

TENNESSEE BOARD OF PHARMACY
MARCH 24-25, 2010
227 FRENCH LANDING, POPULAR ROOM
NASHVILLE, TN

BOARD MEMBERS PRESENT:

Bettie Wilson, D. Ph., President
Larry Hill, D. Ph., Vice President
David Todd Bess, 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

BOARD MEMBER ABSENT:

Brenda Warren

STAFF ABSENT:

Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Wednesday, March 24, 2010 in the Poplar Room, 227 French Landing, Nashville, TN. A quorum of the members being present, the meeting was called to order at 9:07 a.m., C.D.T., by Dr. Bettie Wilson.

Dr. Wilson welcomed Dr. Sheila Mitchell and Dr. Kim Jones along with students from Union University. Students from the University of Tennessee, Belmont University and East Tennessee State University were present. Dr. Wilson explained to the students that the board's responsibility is to protect and promote the health, safety and welfare of the citizens of Tennessee.

TELEPHARMACY

Dr. Eidson introduced Dr. Karen Clawson of Cherokee Health Systems to the board. Dr. Clawson presented to the board copies of the audit of telepharmacy counseling records, the patient evaluation survey and the policy procedures. Dr. Clawson stated that the patient evaluation survey went well, and only revealed had one patient that didn't like seeing herself on the monitor. Dr. Clawson also stated that the patients liked that they were able to save money on the prescription and didn't have to juggle taking the prescription to a pharmacy to be filled. Dr. Wilson explained to the students that the legislation designated one Federal Qualified Health Center (FQHC) to be able to participate in a pilot project that involves the use of telepharmacy and pharmacy technicians in remote sites working with the central location to provide patient counseling. It will allow patients in rural areas to pick up their medication close to where they live and to be able to receive counseling from the pharmacist via the AV link. Dr. Wilson also stated that the pilot project has been completed from the legislative stand point and allows Cherokee Health Systems

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to ask to expand the telepharmacy program to more sites and to expand the project to more FQHC's if they meet the criteria. Dr. Clawson stated that they have sent letters to both committees in the legislation, and the feedback has been positive. Dr. Clawson shared that the FQHC gets special pricing using the 340B and that is why Cherokee Health Systems asked to do the pilot project. Cherokee Health Systems only uses the special pricing for their patients, and they don't go out and recruit new patients to get their prescriptions through Cherokee Health Systems. Dr. Wilson asked Dr. Clawson about the comment from patients concerning their displeasure because the main pharmacy was closed, and they would have to return to the clinic the next day to pick up their prescription since counseling was not available. Dr. Clawson stated that a pharmacy technician was working late and patients were still being seen at the clinic but the central pharmacy had already closed, so patient counseling could not take place. Dr. Clawson stated that some of the patients have transportation problems and rely on others to bring them to the clinic. They have also discovered that they will need to get the pharmacist to give the counseling first and then hand the patient the prescription. Patients were walking out without waiting for counseling. Dr. Clawson also mentioned that a relief technician was not as knowledgeable as the usual certified pharmacy technician and did not offer counseling. Dr. Hill asked if the relief technician was registered with the Board? Dr. Clawson stated that all of the pharmacy technicians were registered with the board. Dr. Hill stated that if the pharmacy technicians are registered with the board then they should have understood the rule. Dr. Stephens stated that he thought that when the pilot program was first implemented that all the pharmacy technicians were going to be certified. Dr. Clawson stated that the law only required them to be registered and because she already had certified pharmacy technician in those site she used them to work with the telepharmacy pilot project. Dr. Clawson stated that the certified pharmacy technicians have more experience and recognize different medications better than the registered pharmacy technicians.

Dr. Bess asked Mr. Mezer about the board's rule concerning the procedures if the AV link is down and a patient receives medications. Dr. Clawson stated that Cherokee Health Systems only had one incident where the AV link was down but it came right back up and the patient was able to receive their prescription. Mr. Mezer stated that board rule 1140-13-.06 (1)(b) says "In the event that the computer, video link, or audio link connection is not operational, the pharmacist-in-charge shall ensure that the satellite clinic shall cease to operate relative to the issuance of prescriptions supplied by the central pharmacy until the links are reconnected. Whenever an interruption of data, video or audio link occurs between the central pharmacy and the satellite clinic, no prescription shall be dispensed, and a sign shall be posted noting the closure with an estimated time until a resumption of services can be expected". Dr. Bess believes that the pharmacist is still in control of the pharmacy and the AV link, and that policy needs to be in place on what to do if the AV link is down and it needs to be in the updated corrective action plan. Dr. Bess also stated that the pharmacist needs to understand their role with the link. Dr. Clawson stated, she shared this information with the pharmacists but the problem they have is that the medication may be ready one day, but the patient doesn't pick up the prescription until a day or two later. This is why she has implemented the use of the logs stating that the patient has received counseling. Dr. Bess stated that his understanding is that the pharmacist is the one releasing the medication to the patient and that all the responsibility is on the pharmacist. Dr. Clawson stated that they do not have

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a live camera on the site and only when the technician calls the central pharmacy, the link will be turned on. Dr. Bess stated that he would like to see an updated version audit that shows that the pharmacist understands their roll with telepharmacy. Dr. Wilson asked Dr. Clawson “if the link is down, who knows that it’s down? Is it the pharmacist?” Dr. Clawson stated that the camera is in the back of the pharmacy and if a patient comes up the pharmacy technician has to call the central pharmacy. The link is not on at all times and if the pharmacy technician calls and the camera is not working, the pharmacist will tell the pharmacy technician that the camera is down and not to release the medication. Dr. Bess stated that the pilot project is a great program but the problem with patient counseling can jeopardize the project. The Board really stresses patient counseling and really believes that it is an important element to pharmacy. Dr. Stephens stated that one of the main concerns that the board had was with patient counseling and 20% of the patients not counseled is a concern and the pharmacist in charge must take control.

Dr. Wilson stated that the issues before the board concerning Cherokee Health Systems Telepharmacy Pilot Program is “How to deal with the approval of FQHC to allow Cherokee Health Systems to expand the pilot program to other remote sites” and “How to expand to other FQHC”? Dr. Clawson stated that the pilot program has not been up and running for a year and that the idea is to have the program for one year with policy and procedures in place and come back before the board with the additional data. Dr. Hill made the motion that before the expansion of the pilot program within Cherokee Health Systems that they take the additional time needed to have more data on the issues presented at this meeting. Dr. Stephens seconded the motion. The motion carried.

Dr. Clawson asked for clarification due to the fact that a physician at the clinic that writes all refills as a new prescription, is counseling required? The Board answered in the affirmative because it is a new prescription. Dr. Kizer stated that patient counseling at minimum will clarify if the dosage has changed or if the physician incorrectly wrote the prescription. Dr. Wilson asked when did Cherokee Health System start the program? Dr. Clawson stated that the program did not start until May 2009. Dr. Wilson stated that Dr. Clawson can come back before the board at its May 12-13, 2010 meeting. Dr. Stephens asked Dr. Eidson in regards to the diabetic prescription for syringes, if a prescription has a prescription number because it is their internal policy does it fall under a new prescription and would require counseling? Dr. Eidson asked the board if it is written as a prescription to that patient, is it considered a medical order for a prescription? Dr. Stephens asked Dr. Clawson if the physician writing the prescription or is it an internal policy that a prescription be created for it? Dr. Clawson stated that it is required under the 340B and the tracking system that Cherokee Health System has.

Dr. Wilson explained to the students that the board will discuss throughout the meeting patient counseling and how important it is for the pharmacist to do patient counseling. Dr. Wilson also stated that the board has found that medication errors could have been prevented if patient counseling was performed and the board has increased the enforcement. Dr. Bess stated that if the students become PIC of a pharmacy and there is a medication error, the PIC is required to report it

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to the Board. Dr. Bess stated that if the pharmacist would ask what is this medication being used for, they will catch the medication error.

BOARD APPEARANCE

Gwendolyn Fowler, D. Ph.

Dr. Eidson introduced Dr. Fowler to the Board. Dr. Fowler voluntarily retired her license January 2009. Dr. Fowler is trying to reciprocate in the State of Alabama. The Alabama Board of Pharmacy requires the applicant to have an active license in the original state of licensure. Dr. Fowler's original licensing state is Tennessee. Dr. Fowler does have active licenses in Virginia and Mississippi and she works part time in Mississippi as a pharmacist. Dr. Eidson stated that the National Association Board of Pharmacy (NABP) has changed the rule that required an active license in the original state of licensure before a pharmacist can reciprocate to another state but Alabama and Georgia still require the applicant to have an active original state license. Ms. McDaniel asked if the board can request letters of recommendation from previous employers. Mr. Mezer stated that that the board can ask for letters of recommendation. Dr. Stephens asked Dr. Fowler if she had a job opportunity in Alabama. Dr. Fowler stated that she does not. After discussion, Ms. McDaniel made a motion to have Dr. Fowler bring letters of recommendations from her last employer in Tennessee and from her part time employer in Mississippi. Dr. Stephens seconded the motion. The motion carried.

GENERAL DISCUSSION

Dr. Wilson explained to the students in the audience that a few years ago NABP required applicants to maintain their original state of licensure in order to reciprocate to other states. NABP changed that rule to state that you do not have to have an active original state license to reciprocate, however some states still require the applicant to maintain the original state of licensure. Dr. Eidson stated that he had spoken to a representative at NABP who stated that other states are changing their rules to allow reciprocity without an active original state of licensure. Dr. Eidson also stated that the administrative office receives a lot of calls concerning this issue and would like some guidance from the board on how to best handle this issue. Dr. Eidson stated that the board has received an application where the pharmacist was originally licensed in Hawaii and reciprocated to California and reciprocated to Colorado with the California licenses. The Hawaii license is no longer valid and the applicant would like to reciprocate to Tennessee on the Colorado license. Dr. Bess stated that the Board needed to look at the issue from a financial standpoint that we would lose funding if the board decides to remove the requirement. Dr. Wilson stated that one of the things that drives pharmacist to let their Tennessee license go is the Professional Privilege Tax. The Professional Privilege Tax covers about fifteen (15) professions and is four hundred dollars (\$400.00) a year. Dr. Eidson stated that he thinks that the MPJE is one of the most important components of licensure for the State of Tennessee, that the applicants understand the rules and law that govern the Tennessee Board of Pharmacy. Dr. Wilson stated that she believes

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that the changes come from people being more mobile and not staying in one state but we the board do not want to disregard the safety issues. Dr. Wilson asked for clarification that the board does not require an applicant to have an active license in the original state of licensure to apply for reciprocity in Tennessee? Mr. Mezer states that the board does not have in its rules that a person applying for reciprocity in Tennessee must have an active original state of licensure. The Board was using the rule established by NABP. Dr. Stephens stated that consistency for reciprocity in the State of Tennessee, is that the board accepted what the other states rules were and if they reciprocate with Tennessee we would reciprocate with them. Dr. Wilson quoted board rule 1140-1-.03 (6) in part "No license shall be issued to a score transfer applicant from a state which denies score transfer privileges to a pharmacist currently licensed in and in good standing in Tennessee." Dr. Wilson also informed the board that this would have been Florida, California and Hawaii. Dr. Eidson stated that Florida has loosened their requirements and we changed the way we reciprocate with Florida. Dr. Eidson asked for a policy statement regarding reciprocity for example Colorado. Dr. Eidson stated that he is basing the statement on the applicant that has applied for reciprocity with her Colorado license. The applicant has an inactive license in Hawaii, an active license in California, an expired license in Missouri and an active license in Colorado issued by reciprocity from California. Dr. Eidson stated that the board typically does not reciprocate with California because they did not require the NAPLEX or the Blue Ribbon Exam, California administers their own exam. Dr. Stephens asked if the applicant reciprocated into California with her Hawaii license? Dr. Eidson stated that she did reciprocate from Hawaii to California. After discussion, the board decided to defer a decision and further discussion until the May 12-13, 2010 meeting.

Dr. Eidson asked the board for guidance concerning new graduates taking the NAPLEX several times and failing. Dr. Eidson wanted to know if the board would like for this issue to be handling administratively or bring it before the board. Pursuant to board rule 1140-1-.06 (5) Any applicant who fails either the NAPLEX or jurisprudence examination shall be entitled to retake the examination on the board's next regularly scheduled date. If an applicant should fail the NAPLEX or jurisprudence examination three (3) times the applicant may be required to take review courses as approved by the board prior to reexamination. This requirement shall apply to the third and each subsequent failure. Mr. Mezer stated that the rule lacks a statement that says that the board can waive this requirement. Dr. Eidson stated that the rules state that the applicant may be required to take review courses as approved by the board prior to reexamination. Mr. Mezer asked if the board had a review course that it can recommend for the students? Dr. Eidson informed the board that he is looking for guidance and wanted to know if the Board wants each candidate before the board? Dr. Eidson also informed the board that the scores are very low starting with a score of thirteen (13) and moving up to a score of forty-six (46). The passing requirement is seventy-five (75). Dr. Hill asked if there was any reason that the applicant needs to come before the board and if NABP or any other state have a limit on the number of times that the exam can be taken before passing? Dr. Stephens stated that he doesn't think that the applicants need to come before the board and the requirement is there that the applicant has to pass it and the board cannot waive the requirement. Dr. Stephens stated that he does not think that the board needs to recommend a course. Dr. Bess suggested that the board contact NABP to see if they have any knowledge about review courses.

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NABP does statistical data on pharmacy schools showing the pass/fail ratio. The data is sent to the schools and ACPE. Dr. Eidson asked Dr. Bess if the University of Tennessee's College of Pharmacy has review material? Dr. Bess referred to Dr. Eidson to Dr. Jim Eoff. Dr. Stephens made the motion to have the applicant contact NABP or other review agency for review material. Dr. Hill seconded the motion. The motion carried.

REINSTATEMENT

David R. Robinson, D.Ph.

Dr. Eidson introduced Dr. Robinson to the board. Dr. Robinson is requesting to have his license reinstated. Dr. Robinson's license was suspended on November 18, 2009 by default. When asked why he didn't appear before the Board on November 18, 2009, Dr. Robinson stated that he was suffering from depression and did not open the certified letters sent by the board asking him to appear before the Board for a Contested Case. Dr. Robinson created prescriptions for Atenolol 10 mg and Amlodipine-Benzepiril and dispensed them to himself approximately thirty-six (36) times based on the fraudulent prescriptions and billed his employer's third party insurance plan for fraudulent prescriptions. After discussion, Dr. Stephens made the motion to defer Dr. Robinson's request to reinstate until he submits a letter from his primary care physician and have an evaluation from a psychiatrist or another mental health provider. Ms. McDaniel seconded the motion. The motion carried.

APPEAL OF DENIAL

Deanna Dawn Smith, RT

Mr. Mezer introduced Ms. Smith to the board. Ms. Smith's application for pharmacy technician registration was denied at the January 21, 2010 board meeting. Ms. Smith has been convicted of writing bad checks, forgery and theft of property. Ms. Smith graduated from Concord Career College with a certification as a pharmacy technician with honors and has been certified by the Pharmacy Technician Certification Board. After discussion, Dr. Kizer made the motion to approve Ms. Smith's application for pharmacy technician registration. Ms. McDaniel seconded the motion. The motion carried.

Debbie Lovvorn, RT

Mr. Mezer introduced Ms. Lovvorn to the board. Ms. Lovvorn's application for pharmacy technician registration was denied at the January 21, 2010 board meeting. Ms. Lovvorn was convicted of two (2) DUI's in 2007. Ms. Lovvorn has completed treatment at the Grace House of Memphis and is in the process of signing a two (2) year contract with the Tennessee Peer Assistance Program. After discussion, Dr. Bess made the motion to approve Ms. Lovvorn's application for pharmacy technician registration. Ms. McDaniel seconded the motion. The motion carried.

APPLICATION REVIEW

Dr. Wilson explained to the students that the application review is because the applicants for pharmacy license has disciplinary actions in another state or have been convicted of a crime.

Pharmacist

Elmer L. 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?” At the January 20-21, 2010 meeting, the Board requested a criminal background check. After discussion, Dr. Stephens made the motion to approve Dr. Richardson’s application for licensure by reciprocity once he has successfully completed all the requirements. Ms. McDaniel seconded the motion. The motion carried.

Donnie W. Turner, D. Ph.

Dr. Turner is applying for licensure by reciprocity in the State of Tennessee. Dr. Turner answered no 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?” Documentation submitted by NABP stated that Dr. Turner license in the State of Virginia as disciplined December 14, 1994 for representing himself as a licensed pharmacist prior to obtaining a license to practice pharmacy. After discussion, Ms. McDaniel made the motion to approve Dr. Turner’s application for licensure by reciprocity once he has successfully completed all the requirements. Dr. Stephens seconded the motion. The motion carried.

Achinike L. Ofoleta, D. Ph.

Dr. Ofoleta is applying for licensure by reciprocity in the State of Tennessee. Dr. Ofoleta 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. Stephens made the motion to approve Dr. Ofoleta’s application for licensure by reciprocity once he has successfully completed all the requirements. Dr. Hill seconded the motion. The motion carried.

Tokunbo N. Kassim, D. Ph.

Dr. Kassim is applying for licensure by reciprocity in the State of Tennessee. Dr. Kassim answered yes to the question that asked “Have your ever had any application for initial licensure, renewal

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licensure, or licensure by transfer denied by any licensing authority whether in pharmacy or any other profession?" After discussion, Dr. Bess made the motion to approve Dr. Kassim application for reciprocity once he has successfully completed all the requirements for licensure. Dr. Stephens seconded the motion. The motion carried.

Charldeen J. Bagwell, D. Ph.

Dr. Bagwell is applying for licensure by reciprocity in the State of Tennessee. Dr. Bagwell answered no to the question that asked "Have your ever had any application for initial licensure, renewal licensure, or licensure by transfer denied by any licensing authority whether in pharmacy or any other profession?" Documentation submitted by NABP stated that Dr. Bagwell's license in the State of Virginia was disciplined on September 14, 2007 for failure to maintain records or provide medical, financial or other required information and failure to perform a complete and accurate biennial inventory of schedule II through V drugs within two years from previous inventory. After discussion, Dr. Stephens made the motion to deny Dr. Bagwell's application for licensure by reciprocity. Dr. Bess seconded the motion. The motion carried.

Mary Katherine Skinner, D. Ph.

Dr. Skinner is applying for licensure by reciprocity in the State of Tennessee. Dr. Skinner 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. Skinner's application for licensure by reciprocity once she has successfully completed all the requirements. Dr. Hill seconded the motion. The motion carried.

John M. Miles, D. Ph.

Dr. Miles is applying for licensure by reciprocity in the State of Tennessee. Dr. Miles answered yes to the question that asked "Have you ever voluntarily surrendered your pharmacist license or any pharmacist registration issued by a federal or state controlled substance authority?" After discussion, Ms. McDaniel made the motion to approve Dr. Miles's application for licensure by reciprocity once he has successfully completed all the requirements for licensure. Dr. Stephens seconded the motion. The motion carried.

Duane Ronald Griffin, D. Ph.

Dr. Griffin is applying for licensure by reciprocity in the State of Tennessee. Dr. Griffin answered no 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?" Documentation submitted by NABP stated that Dr. Griffin's license in the State of California on March 7, 2007 for failure to have sufficient security of the pharmacy in place to prevent loss of controlled substances and failure to

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establish procedures to ensure that dangerous drugs and dangerous devices were received and signed by a pharmacy, After discussion, Dr. Bess made the motion to deny Dr. Griffin's application for licensure by reciprocity. Dr. Hill seconded the motion. The motion carried.

Tammy Charlyn Gibson, D. Ph.

Dr. Gibson is applying for licensure by reciprocity in the State of Tennessee. Dr. Gibson answered no 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?" Documentations submitted by NABP stated that Dr. Gibson's license in the State of Kentucky was disciplined on June 6, 2007 for an error in prescribing, dispensing or administering medication. After discussion, Dr. Stephens made the motion to deny Dr. Gibson's application for licensure by reciprocity. Dr. Bess seconded the motion. The motion carried.

Jeremy S. Patterson, D. Ph.

Dr. Patterson is applying for licensure by reciprocity in the State of Tennessee. Dr. Patterson answered yes to the question that asked "Have you ever been charged or convicted (including a nolo contendere plea or guilty plea) of a felony misdemeanor (other traffic offenses) whether or not sentence was imposed, suspended, expunged or whether you were pardoned from any such offenses?" After discussion, Dr. Hill made the motion to approve Dr. Patterson's application for licensure by reciprocity once he has successfully completed all the requirements. Dr. Stephens seconded the motion. The motion carried.

Pharmacy Technicians

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)?" At the January 20-21, 2010 board meeting, Ms. McDaniel made the motion to defer Ms. Butler's application for registration until the March 24-25, 2010 meeting. Dr. Stephens seconded the motion. All were in favor and the motion carried.

Ms. Butler has submitted documentation showing that on March 10, 2010 she received a deferment of sentence for the theft of property under \$500 to 20 hours of special conditions and courses, restitution and must obtain gainful employment. After discussion, Ms. McDaniel made the motion to approve Ms. Butler's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Melinda Jo Montero

Ms. Montero is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Montero 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 Ms. Montero’s application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Briana Coss Hayden

Ms. Hayden is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Hayden 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. Hayden’s application for registration as a pharmacy technician. Dr. Kizer seconded the motion. The motion carried.

Brian Michael Meredith

Mr. Meredith is applying for registration as a pharmacy technician in the State of Tennessee. Mr. Meredith 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. Meredith’s application for registration as a pharmacy technician. Dr. Hill seconded the motion. The motion carried.

Angela Marie Allen

Ms. Allen is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Allen 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. Allen’s application for registration as a pharmacy technician. Ms. McDaniel seconded the motion. The motion carried.

Keoshe Anderson

Ms. Anderson is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Anderson 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.

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Anderson's application for registration as a pharmacy technician. Dr. Hill seconded the motion. The motion carried. Dr. Bess voted no.

Deanna Lashaw Baugher

Ms. Baugher is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Baugher 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. Baugher's application for registration as a pharmacy technician. Dr. Bess seconded the motion. The motion carried.

Colby Wade Terry

Mr. Terry is applying for registration as a pharmacy technician in the State of Tennessee. Mr. Terry 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 deny Mr. Terry's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Tracy N. Matthews

Ms. Matthews is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Matthews 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 Ms. Matthew's application for registration as a pharmacy technician. Dr. Hill seconded the motion. The motion carried.

Holly Eve Andes

Ms. Andes is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Andes 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. Andes's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried. Dr. Bess voted no.

Brenda Thompson

Ms. Thompson is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Thompson 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

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marijuana or hallucinogens)?" After discussion, Dr. Kizer made the motion to approve Ms. Thompson's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Andrew Scott Thompson

Mr. Thompson is applying for registration as a pharmacy technician in the State of Tennessee. Mr. Thompson 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 deny Mr. Thompson's application for registration as a pharmacy technician until charges or the court proceedings are cleared. Dr. Bess seconded the motion. The motion carried.

Waivers

Board rule 1140-1-.07 (3) (b)

Dr. Bess made the motion to approve the request from **Kertrina R. Brame, D. Ph.** to waive the internship hours and MPJE needed for reinstatement. Ms. McDaniel seconded the motion. The motion carried.

Dr. Hill made the motion to defer the request from **Sarah McGee Hayes, D. Ph.** to waive the internship hours needed for reinstatement until Dr. Hayes submits information about her employment. Dr. Kizer seconded the motion. The motion carried.

Dr. Bess made the motion to approve the request from **Douglas S. Merrell, D. Ph.** to waive the internship hours needed for reinstatement. Ms. McDaniel seconded the motion. The motion carried.

Dr. Kizer made the motion to approve the request from **Tiffany T. McCray, D.Ph.** to waive the internship hours and MPJE needed for reinstatement. Ms. McDaniel seconded the motion. The motion carried.

Board rule 1140-3-.14 (12)

Dr. Bess made the motion to defer the request from **Jamie Gunnells, R. Ph.** director of Elder Scripts to allow Chris Masters, D. Ph. to be PIC at The Palace in Red Boiling Springs and Church Hill Health and Rehab in Church Hill, TN. The request to be PIC in two different locations must come from the PIC and include procedural issues. Dr. Stephens seconded the motion. The motion carried.

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Board rule 1140-1-.05(4)

Ms. McDaniel made the motion to approve the request from **Bantu G. Amare D. Ph.** to waive the TSE requirement for licensure because it is not required for licensure by reciprocity. Dr. Kizer seconded the motion. The motion carried.

Board rule 1140-1-.12(3) (e)

Dr. Hill made the motion to approve the request from **Roger Alay, D. Ph.** to waive the running hot and cold water rule. The availability of running water is just ten steps away. Dr. Bess seconded the motion. The motion carried.

Board rule 1140-1-.04(1)

Ranjit K. Thirumaran, D. Ph

Dr. Thirumaran submitted a request to use hours earned during a clinical research study to be used toward the 1500 hours needed for licensure as a pharmacist in Tennessee. Dr. Thirumaran stated that he would be under the supervision of a faculty member that holds a PhD and a co-investigator that holds a PharmD. After discussion, Dr. Bess made the motion to grant approval of 400 internship hours in clinical research under a pharmacist in good standing. Dr. Hill seconded the motion. Dr. Stephens amended the motion to allow only a maximum of 200 non traditional hours in clinical research hours used toward the 1500 hours of internship. Dr. Bess seconded the amended motion. The motion carried.

CONSENT ORDERS

Dr. Bess made the motion to accept the consent orders presented. Dr. Stephens seconded the motion. The motion carried.

ORDERS FOR REINSTATMENTS

James E. King, Jr.
Stephen R. Goss
Ronnie Batchelor
James A. Parker
Robert Michael King
Martha Bryant

VIOLATED BOARD RULE 1140-3-01 (1)(a) and (f)

CVS Pharmacy #3293- \$1000.00 civil penalty-paid
Wal-Mart Pharmacy #10-0064- \$1000.00 civil penalty-paid

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Wal-Mart Pharmacy #10-0671- \$1000.00 civil penalty-paid
Walgreens Pharmacy #4313- \$1000.00 civil penalty-paid
Wal-Mart Pharmacy #10-5043- \$1000.00 civil penalty-paid
Walgreens Pharmacy #4734- \$1000.00 civil penalty-paid
Wal-Mart Pharmacy #10-1318- \$1000.00 civil penalty-paid
Roy Glenn Bowen- \$1000.00 civil penalty-paid
Jocelyn Davina Johnson- \$1000.00 civil penalty-paid
Jan Gary Horn- \$1000.00 civil penalty-paid
Katherine Lynn Snow- \$1000.00 civil penalty-paid
Frances Grace Wood- \$500.00 civil penalty-paid
Kelley Gale Heilman- \$500.00 civil penalty-paid
Brittnye Lynn Bagatini- \$1000.00 civil penalty-paid
Mansour Shabazz- \$1000.00 civil penalty-paid
Florence A. Lewis- \$1000.00 civil penalty-paid
Kenneth T. Stewart- \$1000.00 civil penalty-paid

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

Jerry Keith Adams- \$100.00 civil penalty-paid

VIOLATED BOARD RULE 1140-2-.02(6)

William R. Crawford- \$100.00 civil penalty-paid

VIOLATED BOARD RULE 1140-2-.01(15)

Brittnye Lynn Bagatini- \$100.00 civil penalty-paid

ORDERS OF REVOCATION

J. Michael Bennett, D. Ph.
Jessica Jean Burke, D. Ph
Kim R. Sturgeon, D. Ph.
Sheila Innette Allen, RT
Bradley Dylan Lawson, RT
Whitney Jarman, RT
Kevin Michael Brown, D. Ph.
Krishan Stephen, RT
Kathleen Riley, D.Ph.

LEGAL REPORT

1. Case No.: L10-PHR-RBS-2010000461

Complainant alleges that respondent pharmacy is engaging in fraud, insurance fraud, stalking, harassment, illegal marketing and computer fraud. Complainant gave no specific details except for names of the individuals and pharmacy involved.

After a thorough and lengthy investigation, Pharmacy Board investigators have not been able to substantiate the allegations.

Prior discipline: 1/31/07, distribution of expired drugs, \$250 cp

Recommendation: dismiss

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

2. Case No.: L10-PHR-RBS-2010000481

Complaint alleges that respondent compounding pharmacy had expired controlled drugs stored in an office that was not part of the pharmacy. The office was not secure except for a door knob that locked.

Respondent replied that the drugs were retained there until, "someone from the State could come by and destroy them."

Prior discipline: none

Recommendation: LoW for improper storage of drugs

Dr. Hill made the motion to authorize a **Letter of Warning** for the improper storage of drugs. Dr. Bess seconded the motion. The motion carried.

3. Case No.: L10-PHR-RBS-2010000431

Complaint alleges that respondent pharmacy is shipping into Georgia without a license. GA Board of Pharmacy does not require licensure for out of state pharmacies shipping into GA.

Prior discipline: none

Recommendation: dismiss

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

4. Case No.: L10-PHR-RBS-2010000261

Respondent pharmacy technician admitted to Board staff that he had moved several times without notifying the Board. This resulted in Respondent not receiving notice of renewal and Respondent was unregistered for 5 ½ months. Respondent is an assistant manager at a drug store and does not usually perform tech duties, but has at times gone behind the counter.

Prior discipline: none

Recommendation: Authorize formal hearing, \$100 civil penalty to tech for not notifying Board of change in address. \$300 civil penalty to PIC for unregistered tech.

Dr. Hill made the motion to **authorize a formal hearing** with a \$100.00 civil penalty to the technician for not notifying the Board of a change in address and a \$300.00 civil penalty to the PIC for unregistered technician. Dr. Kizer seconded the motion. The motion carried.

5. Case No.: L10-PHR-RBS-2010000291

Respondent technician failed to notify Board of change of address.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

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

6. Case No.: L10-PHR-RBS-2010000271

Respondent technician failed to notify Board of change of address. Last Board meeting, the Board voted to revoke Respondent's registration based on diversion. At this time, Respondent has not been able to be located.

Prior discipline: none

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

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

7. Case No.: L10-PHR-RBS-2010000641

Respondent technician admitted to loss prevention to taking Desoxyn 5mg (300), Demerol (50mg/ml, 150ml), Robitussin A-C 2mg/cc (5676ml), Hydrocodone multiple strengths (9646), Valium 10mg(1001) and Diazepam 10mg (346) from the pharmacy without a valid prescription and without authorization, for personal use and 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.

8. Case No.: L10-PHR-RBS-2010000501

Respondent pharmacy notified Board of Pharmacy office of possible employee pilferage and filled out a DEA 106 form. After further review, the pharmacy concluded that this was due to a miscount and not theft.

Prior discipline: none

Recommendation: dismiss

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

9. Case No.: L10-PHR-RBS-2010000361

Respondent technician admitted to loss prevention to taking 7779 pills of Hydrocodone, 2061 pills of Alprazolam, 986 pills of Suboxone, 447 pills of Clonazepam, and 1526 pills of Diazepam 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. Bess made the motion to **authorize a formal hearing for revocation**. Dr. Kizer seconded the motion. The motion carried.

10. Case No.: L10-PHR-RBS-20100000371

Complainant alleges that respondent Pharmacist violated her HIPPA rights. U.S. Department of Health and Human Services and the Office for Civil Rights investigated and found no violation.

Prior discipline: none

Recommendation: dismiss

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

11. Case No.: L10-PHR-RBS-20100000571

Complaint alleges that respondent pharmacy is not performing proper DURs. Pharmacy Board investigator visited the pharmacy and found patient counseling occurring and after speaking with the pharmacist and reviewing several specific patient records, found no violation.

Prior discipline: 2002, insurance claim issue, dismissed

Recommendation: dismiss

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

12. Case No.: L10-PHR-RBS-20100000321

Complainant alleges that respondent Pharmacy refuses to transfer her prescriptions due to an outstanding balance owed.

Respondent Pharmacy responded that the complainant did in fact owe the pharmacy \$6,139.58 and that the balance had been paid, only when they threatened to send the account to collections. They continued to offer to fill her prescriptions until her balance

was paid or until she told them which pharmacy to transfer the prescriptions to. They have since transferred the refills to another pharmacy.

Prior discipline: none

Recommendation: dismiss

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

13. Case No.: L10-PHR-RBS-20100000451

Complainant physician alleges that respondent Pharmacy is operating without a license. Complainant provided documents showing that the Pharmacy is shipping from TN to SC.

Prior discipline: none

Recommendation: dismiss and refer the matter to the SC Board of Pharmacy

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

14. Case No.: L10-PHR-RBS-20100000281

Complainant alleges that respondent Pharmacy filled a C-II prescription from 2008. PIC responded that they place all unfilled C-II prescriptions in a box for the patient. This patient had two prescriptions for Kadian 30mg but the earlier prescription was written for 60 and the latter for 90. The pharmacy for some reason did not discard the old prescription at the end of the one year period. Once the mistake was realized, both the patient and the pain clinic were notified and med error was corrected. The APN was very upset by this incident.

Prior discipline: none

Recommendation: LoW for misfill

Dr. Stephens made the motion to **dismiss** based on the prescription that was picked up was filled as written. Ms. McDaniel seconded the motion. The motion carried.

15. Case No.: L10-PHR-RBS-20100000611

Respondent technician stole credit card information from customers and used them to buy things. Her registration is currently expired.

Prior discipline: none

Recommendation: close, flag in RBS in case she reapplies

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

16. Case No.: L01-PHR-RBS-2001030901

Case was originally presented 9 years ago. It concerned a misfill for a pregnant patient's (8 months pregnant) Prenate, it was filled as Parnate. It was assumed that counseling did not occur because no pharmacist would dispense that or any patient accepts that if they were pregnant.

Once I found the file, I sent out the originally authorized \$250 civil penalty for the counseling violation and misfill. The respondent replied that he was not on duty then, as he explained to counsel, Cecil Ross.

There is little evidence as to who was working then, as the records are no longer available and the prescription label was not in the records, so the dispensing pharmacist is not known.

Prior discipline: none

Recommendation: close, lack of evidence

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

17. Case No.: L10-PHR-RBS-20100000591

Complaint alleges that respondent pharmacy is not performing proper DURs. Pharmacy Board investigator visited the pharmacy and found patient counseling occurring and after speaking with the pharmacist and reviewing several specific patient records, found no violation.

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Prior discipline: 2007, med error; 2009 patient confidentiality

Recommendation: dismiss

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

18. Case No.: L10-PHR-RBS-20100000381

Complainant alleges that respondent Pharmacy allows its employees to drink water, eating M&M's and eat potato chips behind the counter. Complainant provided photo documentation proving these actions.

Prior discipline: none

Recommendation: dismiss

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

The Board held a question and answer session for the students at the end of the meeting. Dr. Hill made the motion to adjourn. Dr. Bess seconded the motion. The motion carried.

MARCH 25, 2010

The Tennessee Board of Pharmacy convened on Thursday, March 25, 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. by Dr. Wilson, president. Dr. Warren was absent and Dr. Bess arrived at 9:11 a.m.

Dr. Wilson welcomed the pharmacy students from David Lipscomb University, University of Tennessee and Belmont University.

MINUTES

The minutes from the September 22-23, 2009 and the January 20-21, 2010 were presented. The September 22-23, 2009 was amended per the board's request. Dr. Hill made the motion to approve the September 22-23, 2009 meetings as amended. Dr. Kizer seconded the motion. The motion carried. Dr. Stephens made the motion to accept the January 20-21, 2010 minutes as presented. Dr. Hill seconded the motion. The motion carried.

BOARD APPEARANCE

Rory J. Albert, D. Ph.

Dr. Eidson introduced Dr. Albert to the board. Dr. Albert is applying for licensure by reciprocity in the State of Tennessee. Dr. Albert's application for reciprocity was denied at the November 6, 2009 board meeting due to Dr. Albert stating that his out of state license had not been disciplined. Documentation submitted by NABP showed that Dr. Albert's license had been disciplined by the Arizona Board of Pharmacy. After discussion, Dr. Kizer made the motion to approved Dr. Albert's license once he has completed all the requirements for licensure and he must submit yearly reports showing that there are no sanctions against his licenses for two (2) years. Dr. Bess seconded the motion. The motion carried.

Meredith Brown, D. Ph.

Dr. Eidson introduced Dr. Brown to the Board. Dr. Brown is applying for licensure by reciprocity in the State of Tennessee. Dr. Brown's South Carolina pharmacist license is on probation for five (5) years due to impairment. Dr. Janet Hicks was present with Dr. Brown as her TPRN advocate. After discussion, Dr. Stephens made a motion to approve Dr. Brown's application for licensure by reciprocity once he has completed all the requirements for licensure. Dr. Hill seconded the motion. The motion carried. Dr. Brown's license will be placed on probation from May 12, 2009 to May 1, 2014 to run concurrent with the South Carolina Board of Pharmacy disciplinary actions, with the following terms and 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. Kelley Caldwell-Chor and the Respondent's psychiatrist, Dr. Corinne Bell, except in the case of an emergency or upon 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 license is in probation. 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 a license; satisfy all past due continuing pharmaceutical education; successfully complete the Multi-State Pharmacy Jurisprudence Examination (MPJE); pay all cumulative licensure fees; complete a period of pharmacy internship in Tennessee of one hundred sixty (160) hours within ninety (90) consecutive days.

Ronald Tucker, D. Ph.

Dr. Eidson introduced Dr. Tucker to the Board. Dr. Tucker requested to come before the board because he wants to apply for licensure in Tennessee by reciprocity but his Mississippi pharmacist license is on probation for ten (10) years due to impairment. After discussion, Dr. Bess made the motion to approve Dr. Tucker's application for licensure by reciprocity once he has completed all the requirements for licensure in Tennessee. Dr. Tucker's Tennessee license will be placed on probation with a consent order mirroring the Mississippi Consent Order. Dr. Stephens seconded the motion. The motion carried.

REINSTATEMENT

Mitchell Dietrich, D. Ph.

Dr. Eidson introduced Dr. Dietrich to the Board. Dr. Dietrich license was revoked on May 9, 2008. After discussion, Dr. Bess made the motion to reinstated Dr. Dietrich's license. Dr. Hill seconded the motion. Dr. Dietrich's license will be on probation for five (5) years beginning March 25, 2010 until March 25, 2015 with the following terms and 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. Curtis Markham and the Respondent's psychiatrist, Dr. Amir Hussaini, except in the case of an emergency or upon 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 Pharmacists 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 a license; satisfy all past due continuing pharmaceutical education; successfully complete the Multi-State Pharmacy Jurisprudence Examination (MPJE); pay all cumulative licensure fees; complete a period of pharmacy internship in Tennessee of one hundred sixty (160) hours within ninety (90) consecutive days

FINANCIAL REPORT

Dr. Eidson introduced Christy Allen, Assistant Commissioner, Department of Health and Eugene Neubert, Assistant Commissioner for the Bureau of Administrative Services to the board. Ms. Allen and Mr. Neubert gave the financial report for fiscal year ending June 30, 2009 and a financial report July 1, 2009 thru December 31, 2009. The financial report for the fiscal year ending June 30, 2009 shows a deficit of \$59,776.49. Ms. Allen stated that some of the changes in the financial statements are the Rentals & Insurance. The board pays \$18.00 per square feet of the space that the board’s administrative office occupies and the support staff salaries are taken out of Indirect Expenditures and put in Salaries & Wages. Dr. Bess asked what happened to the civil penalties that the board collected. Dr. Bess stated that the board was told that the civil penalties went into the general fund. The financial report ending December 30, 2009 shows a zero balance for civil penalties. Ms. Allen explained that the civil penalties do not go into a general fund but belong to the board and that they were collected under miscellaneous. The Board asked for a detailed financial report from fiscal year 2005 forward. The Board also asked for a breakdown of the following; miscellaneous fees including civil penalties, the Professional Services and Dues, and State Professional Services. Ms. Allen stated that Dr. Eidson will provide the board with quarterly financial reports.

DIRECTOR’S REPORT

Dr. Eidson told the board that he has completed four (4) updates in West Tennessee and that they have been successful.

Dr. Eidson informed the board the new rules concerning pharmacy technicians went into effect on March 23, 2010. Dr. Eidson asked for clarification of board rule 1140-02-.02(7) (a) which states “The primary technician to pharmacist ratio shall not exceed 2:1; however the ratio may be increased up to a maximum of 4:1 by the pharmacist in charge based upon public safety considerations but only if the additional pharmacy technicians are certified pharmacy technicians.

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However, the pharmacist in charge may request a modification of the ratio from the Board in writing which addresses: 1. the pharmacy technician's experience, skill, knowledge and training, and; 2. the workload at the practice site; and 3. detailed information regarding the numbers of pharmacy technicians and the specific duties and responsibilities of each of the pharmacy technicians; and 4. justification that patient safety and quality of pharmacy services and care can be maintained at the pharmacy. Dr. Eidson stated that the office has been getting a lot of telephone calls concerning this rule and if the ratio goes beyond 4:1. Dr. Bess stated that the pharmacist in charge must state that it is a safety issue before changing the ratio from 4:1.

Dr. Eidson stated that the Controlled Substance Monitoring Database Alliance Group will be meeting on May 20-21, 2010, in Memphis, TN., to discuss issue concerning the database. Dr. Eidson stated that Walter Philpot works with the Controlled Substance Monitoring Database for the Board. Ms. McDaniel made the motion to send Dr. Eidson and Mr. Philpot to the Controlled Substance Monitoring Database Alliance Group meeting in Memphis, TN. Dr. Hill seconded the motion. The motion carried.

Dr. Eidson informed the Board that Walgreen's is considering a drop box for refill prescriptions. The box may be placed outside of the store or outside of the pharmacy. The Board voted to table this discussion until the next scheduled meeting and ask that a Walgreen's representative attend to present the plan for the drop box.

Dr. Eidson informed the board that the law books are currently out dated. Dr. Eidson stated that the board may want to consider raising the fees for the law books. The current fees are \$10.00 per law book but LexisNexis is charging the board \$14.85 per law book. Dr. Eidson stated that last year the board spent roughly \$62,000.00 for the law books. Dr. Bess asked if the law book can be posted on the website. He would like to see the complete law book posted on the website and thinks that it would be best for pharmacist to have a searchable law book. Mr. Mezer stated that one of the issues is that some stores are reluctant or unable to give the pharmacist access to the internet. Dr. Eidson read board rule 1140-3-.15 which states "Each pharmacy practice site shall maintain in its library at least one (1) reference book (printed or electronic) from either of the last two(2) editions that address each category listed below: (11) current Tennessee Pharmacy Laws issued by the Tennessee Board of Pharmacy and updates. The board's website currently has the updated laws and rules but the website is missing Title 21 concerning the DEA and the Code of Federal Regulations. Dr. Eidson stated that we could add a link or Dr. Eidson stated that the rule does allow for electronic Dr. Stephens stated that maybe the board should abandon the law book and just use the website. Dr. Stephens stated that the law book could be in a PDF file. Dr. Wilson stated that one of the good things about the website is that the rules are update frequently whereas the law book is already out dated the day it came off the press. Dr. Edison stated that one of things they could do is ask LexisNexis how much it would cost to post the law book online. Dr. Eidson also stated that LexisNexis has roughly 563 copies of the 2008 Edition and would like the board's permission to order the books due to the graduating class in May 2010. Dr. Stephens made the motion to refer applicants to the board's website, ask LexisNexis about a printable PDF file of the law book and to add a link to the DEA. Dr. Hill seconded the motion. The motion carried.

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Ms. McDaniel made the motion to purchase fifty (50) law books. Dr. Hill seconded the motion. The motion carried.

Mr. Mezer presented to the Board copies of Senate and House Bills that may pertain to the practice of pharmacy. Mr. Mezer stated the Senate Bill 2297 states that before employing or contracting with any person who will be providing direct patient care, but who is not required to a complete background check under any of the background check requirements of titles of 33, 63, 68 or 71 chapter 2, a health care professional licensed under any chapter of title 63 or title 68, chapters 24 and 140 shall initiate and obtain the results of a name search from the National Sex Offender public registry, any adult registry and the department of health's elder abuse registry. If the applicant is listed on any of the registries the health care professional shall not be employed or contract with the person if the person would be providing direct patient care. Mr. Mezer stated that the questions before the Board are: What is direct patient care? Does it include pharmacy technicians or is it just limited to physicians?

Dr. Wilson asked the members of the Board to send information to Dr. Eidson to be placed in the board's newsletter. The next newsletter will include the legislative update and an article concerning eating in the Pharmacy and food allergies.

LEGAL REPORT

19. Case No.: L10-PHR-RBS-20100000551

Complaint alleges that respondent pharmacy is not performing proper DURs. Pharmacy Board investigator visited the pharmacy and found patient counseling occurring and after speaking with the pharmacist and reviewing several specific patient records, found no violation.

Prior discipline: none

Recommendation: dismiss

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

20. Case No.: L10-PHR-RBS-20100000561

Complaint alleges that respondent pharmacy is transferring/selling large quantities of drugs to a local EMS. Pharmacy Board investigator reviewed respondent's drug transfer files and DEA222 forms and found all transfers to be properly documented.

Prior discipline: none

Recommendation: dismiss

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

21. Case No.: L10-PHR-RBS-2010000631

Complaint alleges that respondent pharmacy is transferring/selling large quantities of drugs to a local EMS. Pharmacy Board investigator reviewed respondent's drug transfer files and DEA222 forms and found no transfers to the local EMS in question.

Prior discipline: none

Recommendation: dismiss

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

22. Case No.: L10-PHR-RBS-2010000381

Complainant alleges that respondent Pharmacist misfilled her Diazepam prescription by giving her one less pill. The complainant alleges that after she counted the pills in the car and noticed that it was one short, the pharmacist was rude to her when she returned to the store to ask for the remainder of the medication. The complainant also alleges that the pharmacist and pharmacy techs sell the pills on the street and that the store does not double count the prescription quantities.

The respondent replied that the quantity on the bottle was circled, indicating that it was double checked. The pharmacist replied that she refused to give the complainant one more pill unless she, the pharmacist, spoke to the doctor first. The pharmacist stated that the complainant told the pharmacist not to call the doctor and just give her the pill.

Prior discipline: none

Recommendation: dismiss

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

23. Case No.: L10-PHR-RBS-2010000211

Respondent technician admitted to loss prevention to creating fraudulent scripts for Xanax and Lortab and filling them so that she can give them to her boyfriend for his personal use.

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.

24. Case No.: L10-PHR-RBS-2010000621

Respondent technician failed to notify Board of change of address.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

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

25. Case No.: L10-PHR-RBS-2010000351

Respondent technician failed to notify Board of change of address.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

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

26. Case No.: L10-PHR-RBS-2010000511

Respondent pharmacy was disciplined by another State's Board of Pharmacy for shipping a prescription order to a patient who did not order the medication and that was not prescribed by a physician the individual had ever seen before. There was no ingestion of the medication and no patient harm occurred.

Prior discipline: 10/9/08, unprofessional conduct, LoW

Recommendation: LoW for misfill

Ms. McDaniel made the motion to **defer** until further investigation. Dr. Bess seconded the motion. The motion carried.

27. Case No.: L10-PHR-RBS-2010000601

Respondent technician admitted to pharmacy manager to processing her own refills and filling them too early. She admitted that she had a problem with Tramadol.

Prior discipline: none

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.

28. Case No.: L09-PHR-RBS-2009002631

Complaint arises from a routine inspection. Pharmacy Board investigator found one technician working on an expired registration. Pharmacy Board records indicate that he was not registered for 19 months. The technician also failed to update his address with the Board office.

Prior discipline: none

Recommendation: authorize formal hearing, \$1,700 cp to PIC; \$200 cp to technician for lapsed registration and failure to update address.

Dr. Bess made the motion to **authorize a formal hearing** with a \$1,700.00 civil penalty to the PIC, a \$200.00 civil penalty the technician for a lapsed registration and failure to update their address. Dr. Kizer seconded the motion. The motion carried.

29. Case No.: L10-PHR-RBS-2010000181

Complaint arises from a routine inspection. Pharmacy Board investigator found one technician working on an expired registration. Pharmacy Board records indicate that she was not registered for 3 months.

Prior discipline: none

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

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

30. Case No.: L10-PHR-RBS-2010000191

Complainant alleges a HIPPA violation. Complainant alleges that when he went to pick up his medication, the tech asked if it was for seizures. The complainant also stated that other patients at the pharmacy also had their medication and conditions mentioned in a loud voice so that others can hear.

The pharmacist on duty replied that the reason why he was asked if the Topomax was for seizures was because it filled as Topiramate. The pharmacist stated that the complainant was given a partial fill of Topomax and was told to come back in two days when they had the rest available. Two days later, when the technician was in the process of giving the complainant the bag, she noticed that it was for Topiramate and did not see on the hard copy of the script that there was verification from the doctor for the dispensing of a generic. The pharmacist stated that this was why the question was asked because if it was an anti-epileptic medication, he would not have been able to dispense a generic without authorization. It appears that the complainant was given the medication because he demanded it.

The complainant never mentioned a misfill concerning the generic version of the drug and it is unclear if this was an anti-epileptic.

Prior discipline: none

Recommendation: dismiss

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

31. Case No.: L10-PHR-RBS-2010000201

Complainant alleges that his percocet 5/325 was filled and dispensed as 10/325.

Respondent pharmacist admitted that the misfill occurred and stated that counseling was offered for this new prescription.

Prior discipline: none

Recommendation: LoW for misfill

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

32. Case No.: L10-PHR-RBS-20100000311

Respondent technician admitted to pharmacy manager to creating fraudulent scripts and filling them so that she can give them to her children. They were not for controlled drugs.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

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

33. Case No.: L08-PHR-RBS-2008001951

Complainant Podiatrist alleges that respondent pharmacy is filling fraudulent prescriptions after being notified of the forgery. Complainant alleges that he had a blank prescription pad stolen and that respondent pharmacy is filling the scripts and then faxing verification to the office after they are filled. Complainant alleges that he informed the pharmacy of this and they still fill his scripts without checking first.

PIC responded that they did fill a script that turned out to be a forgery, but that at the time the script looked valid and that when they were contacted by the Podiatrist, they informed all staff to verify all scripts from him before dispensing.

The original prescription provided as evidence was written for Lortab 10mg #120 and written for a famous person's name that was misspelled. When the pharmacy faxed the verification to the Podiatrist, they had the correct spelling of this person's name on it and had the mg of acetomenephine on it, which the script lacked.

Prior discipline: none

Recommendation: Discuss

Dr. Bess made the motion to **defer**. Ms. McDaniel seconded the motion. The motion carried.

34. Case No.: L10-PHR-RBS-2010000221

Complainant alleges several misfills. The first time he discovered an extra bottle of medication in his bag, Viagra, which he returned. He has never had a prescription for Viagra. The second time he discovered an extra bottle of Viagra in his bag, but kept it. The third time he requested that his Lumigan be refilled and when he went home, the bag contained Timolol. When he went back to the pharmacy to return the Timolol and pick up the Lumigan, the bag contained another bottle of Viagra. He checked the bag before leaving the store and refused to keep the Viagra this time. The fourth time, the complainant dropped of a prescription for Timolol, the original prescription ran out of refills, he received only Viagra.

The PIC's response failed to address the inclusion of Viagra in the bags, although he was given a copy of the complaint. The response also stated that counseling was offered on all the prescriptions. The PIC also stated that the complainant did not have a prescription for Timolol with that pharmacy, but he did have one for dorzolamide/timolol 2-05%.

Prior discipline: none

Recommendation: LoI to PIC for counseling violation; authorize formal hearing, \$1,000 to dispensing pharmacist for counseling violation; \$1,000 to pharmacy for counseling violation; LoW for misfills

Dr. Bess made the motion to **defer**. Ms. McDaniel seconded the motion. The motion carried

35. Case No.: L10-PHR-RBS-2010000241

Complaint arises from a routine inspection. Pharmacy Board investigator found one technician working without being registered. She was certified but not registered. PIC responded that he did not know certified techs need to be registered with the BoP as well. She worked unregistered for 5 months.

Prior discipline: 2009, med error/counseling--\$1000 cp and LoW

Recommendation: authorize formal hearing, \$300 cp to PIC

Dr. Bess made the motion to **authorize a formal hearing** with a \$300.00 civil penalty to the PIC. Ms. McDaniel seconded the motion. The motion carried.

36. Case No.: L10-PHR-RBS-2010000251

Complaint arises from a routine inspection. Pharmacy Board investigator found that last DEA inventory date was performed approximately 3 years before the inspection. The PIC did present an incomplete inventory that was dated within two years of the inspection.
Prior discipline: 2009, counseling--\$1000 cp

Recommendation: LoW for improper records

Dr. Stephens made the motion to issue a **Letter of Warning** for improper record. Dr. Kizer seconded the motion. The motion carried.

37. Case No: L10-PHR-RBS-2010000711

Respondent pharmacies did not have access to the CSMD starting January 1, 2010 as required by T.C.A. 53-10-310. The bill requiring access starting January 1, 2010 was passed on May 11, 2009.

Recommendation: authorize formal hearing, \$100.00 civil penalty per store per day of no CSMD access.

Dr. Bess made the motion to **authorize a formal hearing** with \$100.00 civil penalty per store per day of no CSMD access. Ms. McDaniel seconded the motion. The motion carried.

Dr. Stephens made the motion to adjourn at 2:25 p.m. Dr. Kizer seconded the motion. The motion carried.

Ratified at the June 8, 2010 Board Meeting.