

TENNESSEE BOARD OF PHARMACY
JULY 14-15, 2010
227 FRENCH LANDING, POPLAR ROOM
NASHVILLE, TN

BOARD MEMBERS PRESENT

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

STAFF PRESENT

Kevin Eidson, Executive Director
Elizabeth Miller, Director of Health Related
Boards
Benjamin Mezer, Assistant General Counsel
Sheila Bush, Administrative Manager
Terry Grinder, Pharmacy Investigator
Tommy Chrisp, Pharmacy Investigator
Richard Hadden, Pharmacy Investigator
Joyce Ball, Administrative Law Judge

STAFF ABSENT

Ralph Staton, Pharmacy Investigator
Scott Denaburg, Pharmacy Investigator

The Tennessee Board of Pharmacy convened on Wednesday, July 14, 2010, in the Poplar Room, 227 French Landing, Nashville, TN. A quorum of the members being present, the meeting was called to order at 9:00 a. m., C.D.T., by Dr. Bettie Wilson.

Dr. Wilson welcomed Interns from Walgreens and students from the University of Tennessee and Union University. Dr. Wilson also expressed the board's gratitude to Dr. Kevin Eidson, Executive Director, Dr. David Todd Bess and Dr. Ralph Staton for their years of service to the board. Dr. Eidson is resigning his position effective July 30, 2010 and has accepted a professorship with the Lipscomb College of Pharmacy, Dr. Bess term as a board member is expiring and Dr. Staton may be retiring from the State of Tennessee due to health issues.

CONTESTED CASES

Jasmine L. Harris, D.Ph.

Dr. Harris was not present nor represented by legal counsel. Benjamin Mezer, Assistant General Counsel represented the State. Joyce Ball was the Administrative Law Judge. Mr. Mezer asked to proceed in default. After discussion, Ms. Ball stated that the Contested Case may proceed in default. Mr. Mezer passed out the Notice of Charges. Dr. Harris is being charged with creating prescriptions that were not authorized by a licensed prescriber for Hydrocodone and Tussionex and then dispensed those medications in return for approximately \$1,500.00. After discussion, Dr. Bess made a motion to revoke Dr. Harris's license. Dr. Stephens seconded the motion. The motion carried. Dr. Bess 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. Kizer seconded the motion. The motion carried.

Tosha Lynn Webb, RT

Ms. Webb was not present nor represented by legal counsel. Benjamin Mezer, Assistant General Counsel represented the State. Joyce Ball was the Administrative Law Judge. Mr. Mezer asked to proceed in default. After discussion, Ms. Ball stated that the Contested Case may be proceed in default. Mr. Mezer passed out the Notice of Charges. Ms. Webb is being charged with creating prescriptions for Hydromet and Poly-Tussin HD, scheduled III controlled substances that were dispensed from the pharmacy without authorization from a license prescriber. After discussion, Dr. Bess made the motion that based on Ms. Webb's action during March 5, 2008 through April 18, 2009 her registration is revoked. Dr. Stephens seconded the motion. The motion carried. Dr. Bess made the motion to revoked Ms. Webb's ability to renew her registration online as a pharmacy technician. Dr. Kizer seconded the motion. The motion carried. Dr. Stephens 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 and the integrity bestowed on the practice of pharmacy and drug security. Dr. Warren seconded the motion. The motion carried.

Cledius D. Bryant, RT

Mr. Bryant was not present nor represented by legal counsel. Benjamin Mezer, Assistant General Counsel represented the State. Joyce Ball was the Administrative Law Judge. Mr. Mezer asked to proceed in default. After discussion, Ms Ball stated that the Contested Case may proceed in default. Mr. Mezer passed out the Notice of Charges. Mr. Bryant is being charged with removing Viagra, Xanax, and Lortab from the pharmacy for his own personal use, without authorization from a licensed prescriber. Mr. Bryant also admitted the same to Walgreens Loss Prevention Supervisor. After discussion, Dr. Warren made the motion to revoke Mr. Bryant's registration as a pharmacy technician. Dr. Hill seconded the motion. The motion carried. Dr. Bess 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 and the action that took place places the practice of pharmacy in jeopardy. Dr. Hill seconded the motion. The motion carried.

John Clinton Sanders, RT

Mr. Sanders was not present nor represented by legal counsel. Benjamin Mezer, Assistant General Counsel represented the State. Joyce Ball was the Administrative Law Judge. Mr. Mezer asked to proceed in default. After discussion, Ms Ball stated that the Contested Case may proceed in default. Mr. Mezer passed out the Notice of Charges. Mr. Sanders is being charged with removing Hydrocodone, Alprazolam, Ambien and Phentermine from the pharmacy for his own personal use, without authorization from a licensed prescriber. Mr. Sanders also admitted the same to the CVS Loss Prevention Supervisor. After discussion, Dr. Stephens made the motion to revoke Mr. Sander's registration as a pharmacy technician. Dr. Hill seconded the motion. The motion carried. Dr. Warren a motion to accept the policy statement to indicate that action taken is to protect the health, safety and welfare of the citizens of the State of Tennessee

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and to fulfill the board's obligation to keep controlled substances secured. Dr. Hill seconded the motion. The motion carried.

Ciara Q. Robinson, RT

Ms. Robinson was not present nor represented by legal counsel. Benjamin Mezer, Assistant General Counsel represented the State. Joyce Ball was the Administrative Law Judge. Mr. Mezer asked to proceed in default. After discussion, Ms Ball stated that the Contested Case may proceed in default. Mr. Mezer passed out the Notice of Charges. Ms. Robinson is being charged with removing Xanax and Lortab from the pharmacy for personal use and resale, without authorization from a licensed prescriber. After discussion, Dr. Hill made the motion to revoke Ms. Robinson's pharmacy technician registration. Dr. Warren seconded the motion. The motion carried. Dr. Stephens made a motion to accept the policy statement to indicate that action taken is to protect the health, safety and welfare of the citizens of the State of Tennessee and the integrity of the controlled substances monitoring database of the state. Dr. Hill seconded the motion. The motion carried.

Mr. Mezer explained to the students in the audience about the process for contested cases and how a complaint is filed.

Telepharmacy

Dr. Karen Clawson of Cherokee Health Systems and Dr. Christi Granstaff of Primary Care Association appeared before the board to discuss expanding the pilot program for telepharmacy in the Federal Qualified Health Center (FQHC). Mr. Mezer directed the board to T.C.A. § 63-10-601(e) which states "The Department of Health and The Board of Pharmacy shall identify one (1) FQHC for a voluntary pilot program originating in a county located in the eastern grand division of the state in order to implement the telepharmacy provisions at no more than two (2) eligible satellite clinics as described in this section. Mr. Mezer stated that the board has statutory authority to expand the program. Dr. Eidson stated that he believed that Dr. Clawson wants to expand the program to one or two programs. Ms. McDaniel made the motion to expand the program. The motion died for a lack of a second. Dr. Granstaff stated that Cherokee Health Systems would like to expand to additional sites and for the future the Primary Care Association stand point and speaking on behalf of all the FQHC's, they are really interested in a process to expanding the program with other FQHC's that have pharmacies and satellite clinics that can participate in this program. Dr. Clawson stated that she agrees with Dr. Granstaff and that there are other FQHC's with 340B pricing that need to serve the underserved patient. Dr. Clawson stated that Cherokee Health System is opening up a satellite clinic in Blount County using the Knoxville clinic as the main pharmacy and in the future open a clinic in Englewood, which also has a great need for this service. Dr. Clawson stated that she has enough staff to handle an additional clinic and is concentrating on the clinic in Blount County. Dr. Kizer asked if they have the capability to add additional ports or if they only have one line and that other clinics would have to wait in line to speak to the pharmacists? Dr. Clawson stated that she is not sure but they

do it on the telemedicine side and she could see adding another monitor. Dr. Stephens asked if the satellite clinics have different license numbers or are they under the umbrella of the main pharmacy? Dr. Clawson stated that each satellite clinic has its own pharmacy license. After discussion, Dr. Kizer made the motion that Cherokee Health Systems be allowed to expand their program and be notified of any other expansion in writing. Dr. Warren seconded the motion. The motion carried. Dr. Granstaff asked the board if another FQHC's wants to participate in the program would they have to come before the board. Dr. Wilson stated that they would need to appear.

GENERAL DISCUSSION

Dr. Eidson asked the board to allow Mr. Mezer to speak to them concerning the Dr. Stephens question concerning the renewal process and discipline a registration and/or license that has expired. Mr. Mezer referred the board to rule 1140-1-.10(11) which states "If any person fails to renew a license, such license may be reinstated upon complying with rule 1140-1-.07 and upon the payment of the appropriate renewal fee plus a penalty fee of ten (\$10.00) for each month or fraction thereof that payment for renewal is delinquent. In the event such renewal is not procured within six (6) months from the date on which the last renewal became delinquent, the board may refuse to issue the renewal." Dr. Warren asked that within that six months period the license can renew without any problem. Dr. Stephens stated that the rule references a license and not registration and since the pharmacy technician is registered, that rule does not apply. Mr. Mezer referred the board to the 1140-1-.10(12) which states "If any person fails to renew a license or registration certificate, such license or registration certificate may be reinstated upon complying with rule 1140-1-.07 and upon the payment of the appropriate renewal fee plus a penalty fee of ten (\$10.00) for each month or fraction thereof that payment for renewal is delinquent. In the event such renewal is not procured within six (6) months from the date on which the last renewal became delinquent, the board may refuse to issue the renewal.

Surescripts-E-prescribing

Mr. Ken Whitmore, Senior Vice President of Regulatory Affairs for Surescript appeared before the board to discuss the Drug Enforcement Agency (DEA) Electronic Prescribing Controlled Substance process and what process Surescript is undertaking to comply with the new rule. The DEA rule gives the prescriber the option to transmit prescription for controlled substances electronically and allows pharmacies to receive, dispense and archive electronic prescriptions for controlled substances. The rule applies to all schedule drugs II thru V and it is one additional way that physicians can get prescription for controlled substances to the pharmacies. A major factor in the rule is the use of hard tokens and password knowledge factors for the signing process. Physicians will be required to use the hard tokens and password knowledge to access the system to keying the prescription and to transmit the prescription. The rule also requires that the physicians keep the hard tokens in their possession and not allow them to be used by other physicians or their agents that are not authorized to use them. The physician may be held liable for any negligence concerning e-prescribing controlled substances. Bess thanked Mr. Whitmore

for coming and explaining to the board what is going on with electronic prescribing of controlled substances.

Application Review

Pharmacist

Kyle Bradley Mullins, D.Ph.

Dr. Mullins is applying for licensure by examination in the State of Tennessee. Dr. Mullins answered yes to the question that asked “Have you ever been convicted of a felony or misdemeanor other than a routine traffic violation?” After discussion, Dr. Bess made the motion to approved Dr. Mullins’s application for licensure by examination once he has successfully completed all the requirements. Dr. Stephens seconded the motion. The motion carried.

Matthew Adam Hobbs, D. Ph.

Dr. Hobbs is applying for licensure by examination in the State of Tennessee. Dr. Hobbs answered yes to the question that asked “Have you ever been convicted of a felony or misdemeanor other than a routine traffic violation?” After discussion, Dr. Bess made the motion to approved Dr. Hobbs’s application for licensure by examination once he has successfully completed all the requirements. Dr. Stephens seconded the motion. The motion carried.

Samantha Renee Cunningham, D.Ph.

Dr. Cunningham is applying for licensure by score transfer in the State of Tennessee. Dr. Cunningham answered yes to the question that asked “Have you ever been convicted of a felony or misdemeanor other than a routine traffic violation?” After discussion, Dr. Bess made the motion to approved Dr. Cunningham’s application for licensure by score transfer once she has successfully completed all the requirements. Dr. Stephens seconded the motion. The motion carried.

Chad Aaron Swiney, D.Ph.

Dr. Swiney is applying for licensure by score transfer in the State of Tennessee. Dr. Swiney answered yes to the question that asked “Have you ever been convicted of a felony or misdemeanor other than a routine traffic violation?” After discussion, Dr. Bess made the motion to approved Dr. Swiney’s application for licensure by score transfer once he has successfully completed all the requirements. Dr. Stephens seconded the motion. The motion carried.

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Jared Michael Schmitz, D.Ph.

Dr. Schmitz is applying for licensure by examination in the State of Tennessee. Dr. Schmitz answered yes to the question that asked “Have you ever been convicted of a felony or misdemeanor other than a routine traffic violation?” After discussion, Dr. Bess made the motion to approved Dr. Schmitz’s application for licensure by examination once he has successfully completed all the requirements. Dr. Stephens seconded the motion. The motion carried.

Samuel Travis King, D.Ph.

Dr. King is applying for licensure by examination in the State of Tennessee. Dr. King answered yes to the question that asked “Have you ever been convicted of a felony or misdemeanor other than a routine traffic violation?” After discussion, Dr. Bess made the motion to approved Dr. Kings’s application for licensure by examination once he has successfully completed all the requirements. Dr. Stephens seconded the motion. The motion carried.

Richard Alexander Vigneault, D.Ph.

Dr. Vigneault is applying for licensure by reciprocity in the State of Tennessee. Dr. Vigneault answered yes to the questions that asked “Have you 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?” In 2001, Dr. Vigneault was applying for a license transfer to New Hampshire at the same time that the New Hampshire Board of Pharmacy was conducting an investigation of controlled substance order documentation at the correctional facility his firm was servicing. The New Hampshire Board of Pharmacy sent a letter to Dr. Vigneault asking several questions. Dr. Vigneault forwarded a copy of the letter to his employer per company policy. His firm was working on a response when shortly thereafter, he received a second letter informing him that the New Hampshire Board of Pharmacy denied his application before he had a chance to respond. Dr. Vigneault stated that the initial letter did not have a deadline for response. The investigation was referred to the US Attorney’s Office who cited incomplete data on controlled substance orders and two narcotic destructions. A settlement was reached between the US Attorney’s Office, AmerisourceBergen and Dr. Vigneault. Dr. Vigneault is currently licensed in MA, CT, ME, OH and Va. After discussion, Ms. McDaniel made the motion to approve Dr. Vigneault’s application for licensure by reciprocity once he has successfully completed the requirements. Dr. Stephens seconded the motion. The motion carried.

Michael Gallotte, D.Ph.

Dr. Gallotte is applying for licensure by reciprocity in the State of Tennessee. Dr. Gallotte 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?” In 2001, D. Gallotte had chemical dependent issues and was placed on probation by the Mississippi Board of Pharmacy for ten (10) years. He has an active Mississippi license and is still on probation. After discussion, Dr. Stephens made the motion to

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approve Dr. Gallotte's application for licensure by reciprocity once he has successfully completed all the requirements and to place his Tennessee license on probation to run concurrent with the Mississippi Board Order. Dr. Stephens also requested that the Tennessee Pharmacy Recovery Network (TPRN) works with the Mississippi Recovery Network. Dr. Hill seconded the motion. The motion carried.

Pharmacy Technicians

Donna Ford Bearden

Ms. Bearden is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Bearden 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 June 8, 2010 board meeting, Dr. Warren made the motion to defer Ms. Bearden's application for registration as a pharmacy technician until the July 14-15, 2010 meeting. Dr. Stephens seconded the motion. The motion carried.

Ms. Bearden submitted documentation showing that she has successfully paid all of her fines concerning crimes committed on May 18, 2007 and April 30, 2008. After discussion, Dr. Bess made the motion to deny Ms. Bearden's application for registration as a pharmacy technician. Dr. Hill seconded the motion. The motion carried.

Shannon Leann Halsey, RT

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

Donna Ruth Kilgore-Daly, RT

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

William Tucker Vandenberg, RT

Mr. Vandenberg is applying for registration as a pharmacy technician in the State of Tennessee. Mr. Vandenberg answered yes to the question that asked "Have you ever been convicted of a

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misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Dr. Warren made the motion to approve Mr. Vandenberg’s application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Waivers

Board Rule 1140-1-.12(3) (d)(e) and 1140-3-.14(12)

Dr. Stephens made the motion to approve the request from **Patricia A. Strickler, D.Ph.**, to be PIC at Parkwest Medical Center and Boulevard Surgery Center in Knoxville, TN and square footage of the pharmacy to be waived. Dr. Hill seconded the motion. Ms. McDaniel amended the motion to state that the square footage waived will be for the 6 x 12 foot room as requested. Dr. Stephens seconded the amended motion. The motion and the amended motion carried.

Dr. Stephens made the motion to approve the request from **John D. Bridges, D.Ph.**, to be PIC at Baptist Hospice Residential Facility and Baptist Women’s Pharmacy in Memphis, TN and square footage requirements of the pharmacy which will be approximately 100 square feet be waived. Dr. Warren seconded the motion. The motion carried.

Board Rule 1140-3-.14(12)

Dr. Bess made the motion to approve the request from **Cynthia J. Smith, D.Ph.**, to be PIC at Ocoee Professional Pharmacy and Axium Ocoee Pharmacy in Cleveland, TN. Ms. McDaniel seconded the motion. The motion carried.

Dr. Warren made the motion to request that **G. Steve LeMarr, D.Ph.**, to appear before the board to discuss his request to be PIC at Walgreens Pharmacy #11813 and at a proposed closed door compounding pharmacy. Dr. Hill seconded the motion. The motion carried.

The Board voted to defer **Ron Rahe, D.Ph.**, waiver request to be PIC at GE Pharmacy Services and EHS Pharmacy Services in Hudson, OH until Dr. Rahe can appear before the board with more information concerning the operations of both pharmacies.

Board Rule 1140-1-.07

Dr. Bess made the motion to approve **Nickie D. Greer, D.Ph.**, request to waive the internship hours and the continuing education hours due to Dr. Greer completing the Pharmacotherapy Self-Assessment Program-VII (PSAP) and presenting at the National Meeting in December 2009 but she must take the MPJE. Dr. Hill seconded the motion. The motion carried.

Consent Orders

REVOCATION

Stephen F. Davis, D.Ph.
Misty Diane Elsea, RT
Sarah Marie Birchfield, RT
Stacy Hazelwood, D.Ph.

VIOLATION OF BOARD RULE 1140-3-01(a) and (f)

Walgreens #4707-\$1000.00 civil penalty paid
Walgreens #4346-\$1000.00 civil penalty paid

PROBATION

Ronald E. Tucker, D.Ph.

REINSTATEMENT

David R. Robinson, D.Ph.

Reinstatments

Kara Watts, D.Ph.

Dr. Eidson introduced Dr. Watts to the board. Dr. Watts is requesting to have her license reinstated. Dr. Watts's license was revoked on January 21, 2010 by the board. After discussion, Dr. Bess made the motion to reinstate the license. Dr. Kizer seconded the motion. The motion carried. Dr. Watts's license will be on five (5) year probation from July 14, 2010 to July 14, 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 Bowles, 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

- (d) 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 is on 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;
- (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 applicable penalties.

Legal Report

1. Case No.: L10-PHR-RBS-2010001361

Complainant alleges that the respondent pharmacy is unethically charging patients more when they run the insurance as opposed to pay cash for the drug. Respondent replied that if the cash price is less than the co-pay, they will not run it through the insurance so that they can get the lower price. The respondent also stated that this time the pharmacist did

not realize that the prescription was cheaper if paid in cash. Before the patient left the counter, the pharmacist realized this and refunded the extra \$11.

Prior discipline: none

Recommendation: dismiss

Dr. Kizer made the motion to **accept counsel recommendation**. Dr. Warren seconded the motion. The motion carried.

2. Case No.: L10-PHR-RBS-2010001441

Complaint arises from a routine inspection. Pharmacy Board investigator found one technician working on an expired registration for 9 months another who worked for 3 months without being registered.

Prior discipline: none

Recommendation: authorize formal hearing, \$100 cp to tech for lapsed registration, \$800 cp to PIC for unregistered techs

Dr. Stephens made the motion to **authorize a formal hearing** with a \$700.00 civil penalty to the PIC for unregistered technicians. Dr. Hill seconded the motion. The motion carried.

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

Complaint was previously presented. The board authorized \$100 cp to tech for failure to update Board office of address change. After speaking to respondent and doing additional investigation, she did submit the change; it was never entered into the system on our end.

Prior discipline: none

Recommendation: dismiss

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

4. Case No.: L10-PHR-RBS-2010001191

Complainant alleges that respondent company is providing after hours medication review for hospitals and that they are not using TN licensed pharmacists. Respondent replied that they are a licensed out of state pharmacy that has a licensed PIC.

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Prior discipline: none

Recommendation: discuss

Dr. Stephens made the motion to issue a **cease and desist letter and that all pharmacists be licensed in Tennessee**. Dr. Bess seconded the motion. A roll call vote was taken. The motion carried with Dr. Warren and Ms. McDaniel voting in the negative.

Dr. Kizer made the motion to adjourn at 4:40 p.m. Dr. Stephens seconded the motion. The motion carried.

July 15, 2010

The Tennessee Board of Pharmacy convened on Thursday, July 15, 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. by Dr. Wilson, president.

Minutes

The minutes from the June 8, 2010 board meeting were presented. Ms. McDaniel made the motion to accept the minutes as presented. Dr. Warren seconded the motion. The motion carried. Dr. Hill abstained.

Reinstatement

Menyatta Foster Perkins, RT

Dr. Eidson introduced Ms. Perkins to the Board. Ms. Perkins registration as a pharmacy technician was revoked at the July 14, 2006 board meeting. Ms. Perkins admitted to taking approximately one hundred and twenty (120) tablets of Hydrocodone 10/650 from the pharmacy without a prescription from a licensed prescriber. After discussion, Dr. Kizer made the motion to allow Ms. Perkins to reinstate her pharmacy technician registration. Ms. McDaniel seconded the motion. The motion carried with Dr. Bess and Dr. Warren voting no. Dr. Warren explained to Ms. Perkins that it was going to be difficult for her to find employment as a pharmacy technician with the revocation on her record.

Raquelle Woodard, D.Ph.

Dr. Eidson introduced Dr. Woodard to the Board. Dr. Woodard is applying for licensure by reciprocity in the State of Tennessee. Dr. Woodard's Louisiana pharmacist intern license is on probation for five (5) years due to impairment. After discussion, Dr. Stephens made a motion to approve Dr. Woodard's application for licensure by reciprocity once she has completed all the requirements for licensure. Dr. Hill seconded the motion. The motion carried. Dr. Woodard's license will be placed on probation until November 18, 2014 with the same terms and condition set forth in the Louisiana order for probation with the additional 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. Sara Owen, 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;

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- (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 the duration of her probation. The Respondent shall not work as a “floater” for the duration of her probation, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

Robert Hafner, D.Ph.

Dr. Eidson introduced Dr. Hafner to the Board. Dr. Hafner is requesting to have his license reinstated. Dr. Hafner’s license was revoked on June 8, 2010 by the board. After discussion, Dr. Warren made a motion to approve Dr. Hafner request to reinstate his license under the existing consent order. Dr. Stephens seconded the motion. The motion carried. Dr. Hafner’s license will be on placed on probation for five (5) years from July 15, 2008 to July 15, 2013.

Margaret Ann Pitts, D.Ph.

Dr. Eidson introduced Dr. Pitts to the board. Dr. Pitts is requesting to have his license reinstated. Dr. Pitts license were revoked January 1999 by the board. After discussion, Dr. Warren made the motion to approve Dr. Pitts request to reinstate. Dr. Bess seconded the motion. The motion carried. Dr. Pitt’s license will be on probation for fifteen (15) years from July 15, 2010 to July 15, 2025 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. Arthur Franklin, 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;

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- (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 is on 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; 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; 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); successfully complete the NAPLEX; complete a period of pharmacy internship in Tennessee of three hundred twenty (320) hours within one hundred and eighty (180) consecutive days; and pay all cumulative license renewal fees and applicable penalties.

Board Appearance

Sigsbee Duck, Md., R.Ph.

Dr. Eidson introduced Dr. Duck to the Board. Dr. Duck submitted a request for a waiver of continuing education hours, three hundred and sixty (360) internship hours, the NAPLEX and

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MPJE needed in order to reinstate his license at the June 8, 2010 board meeting. After discussion, Dr. Warren made the motion to deny Dr. Duck's request for the waiver. Dr. Bess seconded the motion and the motion carried.

Dr. Duck requested to appear before the Board for reconsideration of the denial of his waiver request. Dr. Duck stated that he is working as a medical doctor and would like to be able to do some compounding strictly for his patients. There isn't a pharmacy close to where he works that will do compounding and he send the prescriptions to Los Angeles, CA. After discussion, Dr. Stephens made the motion to allowing Dr. Duck to reinstate his license by waiving the NAPLEX, internship hours and the continuing medical education hours must be equivalent to the continuing pharmaceutical education hours. Dr. Duck will be required to take and successfully pass the MPJE and pay seven hundred and fifty (\$750) dollars reinstatement fee. Ms. McDaniel seconded the motion. The motion carried with Dr. Warren voting no.

Chris Masters, D.Ph.

Dr. Eidson introduced Dr. Masters and Dr. Jamie Gunnells, Pharmacy Director for Elderscript, to the Board. Dr. Masters submitted a request to be PIC at Palace in Red Boiling Springs and Church Hill Health and Rehab in Church Hill, TN., at the June 8, 2010 board meeting. Ms. McDaniel made the motion to deny the request and Dr. Warren seconded the motion. The motion carried.

Dr. Gunnells stated that Elderscript has several machines in seven nursing homes in Tennessee. Elderscripts monitors the machines from the pharmacies and coordinates with Dr. Masters to have the machines restocked. Dr. Masters is the only person that restocks the machines. The machines are only used for emergencies and the restocking volume is not high. After discussion, Dr. Warren made the motion to approve Dr. Masters' request to be PIC at Palace in Red Boiling Springs and Church Hill Health and Rehab in Church Hill, TN. Dr. Kizer seconded the motion. The motion carried. Dr. Stephens recused himself. Dr. Bess had to leave and did not vote.

Vanderbilt University Medical Center

Dr. Eidson introduced Dr. Mark Sullivan, Director of Pharmacy Operations at Vanderbilt Department of Pharmacy, to the board. Dr. Sullivan is appearing before the board in reference to board rule 1140-02-.2 (5)(c) which states "Certified pharmacy technicians may also verify the contents of unit dose carts prepared by other registered technicians when an additional verification by use of bar code technology or a license health care professional is performed prior to administration to the patient." Dr. Sullivan is asking for the board to allow for the technician checking technician unit dose carts to be extended to all unit dose packaged products with a manufacturer's bar code. Vanderbilt University Medical Center has a bar code process in place to document medication administration as well as a bar code system in place to verify drug for automated dispensing cabinet refill. Mr. Mezer informed the board that this would be an interpretation of the rule not a waiver and the Board cannot waive the rule. Mr. Mezer also stated

that he believed that Dr. Sullivan was asking that the unit dose cart to equate to the accue dose. Dr. Sullivan stated that this interpretation was correct. After discussion, Dr. Warren made the motion that Vanderbilt's system meets the interpretation of the rule. The motion died for a lack of a second. Dr. Warren withdrew her original motion and made the motion that rule 1140-02-.2(5) (c) stands on its own and no interpretation is needed. Dr. Stephens seconded the motion. The motion carried with Ms. McDaniel being abstained.

Legal Report

5. Case No.: L10-PHR-RBS-2010001431

Respondent technician admitted to loss prevention to taking 4,000 Hydrocodone 10/500 from the pharmacy without authorization from a licensed prescriber. The technician sold the drugs.

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.

6. Case No.: L10-PHR-RBS-2010001581

Respondent W/M/D closed sometime before 10/22/09 and failed to notify the board office.

Prior discipline: none

Recommendation: authorize formal hearing, \$500 cp

Dr. Warren made the motion to **authorize a formal hearing** with a \$500.00 civil penalty. Dr. Kizer seconded the motion. The motion carried.

7. Case No.: L10-PHR-RBS-2010001301

Anonymous complainant alleges that the respondent pharmacy is filling prescriptions too early. Pharmacy Board investigators pulled the patient records of the named individuals and found no indication of early refills.

Prior discipline: none

Recommendation: dismiss

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

8. Case No.: L10-PHR-RBS-2010001211

Respondent technician admitted to loss prevention to taking 2 bottles of Alprazolam from the pharmacy without authorization from a licensed prescriber. The technician sold the drugs.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

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

9. Case No.: L10-PHR-RBS-2010001261

Anonymous complainant alleges that the respondent pharmacy is filling prescriptions too early. Pharmacy Board investigators pulled the patient records of the named individuals and found no indication of early refills.

Prior discipline: none

Recommendation: dismiss

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

10. Case No.: L10-PHR-RBS-2010001701

Respondent pharmacy did not have air conditioning for approximately 26 days. The pharmacy brought in two 12,000BTU air conditioning units in after the central air went out. The first one was brought in the second day, the other five days after the air went out.

Prior discipline: none

Recommendation: LoW, instructing them to make sure that all drugs have not been damaged and to make sure that they are in compliance with rule 1140-3-.10(1).

Ms. McDaniel made the motion to **dismiss** the compliant. Dr. Hill seconded the motion. The motion carried.

11. Case No.: L10-PHR-RBS-2010001401

Respondent Pharmacist admitted to drinking cough syrup with codeine while at work and without a prescription.

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.

12. Case No.: L09-PHR-RBS-2009000171

Respondent technician was arrested for being an accessory to tennicare fraud based on her processing fraudulent prescriptions for her brother. Her technician registration has since lapsed.

Prior discipline: none

Recommendation: close and flag in RBS in case she reapplies

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

13. Case No.: L10-PHR-RBS-2010001481

Complaint arises from a routine inspection. Pharmacy staff could not access the CSMD when asked by the board of pharmacy investigator.

Prior discipline: none

Recommendation: authorize formal hearing, \$50 cp to pharmacy for CSMD violation

Dr. Kizer made the motion to dismiss. Dr. Bess seconded the motion. The motion carried.

14. Case No.: L10-PHR-RBS-2010001351

Respondent technician admitted to loss prevention to taking 1,500 Hydrocodone 10/500 from the pharmacy without authorization from a licensed prescriber. The technician took the drugs for her own personal use.

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.

15. Case No.: L10-PHR-RBS-2010001411

Respondent technician admitted to loss prevention to taking Hydrocodone from the pharmacy without authorization from a licensed prescriber for personal use. The pharmacy showed a loss of 2,167 Hydrocodone 7.5/325 and 7,019 Hydrocodone 10/325.

Prior discipline: none

Recommendation: authorize formal hearing, revoke

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

16. Case No.: L10-PHR-RBS-2010001421

Respondent technician admitted to loss prevention to taking 2,500 Hydrocodone 10/500 and 2,500 Hydrocodone 10/325 from the pharmacy without authorization from a licensed prescriber. The technician gave the drugs to her husband for his 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.

17. Case No.: L07-PHR-RBS-2007080071

Complaint alleges that respondent pharmacy gave her the generic instead of the name brand.

Respondent replied they were mandated by the newly enacted substitution law and that the script provided did not meet the requirements for brand dispensing.

Prior discipline: none

Recommendation: dismiss

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

18. Case No.: L10-PHR-RBS-2010001251

Anonymous complainant alleges that the respondent pharmacy is filling prescriptions too early. Pharmacy Board investigators pulled the patient records of the named individuals and found no indication of early refills.

Prior discipline: none

Recommendation: dismiss

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

19. Case No.: L10-PHR-RBS-2010001421

Respondent technician admitted to loss prevention to taking 2,000 Hydrocodone 10/500 and 200 Lexapro 10mg from the pharmacy without authorization from a licensed prescriber. The technician sold the drugs.

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.

20. Case No.: L10-PHR-RBS-2010001611

Respondent pharmacist was disciplined by the TX board of pharmacy for dispensing an IV solution diluted with sterile water instead of normal saline as was prescribed by the physician. Respondent's license was placed on a two year probation and was fined \$1,500. Respondent self reported to the TN Board.

Prior discipline: none

Recommendation: dismiss

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

21. Case No.: L10-PHR-RBS-2010001591

Complaint arises from a routine inspection. Pharmacy Board investigator found a technician working for 41 months on an expired registration. Pharmacist on duty was unable to produce the DEA registration.

Prior discipline: 1 complaint in 1995

Recommendation: authorize formal hearing, \$3,900 cp to PIC for unregistered tech; \$200 cp for tech working on an expired registration. LoI to PIC for DEA registration violation.

Dr. Hill made the motion to **authorize a formal hearing** for \$3,900.00 civil penalty to the PIC for unregistered technician, a \$200.00 civil penalty for a technician working on an expired registration, a **Letter of Instruction** to the PIC for the DEA registration violation. Ms. McDaniel seconded the motion. The motion carried.

22. Case No.: L10-PHR-RBS-2010001601

Respondent pharmacist was disciplined by the WV board of pharmacy for a misfill. It was an input error by the tech on duty. He was fined \$500 and given a letter of reprimand. The pharmacist self reported this.

Prior discipline: none

Recommendation: dismiss

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

23. Case No.: L09-PHR-RBS-2009002331

Complaint alleges that respondent pharmacy is operating without a PIC and that the GM who is not a pharmacist makes changes to the prescriptions.

Respondent replied that they do have a PIC and that there is no way that the GM can make changes to a prescription because per their P&P, all medication orders – new and changes – must be verified by a pharmacist. A prescription label cannot even be printed until it is verified.

Board records show a PIC for this pharmacy.

Prior discipline: 2010, employed unlicensed pharmacist, still open.

Recommendation: dismiss

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

24. Case No.: L10-PHR-RBS-2010000751

Respondent pharmacy employed a pharmacist with a revoked license for 2 months.

Prior discipline: 2009, absence of pharmacist, still open.

Recommendation: dismiss

Dr. Warren made the motion to **accept counsel's recommendation** and to notify the PIC concerning the revocation. Dr. Hill seconded the motion. The motion carried.

25. Case No.: L10-PHR-RBS-2010001231

Respondent oxygen company is advertising sending oxygen into Tennessee. Pharmacy board records indicate that they do not have a license.

Prior discipline: none

Recommendation: C & D

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

26. Case No.: L10-PHR-RBS-2010001281

Anonymous complainant alleges that the respondent pharmacy is filling prescriptions too early. Pharmacy Board investigators pulled the patient records of the named individuals and found no indication of early refills.

Prior discipline: none

Recommendation: dismiss

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

27. Case No.: L10-PHR-RBS-2010000841

Complaint arises from a routine inspection. Pharmacy Board investigator found PIC working at this pharmacy for 2 years without the pharmacy reporting the change. The pharmacist on duty could not produce the Controlled substance inventory that should have been completed at the time of the PIC change.

Prior discipline: 2001, med issue, dismissed

Recommendation: authorize formal hearing; \$100 cp to pharmacy for not reporting change in PIC; LoI to PIC for not having controlled substance inventory readily available.

Dr. Hill made the motion to **authorize a formal hearing** with \$100.00 civil penalty to the pharmacy for not reporting changes in PIC and a **Letter of Instruction** for not having controlled substance inventory readily available. Dr. Warren seconded the motion. The motion carried.

28. Case No.: L10-PHR-RBS-2010001151

Complainant alleges her 5mcg prescription for Liothyronine was filled as 50mcg Liothyronine. Respondent pharmacist replied that the misfill did occur and that patient counseling was offered on this refill prescription.

Prior discipline: 2009 counseling, still open.

Recommendation: LoW to dispensing for misfill

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

29. Case No.: L10-PHR-RBS-2010001311

Anonymous complainant alleges that the respondent pharmacy is filling prescriptions too early. Pharmacy Board investigators pulled the patient records of the named individuals and found no indication of early refills.

Prior discipline: 2001, Unprofessional conduct, LoI; 2008, med error, LoW

Recommendation: dismiss

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

30. Case No.: L10-PHR-RBS-2010001291

Anonymous complainant alleges that the respondent pharmacy is filling prescriptions too early. Pharmacy Board investigators pulled the patient records of the named individuals and found that one of the 5 drugs prescribed to one of the patients listed was filled early 60 days over a 1 ½ year period.

Prior discipline: 2001, Unprofessional conduct, LoI; 2008, med error, LoW

Recommendation: authorize formal hearing, \$500 cp to each dispensing pharmacist for failure to perform a proper DUR.

Dr. Stephens made the motion to dismiss the compliant. Ms. McDaniel seconded the motion. The motion carried.

31. Case No.: L10-PHR-RBS-2010001271

Anonymous complainant alleges that the respondent pharmacy is filling prescriptions too early. Pharmacy Board investigators pulled the patient records of the named individuals and found no indication of early refills.

Prior discipline: none

Recommendation: dismiss

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

32. Case No.: L10-PHR-RBS-2010001391

Complainant alleges that respondent pharmacy is shorting him pills on his percocet prescriptions. Respondent pharmacist replied that the prescriptions in question had the quantity circled which indicates a double count by the pharmacist and therefore was highly unlikely that it was short. She, at the request of the complainant, checked the C-II safe and counted to make sure that her numbers were correct...they were.

Prior discipline: none

Recommendation: dismiss

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

33. Case No.: L10-PHR-RBS-2010001511

Anonymous complainant alleges that respondent is operating an unlicensed pharmacy because the address listed is actually a residence. Pharmacy board investigators discovered that the address listed is for the respondent's home address and it is listed as the mailing address in the Board records. The physical address is licensed as a pharmacy by the board.

Prior discipline: none

Recommendation: dismiss

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

34. Case No.: L10-PHR-RBS-2010000491

Complaint was accidentally opened based on the discipline on this pharmacist's license in MS. After the discipline, the pharmacist applied for licensure in TN and disclosed it to the board.

Prior discipline: none

Recommendation: dismiss

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

35. Case No.: L10-PHR-RBS-2010001341

Respondent technician admitted to loss prevention to taking 1,382 Hydrocodone (different strengths and brands) and 2,149 Adderall (different strengths and brands)

Prior discipline: none

Recommendation: authorize formal hearing, revoke

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

**36. Case Nos.: L10-PHR-RBS-
2010000621/2010000091/2010000071/2010000351/2010001121**

Complaints were originally presented at the last board meeting alleging that the respondents failed to update the board as to their new address or place of employment. These respondents actually updated the board but the changes were not properly entered into the system by board staff.

Prior discipline: none

Recommendation: dismiss

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

Director's Report

Dr. Eidson told the board that the office has received several questions concerning advertisement of drugs outside the pharmacy. Some chain pharmacies are advertising online and independent pharmacies would like to advertise on billboards. When the question was posed to one of the Investigator, he stated that advertising outside the pharmacy is illegal. Mr. Mezer referred the board to board rule 1140-3-.03(9) which states "Medical and prescription orders cannot be accepted, solicited, collected or advertised at a location other than a primary practice site for which a license has been issued by the board, and such pharmacy practice site shall be actively engaged in compounding and dispensing medical and prescription orders". After discussion, Ms. McDaniel made the motion that a pharmacy can advertise only the prescription price. Dr. Hill seconded the motion. The motion carried.

Dr. Eidson presented the board with a financial report of direct expenditures for fiscal year 2010 through July 7, 2010. This financial report did not show the indirect expenditures. Dr. Eidson also informed the board that he misspoke at the last meeting concerning the charges for copying, the Board of Pharmacy has it own copier and the fees charged for copying are not included with the other boards under Health Related Boards.

Dr. Eidson thanked the Board for allowing him to serve as the Executive Director of the board. Ms. Miller stated that Dr. Grinder will be in the office once a week to help out until they can hire a replacement. Ms. McDaniel asked if there as new legislation that states that the board would give their consent to hire a new executive director. Dr. Bess stated that the board did interview the potential applicants when Dr. Eidson interviewed. Dr. Wilson stated that she really liked the process and how they, the board, were able to talk to the candidates. Ms. McDaniel made the

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motion for Dr. Bess and Dr. Wilson to help with the interview process. Dr. Hill seconded the motion. The motion carried.

Ms. Miller talked to the board about attending the Council on Licensure Enforcement and Regulation Conference (CLEAR) scheduled for September 23-25, 2010. The Board voted to send the investigators at the June 8, 2010 meeting but the board members will not be attending due to conflicts with the next scheduled meeting on September 21-22, 2010.

Ms. Miller stated that since Health Related Boards is carrying out a continuing education audit every month for five (5) percent of the licenses renewed. It has been noted that the pharmacists renewing on paper are currently required to submit a listing of the accrued continuing education hours at the time of renewal but are not required to do so if renewing online. After discussion, Ms. McDaniel made the motion to delete the request/requirement for listing of continuing education hours as part of the renewal process. Dr. Warren amended the motion to include and remove the listing from the Internet. Dr. Kizer seconded the amended motion. The motion carried.

Dr. Eidson presented a request from Dr. Chhayal Scott requesting a waiver of seven (7) hours of live continuing education hours. Dr. Scott license expired December 31, 2009 and she was sent a letter dated January 7, 2010 stated that she could not renew until she submitted the additional hours. After discussion, Dr. Bess made the motion to grant a six (6) month extension for Dr. Scott to acquire and submit the seven (7) live continuing education hours or submit documentation showing internet hardship since you can obtain live hours from the internet. Ms. McDaniel seconded the motion. The motion carried.

Dr. Eidson asked the board for clarification of a campus site. Dr. Eidson has received a request on whether a facility that has a pharmacy with drugs and medication and the adjacent building handling telephone calls, administrative and regulatory procedures of the facility if both facilities need to be licensed as a pharmacy. The buildings are separated by a small drive and the buildings have two separate addresses. Dr. Bess asked if the pharmacy was considered insitutional. Dr. Eidson stated that it is a community pharmacy. Dr. Warren stated that the in 1620 building the drugs are stored and dispensed and the 1640 building is where the counseling, order entry, renewal, and verbal prescription are taken. Dr. Warren stated that this question was brought before the former executive director of the board and his opinion is that the pharmacy was campus license. Dr. Hill asked Dr. Wilson if this was a specialty pharmacy and she stated that it was. Dr. Hill asked what is the difference between a pharmacy that is licensed in Tennessee with a call center in another state? Dr. Warren stated that there is not much difference as the pharmacist in the second building do call center functions as well as enter prescriptions into the system and sign off on them and that there are technicians that accept new prescriptions. Dr. Bess stated not to call it a call center function but pharmaceutical care functions. Dr. Stephens stated that the consensus in the past by board is that they don't register as a pharmacy but licensed as pharmacist practicing pharmaceutical care. Mr. Mezer directed the board to board rule 1140-3-.03(9) which states "Medical and prescription orders cannot be accepted, solicited,

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collected or advertised at a location other than a pharmacy practice site for which a license has been issued by the board, and such pharmacy practice site shall be actively engaged in compounding and dispensing medical and prescription orders.” Dr. Warren stated that it points out the dilemma and that there are no drugs at the second building but they are taking oral prescription orders. Dr. Bess directed the board to board rule 1140-1-.01(23) which states “Pharmacy practice site” means any place within this state where prescription drugs or prescription devices are dispensed and where pharmaceutical care is provided and any place outside of the state where prescription drugs or prescription devices are dispensed and pharmaceutical care is provided to persons residing in this state.” Dr. Bess stated that it seems to him that it would be under one license in this case and considered as one practice site. Ms. McDaniel amended the motion that language would be drafted and presented to the board at the September. Dr. Kizer seconded the motion. The motion carried.

Dr. Bess stated that the Accredo issue is covered under board rule 1140-1-.01(23). Dr. Warren stated that the building is separated by a driveway and that both buildings are secured separately. Dr. Hill stated that with two different buildings with two different addresses they’re both doing pharmaceutical care. Dr. Stephens directed the board to board rule 1140-3-.02 which states “A pharmacist may compound and dispense prescription drugs and devices and related materials only in a pharmacy practice site which is duly licensed by the board and which operates in compliance with Tennessee and federal laws and rules governing the practice of pharmacy. The practice of the knowledge skills of pharmacy is not pharmacy practice site dependent. However, any person practicing any aspect of the art and science of pharmacy must be license by the board.” Mr. Mezer stated that there is no difference with in state and out of state pharmacy practice site with rule 1140-1-.01(23). Dr. Warren stated that Accredo is divided by therapies and each building handles different medical issues. Ms. McDaniel stated that the board should be using common sense and that if one company is using two different buildings then it is still under the one company. However, when you get into the technical side of things and are doing two different types of therapies in two different buildings that is two practice sites. Dr. Warren directed the board to T.C.A. §63-10-204(32) which states “Pharmacy means a location licensed by this state where drugs are compounded or dispensed under the supervision of a pharmacist, as defined in the rules of the board and where prescriptions orders are received or processed.” Building 1640 does not dispense and this was the dilemma as before. After further discussion, the board decided to table this discussion until the September 21-22, 2010 board meeting.

After discussion, Dr. Stephens made a motion to submit this particular item to the Attorney General’s office for an opinion. Ms. McDaniel seconded the motion. Mr. Mezer stated that if each board member could email him their concerns and questions for him to answer in legal form and bring it to the Board at the September meeting.

Dr. Kizer left the meeting at 3:20 p.m.

Dr. Hill made the motion to adjourn at 3:30 p.m. Dr. Warren seconded the motion. The motion carried.

Amended and ratified at the November 15-16, 2010 board meeting.