

**TENNESSEE BOARD OF PHARMACY
NOVEMBER 5-6, 2009
227 FRENCH LANDING, POPULAR ROOM
NASHVILLE, TN**

BOARD MEMBERS PRESENT:

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

STAFF PRESENT:

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

MEMBER ABSENT:

Brenda Warren, D.Ph.

The Tennessee Board of Pharmacy convened on Thursday, November 5, 2009 in the Poplar Room, 227 French Landing, Nashville, TN. A quorum of the members being present, the meeting was called to order at 8:10 a.m., C.D.T., by Dr. Todd Bess.

Minutes

Dr. Hill made the motion to approve the minutes from the July 14-15, 2009 meeting as presented. Ms. McDaniel seconded the motion. The motion carried.

The minutes from the September 22-23, 2009 board meeting were presented. Dr. Stephens stated that he would like to see added all of the board's recommendations concerning contested cases and reinstatements of licensure. Dr. Bess stated that he would like for the minutes to use the term "registration" instead of license for pharmacy technicians. After discussion, Dr. Hill made the motion to accept the minutes as amended. Ms. McDaniel seconded the motion. The motion carried.

CVS CAREMARK

Dr. Bess asked Dr. Eidson to give a brief summary of the CVS Caremark request for licensure for a call center in the State of Rhode Island. CVS Caremark asked for the Board's approval concerning a business model for CVS Caremark call center. Stacy Inman, D.Ph., Clinical Manager of Professional Services and Peg Griffiths, Legal Counsel for CVS, were present.

One of the concerns was whether the call center should be licensed as a pharmacy. Mr. Mezer informed the Board that they can waive some of the requirements and the call center could be licensed as a non resident pharmacy. Dr. Inman stated that the call center in Rhode Island is licensed as a pharmacy with a state control substance registration and DEA certification. The prescriptions are filled and dispensed at local pharmacies. The call center in Tennessee would not be filling prescription; they will be sent to a local pharmacy. Dr. Stephens asked if the call center would be licensed as a pharmacy with a Tennessee licensed PIC and all other pharmacists working in the call center licensed in Tennessee. Dr. Inman stated that CVS Caremark is willing to license the call center as a non resident pharmacy and have a Tennessee licensed PIC in the call center. Dr. Bess asked the Board to decide if they will license the call center as an out of state pharmacy.

Dr. Inman asked about board rule 1140-4-.16 which states:

“If prescription drugs, devices and related materials in an emergency room are to be dispensed (other than by pharmacy staff) rather than administered, the drugs, devices or related materials must be dispensed by the physician or an emergency room nurse or certified physician assistant at the direction of an physician. If the physician in an emergency room does not personally dispense, then prescription drugs, devices and related materials of outpatient use must be packaged in containers from the pharmacy practice site in amounts not to exceed a twelve (12) hour period or with products commercially prepared for multiple dose therapy (e.g., ophthalmic products, topical products, optic drops) in the smallest available package. These prescription drugs, devices or related materials shall be dispensed only after a medical or prescription order has been issued and recorded in the emergency room and shall be labeled with appropriate labeling.

Dr. Eidson informed Dr. Inman that this rule is for Institutional Pharmacy. Ms. McDaniel asked the Board if all pharmacists that work for an out of state pharmacy licensed in Tennessee if they are required to be licensed in Tennessee.

Dr. Stephens made the motion to approve the request provided each pharmacist in the call center is licensed in Tennessee. Dr. Wilson seconded the motion. Ms. Griffiths asked why the Board would not license the call center as an out of state pharmacy with a Tennessee licensed PIC. Dr. Stephens stated that the call center does not fit the definition of an out of state pharmacy. The motion carried.

CONTESTED CASES

Shuntella Denise Wynn, RT

Ms. Wynn was present and represented by Mr. Willis Jones, Attorney at Law. Mr. Benjamin Mezer, Attorney, represented the State. Mary Collier was the Administrative Law Judge.

Ms. Wynn was charged with violating T.C.A. § 53-10-104(a) and (b) and T.C.A. § 53-10-105(a). Ms. Wynn had admitted to the Loss Prevention Department of Walgreens that she took 500 hydrocodone pills and 1 bottle Tussionex for resale. After discussion, Dr. Stephens made the motion to revoke Ms. Wynn's registration based upon the testimony and evidence presented. Dr. Wilson seconded the motion. The motion carried. Dr. Wilson made a motion to accept the policy statement to indicate that the action taken is to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Hill seconded the motion. The motion carried.

Ms. McDaniel left the meeting at 10:00 a.m. A quorum was still present.

Michelle R. Ashley, RT

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

David Robinson, D.Ph.

Dr. Robinson was not present nor represented by legal counsel. Mr. Benjamin Mezer, Attorney, represented the State. Mary Collier was the Administrative Law Judge. Mr. Mezer asked to proceed in default. After discussion, Dr. Hill made the motion to proceed in default. Dr. Wilson seconded the motion. The motion carried. On the Notice of Charges Dr. Robinson was being charged with violating T.C.A. §53-10-104(a) and (b). Dr. Robinson created and dispensed fraudulent prescriptions and billed his employer third party insurance plan for the fraudulent prescriptions. The prescriptions were for Dr. Robinson's personal use. After discussion, Dr. Stephens made the motion to indefinitely suspend Dr. Robinson's license based on the findings of fact and the conclusions of law. Dr. Kizer seconded the motion. The motion carried. Dr. Wilson made a motion to accept the policy statement to indicate that the action taken is to protect the health, safety and welfare of the citizens of the State of Tennessee. Dr. Kizer seconded the motion. The motion carried.

PRESENTATION

Baxa Corporation (Dose Edge)

Dr. Dennis Tribble presented a business model to request approval for Dose Edge to help with the work flow within the IV room. This model is a per dose billing model. Dr. Wilson stated that she has worked with Baxa Corporation before and that they were one of the best compounders. After the presentation, the Board approved the request as long as a pharmacist is on duty. Mr. Mezer and Dr. Eidson will draft a letter stating the Board's decision and present it at the next scheduled board meeting for approval.

REINSTATEMENTS

Christina McCartney

Dr. Eidson introduced Christina McCartney, D.Ph. to the Board. Dr. McCartney is requesting that her license be reinstated. Dr. McCartney's license was indefinitely suspended on June 9, 2009. After discussion, Dr. Wilson made the motion to reinstate Dr. McCartney's license. Dr. Hill seconded the motion. The motion carried. Dr. McCartney's license will be placed on a five (5) year probation from November 5, 2009 until November 5, 2014, 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 physicians, Drs. Ivey Williamson and Pameet Bhushan except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing 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 a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own

- expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the
- (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 she entered into with Tennessee Pharmacist Recovery Network (TPRN). Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (i) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years; however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (j) The Respondent shall provide written notice requesting an active license, satisfy all past due continuing pharmaceutical education, and pay all cumulative license renewal fees and any applicable penalties.

Laura Leigh Allen

Dr. Eidson introduced Laura Leigh Allen, D.Ph., to the Board. Dr. Allen is requesting that her license be reinstated. Dr. Allen's license was indefinitely suspended on June 9, 2009. After discussion, Dr. Stephens made the motion to reinstate Dr. Allen's license. Dr. Wilson seconded the motion. The motion carried. Dr. Allen's license will be placed on a five (5) year probation from November 5, 2009 until November 5, 2014, 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. Glen Newman, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of her 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 a physician other than the Respondent's primary

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

Jerry Meaders

Dr. Eidson introduced Jerry Meaders, D.Ph., to the Board. Dr. Meaders is requesting that his license be reinstated. Dr. Meaders' license was revoked on May 6, 2008. After discussion, Dr. Wilson made the motion to deny Dr. Meaders' request to reinstate his license. Dr. Stephens seconded the motion. The motion did not pass. Dr. Stephens made the motion to reinstate Dr. Meaders' license. Dr. Wilson seconded the motion. The motion carried. Dr. Meaders' license will be placed on life-long probation beginning November 5, 2009 with the following conditions:

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, including Altram and Soma, 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. Joseph Sentef, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately
- (c) notify the Board office in writing of the name of his primary physician each time the Respondent changes primary physicians;
- (d) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances, including Ultram and Soma, or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (e) The Respondent shall destroy any unused controlled substances, including Altram and Soma, prescribed under the provisions of subsection (b) no later than fifteen (15) 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 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; Test for Tramadol
- (h) The Respondent shall comply with all terms and conditions of the extended aftercare contract she 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; successfully complete the Multi-State Pharmacy Jurisprudence Examination (MPJE); pay all cumulative license renewal fees and any applicable penalties; and complete a period of pharmacy internship in Tennessee consisting of one hundred sixty (160) hours within ninety (90) consecutive days.

GENERAL DISCUSSION

Dr. Bess spoke to the board about the upcoming National Association of Boards of Pharmacy (NABP) 2009 Symposium to be held in Tucson, AZ on December 3-4, 2009. The topics will consist of “legalization of medical marijuana” and “opportunities for public-private partnerships”. After discussion, Dr. Hill made the motion to send Dr. Eidson to the Symposium as a representative of the Board. Dr. Kizer seconded the motion. The motion carried. Dr. Hill made the motion to send Mr. Mezer, as the board legal counsel, to the Symposium. Dr. Stephens seconded the motion. The motion carried.

LEGAL REPORT

General Discussion

Mr. Mezer recommended a \$1000.00 civil penalty per violation of patient counseling to the pharmacy. Dr. Hill wanted to know why not fine the pharmacist. Mr. Mezer stated that his reasoning is that the pharmacy is pushing a certain amount of prescriptions and worried more about the bottom line. Dr. Stephens stated that he thinks that both the pharmacy and the pharmacist are responsible. Triparite will be working on establishing a continuing education course on patient counseling. Dr. Stephens suggested that a corrective action plan be developed, especially if the pharmacy and/or pharmacist are repeat offenders of not offering patient counseling. The corrective action plan would consist of analyzing how it happened, how to correct the problem, how to monitor the problem so that it doesn't happen again and, after they have been cited, when will the plan be put in place. Dr. Stephens made the motion to \$1000.00 civil penalty for each patient counseling violation to the pharmacy with the entire fine stayed except \$1000.00 with a acceptable corrective action plan and a \$1000.00 civil penalty to the dispensing pharmacist. If there are two dispensing pharmacists, then the fine will be \$500.00 dollars each. Dr. Hill seconded the motion. The motion carried.

1. Case No.: L09-PHR-RBS-2009002091

Pharmacy Board investigators observed 8 patients leaving pharmacy without any offer for counseling. Dispensing pharmacist, who is also the PIC acknowledged that the violation occurred and wrote a letter stating that it will not happen again.

Prior discipline: none

Recommendation: Authorize formal hearing, \$500 civil penalty to the dispensing, \$1,000 (possibly \$8,000) to the pharmacy, Letter of Instruction to the PIC

Dr. Stephens made a motion to **accept counsel's recommendation**. Dr. Hill seconded the motion. The motion failed. Dr. Stephens amended his motion to include requiring a written plan of action. Dr. Kizer seconded the motion. The amended motion failed. After discussion, Dr. Stephens made the motion to **authorize a formal hearing** with a \$1,000.00 civil penalty to the dispensing pharmacist, a \$8,000.00 civil penalty to the pharmacy with \$7,000.00 stayed upon receipt of an acceptable plan of action, and a **Letter of Instruction** to the PIC. Dr. Hill seconded the motion. The motion carried.

2. Case No.: L09-PHR-RBS-2009001841

Respondent company receives prescriptions for test strips and lancets from physicians at the company headquarters. The test strips and lancets are shipped from the company's warehouse, which is licensed as a manufacturer/wholesaler/distributor with the state, directly to the patients. The company bills the patients' insurance companies for the non-prescription devices. The company does not have a pharmacy license with the state.

Prior discipline: none

Recommendation: Discuss

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

3. Case No.: L09-PHR-RBS-2009001881

Complainant alleges that respondent pharmacy changed her husband's prescription without authorization.

Respondent pharmacy responded that the complainant's husband had come into another of the chain's pharmacies with a prescription for 405 tablets of Alprazolam 1mg, a 3-month supply. The first pharmacy did not have that quantity in stock and called the respondent pharmacy to inquire about their supply. Respondent pharmacy had enough in stock to fill the whole prescription. When the complainant was on route to the respondent pharmacy, the first pharmacy called the physician's office to verify the amount written, since it was signed by a P.A. and it seemed like a high number. The nurse from the physician's office agreed that it would be better not to dispense the whole 3 month supply, but to dispense a one month with 2 refills. When the patient came to the pharmacy to pick up his medication, he was counseled by the pharmacist and was informed that his script was changed to a one month supply with 2 refills. Later the

complainant came in to the pharmacy and yelled and called the physician's office to complain. The physician's nurse explained what happened, but this was not acceptable to the complainant, who called the prescribing physician who finally agreed to allow the 3 month supply to be filled. The physician informed the pharmacist of this and the rest of the medication was dispensed.

Prior discipline: none

Recommendation: Dismiss

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

4. Case No.: L09-PHR-RBS-2009001801

Anonymous complainant alleges that a pharmacist sells drugs illegally from the respondent drug store and bills Tenn Care and has the patients pay for it as well. Complainant also alleges that this particular pharmacist lives in a nice house that, "would be more than a pharmacist could afford." Property assessor records indicate that the pharmacist's house is worth \$730,000 and also owns 9 other properties, mostly land.

Prior discipline: Refuse to transfer Rx, dismissed 1/16/01; denied copies of old scripts, dismissed 2/25/02

Recommendation: discuss, refer to OIG

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

5. Case No.: L09-PHR-RBS-2009001861

Pharmacy Board investigators observed 13 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: Pharmacy: med refill issue, still open; med error, dismissed 4/17/02; med shortage, dismissed 2/6/02; out of date drugs, closed 10/12/07
Pharmacist: none*

Recommendation: Authorize formal hearing, \$500 civil penalty to the dispensing, \$1,000 (possibly \$13,000) to the pharmacy, Letter of Instruction to the PIC

Dr. Hill made the motion to **authorize a formal hearing** with \$1000.00 civil penalty to the dispensing pharmacist, a \$13000.00 civil penalty to the pharmacy with \$12000.00

stayed upon receipt of an acceptable action plan and a **Letter of Instruction** to the PIC. Dr. Stephens seconded the motion. The motion carried.

6. Case No.: L09-PHR-RBS-2009002001

Respondent technician admitted to loss prevention that he took Viagra, Xanax, and Lortab from the pharmacy for his own personal use, without authorization from a licensed prescriber.

Prior discipline: none

Recommendation: Revoke

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

7. Case No.: L09-PHR-RBS-2009002081

Respondent technician admitted to loss prevention that she took Lortab from the pharmacy and sold it to an unidentified individual, without authorization from a licensed prescriber.

Prior discipline: none

Recommendation: Revoke

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

8. Case No.: L09-PHR-RBS-2009001811

Complainant physician alleges that respondent manufacturer/wholesaler/distributor informed him that they had the .25ml pediatric Fluzone prefilled syringes in stock, but would only send them at a price of \$17 per dose plus shipping. The complainant gave respondent his credit card information and was told that the drugs would arrive later in the week. This was confirmed by fax and voicemail. The drugs never came and the respondent wrote the complainant a letter, a week later, stating that they never had those in stock and would not in the future, but had 5 multidose vials of Fluzone 5ml for a cost of \$124.95 plus shipping.

Prior discipline: none

Recommendation: discuss, refer to consumer affairs

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

9. Case No.: L09-PHR-RBS-2009001731

Complainant is an anonymous caller and alleges that a pharmacy technician was seen picking up 3 to 4 pills off the floor and putting them back in a patient's bottle, which employees at this pharmacy are often seen eating and drinking at the pharmacy counter, and that employees wear flip-flops and other open toed shoes.

Respondent replied that one of his technicians is going through a "nasty" divorce and that the ex-husband constantly harasses this technician and has made comments about getting the pharmacy in trouble. Respondent stated that his policy for shoes is whatever is comfortable and supportive and that he does not prohibit sandals or flip-flops. He also stated that a fallen tablet would never go in a patient's bottle and that he allows drinks only at the computer or phone terminal and not where medicine is open.

Prior discipline: Med error, LoW, 6/13/02; Rx Authorization, dismissed 1/14/09; Med error, LoW 3/11/9; registration of techs, \$4,800 cp.

Recommendation: dismiss

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

10. Case No.: L09-PHR-RBS-2009002021

Respondent pharmacist admitted to giving a technician 3 Lortab 7.5mg from her own personal prescription to ease the technician's pain until she could see a dentist.

Prior discipline: none

Recommendation: Letter of Warning, suggest CE on Pharmacy Law and Controlled Substances

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

11. Case No.: L09-PHR-RBS-2009001741

Pharmacy Board investigators observed a pharmacy technician working with an expired registration. Pharmacy Board records indicate that the technician was not registered for 11 months.

Prior discipline: none

Recommendation: Authorize formal hearing, \$900 cp to PIC

Dr. Kizer made the motion to **accept counsel's recommendation**. Dr. Stephens seconded the motion. The motion carried. Dr. Stephens made the motion to **authorize a formal hearing** with a \$900.00 civil penalty to the PIC and \$100.00 civil penalty to the pharmacy technician. Dr. Hills seconded the motion. The motion carried.

12. Case No.: L09-PHR-RBS-2009001871

Respondent pharmacy failed to notify the Board of Pharmacy of a change in ownership as required by 1140-1-.08(2).

Prior discipline: none

Recommendation: Letter of Instruction

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

13. Case No.: L09-PHR-RBS-2009002121

Complainant is the PIC at a pharmacy who informed the Board office of a med error that potentially caused significant patient harm. Complainant stated that a patient's medication bag included another patient's medication. The patient was prescribed Metoclopramide but received another patient's Meclizine which had the other patient's name on the bottle. Counseling was performed on this new prescription, but since the bag's label listed the correct drug and the correct patient, the dispensing pharmacist did not catch the error during the counseling session. Once it was discovered that the error did occur, the pharmacy staff attempted to contact the patient, but was unable to due to the fact that the patient provided incomplete/incorrect contact information.

Prior discipline: none

Recommendation: Letter of Warning to dispensing pharmacist

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

14. Case No.: L08-PHR-RBS-2008002241

Complainant alleges that her mother received 3 new medications from respondent pharmacy/pharmacist. One bottle had another patient's name marked out, but still had that person's address and physician on the bottle. The medication was Metformin and the instructions on the bottle were to take 3 tablets daily which was 3 times the amount her doctor prescribed. The other two bottles had the wrong doctor's name on them. When she called back to the pharmacy the respondent told the complainant that someone had not picked up their medication and that the pharmacy staff must have placed the bottle back on the shelf. He then asked her what she wanted him to do about it. She then hung up the phone and when she called back, the respondent would not tell her his last name.

The respondent replied that this was not standard operating procedure, but does not recall the situation. It is assumed that patient counseling was not performed, otherwise these errors would have been detected.

*Prior discipline: Pharmacy: med dispensed to wrong patient, dismissed 1/16/01
Pharmacist: customer service, dismissed 9/28/99; unprofessional conduct/addicted to alcohol/drugs, suspended 12/11/08, reinstated 6/9/09.*

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

Dr. Hill made the motion to issue a **Letter of Warning** and **authorize a formal hearing** with a \$1000.00 civil penalty to the dispensing pharmacist, a \$1000.00 civil penalty to the pharmacy with a corrective plan of action and a **Letter of Instruction** to the PIC. Dr. Stephens seconded the motion. The motion carried.

15. Case No.: L09-PHR-RBS-2009001751

Complainant alleges that her son's refill prescription for Desmopressin acetate 0.1mg was filled with both 0.1mg and 0.2mg pills.

PIC responded that counseling for this refill prescription was offered but refused and that both the pharmacists on duty that day were floaters. She has since moved the two strengths of Desmopressin so that they are not next to each other.

Prior discipline: all parties, none

Recommendation: Letter of Warning to both dispensing pharmacists

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

16. Case No.: L08-PHR-RBS-2008000441

Complainant is the director of pharmacy at a hospital. Respondent was placed at the hospital through a staffing agency. Respondent was observed to be exhibiting behavior of a suspicious nature and he was asked to take a urinary drug screen. Respondent complied but had trouble voiding. Respondent refused to give a specimen after the first attempt and was dismissed from the hospital for the refusal.

Pharmacy Board investigators conducted two audits of the pharmacy where the respondent was the PIC.

The first audit revealed, among other things; a 100% shortage of Ambien 5mg; a 78% shortage of Ambien 10mg; a 25.3% shortage of Diazepam 10mg; a 15.1% shortage of Diazepam 5mg; a 33.6% shortage of Hydrocodone 10/500; a 12% shortage of Hydrocodone 7.5/500; a 3.1% shortage of Hydrocodone 5/500; and an 11.1% overage of Clonazepam 2mg.

A subsequent audit revealed, among other things; a 100% shortage of Ambien 10mg; a 15% shortage of Hydrocodone 5/500; a 35% shortage of Diazepam 10mg; and a 47% overage of Diazepam 2mg.

Prior discipline: med error, mislabeled, 2008; chemical impairment, dismissed 6/20/07

Recommendation: Revocation

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

17. Case No.: L09-PHR-RBS-2009001981

Respondent pharmacist was terminated for taking a box of Fentanyl for personal use without authorization from a licensed prescriber.

Respondent admitted to loss prevention that he did take the Fentanyl box without a prescription, but that he did not think that what he did was wrong because it was for his step-daughter and she had a previous Rx for Fentanyl and would have had another one in a few days. He did not believe that it was wrong to take Fentanyl without a prescription and without paying for it. He was terminated for gross misconduct and no criminal charges were filed.

Prior discipline: chemical dependency, 5 yr probation, ended 5/23/00

Recommendation: Discuss, would the board consider asking for an evaluation from the TPRN or other entity

Dr. Stephens made a motion to defer. Dr. Hill seconded the motion. The motion carried.

18. Case No.: L09-PHR-RBS-2009001901

Respondent technician admitted to loss prevention that she took Hydrocodone from the pharmacy for personal use, without authorization from a licensed prescriber.

Prior discipline: none

Recommendation: Revoke

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

19. Case No.: L09-PHR-RBS-2009001931

Respondent technician admitted to loss prevention that she took Hydrocodone from the pharmacy and sold it to an unidentified individual, without authorization from a licensed prescriber.

Prior discipline: none

Recommendation: Revoke

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

20. Case No.: L09-PHR-RBS-2009000561

Prior to becoming a registered technician, respondent technician was terminated from her employment at a pharmacy as a cashier for stealing money from the cash register. She is currently a pre-pharmacy student at Austin Peay University and a registered technician.

Prior discipline: none

Recommendation: Flag file in RBS in the event that she applies to become a pharmacist.

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

21. Case No.: L09-PHR-RBS-2009001851

Respondent failed to maintain TPRN advocacy by failing a urine drug screen, which was positive for alcohol.

Prior discipline: chemical dependency—revocation, 7/15/04; reinstatement, 1/18/05 .

Recommendation: Revoke

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

22. Case No.: L09-PHR-RBS-2009002071

Respondent technician admitted to loss prevention that she took Hydrocodone from the pharmacy and sold it to an unidentified individual, without authorization from a licensed prescriber.

Prior discipline: none

Recommendation: Revoke

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

23. Case No.: L09-PHR-RBS-2009001821

Complaint arises from a routine inspection. Pharmacy Board investigator observed a technician working on an expired registration. Records indicate that he was not registered for six months. The Pharmacy Board investigators also observed patients walking into the pharmacy with lit cigarettes. Also, the owner and PIC had his pet dog behind the counter as well as a tray on the floor with food and water for the dog. Investigators also found 20 bottles of expired drugs on the shelves dating back to 2004.

Prior discipline: none

Recommendation: Discuss

Dr. Kizer made the motion to **authorize a formal hearing** with a \$400.00 civil penalty to the PIC and a \$100.00 civil penalty to the pharmacy technician for the pharmacy technician working on an expired registration. Dr. Hill seconded the motion. The motion carried. Dr. Stephens made the **motion to refer** the issues concerning patients smoking in pharmacy and the pharmacist having a dog in the pharmacy to the appropriate authority. Dr. Hill seconded the motion. Dr. Kizer made the motion to **authorize a formal hearing** with a \$200.00 civil penalty to the pharmacy for the expired drugs and the PIC must report to the board that they have inspected their inventory biannually. Dr. Hill seconded the motion. The motion carried.

24. Case No.: L09-PHR-RBS-2009001691

Complaint alleges that Respondent doctor's office is continuing to dispense medication from their office to patients without counseling, are telling their patients that they have to have their prescriptions filled at the office and they are calling their dispensary a pharmacy and their staff members pharmacy technicians.

Pharmacy Board investigators visited the office and found the dispensary to be locked with a small window open and a female employee in the room. She did not refer to herself as a technician and did not refer to the dispensary as a pharmacy. The medical director showed the investigators the dispensary and informed them that they do not transfer prescriptions, and that outside phone calls never go to the dispensary.

Prior discipline: unlicensed practice, 6/9/09, cease and desist letter

Recommendation: Dismiss

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

25. Case No.: L09-PHR-RBS-2009001911

Complainant reports that 11 out of 39 babies born in a one week time frame had Apgar scores of 5 or less at one minute after birth. Staff noticed that the babies responded to the administration of Narcan. All of the mothers had received epidural anesthesia that was received from Respondent manufacturer. The hospital pharmacy removed all 0.25% Bupivacaine for Epidural use that was received from the Respondent. The hospital sent one bag from the suspected lot number back to Respondent. Respondent performed tests and informed the hospital that the bag contained Hydromorphone and not Bupivacaine as labeled. All of the babies had positive outcomes in the end.

Prior discipline: none

Recommendation: Discuss

Dr. Stephens made the motion to **authorize a formal hearing** with a \$11,000.00 civil penalty to the Manufacturer/Wholesaler/Distributor and file proper notice with the FDA of this occurrence. Dr. Hill seconded the motion. The motion carried.

26. Case No.: L09-PHR-RBS-2009001791

Respondent technician admitted to loss prevention that she took Lortab from the pharmacy for personal use, without authorization from a licensed prescriber.

Prior discipline: none

Recommendation: Revoke

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

November 6, 2009

The Tennessee Board of Pharmacy reconvened on Friday, November 6, 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 Dr. Todd Bess. Dr. Warren, Dr. Wilson and Ms. McDaniel were absent.

REINSTATEMENTS

Kaylyn Bernice Smith, RT

Dr. Eidson introduced Ms. Smith to the Board. Ms. Smith is requesting reinstatement of her pharmacy technician registration. Ms. Smith's registration was revoked on January 15, 2009 due to theft of controlled substances. Ms. Smith stated that she has received rehabilitation treatment through Skyline Hospital. After she finished treatment at Skyline Hospital, Ms. Smith entered Pathfinders in Murfreesboro, TN for an intensive outpatient treatment for 3 months. The treatments consisted of 4 days a week for 4 hours per day. Dr. Hill asked Ms. Smith if she has an advocate/sponsor, she stated that Susan McCarter is her sponsor through Pathfinders. Ms. Smith stated that she has a job offer with Omnicare taking refills over the telephone. She will not have access to any drugs or the pharmacy but will be keying in refill numbers and billing insurance companies.

Dr. Bess asked if Tennessee Pharmacy Recovery Network (TPRN) accepts pharmacy technicians. Dr. Ralph Staton, Investigator, stated that some technicians go to the meetings in Knoxville but didn't know if they had contracts. Dr. Eidson stated that he doesn't think that TPRN accepts pharmacy technicians in the program. Dr. Micah Cost, Director of TPRN, stated that there is no structure or funding to support having pharmacy technicians in the program. Dr. Bess stated that the Board needs to come up with a plan on how to handle pharmacy technicians who want to have the license reinstated that allows them to get on probation with some tracking of the recovery process. Dr. Bess also suggested that Ms. Smith and her employer meet with Dr. Black to try to come up with a plan that will help Ms. Smith stay on track. Dr. Stephens stated that this is an increasing problem and that the Board has seen more pharmacy technicians than pharmacists with substance abuse problems. Dr. Bess stated that when the Board allows an impaired pharmacist to reinstate, the pharmacist is placed on probation for a certain time frame as long as the pharmacist maintains advocacy with TPRN and Ms. Smith does not have that same level of accountability. Mr. Mezer stated that the board has statutory authority to restrict a registration. Dr. Bess suggested that Ms. Smith, her sponsor and Dr. Black come up with a plan to help her in her recovery. Mr. Mezer read the Loss Prevention statement that Ms. Smith signed stating that she was diverting drugs for 18 months and that it helped her pay \$400.00 a month in child support. Ms. Smith denies selling the drugs and states that she just said that she said that she sold them thinking that Loss Prevention would go easy on her.

Dr. Stephens made a motion to defer Ms. Smith's request for reinstatement until she and her employer can meet with Dr. Black or another advocacy group and to come up with a plan that will help with her recovery. Dr. Hill seconded the motion. The motion carried. Dr. Stephens also suggested that when Ms. Smith comes back before the Board that she bring her potential employer and her advocate.

Tanjaniqua Williams, RT

Dr. Eidson introduced Ms. Williams to the Board. Ms. Williams is requesting reinstatement of her pharmacy technician registration. Ms. Williams' registration was revoked on January 15, 2009 due to stealing controlled substances. Dr. Bess asked Ms. Williams if she was selling the drugs and she said yes. After discussion, Dr. Stephens made the motion to deny Ms. Williams' request for reinstatement of her pharmacy technician registration. Dr. Hill seconded the motion. The motion carried.

Natalie Coker, D.Ph.

Dr. Eidson introduced Dr. Coker to the Board. Dr. Coker is requesting to have her license reinstated. Dr. Coker's license was revoked on December 13, 2006. After discussion, Dr. Stephens made the motion to reinstate Dr. Coker's license effective April 19, 2010 with the following conditions:

- (a) The Respondent shall provide written notice requesting an active license, satisfy all past due continuing pharmaceutical education; successfully complete the Multi-State Pharmacy Jurisprudence Examination (MPJE); pay all cumulative license renewal fees and any applicable penalties; and complete a period of pharmacy internship in Tennessee consisting of one hundred sixty (160) hours within ninety (90) consecutive days and can be completed prior to April 19, 2010.

Dr. Hill seconded the motion. The motion carried

William J. Hamilton, D. Ph.

Dr. Eidson introduced Dr. Hamilton to the Board. Dr. Hamilton is requesting to have his license reinstated. Dr. Hamilton's license was revoked on May 26, 2004 and he is also on the Officer of Inspector General's list. After discussion, Dr. Hill made the motion to reinstate Dr. Hamilton's license with the following conditions:

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

Dr. Kizer seconded the motion. The motion carried.

APPLICATION REVIEW

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

Dr. Eidson introduced Dr. Harrington to the Board. Dr. Harrington's application for licensure by reciprocity was denied by the Board but was allowed to appear before the board to ask for reconsideration at the September 22-23, 2009 meeting because he 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 with the application indicated that Dr. Harrington's pharmacist licenses in Tennessee and Georgia had been subjected to disciplinary actions. Dr. Harrington stated that he made an honest mistake and answered the question incorrectly. After discussion, Dr. Hill made the motion to approve Dr. Harrington's request for licensure by reciprocity once all the requirements have been meet. Dr. Stephens seconded the motion. The motion carried.

Jacqueline Brooks, RT

Dr. Eidson introduced Ms. Brooks to the Board. Ms. Brooks' application for registration as a pharmacy technician was denied by the Board but was allowed to appear before the board to ask for reconsideration at the September 22-23, 2009 meeting. 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. Kizer made the motion to approve Ms. Brooks' application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

Jerome Powell, RT

Dr. Eidson introduced Mr. Powell to the Board. Mr. Powell's registration expired on October 31, 2006 and he resubmitted an application to renew in August 2009. Mr. Powell's request to renew his license was denied by the Board at the September 22-23, 2009 meeting due to a misdemeanor conviction and Mr. Powell did not answer 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)?" Mr. Powell stated that he had his record expunged and was told by his attorney that he did not have to admit that he had a conviction. After discussion, Dr. Hill made a motion to approve Mr. Powell's request to renew his pharmacy technician registration. Dr. Stephens seconded the motion. The motion carried.

Dr. Bess asked that Mr. Mezer explore improvements to the applications to see about adding "If an applicant has had a criminal record expunged". Mr. Mezer stated that the board can also add the question "Have you ever been convicted of a crime?"

Pharmacist

Susan Grainger Ryan, D.Ph.

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

Rory Jay Albert, D.Ph.

Dr. Albert is applying for licensure by reciprocity in the State of Tennessee. Dr. Albert answered no to the question that asked "Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated or otherwise been subject to disciplinary actions (public or private) by any board or pharmacy or other state authority?" Documentation submitted indicated

that Dr. Albert's pharmacist license in Arizona had been subjected to disciplinary actions. Dr. Albert also submitted documentation stating that since he completed his term of probation, he didn't think that he had to mark yes. After discussion, Dr. Stephens made the motion to request that Dr. Albert appear before the Board. Dr. Hill seconded the motion. The motion carried.

Whitney Brook Zirke, D. Ph.

Dr. Zirke is applying for licensure by reciprocity in the State of Tennessee. Dr. Zirke answered yes to the question that asked "Have you ever been charged or convicted (including a nolo contendere plea or guilty plea) of a felony 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. Kizer made the motion to approve Dr. Zirke's application once she has successfully completed all requirements for licensure. Dr. Stephens seconded the motion. The motion carried.

Hai Dinh Nguyen, D. Ph.

Dr. Nguyen is applying for licensure by reciprocity in the State of Tennessee. Dr. Nguyen answered yes to the question that asked "Have you ever been charged or convicted (including a nolo contendere plea or guilty plea) of a felony 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. Nguyen's application once he has successfully completed all requirements for licensure. Dr. Hill seconded the motion. The motion carried.

Kave Nikbakht, D. Ph.

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

Doug Frederick Cammann, D. Ph.

Dr. Cammann is applying for licensure by reciprocity in the State of Tennessee. Dr. Cammann answered yes to the questions that asked "Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated or otherwise been subject to disciplinary actions (public or private) by any board or pharmacy or other state authority?" and "Have you ever been charged or convicted (including a nolo contendere plea 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. Hill made the motion to approve Dr. Cammann's application for licensure once he has

successfully completed all the requirements for licensure. Dr. Stephens seconded the motion. The motion carried.

Robert Lee Harger, III, D. Ph.

Dr. Harger is applying for licensure by reciprocity in the State of Tennessee. Dr. Harger answered yes to the questions that asked “Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated or otherwise been subject to disciplinary actions (public or private) by any board or pharmacy or other state authority?” and “Have you ever been charged or convicted (including a nolo contendere plea 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. Kizer made the motion to approve Dr. Harger’s application for licensure once he has successfully completed all the requirements for licensure. Dr. Hill seconded the motion. The motion carried.

Robert Peter Wade, D. Ph.

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

Thomas Emerson Dahlgren, D. Ph.

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

Pharmacy Technicians

Kristin Leeann Brown

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

Jessica Lindsay Becker

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

Michael James Clark

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

Kimberly Dawn Price

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

Denise Louise Reese

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

WAIVERS

Board rule 1140-3-14

Dr. Stephens made the motion to approve the request from **Cathy Creger** to be PIC at Food City Pharmacy #617 and The Sullivan County Health Department with proper notice given to the

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Board if The Sullivan County Health Department will be open more than one morning a week.
Dr. Hill seconded the motion. The motion carried.

CONSENT ORDERS

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

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

Cassie Ann Newman-civil penalty \$1200.00 paid
Cabel L. Jones III-civil penalty \$4800.00 paid

CONSENT ORDER FOR REINSTATEMENTS

Wesley Ball
Kevin Brown
Elena Hines

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

Soung Bang Tran- civil penalty \$500.00 paid
Janice Carey Murr- civil penalty \$500.00 paid
Troy Michael Rebert –civil penalty \$500.00 paid
John R. Moore-civil penalty \$500.00 paid
Meritt Hargrave Harrison –civil penalty \$500.00 paid
Allen Gray Campbell-civil penalty \$500.00 paid
Alice Dowell-civil penalty \$500.00 paid

CONSENT ORDER FOR REVOCATION

Jacob Wade McGruder, RT
Brion K. Laplace, D. Ph.
Patricia S. Leonard, RT
Laura Michelle Acres, RT
Ashley S. Emmitt, RT

VIOLATION BOARD RULE 1140-9-.01(1)

Leiter's Pharmacy –civil penalty \$8400.00 paid

CONSENT ORDER FOR TEN DAY SUSPENSION

Walter E. Holland, D.Ph.

Directors Report

Dr. Eidson introduced Dr. Scott Denaburg to the Board. Dr. Denaburg is the new pharmacy investigator with the Board. Dr. Eidson also informed the Board that Patricia Little, Administrative Assistant for Regulatory Board II will be retiring from the State of Tennessee on December 30, 2009 and that Carolyn Jones, Licensing Technician has starting working in the office and handling the pharmacy technicians registration applications.

Dr. Eidson stated that the Board had talked about Long Term Care Facilities and electronic prescriptions. Mr. Mezer stated that he research this and also spoke with the DEA, and the attorneys for the Board of Medical Examiners and Board of Nursing. They all came to the conclusion that the nurse in a long term care facility is acting as an authorized agent for the prescriber. Dr. Stephens wanted to clarify so that meant if the physician calls the facility and gives the order to the nurse, the nurse, whether it is electronic, fax or written with pen and paper, sends it to the pharmacy and it will be acceptable. Dr. Eidson stated that the issue before the Board is whether the Board wants to consider an electronic prescription transmitted by a nurse as authorized agent for the prescriber, to serve as an order to the pharmacy? Dr. Stephens stated that the DEA rules make provision for institutional pharmacy and them working off physician orders for controlled substances and the Board rules states that long term care facilities are listed as institutional pharmacies, but by DEA standards, long term care facilities are not listed as institutional pharmacies. Long term care facilities DEA registrations state that they are a retail pharmacy. Dr. Hill made the motion that nurses in a long term care facilities accepting a prescription order from a authorized prescriber are acting as authorized agents for the prescribers. Dr. Kizer seconded the motion. The motion carried.

Dr. Bess asked Dr. Eidson about the contract for the control substance database. Dr. Eidson stated that it is a year to year contract that will expire August 2010. Dr. Bess wanted to know what the plan is for the RFP and if the system will show cash transaction or third party payment. Dr. Eidson stated that the Board will be sending out RFP but they had plenty of time to send those out. Also, Mr. Mezer will research the issue of the control substance data base and cash and third party payment transactions.

Mr. Mezer informed the Board that all the other Boards under the Health Related Boards require a criminal background check through the Tennessee Bureau Investigation (TBI) and Federal Background Investigation (FBI) and that it is relative inexpensive. Dr. Bess asked that Mr. Mezer present the documentation concerning the criminal background checks at the January meeting when all the board members will be in attendance.

Dr. Eidson informed the Board that they will have election of officers at the January meeting.

LEGAL REPORT

27. Case No.: L06-PHR-RBS-2006023851

These next five complaints all pertain to a case the last board meeting.

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 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

Recommendation: Revoke

Case No.: L09-PHR-RBS-2009000311

Complainant alleges that respondent was working on an expired license from September 30, 2008 to March, 5 2009. This was verified in RBS.

Prior discipline: none

Recommendation: Authorize formal hearing, \$500 civil penalty

Case No.: L09-PHR-RBS-2009001591

Respondent was terminated from her employment for falsification of records. Respondent allegedly created a prescription for Oxycotin 80mg for a fictitious patient. The PIC could not find the prescription in the will call bin and it had not been paid or signed for. One week later, the PIC noticed that the prescription had been credit returned and reprocessed by the respondent. To date, the prescription has not been located and has not been paid for or signed for.

Prior discipline: none

Recommendation: Revoke

Dr. Stephens made the motion to **authorize a formal hearing** for revocation for case numbers L09-PHR-RBS-2006023851, L09-PHR-RBS-2009001591 and L09-PHR-RBS-2009000311. Dr. Hill seconded the motion. The motion carried.

Case No.: L09-PHR-RBS-2009000321

Complainant alleges that respondent PIC allowed a pharmacist whose license was expired to work at the pharmacy. She worked without a license from September 30, 2008 to February 17, 2009.

Prior discipline: none

Recommendation: Authorize formal hearing, \$500 civil penalty to PIC

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

Case No.: L09-PHR-RBS-2009002171

Respondent pharmacy employed a pharmacist who had been convicted of Vehicular Homicide by intoxication and Vehicular Assault, a Class B and Class D Felony, respectively. This pharmacist disclosed this on her application.

On February 18, 2008, the respondent pharmacy gave the pharmacist a written warning based on numerous complaints and strong anecdotal evidence suggesting that the pharmacist reported to work after using alcohol and smelling like alcohol.

On November 19, 2008, the respondent pharmacy gave the pharmacist another written warning based on several reports that stated that the pharmacist would open the pharmacy in the morning and leave to go to her car with the pharmacy still open.

The respondent did not fire the pharmacist until February 17, 2009 when it was discovered that she was falsifying records.

Prior discipline: unlicensed activity, still open

Recommendation: Authorize formal hearing, \$365,000 civil penalty to pharmacy

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

28. Case No.: L09-PHR-RBS-2009001961

Complainant alleges that her son's refill Focalin prescription was dispensed to another patient.

Respondent replied that the technician on duty called the complainant's name to come up to the counter, but another patient came up instead. The technician asked if the patient had any questions and she refused counseling and stated that she had taken this medication before and the transaction was completed. The complainant then went up to the counter to see if her son's medication was ready. It was then that they discovered the mistake. The pharmacist attempted to find the patient who took the wrong medication, but she had already left the store. The pharmacist called the patient and requested that she bring back the medication, which she did the next day. It was unopened and all the pills were accounted for and the medication was discarded by the pharmacist. The complainant was dispensed her son's Focalin and left the store. The technician was terminated because of this incident.

Prior discipline: pharmacy: med error, dismissed 1995; unprofessional conduct, dismissed, 2004.

Recommendation: Letter of Warning for misfill

Dr. Hill made to **accept counsel's recommendation** with a **Letter of Warning** to the dispensing pharmacists for the misfill. Dr. Kizer seconded the motion. The motion carried.

29. Case No.: L09-PHR-RBS-2009001991

Respondent technician admitted to loss prevention that she took Xanax and Lortab from the pharmacy for personal use and resale, without authorization from a licensed prescriber.

Prior discipline: none

Recommendation: Revoke

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

30. Case No.: L09-PHR-RBS-2009002101

Respondent pharmacist was disciplined by another board of pharmacy for allowing unauthorized individuals in a pharmacy without a pharmacist present. Respondent's license lapsed in 1994.

Prior discipline: none

Recommendation: close, flag in RBS

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

31. Case No.: L09-PHR-RBS-2009002061

Respondent technician admitted to loss prevention that he took Hydrocodone, Alprazolam, Ambien, and Phentermine from the pharmacy for personal use without authorization from a licensed prescriber.

Prior discipline: none

Recommendation: Revoke

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

32. Case No.: L01-PHR-RBS-200005953

This case was originally presented at the January 2002 Board meeting.

The complaint alleges that the pharmacist misfilled a prescription for morphine to be used in an interthecal spinal pump for chronic pain sufferers. When the pharmacist compounded the substance, he used methadone instead of morphine. Eight (8) patients were administered the drug containing methadone and after using the drug, they all required medical attention, three (3) of which required hospitalization.

Prior discipline: none

Recommendation: Discuss

Original discipline was suspension of license for one year, with all but three months stayed pending good behavior and require the pharmacist to undergo additional training in sterile product preparation.

The Board decided not to take any action.

33. Case No.: L09-PHR-RBS-2009002131

Pharmacy Board investigators observed 4 patients leaving pharmacy without any offer for counseling. Dispensing pharmacist, who is also the PIC acknowledged that the violation occurred and wrote a letter stating that it will not happen again.

Prior discipline: none

Recommendation: Authorize formal hearing, \$500 civil penalty to the dispensing pharmacist, \$1,000 (possibly \$4,000) to the pharmacy, Letter of Instruction to the PIC

Dr. Stephens made the motion to **authorize a formal hearing** with a \$1000.00 civil penalty to the dispensing, a \$4000.00 civil penalty to the pharmacy with \$3000.00 stayed upon receipt of a corrective plan of action and a **Letter of Instruction** to the PIC. Dr. Kizer seconded the motion. The motion carried.

34. Case No.: L09-PHR-RBS-2009001921

Complaint arises from the investigation of the loss of controlled substances at respondent pharmacy. Investigation revealed that a technician was responsible. The technician was not registered and worked for 2 days.

Prior discipline: Registration of techs, 2007

Recommendation: authorize formal hearing, \$100 to PIC

Dr. Stephens made the motion to issue a **Letter of Instruction** to the PIC. Dr. Kizer seconded the motion. The motion carried.

35. Case No.: L09-PHR-RBS-2009001701

Complaint alleges that Respondent pharmacy is filling too many narcotics on the same day for the same individual.

Respondent pharmacy responded that the patient in question has been a patient there for years and has had the same physician for that whole time. He does not request early refills, nor has he ever requested that his prescriptions be transferred to another pharmacy. He takes Oxycotin for chronic pain, Oxycodone IR for breakthrough pain, he suffers from constant headaches for which he takes Alprazolam and generic Fiorinal #3 and has just been placed on Lyrica to see if he can get enhanced relief from some of his pain. He has been to a hospital for evaluation, but nothing seems to cure his pain.

Prior discipline: none

Recommendation: Dismiss

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

36. Case No.: L07-PHR-RBS-2007080301

Complaint arises from the investigation of the loss of controlled substances at respondent pharmacy. Investigation revealed that a technician was responsible. The technician was not registered and worked for 3 months.

Prior discipline: none

Recommendation: Authorize formal hearing, \$100 cp to PIC

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

37. Case No.: L09-PHR-RBS-2009002011

Respondent technician admitted to loss prevention that she took Hydrocodone and Percocet from the pharmacy for personal use without authorization from a licensed prescriber.

Prior discipline: none

Recommendation: Revoke

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

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

Complaint alleges that she received another patient's medication.

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

Prior discipline: none

Recommendation: Authorize formal hearing, \$500 civil penalty to the dispensing pharmacists (2 on duty), \$1,000 civil penalty to the pharmacy, Letter of Instruction to the PIC. Letter of Warning to dispensing pharmacist for med error/misfill

Dr. Stephens made the motion to **authorize a formal hearing** with a \$500.00 civil penalty for both dispensing pharmacists that were on duty, a \$1000.00 civil penalty to the pharmacy, a **Letter of Instruction** to the PIC and a **Letter of Warning** to the dispensing pharmacist for the medication error. Dr. Hill seconded the motion. The motion carried.

39. Case No.: L09-PHR-RBS-2009001831

Complaint arises from a routine inspection. Pharmacy Board investigator observed 4 technicians working with only one pharmacist present. One of the technicians did not have his certificate on the wall, nor did he have his wallet card. The Pharmacy Board investigators also observed 4 patients leaving the pharmacy without an offer to counsel.

Prior discipline: none

Recommendation: Authorize formal hearing, \$500 civil penalty to the dispensing pharmacist, \$1,000 civil penalty (possible \$4,000) to the pharmacy, Letter of Instruction to the PIC and Letter of Warning to the PIC for tech ratio violation

Dr. Hill made the motion to **authorize a formal hearing** with \$1000.00 civil penalty to the dispensing, a \$4000.00 civil penalty to the pharmacy with \$3000.00 stayed upon receipt of a corrective action plan, a **Letter of Instruction** to the PIC and a **Letter of Warning** to the PIC for the technician ratio violation a Letter of Instruction to the technician for not having the registration displayed. Dr. Stephens seconded the motion. Dr. Kizer made the motion to amend the motion to not to issue a Letter of Warning but **authorize a formal hearing** with a \$100.00 civil penalty to the PIC for the technician ratio violation. The motion carried.

40. Case No.: L09-PHR-RBS-2009002151

Complainant alleges that the pharmacy is frequently left unattended by a female pregnant pharmacist who is the owner and PIC.

Pharmacy Board investigator inspected the pharmacy and the pharmacist was on duty. She stated that she never leaves the pharmacy unattended and that it is possible that a long time ago she left the pharmacy for 15 minutes to pick up her kids from school, but she always placed the sign that the pharmacist was not on duty and no prescriptions could be dispensed until her return. Both technicians and the pharmacist signed written statements that the pharmacy is never left unattended.

Prior discipline: none

Recommendation: Dismiss

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

41. Case No.: L09-PHR-RBS-2009001891

Complainant alleges that her 3-year old son was dispensed Tizanidine 4mg instead of his prescribed Singular.

Respondent replied that the medication error did occur and that all he could remember about the counseling on this new prescription was telling the grandmother, who picked up the medication that the pills were chewable. He left the label instructions up to the tech.

Prior discipline: none

Recommendation: Authorize formal hearing, \$500 civil penalty to the dispensing pharmacist, \$1,000 civil penalty to the pharmacy, Letter of Instruction to the PIC. Letter of Warning to dispensing for the misfill

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

Dr. Stephens suggested that the Board have a retreat to discuss some of the concerns that the Board may to achieve more consistency in the actions taken by the Board.

Dr. Hill thanked Dr. Eidson, Mr. Mezer and the Investigators for all the work that they do. Dr. Bess concurred.

Dr. Hill made the motion to dismiss at 2:35 p.m. Dr. Kizer seconded the motion. The motion carried.