

**TENNESSEE BOARD OF PHARMACY
SEPTEMBER 22-23, 2009
227 FRENCH LANDING, POPLAR ROOM
NASHVILLE, TN
AMENDED**

BOARD MEMBERS PRESENT:

Todd Bess, President
Bettie Wilson, Vice President
Larry Hill, Member
Jason Kizer, Member
Charles Stephens, Member
Brenda Warren, Member

BOARD MEMBER ABSENT:

Joyce McDaniel

STAFF PRESENT:

Kevin K. Eidson, Executive Director
Christy Allen, Assistant Commissioner
Elizabeth Miller, Director of HRB
Ben Mezer, Assistant General Counsel
Terry Grinder, Pharmacist Investigator
Ralph Staton, Pharmacist Investigator
Tommy Chrisp, Pharmacist Investigator
Richard Hadden, Pharmacist Investigator
Sheila Bush, Administrative Manager

The Tennessee Board of Pharmacy convened on Tuesday, September 22, 2009 in the Poplar Room, 227 French Landing, Nashville, TN. A quorum of the members being present, the meeting was called to order at 9:20 a.m., C.D.T., by President Dr. Todd Bess. Dr. Bess welcomed Jason Kizer as the new board member and Ben Mezer as the new attorney for the Board. Dr. Kizer stated that he is happy to be a member of the Board.

GENERAL DISCUSSION

Dr. Bess asked Mr. Mezer about Officer Vallee's request that the board have pseudoephedrine gel caps placed on the exclusion list. Mr. Mezer informed the board that he has been in contact with Tommy Farmer of the Tennessee Bureau of Investigations (TBI) concerning the board's request. Mr. Farmer has stated that there have been increases of methamphetamine being made with gel caps. The TBI would need a letter from the board stating that the board would recommend that the pseudoephedrine gel caps be placed on the exclusion list. After discussion, Dr. Hill made the motion to have Mr. Mezer draft a letter to the TBI recommending that pseudoephedrine gel caps be placed on the exemption list. Dr. Stephens seconded the motion. The motion carried.

AGREED ORDERS

Laura Acres, RT

Ms. Acres was not present nor represented by legal counsel. Mr. Mezer, Attorney, represented the State. Ms. Acres is charged with taking Hydrocodone from the CVS Pharmacy without a prescription from an authorized prescriber. After discussion, Dr. Warren made the motion to accept the agreed order as presented. Dr. Hill seconded the motion. The motion carried. Ms. Acres's registration as a pharmacy technician will be revoked.

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Ashley Emmitt, RT

Ms. Emmitt was not present nor represented by legal counsel. Mr. Mezer, Attorney, represented the State. Ms. Emmitt is charged with attempting to pick up a prescription for Soma and Ambien from Walgreens Pharmacy #9444. After discussion, Dr. Hill made the motion to accept the agreed order as presented. Dr. Wilson seconded the motion. The motion carried. Ms. Emmitt's registration as a pharmacy technician will be revoked.

CONTESTED CASE

Patricia Leonard, RT

Ms. Leonard was not present nor represented by legal counsel. Mr. Mezer, Attorney, represented the State. Mr. Steve Darnell was the Administrative Law Judge. The state requested and was granted a non-suit in the case because Ms. Leonard submitted a signed consent order for revocation after the Notice of Charges was filed.

Teresa Markland, RT

Ms. Markland was not present nor represented by legal counsel. Mr. Mezer, Attorney, represented the State. Mr. Steve Darnell was the Administrative Law Judge. Mr. Mezer asked for a motion to proceed in default. After discussion, Dr. Stephens made the motion to proceed in default. Dr. Hill seconded the motion. The motion carried. Mr. Mezer passed out the Notice of Charges. Ms. Markland is charged with violating T.C.A. §53-10-104(a) and (b) and T.C.A. §53-10-105 (a). Ms. Markland removed Hydrocodone from the pharmacy without authorization from a licensed prescriber for approximately two (2) years. After discussion, Dr. Warren made the motion to find Ms. Markland guilty of the charges as amended. Dr. Wilson seconded the motion. Dr. Stephens made the motion to revoke Ms. Markland's registration as a pharmacy technician. Dr. Warren seconded the motion. The motion carried.

APPLICATION REVIEW

Pharmacists

Claude Thomas Tolbert Jr., D.Ph

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

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George W. Harrington, Jr., D.Ph.

Dr. Harrington is applying for licensure by reciprocity in the State of Tennessee. Dr. Harrington failed to answer 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 of pharmacy or other state authority?” Documentation submitted indicated that Dr. Harrington’s pharmacist licenses in Tennessee and Georgia had been subjected to disciplinary actions. After discussion, Dr. Warren made the motion to deny Dr. Harrington’s application for reciprocity with the option to appear before the board to ask for reconsideration. Dr. Wilson seconded the motion. The motion carried.

David L. Lubchansky, D. Ph.

Dr. Lubchansky is applying for licensure by reciprocity in the State of Tennessee. Dr. Lubchansky 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 of pharmacy or other state authority?” Dr. Lubchansky submitted documentation stating that he answered the question incorrectly and that he voluntarily did not renew his New Jersey pharmacist license. After discussion, Dr. Wilson made the motion to approve Dr. Lubchansky’s application once he has successfully completed all the requirements for licensure. Dr. Hill seconded the motion. The motion carried.

Carolyn Samantha Black, D.Ph.

Dr. Black is applying for licensure by reciprocity in the State of Tennessee. Dr. Black 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 of pharmacy or other state authority?” After discussion, Dr. Wilson made the motion to approve Dr. Black’s application once she has successfully completed all the requirements for licensure. Dr. Hill seconded the motion. The motion carried.

Godwin A. Nwaobi, D. Ph.

Dr. Nwaobi is applying for licensure by reciprocity in the State of Tennessee. Dr. Nwaobi 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 of pharmacy or other state authority?” After discussion, Dr. Hill made the motion to approve Dr. Nwaobi’s application once she has successfully completed all the requirements for licensure. Dr. Wilson seconded the motion. The motion carried.

Ryan L. McDearmon, D.Ph.

Dr. McDearmon is applying for licensure by reciprocity in the State of Tennessee. Dr. McDearmon answered yes to the question that asked “Has your pharmacist license in any Tennessee Board of Pharmacy September 22-23, 2009 Board Meeting

jurisdiction ever been revoked, suspended, restricted, terminated, or otherwise been subject to disciplinary actions (public or private) by any board of pharmacy or other state authority?” After discussion, Dr. Wilson made the motion to approve Dr. McDearmon’s application once he has successfully completed all the requirements for licensure. Dr. Hill seconded the motion. The motion carried.

Pharmacy Technicians

Leslie Weeks

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

Olivia Dale Nesbitt

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

Richard A. Peters

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

Jacqueline Patrice Brooks

Ms. Brooks is applying for registration as a pharmacy technician in the State of Tennessee. Ms. Brooks answered yes to the question that asked “Have you been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?” After discussion, Dr. Stephens made the motion to deny Ms. Brooks’s application for registration as a pharmacy technician, with the option to appear before the board to ask for reconsideration. Dr. Wilson seconded the motion. The motion carried.

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Samuel Allen Hobbs

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

James Oliver Jr.

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

Robert Lynn Cooper

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

William Eric Taylor

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

Manufacturer/Wholesaler/Distributor

X-Gen Pharmaceuticals, NY

X-Gen Pharmaceuticals, NY submitted an application for licensure as a Manufacturer/Wholesaler/Distributor and answered yes to the question “Are there any charges involving moral

turpitude or violation of pharmacy, or any other laws pending against you?" After discussion, Dr. Stephens made the motion to accept X-Gen Pharmaceuticals, NY application for Tennessee Board of Pharmacy
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Manufacturer/Wholesaler/Distributor license in the State of Tennessee. Dr. Wilson seconded the motion. The motion carried.

WAIVERS

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

Dr. Stephens made the motion to approve the request from **Mary Ann Marks, D. Ph.**, to waive the internship hours and NAPLEX needed for reinstatement. Dr. Hill seconded the motion. The motion carried.

Board rule 1140-3-.14

Dr. Wilson made the motion to deny the request from **Tammy Bailey, D. Ph.**, to be PIC for Tri-Med Pharmacy Services in Hendersonville, TN and Chattanooga, TN. Dr. Warren seconded the motion. The motion carried with Dr. Stephens abstaining. Dr. Bailey will have the option to appear before the board to ask for reconsideration.

Dr. Wilson made the motion to approve the request from **Denise Sealand, D.Ph.**, to be PIC at Metabalance Systems. Dr. Hill seconded the motion. The motion carried.

Dr. Stephens made the motion to approve the request from **Martha Bryant, D. Ph.**, that she be able to work as a pharmacist in two different pharmacies, as long as the work is consistent in both pharmacies and the work is not as a floater. Dr. Wilson seconded the motion. The motion carried. Dr. Hill recused himself.

Board rule 1140-1-.12

Dr. Hill made the motion to approve the request from **ProTech Medical Home Medical Products** to waive the square footage and the hot and cold running water rule. Hot and cold running water is next door to the pharmacy. Dr. Warren seconded the motion. The motion carried.

CONSENT ORDERS

Dr. Hill made the motion to accept the following consent orders as presented. Dr. Wilson seconded the motion. The motion carried.

VIOLATION OF BOARD RULE 1140-2-.02(1) AND (2)

Jason Lynn Duncan- fined \$400.00 paid

Tony Harrod-fined \$1,600.00 paid

Lester S. Blevins-fined \$5,000.00 paid

Audrey M. Hembree-fined \$300.00 paid
Mathew Wilson-fined \$200.00 paid

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Dr. Warren made the motion to accept the following consent orders as presented. Dr. Wilson seconded the motion. The motion carried.

VIOLATION OF BOARD RULE 1140-3-.01(1) (a) and (f)

John M Jones- fined \$500.00 paid
Wal-Mart Pharmacy #10-0724- fined \$1,000.00 paid
Blount Professional Pharmacy-fined \$1,000.00 paid
Christine Lay-fined \$500.00 paid
Sharonda L. Peete- fined \$500.00 paid
Wal-Mart Pharmacy #10-0742- fined \$1,000.00 paid
Renee Moss- fined \$500.00 paid
CVS Pharmacy #7630-fined \$1000.00 paid
Rick L Cooper-fined \$500.00 paid
Walgreens Pharmacy #3465-fined \$1000.00 paid
Walgreens Pharmacy #7407-fined \$1000.00 paid
Jeremy Paul Muzzall –fined \$500.00 paid
Leroy D. Chu-fined \$500.00 paid

Dr. Wilson made the motion to accept the following consent order as presented. Dr. Hill seconded the motion. The motion carried.

VIOLATION OF BOARD RULE 1140-1-.10(6)

DeRoyal Industries, Inc.-fine \$8,000.00 paid

Dr. Wilson made the motion to accept the following consent order as presented. Dr. Stephens seconded the motion. The motion carried.

REVOKED-VIOLATION OF BOARD RULE 1140-3-.03(2) and (3)

Morris Haddox

Dr. Wilson made the motion to accept the following consent order as presented. Dr. Hill seconded the motion. The motion carried.

INDEFINITE SUSPENSION

Ronnie L. Batchelor
Elena McKee Hines

Dr. Wilson made the motion to accept the following consent order as presented. Dr. Hill seconded the motion. The motion carried.

REVOKED-VIOLATION T.C.A. § 53-10-104(a) and (b) and T.C.A. § 53-10-105(a)

Tambi Hines

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Dr. Hill made the motion to accept the following consent order as presented. Dr. Wilson seconded the motion. The motion carried.

VIOLATED BOARD RULE 1140-2-.02(6)
Paul M. Hughey-fined \$250.00 paid

LEGAL REPORT

1. Case No.: L09-PHR-RBS-2009001521

Complainant alleges that the Respondent pharmacy misfilled son's medication by dispensing the wrong dose of the prescribed drug.

PIC responded to the complaint stating that the pharmacy staff received a faxed prescription order for 400mg Temodar. Pharmacy staff called patient's mother to schedule delivery of the drug. This was a new prescription and patient counseling was offered but refused because the patient had been on this regimen of drugs for some time. (Apparently, this was a continuation of the patient's treatment cycle and therefore, the patient's caregiver was familiar with the drug. Each new cycle is written as a new prescription.) Several hours after the patient's mother was contacted, the physician faxed a second prescription order for 380mg Temodar. This was not entered into the system until after the 400mg was shipped out. Pharmacy staff contacted the patient after it was discovered that the prescription might have been dispensed in at a higher dose than anticipated. Patient replied that his physician adjusted the dose so that he could take the drugs as dispensed.

Prior discipline: distribution of expired products...\$250 cp; med refill issue, dismissed, 9/10/08; med error, dismissed, 7/7/08; refuse to fill, dismissed, 9/07

Recommendation: Dismiss

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

2. Case No.: L09-PHR-RBS-2009000941

Complaint alleges that respondent pharmacy did not dispense the quantity of Betaseron that was prescribed by her physician, a 90 day supply.

Respondent pharmacy replied that the manufacturer changed the package size from a box of 15 blister packs (30 day supply) to a box of 14 blister packs (28 day supply).

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Respondent pharmacy stated that they sent this information to patients informing them of this change.

Prior discipline: none

Recommendation: Dismiss

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

3. Case No.: L08-PHR-RBS-2008000291

Case was presented at a former board hearing. Board authorized probation based on a DEA audit of the respondent pharmacy. Respondent's counsel provided documentation showing that at the time of the audit, respondent was in the process of acquiring the pharmacy and was not the responsible party for the inventory at that time.

Prior discipline: none

Recommendation: Dismiss

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

4. Case No.: L08-PHR-RBS-2008000201

Complainant insurance carrier alleges that many fraudulent transactions were conducted at respondent pharmacy.

PIC responded that her husband, who is also a pharmacist, entered into an agreement with his attorney. In exchange for legal services, the pharmacy would bill the attorney's insurance for medication, but cover his co-pay. When the PIC discovered this, she went back and reversed all of the billing. This was how the insurance carrier found out about the fraudulent billing. The insurance carrier has since canceled the contract.

Prior discipline: pharmacy, pharmacist, PIC—none

Recommendation: Discuss

Dr. Stephens made the motion to dismiss the complaint based on current information. If any additional information becomes available, the complaint will be brought back before the Board. Dr. Hill seconded the motion. The motion carried.

5. Case No.: L09-PHR-RBS-2009001201

Respondent is a tech who admitted to taking 5-10 Loratab from the pharmacy without a valid prescription and without authorization.

Prior discipline: none

Recommendation: Revoke

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

6. Case No.: L09-PHR-RBS-2009001711

Respondent is a pharmacist who was disciplined by the Colorado Board of Pharmacy for not reporting his discipline in Tennessee to the Colorado Board of Pharmacy.

Prior discipline: chemical impairment, 5/16/06, indefinite suspension; reinstatement, 1/30/07

Recommendation: Dismiss

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

7. Case No.: L09-PHR-RBS-2009001461

Complaint alleges TN Care fraud, unsanitary pharmacy conditions, unauthorized personnel working in the pharmacy, shortages of medicine and filling old prescriptions.

PIC responded that complainant was asked to use another pharmacy several months before the complaint was filed because of the complainant's inappropriate behavior towards the female pharmacy staff. PIC also stated that complainant was not on TN Care and therefore, TN Care fraud is not possible with this patient's medication. PIC

submitted the current licensure documentation for all pharmacy staff and denied unsanitary pharmacy conditions.

Prior discipline: none

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Recommendation: Dismiss

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

8. Case No.: L09-PHR-RBS-200900000771

Case was presented last board meeting. Unauthorized technician at pharmacy for 13 months. Board authorized \$1,100 civil penalty to PIC. In his response to the original complaint (received day of the meeting) PIC listed all techs working in the pharmacy. Two of the seven techs were not registered. One worked for 22 months without a license, another 19 months.

Prior discipline: none

Recommendation: \$4,800 Civil Penalty

Dr. Warren made the motion to authorize a formal hearing for the PIC with a civil penalty in the amount of \$4,800.00. Dr. Hills seconded the motion. The motion carried.

9. Case No.: L09-PHR-RBS-20090017771

Respondent is a tech who admitted to knowingly taking fraudulent prescriptions over the phone called in by his girlfriend posing as a nurse. She would then come in and pick up the drugs when tech was on duty so no other employee would be involved in the dispensing process.

Prior discipline: none

Recommendation: Revoke

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

10. Case No.: L08-PHR-RBS-2008002131

Complainant physician alleges that respondent pharmacist is dispensing forged prescriptions written in the complainant's name for a patient (respondent's father-in-law).

Allegedly, respondent is filling the prescriptions for hydrocodone as if they were a phone order.

Respondent admitted to this activity to his manager and was terminated.

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Prior discipline: patient counseling, \$250 cp

Recommendation: authorize formal hearing, 2 year probation and restriction on dispensing to family members and not able to be PIC for the 2 years respondent is on probation.

Dr. Warren made the motion to authorize a formal hearing with two (2) years of probation, restriction on dispensing to family members and cannot be PIC while on probation. Dr. Wilson seconded the motion. The motion carried.

11. Case No.: L09-PHR-RBS-2009001411

Complaint alleges that respondent pharmacy and pharmacist misfilled a prescription by dispensing a 100mcg Fentanyl patch when the prescription was for 12mcg Fentanyl patch.

PIC responded that the medication error did occur and was not sure if patient counseling was performed for this new prescription.

Prior discipline: none

Recommendation: Letter of Instruction to PIC. Authorize formal hearing, \$500 to the Dispensing, \$1000 to the pharmacy.

Dr. Stephens made the motion to authorize a formal hearing with a \$500.00 civil penalty to the dispensing pharmacist, a \$1000.00 civil penalty to the pharmacy and a letter of instruction to the PIC. Dr. Wilson seconded the motion. Dr. Hill made the motion to amend the motion to include a letter of warning to the dispensing pharmacist for the misfill. Dr. Wilson seconded the motion. The motion carried.

12. Case No.: L08-PHR-RBS-2008002621

Complaint alleges that respondent pharmacy's manager was suspicious and attempted to discuss payments and co-payments for complainant's mother's prescriptions (he was POA for his mother's account).

Owner responded that complainant had not paid his co-pay for the last four months and refused to pay it. It is unclear why complainant was allowed to leave the pharmacy without paying for his prescriptions for four months.

Prior discipline: none

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Recommendation: Dismiss

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

13. Case No.: L07-PHR-RBS-2007080311

Respondent pharmacist was convicted of a class D felony for obtaining hydrocodone by fraud. Respondent admitted to the loss prevention manager that respondent created prescriptions for fake patients and would pay for them and take them from the store.

Prior discipline: CII shortage, chemical impairment, med error

Recommendation: Revoke

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

14. Case No.: L09-PHR-RBS-2009000361

Complaint generated from a Medical Malpractice Payment Report. Insurance company settled claim for <\$5,000 based on a misfill with minor, temporary patient harm. Respondent replied that both respondent and a tech read the prescription as Terazosin 10mg and respondent filled it as such. The physician actually prescribed Terazosin 1mg. Respondent stated that patient counseling was offered, but refused because it was a continuation of a medicine the patient had taken before.

Prior discipline: none

Recommendation: Discuss

Dr. Hill made the motion to dismiss the complaint and refer it to the Board of Medical Examiners. Dr. Warren seconded the motion. The motion carried.

15. Case No.: L08-PHR-RBS-2008001901

Complaint alleges that respondent pharmacy filled a large number of prescriptions for controlled substances written by two physicians for out of state and out of country patients. Complaint alleges that patients carpool to the pharmacy and the complainant also raised concerns about the number of night break-ins and robberies.

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Pharmacy Board investigators went to the pharmacy and found very neat and concise recordkeeping, very detailed patient verification and tracking records, police officers on duty every hour the pharmacy is open, and no records of any break-ins or robberies.

The two physicians that are prescribing the majority of the controlled substances for the majority of the patients operate a pain clinic near by.

Prior discipline: none

Recommendation: Dismiss

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

16. Case No.: L09-PHR-RBS-2009000051

No PIC for 3 weeks

Prior discipline: none

Recommendation: authorize formal hearing, \$100 civil penalty

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

17. Case No.: L09-PHR-RBS-2009001541

Respondent is a tech who admitted to taking Hydrocodone and Clonazepam from the pharmacy without a valid prescription and without authorization.

Prior discipline: none

Recommendation: Revoke

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

18. Case No.: L09-PHR-RBS-2009001501

Complaint alleges that respondent pharmacy requested complainant's insurance card so that they could fill her daughter's prescription. Complainant and ex-husband have joint

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custody with complainant keeping the children on her insurance. When the complainant asked what the prescription was for, the pharmacy would not tell her citing HIPPA regulations and informing complainant that the ex-husband requested that the pharmacy not divulge any information. Complainant asked the pharmacy to not fill any prescriptions for her children there and the pharmacy refused, citing an ethical duty not to deny a patient service without good reason, and a custody battle was not a good reason.

Prior discipline: none

Recommendation: Dismiss

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

19. Case No.: L09-PHR-RBS-2009001681

Complaint alleges that PIC/owner of pharmacy was absent from the pharmacy when DEA agents came to the pharmacy and demanded entry. Pharmacy staff member was allowed access to the pharmacy and let the agents in.

Prior discipline: PIC and pharmacy have both surrendered their licenses

Recommendation: dismiss

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

20. Case No.: L08-PHR-RBS-2008001361

Complainant is a pediatric physician in Georgia who called in a prescription for Lortab to a TN pharmacy for a patient who was visiting TN. The pharmacy did not fill the prescription.

Pharmacy responded that the pharmacist on duty called the office of the prescribing physician to verify the prescription and the physician on call did not know the patient and did not feel comfortable with the prescription as ordered.

*Prior discipline: dispensing, license indefinitely suspended 6/9/09
Pharmacy, none*

Recommendation: Dismiss

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

21. Case No.: L09-PHR-RBS-2008001631

Complainant was dispensed Tobi nebulas on February 17, 2009. The expiration date of the drug was January 2009. Respondent admitted that the error occurred.

Prior discipline: none

Recommendation: Discuss civil penalty, \$100

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

22. Case No.: L09-PHR-RBS-2009001641

Respondent technician allegedly created false prescriptions for her husband. Director of pharmacy concluded that there were 123 unauthorized prescription refills obtained since 2006 for her husband. She was terminated for this conduct. There is no statement from the respondent.

Prior discipline: none

Recommendation: Revoke

Dr. Warren made the motion accept counsel's recommendation. Dr. Wilson seconded the motion. The motion carried.

23. Case No.: L08-PHR-RBS-2008002351

Case was presented at prior board meeting. Board authorized \$1,000 civil penalty for two unregistered techs. PIC responded that he wanted to send additional information and have the case represented to the board. PIC responded that he was not the PIC at the time

of the inspection. He was there until August and the inspection occurred in November. Recalculating the fine would bring the appropriate civil penalty to \$500. One tech worked for 2 months without being registered under the PIC's tenure, the other tech worked for 6 months. The second PIC started working in October. There was no PIC reported to the board for August and September.

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*Prior discipline: first PIC, patient counseling—closed, med error—LoW to Dph
Second PIC, none
Pharmacy, counseling violation—7/17/01*

Recommendation: first PIC, \$500; second PIC, \$200; pharmacy, \$200

Dr. Stephens made the motion to authorize a formal hearing with a \$200.00 civil penalty to the pharmacy. Dr. Wilson seconded the motion. The motion carried.

24. Case No.: L07-PHR-RBS-2007080821

Complaint alleges a medication error occurred when his prescription for 90mg Lovenox was first filled with 30mg Lovenox and then the next day filled with 100mg Lovenox.

Respondent pharmacy responded that the script was phoned in by the physician's office representative for 20mg Lovenox. Pharmacist on duty repeated the drug and strength back to the representative who verified that dosage. The complainant came in the pharmacy to pick up his prescription (after the doctor's office was closed) and was notified that the script was called in wrong and that the drug did not come in 20mg dosages, but 30mg. The pharmacist spoke with the patient and inquired if he had any paperwork from the hospital or any other documents that would clear up this issue. He did not and informed the pharmacist that he thought 20mg was the right dose. The pharmacist instructed the patient on how to administer a smaller dose and told him to come back the next day when the doctor's office was open so that the pharmacist could check again with the physician. Pharmacist spoke to the physician's office and was told that the wrong strength was called in and it was supposed to be for 90mg. Lovenox did not come in a 90mg dose but did come in a 100mg. The pharmacist instructed the patient how to give a 90mg dose and informed the patient that the full supply would not be available until the next day, but gave him a partial fill. The next day the rest of the Lovenox 100mg was delivered to the patient's house.

Prior discipline: none

Recommendation: Dismiss

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

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25. Case No.: L09-PHR-RBS-2009001531

Complainant alleges that respondent pharmacist dispensed 3 packs of Microgestin instead of the prescribed 4 packs. Complainant stated that when she discovered the error, 10 minutes later, she was told to come back to the pharmacy where she was told that the prescription was dispensed correctly and that she would have to pay to get the extra pack. She informed the pharmacist that the prescription was for 3 months, but because she was not supposed to have a menstrual cycle, the appropriate amount is 4 packs, which is what the prescription said. The pharmacist on duty (also the PIC) responded, "Did you go to pharmacy school?" Eventually she received the 4th pack and had no additional contact with the pharmacist.

Pharmacist responded that the complaint was accurate and she did say, "did you go to pharmacy school" to the patient. The pharmacist also stated that she "exhibits professional behavior at all times to my customers, colleagues, and ancillary staff."

Prior discipline: none

Recommendation: Letter of Warning

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

26. Case No.: L09-PHR-RBS-2009001581

Respondent failed to maintain TPRN advocacy by failing a urine drug screen.

Prior discipline: chemical dependency—revocation, then reinstatement. Relapse—revocation than reinstatement.

Recommendation: Revoke

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

27. Case No.: L08-PHR-RBS-2008001111

Complaint received from the National Practitioner Data Bank. Patient received 1/3 of the strength of the correct medication which caused a delay in the treatment of his Hepatitis C. The patient was awarded a \$2,000.00 settlement.

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Respondent responded that he was working for a staffing agency that day and stated that the prescription was already entered into the system and he checked the ndc and quantity and filled it as it was entered. He performed patient counseling.

Prior discipline: none

Recommendation: Letter of warning for misfill

Dr. Hill made the motion to issue a Letter of Warning for the misfill to the pharmacist that entered the prescription in the system. Dr. Warren seconded the motion. The motion carried.

28. Case No.: L09-PHR-RBS-2009001161

Respondent technician tested positive for Hydrocodone and was terminated. He did not admit to taking any from the pharmacy but told loss prevention that he fell down the stairs and took some of his father's Hydrocodone. The pharmacy did have a shortage of Hydrocodone, but there was no proof that the Respondent took the drugs. Loss prevention had no other details to add.

Prior discipline: none

Recommendation: Letter of Warning—federal law prohibits transfer of this medication to anyone other than whom it was prescribed.

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

29. Case No.: L08-PHR-RBS-2008001051

Complainant alleges that she was dispensed a prescription that was not hers and that the pharmacy would not fill a C-II prescription for her.

Respondent stated that the bagging error did occur and that he was the one who visually verified it. Respondent stated that he was not there when the prescription was dispensed.

It is not clear if patient counseling was performed as the complainant did not provide the date of the actual dispensing, nor did she indicate if it was a new or refill prescription.

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As for the C-II issue, he stated that the prescription “lacked the pertinent information for legitimacy and did not appear to be written by someone who was knowledgeable about what is required on a C-II prescription.”

Prior discipline: Dispensing: License requirement, 7/17/01, closed; record keeping, 3/29/95, closed; medication error, 11/15/94, closed.

Recommendation: Dismiss as to the refusal to fill the C-II, Letter of warning for the bagging error.

Dr. Warren made the motion to accept counsel’s recommendation. Dr. Wilson seconded the motion. The motion carried.

30. Case No.: L09-PHR-RBS-2009001551

Respondent technician admitted to creating prescriptions for herself for Phentermine 37.5mg. She would pay for them. She stated that she did not have the money for the co-pay to see the doctor and was having a very hard time with her self-esteem and managing her weight.

Prior discipline: none

Recommendation: Discuss

Dr. Hill made the motion to authorize a formal hearing to revoke the respondent’s registration. Dr. Kizer seconded the motion. The motion carried.

31. Case No.: L05-PHR-RBS-2005018121

Respondent technician was arrested in 2005 and plead guilty to simple possession of controlled substances (medications without prescriptions). He was licensed as a technician but let his registration expire so the case was closed. He has now reapplied. On his application he did not mark the box that indicated that he has been convicted of a misdemeanor.

Prior discipline: none

Recommendation: Discuss

Dr. Stephens made the motion to deny respondent's application for registration. Dr. Warren seconded the motion. The motion carried.

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32. Case No.: L09-PHR-RBS-2009000381

Complainant suffered a severe allergic reaction to her Prevpac compliance pack. Complainant alleges that she told the pharmacist at the time that she was allergic to penicillin, and that the pharmacist told her that it was ok to take the drug anyway; therefore it is assumed that counseling (albeit bad counseling) did occur. Subsequent lawsuit revealed that the alleged dispensing pharmacist who performed counseling was not actually there at the time of dispensing. A photocopy of the medication shows that one pharmacist was involved in all aspects of the process as evident by her initials appearing four times on the label. The label also listed that the patient was allergic to penicillin.

Prior discipline: none

Recommendation: Letter of Warning

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

33. Case No.: L09-PHR-RBS-2009001421

Complaint arises from a routine inspection. Pharmacy Board investigator observed a technician working who was not registered. Records indicate that she was not registered for four months.

*Prior discipline: Pharmacy, Rx authorization, still open;
PIC, Rx authorization, still open; unprofessional conduct, dismissed*

Recommendation: authorize formal hearing, \$200 civil penalty to PIC

Dr. Stephens made the motion to authorize a formal hearing with a \$200.00 civil penalty to the PIC. Dr. Wilson seconded the motion. The motion carried.

34. Case No.: L09-PHR-RBS-2009001591

In 2006, Respondent pled guilty to Vehicular Homicide by intoxication and Vehicular Assault, a Class B and Class D Felony, respectively. At the August 29, 2006 Board meeting, the Board voted to revoke her license. She served only 9 months of her 12

month sentence because of good behavior. It is unclear why her license was never disciplined, but she currently holds an active license that was actually renewed in March of this year.

Prior discipline: none

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Recommendation: Discuss

The Board decided to defer until the next meeting.

35. Case No.: L08-PHR-RBS-2008001911

The Board office received notice that Respondent was sued for a medication error. The case was settled for \$450,000. The case was presented at the November Board meeting. The Board requested additional information. The Respondent provided a copy of the original prescription, which was for Diltiazem 30mg. The patient had been prescribed and dispensed 30mg strength each month for the year preceding the misfill. The patient was actually dispensed Diltiazem 300mg. The patient consumed the incorrect medication for several days which caused the patient's heart to go into atrial fibrillation. This atrial fibrillation caused the patient to have a stroke which ultimately led to her death 10 months later.

Prior discipline: medication error, 11/16/2004, dismissed

Recommendation: Letter of Warning

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

36. Case No.: L09-PHR-RBS-2009001611

Pharmacy Board office received complaint from another state agency alleging improper recordkeeping.

Respondent replied that the Rx in question was written for 60 Propoxyphene and they ran it for 60 and it was labeled as 60. Before the dispensing, either the patient or the insurance requested that the quantity be 20. It was changed in the respondent pharmacy's computer system and dispensed as 20. The label on the bottle was never corrected to show 20 Propoxyphene was actually dispensed.

Prior discipline: unprofessional conduct, 1/28/07, dismissed

Recommendation: dismiss

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

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37. Case No.: L09-PHR-RBS-2009001721

Pharmacy Board investigators observed patients leaving pharmacy without any offer for counseling. Dispensing pharmacist acknowledged that the violation occurred and wrote a letter stating that it will not happen again.

*Prior discipline: PIC: 2009, unprofessional conduct/no DUR performed, \$500 cp
Dispensing: none*

Recommendation: Authorize formal hearing; \$500 civil penalty to dispensing, \$1,000 to pharmacy, Letter of Warning to PIC

Dr. Warren made the motion to authorize a formal hearing with \$500.00 civil penalty to the dispensing pharmacist, \$1000.00 to the pharmacy and a Letter of Warning to the PIC. Dr. Hill seconded the motion. The motion carried.

38. Case No.: L09-PHR-RBS-2009000641

Complaint alleges that Respondent pharmacist misfilled his prescription for Polysporin Ophthal Ointment with generic OTC topical antibiotic ointment. Patient applied the antibiotic ointment to his eyes, but did not suffer any adverse reaction.

Respondent replied that he was the dispensing pharmacist and that patient counseling was not performed.

Prior discipline: 1/18/05, med error, L.O.W.; 1/30/07, customer service, dismiss

Recommendation: Authorize formal hearing; \$500 civil penalty to dispensing, \$1,000 to pharmacy, Letter of Warning to PIC

Dr. Warren made the motion to authorize a formal hearing with a \$500.00 civil penalty to the dispensing pharmacist, a \$1000.00 civil penalty to the pharmacy and a Letter of Warning to the PIC. Dr. Kizer seconded the motion. The motion carried.

39. Case No.: L09-PHR-RBS-2009001561

After respondent technician left her employment, pharmacy audits revealed significant shortages of Hydrocodone. There is no evidence to prove that the respondent took the drugs and since then, the pharmacy has installed cameras and there have been no shortages since.

Prior discipline: none

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Recommendation: Dismiss

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

40. Case No.: L09-PHR-RBS-2009001601

Respondent admitted to TPRN Advocate that he took Hydrocodone without a prescription and that he was turning himself in.

Prior discipline: chemical dependency, re-instated 5/16/06; relapsed, dismissed 7/15/09

Recommendation: Authorize formal hearing, Revocation

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

41. Case No.: L09-PHR-RBS-2009001451

Complaint arises from a periodic inspection of respondent drug store. Pharmacy Board investigator observed several patients pick up prescriptions without an offer for counseling.

*Prior discipline: PIC, none
dispensing, unlicensed activity, 5/17/05, L.O.I.*

Recommendation: Authorize formal hearing; \$500 civil penalty for both dispensing pharmacists, \$1,000 civil penalty for the pharmacy, L.O.W. to PIC

Dr. Hill made the motion to authorize a formal hearing with a \$500.00 civil penalty to both dispensing pharmacists, a \$1000.00 civil penalty for the pharmacy and a Letter of Warning to the PIC. Dr. Wilson seconded the motion. The motion carried.

42. Case No.: L09-PHR-RBS-2009001571

Respondent technician admitted to loss prevention that she took Hydrocodone from the pharmacy and took them while on the job.

Prior discipline: none

Recommendation: Revocation

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

43. Case No.: L09-PHR-RBS-2009001601

Complainant alleges that when she transferred her prescriptions from one pharmacy to the respondent pharmacy, the respondent pharmacy did not inform her that her medication was not in stock and would not be for 4 more days. When complainant called the respondent pharmacy to pick up her prescription, she was told it was not in stock. Complainant then called her first pharmacy and requested that her prescription be transferred back to the original pharmacy, but allegedly, respondent pharmacy told original pharmacy that there were no refills left. Complainant went to respondent pharmacy where she was told that there were 4 refills left on her prescription and they did not know why she was not told the medications were not available nor did they know why they told her original pharmacy that there were no refills left.

Respondent pharmacy replied that there was a communication problem in their pharmacy and that they will address this problem with their staff.

Prior discipline: none

Recommendation: letter of warning

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

44. Case No.: L07-PHR-RBS-2007055651

Complainant, who is the PIC at a chain pharmacy, alleges that the corporate office has not provided him with adequate staff, nor have they allowed him to hire more.

Corporate responded that they have added staff pharmacists and technicians and that in the two years since the complaint was filed, the complainant has not had anymore complaints, mainly because they now have adequate staff at his store.

Prior discipline: none

Recommendation: Dismiss

Dr. Hill made the motion to dismiss the complaint. Dr. Wilson seconded the motion. The motion carried.

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45. Case No.: L09-PHR-RBS-2009000421

Complainant dentist alleges that respondent pharmacy filled a Vicodin Rx for patient "RT" nine (9) times at 120 tablets each before it was determined that the Rxs were forged. The forged Rxs were called in by women who stated that they were the complainant's nurses. There was no verification or call to the complainant to verify the Rxs.

The pharmacy's Rx profile for this patient shows that the first Rx was for 12 Vicodin and then each refill after was for 120. The profile shows that 120 were filled each month for 8 months.

Prior discipline: PIC, misfill, 2008, LOW; Pharmacy, none;

Recommendation: Letter of Warning

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

46. Case No.: L09-PHR-RBS-2007080091

Complaint alleges that when she went to respondent pharmacy to pick up her medication, it was discovered that it was dispensed to another patient. The pharmacy allegedly called the patient who received the complainant's medication and asked them to come back to the pharmacy and bring the medication. When the patient brought back the medication, the pharmacy staff allegedly handed the complainant the bag with the returned medication in it. Complainant voiced her concern and the staff verified the medication dosage and quantity and gave it to the complainant. The complainant went home and then returned to the pharmacy to demand new, non-returned medication.

PIC responded that this was not the usual practice and that she will go over the proper procedures with her staff.

Prior discipline: PIC, med shortage, dismissed, 10/6/06

Recommendation: Letter of Warning

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

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47. Case No.: L09-PHR-RBS-2009001511

Complaint alleges that her prescription for Methylpred 4mg was misfilled. Complainant alleges that her prescription was for Methylpred 4mg with the instructions, "take one tablet twice a day until gone, 8 tablets total. (32mg)"

Respondent stated that the complainant had 6 prescriptions to pick up and that he counseled her on the others, but not the Methylpred because he thought that the instructions were clear. The faxed prescription showed that the dentist prescribed Methylprednisolone 32mg D.T.D. 8 (eight) tabs. Sig: take 1 Tab BID till all are taken. The prescription that was dispensed was Methylpred 4mg, take 8 tablets (32mg) by mouth twice daily until gone.

Prior discipline: none

Recommendation: authorize formal hearing, \$500 civil penalty to dispensing; \$1,000 to the pharmacy; Letter of Warning to the PIC

Dr. Warren made the motion to authorize a formal hearing with a \$500.00 civil penalty to the dispensing pharmacist, a \$1000.00 civil penalty to the pharmacy, a Letter of Instruction to the PIC and a Letter of Warning to the dispensing pharmacist. Dr. Kizer seconded the motion. The motion carried.

48. Case No.: L09-PHR-RBS-2009001491

Complaint alleges that Respondent pharmacist refused to fill her full prescription as written. The complainant alleges that her usual prescription was for Premarin 1.25mg, 90 tabs, but she was only dispensed 30 tabs.

Respondent pharmacist stated that the prescription was faxed in to the pharmacy with the 90 scratched out and 30 written in its place with a note stating that it was time for the patient's yearly checkup. When the patient noticed that she was only given 30 tabs, she called the pharmacy to inquire why. Between the time she picked up the medication and when she called, the physician faxed in another prescription for 90 tabs. The complainant wanted to bring back her 30 day supply to get the 90 one because she thought that would be cheaper. The pharmacist told her that it would not make a difference monetarily and

that they were not allowed to take back medication after it has left the pharmacy. The complainant was not happy with that response.

Prior discipline: both pharmacy and PIC, patient counseling, 5/8/08, \$1,000 pharmacy, LOI to PIC

Recommendation: dismiss

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

49. Case No.: L09-PHR-RBS-2009000581

Complaint alleges that the Respondent misfilled a prescription for Imitrex 25mg with Imitrex 100mg and that the patient, her child, consumed two pills of the incorrect strength. The patient went to the ER as a precaution and there is no evidence of any patient harm because of this misfill.

Respondent pharmacist stated that it was a new prescription and she does not remember if counseling was performed.

Prior discipline: none

Recommendation: authorize formal hearing, \$500 to dispensing, \$1,000 to pharmacy, LOI to PIC

Dr. Stephens made the motion to authorize a formal hearing with a \$500.00 civil penalty to the dispensing pharmacist, a \$1000.00 civil penalty to the pharmacy and a Letter of Instruction to the PIC and Letter of Warning the dispensing pharmacist for the misfill. Dr. Wilson seconded the motion. The motion carried.

50. Case No.: L09-PHR-RBS-2009001571

Complainant alleges that his wife's prescription for needles for insulin were not in stock and he had to purchase the short ones in place of the long ones she was prescribed. Complainant also alleges that his medication for blood pressure was short by 15 pills.

Respondent pharmacist stated that he does not remember with specificity the event in question, but he would never instruct a patient to use a short needle in place of a standard needle, especially if the patient said that it was inadequate for proper insulin delivery. Respondent also stated that if the needles were being ran on insurance, a new prescription would have been required in order for a substitution. Respondent also stated that there were many other pharmacies in the area and that since complainant purchased the shorter needles it appears that no prescription was needed and he could have gone to other pharmacies to pick them up.

Prior discipline: none

Recommendation: Dismiss

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

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51. Case No.: L09-PHR-RBS-2009001441

Complainant is PIC and is informing the Board of a possible lawsuit arising out of a misfill. She stated that a misfill occurred when the patient was dispensed Lithium 450mg instead of her prescription for Theophylline 450mg. The PIC stated that although the patient had been taking Theophylline for years, she took the Lithium even though it was a different color and shape pill. When the patient finally went to the hospital, her Lithium levels were within the therapeutic range and she was discharged after a 3 day stay. Counseling was offered.

Prior discipline: pharmacy, med error, 3/14/01, LOW; pharmacist, none

Recommendation: Letter of Warning to dispensing

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

Dr. Kizer made the motion to adjourn at 4:15 p.m. Dr. Hill seconded the motion. The motion carried.

SEPTEMBER 23, 2009

The Tennessee Board of Pharmacy convened on Wednesday, September 23, 2009 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 President Dr. Todd Bess. Dr. Kizer was absent.

GENERAL DISCUSSION

Ms. Christy Allen, Assistant Commissioner and Ms. Elizabeth Miller, Director of Health Related Boards addressed the board concerning the State of Tennessee's travel policy. Each board member had a copy of the Financial Management Policy Memorandum issued by M. D. Goetz, Jr., Commissioner of Finance and Administration, dated July 31, 2009.

Ms. Allen stated that it has become clear to her and Ms. Miller, that there may be some confusion about the travel policy. Ms. Allen referred the board to section for "Out of State Travel" and stated that travel out of state is permitted only in emergency or mandatory situations. The criteria that must be taken into consideration are " (a) Travel required to deliver programs services, utilizing the minimum number of employees required; (b) Travel required to comply with statutory, judicial, federal program, and contractual obligations, utilizing the minimum Tennessee Board of Pharmacy
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number of employees required; and (c) Travel for industrial recruitment, economic development, and tourist development activities of the Department of Economic and Community Development, Department of Agriculture, and Department of Tourist Development. These agencies should utilize the minimum number of employees required for the missions and should conduct these activities as economically as possible."

Ms. Allen and Ms. Miller will consider the justifications submitted with an application for travel using "(b) travel required to comply with statutory, judicial, federal program and contractual obligations, utilizing the minimum number of employees required." Ms. Allen stated that using option (b) is where they have had some success in getting travel approved. Ms. Allen wanted the Board to know that there have been some significant challenges in receiving approval for travel. Ms. Allen gave as an example a meeting sponsored by NABP. They would argue that it complies with the board's statutory obligation. Dr. Bess asked about the upcoming 2010 eight city tour to educate pharmacists on the current rules and regulations. Ms. Allen stated that she would argue that it would fall under the board's statutory obligation but would need a justification. Dr. Warren asked if there was anything that they could do to help and that she is not really concerned about the board members traveling as much as she is about the executive director being allowed to travel. Ms. Allen stated that one of the things that she would recommend is that if they know when travel is needed, to discuss and submit information in sufficient time. Dr. Stephens asked if what would happen if he needed Dr. Eidson to go to a conference with him but not at the board's expense. Ms. Allen stated that it would still require a travel request and justification, if they are representing the board. If they are not representing the board, Dr. Eidson would still need to submit a request for time off.

Ms. Miller stated that in order to prepare for the justification, she can an hour or so, looking at the statute, the rules and the program to find the right information to prepare the justification. Dr. Warren asked if it would helpful if the board prepared the justification and submitted it to Ms. Miller so that it could cut down on the time that it takes for Ms. Miller to write the justification. Ms. Miller stated that would be helpful but that she would still have to prepare a document that is acceptable to Ms. Allen in that it shows how the request falls under the board's statutory obligations.

Dr. Hill asked if they would have to submit a different request for each of the cities in which the 2010 eight city tour would occur. Dr. Warren stated that most of them will be on weekends, but wanted to know how that would work since Dr. Eidson would not be using state time. Ms. Allen stated that since he is an employee with the State of Tennessee and approved to represent the board, he would have to submit a request. Ms. Allen stated that if the board submits the request

citing the statutory obligations along with a list of the cities and dates for the tour then she would not have a problem approving it.

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REINSTATEMENT

James Don Wilson, D. Ph.

Dr. Eidson introduced Dr. Wilson to the Board. Dr. Wilson is requesting to have his license reinstated. Dr. Wilson's license was suspended on June 26, 2004. Dr. Wilson was convicted of submitting fraudulent prescriptions to the insurance company for reimbursement. After discussion, the Board asked that Dr. Wilson's request for reinstatement be deferred until the November 2009 meeting. Dr. Wilson must submit court documents to Mr. Mezer, Attorney or Dr. Eidson.

Elena Hines, D. Ph.

Dr. Eidson introduced Dr. Hines to the Board. Dr. Hines is requesting to have her license reinstated. Dr. Hines's license was suspended on July 17, 2009. After discussion, Dr. Wilson made a motion to reinstate Dr. Hines's license. Dr. Hill seconded the motion. The motion carried. Dr. Hines's license will be on probation for five (5) years beginning September 23, 2009 until September 23, 2014 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 allowed to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Jo Korivi, The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from the physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;

- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the

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- (g) 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 nor work the night shift 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 education, and pay all cumulative license renewal fees and any applicable penalties;

Wesley Ball, D. Ph.

Dr. Eidson introduced Dr. Ball to the Board. Dr. Ball is requesting to have his license reinstated. Dr. Ball's license was suspended on March 12, 2009. After discussion, Dr. Hill made a motion to reinstate Dr. Ball's license. Dr. Wilson seconded the motion. The motion carried. Dr. Ball's license will be on probation for five (5) years beginning September 23, 2009 until September 23, 2014 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 allowed to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Faddy Tohme. 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 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
- (i) 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 education, and pay all cumulative license renewal fees and any applicable penalties;

Kevin Brown, D.Ph.

Dr. Eidson introduced Dr. Brown to the Board. Dr. Brown is requesting to have his license reinstated. Dr. Brown's license was suspended on June 9, 2009. After discussion, Dr. Stephens made a motion to reinstate Dr. Brown's license. Dr. Hill seconded the motion. The motion carried. Dr. Brown's license will be on probation for five (5) years beginning September 23, 2009 until September 23, 2014 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);

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- (b) The Respondent shall be allowed to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Barrington Nash. The Respondent shall immediately notify the Board office of the name of his primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from the physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have the valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all terms and conditions of the extended aftercare contract he entered into with Tennessee Pharmacist Recovery Network (TPRN). Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause; The Respondent shall not work as a

“floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

- (i) The Respondent shall provide written notice requesting an active license, satisfy all past due continuing education, and pay all cumulative license renewal fees and any applicable penalties;

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APPLICATION REVIEW

Dr. Eidson presented Nikhilkumar Patel’s application for licensure as a pharmacist by reciprocity from the state of Michigan. Dr. Patel was not present but Dr. Cliff Weiss spoke on his behalf. Dr. Patel’s application was submitted on June 6, 2008, but he had not received certification from Foreign Pharmacist Graduate Examination Committee (FPGEC) which includes the Test of Spoken English (TSE) and Test of English as a Foreign Language (TOEFL). His application expired on April 9, 2009. According to Board rule 1140-1-.05(4) which states “In addition to paragraph (1) of this rule, a pharmacy foreign graduate shall successfully complete the foreign pharmacy equivalency examination, the Test of Spoken English (TSE) examination and any other requirements established by NABP”. The Michigan Board of Pharmacy does not require certification from FPGEC. After discussion, Dr. Stephens made the motion to approve Dr. Patel’s application as a pharmacist by reciprocity and stated that Dr. Patel must take and pass the MPJE. Dr. Hill seconded the motion. The motion carried.

ORDER MODIFICATION

John N. Phillips, D. Ph.

Dr. Eidson introduced Dr. Phillips to the board. Dr. Paul Shaver, director of Behavioral Professional Services was also present. Dr. Phillips is requesting that the board allow him to be PIC and to be a floater with Behavioral Professional Services of West TN. Dr. Phillips’ license is currently on probation for ten (10) years effective November 2007 and his consent order states that he cannot be PIC or a floater for three (3) years. After discussion, Dr. Hill made the motion to allow Dr. Phillips to be PIC and a floater only within the Behavioral Professional Services umbrella. Dr. Wilson seconded the motion. The motion carried.

GENERAL DISCUSSION

Dr. Warren made the motion to recommend that Dr. Eidson be allowed to attend all of the 2010 eight city tour to educate and update pharmacists concerning the rules and regulations that is required of the board through the statutory obligations. Dr. Hill seconded the motion. The motion carried. Dr. Eidson and Mr. Mezer will work toward getting the proper justification submitted to Ms. Miller and Ms. Allen.

Dr. Warren asked about the newsletter and Mr. Mezer stated that Alison Cleaves and the NABP attorneys have been able to come to an agreement concerning the newsletter.

RULES

Mr. Mezer presented the board with a copy of the drafted rules. After discussion, Dr. Hill made the motion to defer the rules until further research concerning criminal background check for the Tennessee Board of Pharmacy
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practice site, pharmacy, and manufacturer/wholesaler/distributor licenses. Dr. Wilson seconded the motion. The motion carried. Dr. Eidson stated that he would help with the research.

Dr. Bateenea Black, Executive Director for the Tennessee Pharmacists Recovery Network, stated that ACPE has new rules concerning the number of hours a continuing education course will be scheduled. For a pharmacist to receive eight (8) hour credit for attending a ACPE sponsored course, the course must be scheduled for nine and half (9 ½) hours to be able to include breaks and a lunch if needed. Dr. Black stated that it has become increasing difficult to find and receive continuing education that is ACPE approved.

DIRECTORS REPORT

Dr. Eidson introduced Susan Del Monco, D. Ph. Director of Regulatory Compliance for CVS Carmark and Stacy Inman D. Ph., Clinical Manager of Professional Services for CVS Caremark. Dr. Del Monco and Dr. Inman are to here to answer additional questions that the board has concerning the business model for CVS Caremark call center. Dr. Inman stated that the call center is set to go live December 1, 2009 with 25 pharmacists and 40 national certified pharmacy technicians. The call center will service CVS Caremark stores in Rhode Island and Massachusetts. By the middle of January 2010, the call center will have approximately 125 agents, 100 national certified pharmacy technicians and 25 pharmacists and serving 100 stores in Rhode Island and Massachusetts. CVS Caremark has petition and been approved by 11 other Board of Pharmacy's and 3 that are pending.

Dr. Inman stated that one of the concerns was that the non resident pharmacy be licensed along with the pharmacist in charge (PIC). Some of the other states that CVS Caremark has approached for approval only require that the call center be listed as a non resident pharmacy and do not require that the PIC be licensed in their state. Only the Virginia Board of Pharmacy has required that the PIC be licensed in Virginia. If the call center is registered in Tennessee as a pharmacy then the board's rules required that the PIC be licensed in Tennessee. The call center in Rhode Island will be licensed as a pharmacy and it will have a limited formulary but they will not be dispensing to Tennessee.

The Board's other concern is whether the all the pharmacy technicians need to be registered in Tennessee. Dr. Warren made the motion to license the CVS Caremark call center as a non resident pharmacy, requiring the PIC to be licensed in Tennessee. Dr. Wilson seconded the motion. After discussion, the motion was denied. The main issues are if the Rhode Island call

center needs to be licensed as a non resident pharmacy and if CVS Caremark decides to establish a call center in the State of Tennessee, will this call center be licensed as a pharmacy. Dr. Bess also wanted to know how the DEA handles prescriptions for controlled substances keyed in the computer system through a call center. How is it regulated if it is a misfil or results in death. Dr. Stephens made the motion to defer this discussion until the next board meeting and to allow Mr. Mezer and CVS Caremark to discuss and research the issues presented so that the Board will have a legal opinion to answer the questions discussed. Dr. Wilson seconded the motion. The motion carried.

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Dr. Warren presented to the board the 2009 summary of the National Association of Pharmacy Boards (NABP) survey of each state member's rules and laws.

Dr. Bess stated that other pharmacists in Tennessee feel as though the mail order pharmacies and non resident pharmacies are not regulated as much as community pharmacies. He also stated that with the budget crisis in Tennessee, the investigators cannot go to the out of state pharmacies to do an inspection. Dr. Warren asked if the investigators will be allowed to inspect the call center if it is not listed as a pharmacy but the PIC and pharmacy technicians are licensed in the state. Dr. Eidson stated that if the board would put these questions in an email to him, then he and Mr. Mezer would work towards getting the answers for the board at the next scheduled meeting.

Dr. Stephens made a motion that the board submit a request to the Assistant Commissioner for a detailed financial report comparing allocation between all the boards under Health Related Boards for the 2008-2009 fiscal year. Dr. Hill seconded the motion. The motion carried.

Dr. Eidson announced that he had received an email that a former board member, George Fred Miller, has died. He was the Executive Director of the Board of Pharmacy from August 16, 1975 until June 30, 1976.

Dr. Eidson stated that he has been getting a lot of question from long term care pharmacists concerning what constitutes an electronic signature. Dr. Stephens stated that some facilities have their own computer system and that the physician would give the order to the nurse which is then keyed into the system. The physician would then review the order and add the electronic signature if correct. The physicians have a code to key into the system in order to sign and review the order. Dr. Stephens asked what a pharmacist's must have to constitute a medication order. Mr. Mezer stated that he would research it and get back to the board.

Dr. Eidson asked the board for permission to allow Walter Philpot to attend the Alliance of States with Prescription Monitoring Programs 2009 Annual Meeting in San Diego, CA on October 19 – 20, 2009. The estimated cost will be \$926.00.

The Board discussed the upcoming MALTGON meeting scheduled for October 18-21, 2009 in Nashville, TN. Dr. Hill made a motion to approve Mr. Mezer and Dr. Eidson to represent the board at the MALTGON meeting. Dr. Stephens seconded the motion. The motion carried.

Dr. Stephens made the motion to adjourn at 6:50 p.m. Dr. Hill seconded the motion. The motion carried.

Minutes amended and ratified at the March 24-25, 2010 meeting.