; and Promethazine, between 2-9 days early.

Prior discipline: PIC, none; dispensing, unprofessional conduct 2000

Recommendation: authorize formal hearing, \$500 cp to both pharmacists for improper DUR

Dr. Stephens made the motion to **defer the complaint until after litigation**. Dr. Kizer seconded the motion. The motion carried.

32. Case No.: L09-PHR-RBS-2009002601

Complaint arises from a routine inspection of respondent manufacturer/wholesaler/distributor. Pharmacy Board investigator found front door unlocked and no one present in the immediate area. The investigator proceeded to a back hallway that led to the main office. Employee stated that he was not aware of an alarm system being armed. There was no quarantine area located in the facility and no law book found.

Respondent replied that all of the cited violations have been corrected.

Prior discipline: none

Recommendation: LoW for violations

Dr. Stephens made the motion to issue a **Letter of Warning**. Dr. Hill seconded the motion. The motion carried.

33. Case No.: L09-PHR-RBS-2009002201

Respondent technician admitted to loss prevention to taking 57,000 Hydrocodone pills from the pharmacy without a valid prescription and without authorization, for her husband's personal use.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Warren made the motion to **authorize a formal hearing** for revocation. Dr. Bess seconded the motion. The motion carried.

34. Case No.: L10-PHR-RBS-2010000021

Pharmacy Board investigator found 4 patients receiving medications without even an offer for counseling. Dispensing's written response indicated that he did not understand the counseling requirements. He indicated that they, regularly counsel patients on all new prescriptions as well as any questions they may have with refilled medications. Technicians offer patients counseling from the pharmacist when drugs are signed for on the pick-up log, but it is my understanding that a pharmacist must explicitly offer this counseling himself."

Prior discipline: 4 pharmacists, none. Pharmacy, med malpractice from NABP 9/22/05, LoW to PIC and Dph; med error, dismissed 9/20/05; unprofessional conduct, 2008, still open; med error, dismissed, 3/12/09

Recommendation: LoI to PIC for counseling violations; authorize formal hearing, \$1,000 to dispensing pharmacist for counseling violations; \$4,000 to pharmacy for counseling violations with all but \$1,000 suspended pending the submission of an acceptable, store specific plan of correction.

Dr. Stephens made the motion to issues a **Letter of Instruction** to the PIC for counseling violations, **authorize a formal hearing** with a \$1,000.00 civil penalty to the dispensing pharmacist for counseling violations, a \$4,000.00 civil penalty to the pharmacy for counseling violation with all but \$1,000.00 civil penalty suspended pending the submission of an acceptable store specific plan of correction. Dr. Hill seconded the motion. The motion carried.

35. Case No.: L09-PHR-RBS-2009002231

Complainant, pharmacy benefits manager, alleges that respondent pharmacy is filling telephone prescriptions that the prescribing physician has denied authorizing, is supplying two different prescriptions with different prescribers for the same prescription number, and is refilling prescriptions beyond the authorized number on the prescriptions.

Respondent pharmacy responded that they were unaware of these violation and that since the complaint does not list any rx numbers, patient names, or prescriber names, they cannot refute the specific, alleged incidents. Respondent replied that the last audit that a company did for TENNCARE found one minor technical error in 100 audited prescriptions.

Prior discipline: PIC, substitution issue, 2yr probation and cp of \$500

Recommendation: dismiss

Dr. Stephens made the motion to **accept counsel's recommendation**. Dr. Hill seconded the motion. The motion carried.

36. Case No.: L09-PHR-RBS-2009002181

Complainant alleges that respondent pharmacy is soliciting business in TN without a license.

Prior discipline: none

Recommendation: C&D

Dr. Stephens made the motion to **accept counsel's recommendation**. Ms. McDaniel seconded the motion. The motion carried.

37. Case No.: L08-PHR-RBS-2008000151 & L09-PHR-RBS-2009000371

Complainant alleges that respondent pharmacy is filling Rx's early and is being investigated by the TBI for their involvement with an arrested physician who was convicted of TennCare fraud and reckless endangerment. There was no evidence of the pharmacy's involvement and the investigation was closed.

Prior discipline: med error 2005, LoW; Rx Authorization, dismissed, 5/15/07

Recommendation: dismiss

Dr. Kizer made the motion to **accept counsel's recommendation**. Ms. McDaniel seconded the motion. The motion carried.

38. Case No.: L09-PHR-RBS-2009002361

Complaint arises from a routine inspection. Pharmacy Board investigator observed 3 patients leave the pharmacy with not even an offer for counseling. PIC was working for 3 days without informing the Board of the change. Pharmacy also did not inform the Board of the change in PIC

Prior discipline: none

Recommendation: LoI to PIC for counseling; authorize formal hearing, \$100 civil penalty to PIC for failure to update Board of Pharmacy of change in employment; \$100 civil penalty to pharmacy for failure to update Board of Pharmacy of change in PIC; \$1,000 to dispensing pharmacist for counseling violations; \$3,000 to pharmacy for counseling violations with all but \$1,000 suspended pending the submission of an acceptable, store specific corrective plan of action.

Dr. Stephens made the motion to issue a **Letter of Instruction** to the PIC for counseling, **authorize a formal hearing** with a \$1,000.00 civil penalty to the PIC for failure to update Board of Pharmacy of change in employment, a \$100.00 civil penalty to pharmacy for failure to update Board of Pharmacy of change in PIC, a \$1,000.00 civil penalty to dispensing pharmacist for counseling violations, and a \$3,000.00 civil penalty to pharmacy for counseling violations with all but \$1,000.00 suspended pending the

submission of an acceptable store specific corrective plan of action. Dr. Bess seconded the motion. The motion carried.

39. Case No.: L10-PHR-RBS-2010000031

Respondent technician was arrested for DUI.

Prior discipline: none

Recommendation: dismiss, place a copy in the file. Any further DUI will be presented to the Board.

Ms. McDaniel made the motion to **accept counsel's recommendation**. Dr. Stephens seconded the motion. The motion carried.

40. Case No.: L09-PHR-RBS-2009002531

Complainant arises from a Pharmacy Board investigation. Pharmacy Board investigator was not allowed in Respondent's manufacturer/wholesaler/distributor's facility. Company manager stated that he was denied because no notice was given. When the investigator returned several days later, he was again not allowed to enter, but this time the manager was able to be called and went out to allow the investigator in. During the inspection it was discovered that there was no policy on natural disaster and no law book. It was discovered that the company had two other facilities in TN that were not licensed. One was not licensed for 49 months, the other for 11 months.

Prior discipline: none

Recommendation: authorize formal hearing, \$1,000 civil penalty for not allowing investigator in; LoW for no law book and natural disaster policy; \$12,000 civil penalty for unlicensed activity.

Dr. Stephens made the motion to **authorize a formal hearing** with \$1,000.00 civil penalty for not allowing the investigator in, a **Letter of Warning** for no law book and natural disaster policy and a \$12,000.00 civil penalty for unlicensed activity. Dr. Kizer seconded the motion. The motion carried.

41. Case No.: L09-PHR-RBS-2009002571

Pharmacy Board investigator found 10 patients receiving medications without even an offer for counseling. PIC responded that this was not normal and has addressed the situation with her staff.

Prior discipline: pharmacy, med error, closed 11/16/99; med error, closed 7/25/00; unprofessional conduct, LoI 5/25/04; substitution issue, dismissed 7/14/04

Recommendation: LoI to PIC for counseling violations; authorize formal hearing, \$1,000 to dispensing pharmacist for counseling violations; \$10,000 to pharmacy for counseling violations with all but \$1,000 suspended pending the submission of an acceptable, store specific plan of correction.

Dr. Warren made the motion to issue a **Letter of Instruction** to the PIC for counseling violations, **authorize a formal hearing** with \$1,000.00 civil penalty to the dispensing pharmacist for counseling violations, a \$10,000 civil penalty to the pharmacy for counseling violations with all but \$1,000.00 suspended pending the submission of an acceptable store specific plan of correction. Dr. Stephens seconded the motion. The motion carried.

42. Case No.: L09-PHR-RBS-2009002501

Anonymous complaint alleges that respondent pharmacist is abusing opiates. Respondent denies the allegation and there is no proof to substantiate the allegation.

Prior discipline: none

Recommendation: dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Dr. Stephens seconded the motion. The motion carried.

43. Case No.: L10-PHR-RBS-2010000051

Respondent technician admitted to loss prevention to taking 2,500 Lortab pills from the pharmacy without a valid prescription and without authorization, for resale.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Warren made the motion to **authorize a formal hearing** for revocation. Dr. Bess seconded the motion. The motion carried.

44. Case No.: L09-PHR-RBS-2009002541

Respondent technician admitted to loss prevention to taking 2,400 Hydrocodone pills from the pharmacy without a valid prescription and without authorization, for resale.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Dr. Stephens made the motion to **authorize a formal hearing** for revocation. Dr. Kizer seconded the motion. The motion carried.

45. Case No.: L09-PHR-RBS-2009002241

Complaint arises from a routine inspection. Pharmacy Board investigator found one technician working on an expired registration. Pharmacy Board records indicate that she was expired for 53 months.

Prior discipline: none

Recommendation: authorize formal hearing, \$5,100 cp to PIC; \$100 to technician for working on a lapsed registration

Dr. Bess made the motion to **authorize a formal hearing** with \$5,100.00 civil penalty to the PIC and a \$100.00 civil penalty to the technician for working on a lapsed registration. Dr. Kizer seconded the motion. The motion carried.

46. Case No.: L09-PHR-RBS-2009002191

Respondent technician admitted to APN supervisor to creating prescriptions for 120 Hydrocodone and Alprazolam pills for herself and sending them to area pharmacies to be filled, without a valid prescription and without authorization, for personal use.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Ms. McDaniel made the motion to **authorize a formal hearing** for revocation. Dr. Stephens seconded the motion. The motion carried.

47. Case No.: L09-PHR-RBS-2009002391

Complaint arises from a routine inspection. Pharmacy Board investigator found one technician working on an expired registration. Pharmacy Board records indicate that he was expired for 4 months.

Prior discipline: none

Recommendation: authorize formal hearing, \$200 cp to PIC; \$100 cp to technician for working on a lapsed registration

Dr. Bess made the motion to **authorize a formal hearing** with \$200.00 civil penalty to the PIC and a \$100.00 civil penalty to the technician for working on a lapsed registration. Ms. McDaniel seconded the motion. The motion carried.

48. Case No.: L09-PHR-RBS-2009001351

Complaint arises from a routine inspection. Pharmacy Board investigator found five technicians working with only one pharmacist on duty. Pharmacy Board records indicate that PIC did not update his place of employment for 9 months

Prior discipline: pharmacy, med error, still open; pharmacist, none

Recommendation: authorize formal hearing; \$250 to PIC for ratio; \$100 cp to PIC and \$100 to pharmacy for failure to update Board of Pharmacy

Dr. Stephens made the motion to **authorize a formal hearing** with a \$250.00 civil penalty to the PIC for ratio, a \$100.00 civil penalty to the PIC and a \$100.00 to the pharmacy for failure to update the Board of Pharmacy. Dr. Bess seconded the motion. The motion carried.

49. Case No.: L09-PHR-RBS-2009002271

Respondent, former pharmacist in charge, allows technicians to have “swipe cards” which allows them to enter pharmacy without a pharmacist being present. This action led to the technicians ordering and filling fraudulent prescriptions. The new PIC is the one who caught the error and has confiscated the cards and the techs have been terminated.

Prior discipline: none

Recommendation: authorize formal hearing, \$2,000 cp to old PIC

Dr. Hill made the motion to **authorize a formal hearing** with a \$2,000.00 civil penalty to the former PIC. Dr. Kizer seconded the motion. The motion carried.

50. Case No.: L06-PHR-RBS-2006037361

Complainant alleges that his oxycodone/APAP and his oxycodone/hydrochloride were switched and in the wrong bottles. Pictures that the complainant submitted supported his claim. There was no response from the pharmacist.

Prior discipline: pharmacy: med error, closed 1/28/98; counseling, closed 3/14/01; tech ratio, cp \$250, 11/19/02

Recommendation: LoW to dispensing

Dr. Hill made the motion to issue a **Letter of Warning** to the dispensing pharmacist. Dr. Bess seconded the motion. The motion carried.

51. Case No.: L09-PHR-RBS-2009002141

Complaint arises from a routine inspection. Pharmacy Board investigator observed 6 patients leave pharmacy without even an offer for counseling.

Prior discipline: pharmacy: generic med, dismissed 7/10/02; HIPPA violation, LoW, 11/18/03; med error, 9/23/03, LoW; unprofessional conduct, still open, 2008

Recommendation: LoI to PIC for counseling violations; authorize formal hearing, \$1,000 to each dispensing pharmacist for counseling violations; \$6,000 to pharmacy for counseling violations with all but \$1,000 suspended pending the submission of an acceptable, store specific plan of correction.

Dr. Bess made the motion to issue a **Letter of Instruction** to the PIC for counseling violation, **authorize a formal hearing** with a \$1,000.00 civil penalty to each dispensing pharmacists for counseling violations, and a \$6,000.00 civil penalty to the pharmacy for counseling violations with all but \$1,000.00 suspended pending the submission of an acceptable store specific plan of correction. Ms. McDaniel seconded the motion. The motion carried.

52. Case No.: L09-PHR-RBS-2009002521

Complainant alleges that patient received an additional bottle of medication in his bag. The additional prescription bottle was for Oxycodone/Apap, with the markings through the patient's name.

PIC responded that the bottle of medication that was included in error in the patient's bag had not been picked up by the original patient and was set aside to be put back in the CII safe. The technician accidentally put that marked out bottle in the bag. Since it was a refill, the patient was offered counseling, but refused.

Prior discipline: none

Recommendation: LoW to dispensing for misfill

Dr. Stephens made the motion to issue a **Letter of Warning** to the dispensing pharmacists for the misfill. Ms. McDaniel seconded the motion. The motion carried.

53. Case No.: L09-PHR-RBS-2009002421

Complainant alleges that he had 3 misfills from this pharmacy arising out of the same medication request. First time was a prescription for Trazodone hydrochloride 50mg and it was filled with Tramadol. The complainant returned the medication to the pharmacy and asked to have it filled correctly. When he returned home, it was Amitriptylin 10mg. Complainant also had a refill for Alprazolam which was dispensed as Amlodipine 5mg.

PIC responded that none of these were misfills. The complainant gave the pharmacy a computer generated prescription order for both Trazodone and Tramadol but only wanted the "one for sleep." When he got home he then decided that he wanted the other one. The complainant also has prescriptions for Alprazolam, Amitriptylin and Amlodipine in the system. He constantly gets them confused and only asks for the "blue pack of pills" or blood pressure medication. He always refuses counseling. He also checks the medication before he leaves and makes sure it is the "right color". The PIC also responded that the complainant still uses the pharmacy.

Prior discipline: none

Recommendation: dismiss

Dr. Hill made the motion to **accept counsel's recommendation**. Ms. McDaniel seconded the motion. The motion carried.

54. Case No.: L09-PHR-RBS-2009001971

Case was originally presented at the last board meeting.

Complaint alleges that she received another patient's medication.

PIC stated that the technician gave the respondent's husband the wrong bag and that counseling was not performed on this new prescription. The patient's medication was actually filled correctly, but the tech gave the husband the wrong bag.

The dispensing pharmacists spoke to Drs. Eidson, Grinder, Chrisp, and Denaburg. The technician was not a technician but a cashier that had 3 weeks on the job. The cashier never informed the pharmacists that the patient was there to pick up the medication. Management responded that the cashier had done computer training.

Original discipline was: Authorize formal hearing, \$500 cp to the dispensing (2 on duty), \$1,000 cp to the pharmacy, LoI to the PIC. LoW to dispensing for med error/misfill

Prior discipline: none

Recommendation: discuss

Dr. Stephens made the motion to **authorize a formal hearing** with \$500.00 civil penalty to both dispensing pharmacists, a \$1,000.00 civil penalty to the pharmacy, a **Letter of Instruction** to the PIC and a **Letter of Warning** to the both dispensing pharmacists for medication error/misfill. Dr. Hill seconded the motion. The motion carried. Dr. Bess was recused.

55. Case No.: L09-PHR-RBS-2009001311

Complainant alleges respondent pharmacy is failing to perform proper DURs. Most egregious is one incidence of 360 Hydrocodone tablets being dispensed to one patient over a 3 day period. 5 pharmacists in total are not adequately performing DURs.

Prior discipline: none

Recommendation: authorize formal hearing, \$500 civil penalty for all 5 pharmacists for improper DUR

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$500.00 civil penalty for all five (5) pharmacists for improper DUR. Dr. Warren seconded the motion. The motion carried.

56. Case No.: L10-PHR-RBS-2010000031

Respondent pharmacist admitted to pharmacy personnel that she created prescriptions for herself without prescriber authorization. There were 3 prescriptions for Valtrex, and 3 prescriptions Hydrocodone. She had been prescribed these medications before but was out of refills and did not want to contact the doctor's office because she had to speak to the staff and not the physician for the refills.

Prior discipline: none

Recommendation: authorize formal hearing, 2 yr probation, no dispensing medication to herself, quarterly reports submitted to the by board by her PIC, no PIC for the duration of the probation.

Dr. Hill made the motion to **authorize a formal hearing** with a 2year probation to the pharmacist, no dispensing medication to herself, quarterly reports submitted to the Board by her PIC and no PIC for the duration of the probation. Ms. McDaniel seconded the motion. The motion carried. Dr. Warren was recused.

57. Case No.: L08-PHR-RBS-2008001581

Respondent pharmacist pled guilty to Medicare fraud in federal court.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

Ms. McDaniel made the motion to **authorize a formal hearing** for revocation. Dr. Hill seconded the motion. The motion carried.

58. Case No.: L09-PHR-RBS-2009002481

Respondent technician failed to notify Board of change of employment.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

59. Case No.: L10-PHR-RBS-2010000071

Respondent pharmacist failed to notify Board of change of employment.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

60. Case No.: L10-PHR-RBS-2010000081

Respondent pharmacist failed to notify Board of change of employment.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

61. Case No.: L10-PHR-RBS-2010000091

Respondent technician failed to notify Board of change of employment.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

62. Case No.: L10-PHR-RBS-2010000101

Respondent technician failed to notify Board of change of address.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

63. Case No.: L10-PHR-RBS-2010000111

Respondent technician failed to notify Board of change of address.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

64. Case No.: L10-PHR-RBS-2010000121

Respondent technician failed to notify Board of change of address.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

65. Case No.: L10-PHR-RBS-2010000131

Respondent technician failed to notify Board of change of address.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

66. Case No.: L10-PHR-RBS-2010000141

Respondent technician failed to notify Board of change of address.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

67. Case No.: L10-PHR-RBS-2010000151

Respondent technician failed to notify Board of change of address.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

Ms. McDaniel made the motion to **authorize a formal hearing** with a \$100.00 civil penalty. Dr. Bess seconded the motion. The motion carried.

Dr. Wilson thanked Dr. Grinder for his help with the board meeting. Ms. McDaniel made the motion to adjourn at 4:40 p.m. Dr. Kizer seconded the motion. The motion carried.

The minutes ratified at the March 24-25, 2010 meeting.