



TEXAS STATE BOARD OF PHARMACY

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Health Professions Council Board Room
333 Guadalupe Street, Tower II, Suite 225
Austin, Texas

May 5, 2009

MINUTES¹

President W. Benjamin Fry, R.Ph., called the meeting to order at 9:03 a.m. Other Board Members present were Vice President Kim A. Caldwell, R.Ph.; Treasurer Jeanne Waggener, R.Ph.; Buford T. Abeldt, Sr., R.Ph.; Alice Mendoza, R.Ph.; and Dennis F. Wiesner, R.Ph.

Board Members Rosemary Forester Combs; L. Suzan Kedron; and Marcelo Laijas, Jr. were not present.

Staff present were Gay Dodson, R.Ph., Executive Director/Secretary; Carol Fisher, R.Ph., M.P.A., Director of Enforcement; Cathy Stella, Director of Licensing and Administrative Services; Kerstin Arnold, General Counsel; Julie Hildebrand, Litigation Counsel; Mitra Woody, Staff Attorney; Caroline Hotchkiss, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; and Kay Wilson, Executive Assistant.

Also present was Pharmacist Intern Sueli Tovar.

A. Announcements

- President Fry made general announcements.
- Announcements were made concerning Board Members and staff.
- Ms. Benz made an announcement concerning continuing education credit for attending the Board Meeting.

¹See agenda and corresponding attachments for supporting materials.

B. Discussion and Approval of Minutes of Previous Meeting (Tab 1)

Following discussion, the motion was made by Mr. Caldwell to approve the minutes of the TSBP Board Business Meeting, held February 10, 2009, as presented. The motion was seconded by Ms. Waggener and passed unanimously.

C. Discussion of and Possible Action Regarding Rules

Final Adoption of Rules

- Rules Concerning Fines for Pharmacists and Pharmacies Who Allow Pharmacy Technicians and Pharmacy Technician Trainees to Work Without Current Registrations or Delinquent Registrations (§281.65) (Tab 2)

Ms. Benz directed the Board's attention to proposed amendments to §281.65 and explained that the amendments would increase administrative penalties for allowing individuals to work in a pharmacy without a pharmacy technician registration or with a delinquent pharmacy technician registration and increase the range of fines to \$500-\$2000 for pharmacists and \$500-\$3000 for pharmacies who violate this rule.

Ms. Benz explained that the Board voted to propose these amendments at its February 10, 2009, meeting. The amendments were published in the March 27, 2009, issue of the *Texas Register*, and no comments were received.

Following discussion, the motion was made by Mr. Caldwell to approve for adoption, by Board Order, amendments to §281.65, as published. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Internship and Preceptor Requirements (§283.4 and §283.6); and Rules Concerning Ratio of Preceptors to Pharmacist Interns (§283.6) (Tab 3)

Ms. Benz directed the Board's attention to proposed amendments to §283.4 and §283.6 and explained that the proposed amendments would:

- clarify the requirements for a change of name or change of address for pharmacist-interns;

- clarify the charge for a duplicate or amended certificate for pharmacist interns and preceptors;
- eliminate the requirement that a preceptor have one year of experience in the type of internship practice setting and only require the preceptor to have a year of experience as a licensed pharmacist; and
- eliminate the ratio of preceptors to pharmacist-interns in Texas college or school of pharmacy programs.

Ms. Benz explained that the Board voted to propose these amendments at its February 10, 2009, meeting. The amendments were published in the March 27, 2009, issue of the *Texas Register*. Comments were received from Texas Tech University, School of Pharmacy.

Following review of the comments and discussion, the motion was made by Mr. Caldwell to approve for adoption, by Board Order, amendments to §283.4 and §283.6, as published. The motion was seconded by Mr. Abeldt and passed unanimously.

- Rules Concerning Lease Agreements (§291.1, §291.3, and §291.129) and Rules Concerning Notification of Pharmacies Changing Locations and Forged Prescriptions (§291.3) (Tab 4)

Ms. Benz directed the Board's attention to proposed amendments to §291.1, §291.3, and §291.129. She explained that the proposed amendments would:

- clarify that pharmacies are required to notify patients when a pharmacy is changing locations;
- clarify that pharmacies are required to report the loss of controlled substances and dangerous drugs that are obtained by licensees or registrants by means of a forged prescription; and
- delete the option of providing a notarized statement signed by the lessee and lessor certifying the existence of a lease as a part of the application for a pharmacy license.

Ms. Benz explained that the Board voted to propose these amendments at its February 10, 2009, meeting. The amendments were published in the March 27, 2009, issue of the *Texas Register*, and no comments were received.

Following discussion, the motion was made by Ms. Mendoza to approve for adoption, by Board Order, amendments to §291.1, §291.3, and §291.129, as published. The motion was seconded by Mr. Wiesner and passed unanimously.

- Rules Concerning Operational Standards in a Class A Pharmacy (§291.33) and Prescriber's Authorization on Original Prescriptions (§291.34) (Tab 5)

Ms. Benz directed the Board's attention to proposed amendments to §291.33 and §291.34. She explained that the proposed amendments would allow for the secure storage, management, and purchase/delivery of prescription medications during and after pharmacy hours from an automated storage and distribution device, and clarify that an original prescription may only be dispensed in accordance with the prescriber's instructions.

Ms. Benz explained that the Board voted to propose these amendments at its February 10, 2009, meeting. The amendments were published in the March 27, 2009, issue of the *Texas Register*. Written comments were received from the National Association of Chain Drug Stores, H.E.B., and Asteres.

The Board received comments from Bob Hansen of Asteres.

The Board reviewed the comments received and directed staff to make changes to the proposed amendments and bring the revised amendments to the Board later in the meeting. The revisions to the proposed rules would:

- clarify that an automated storage and distribution device may be used when the pharmacy is open and when it is closed;
- allow pharmacies to make available a telephone and telephone number for another pharmacy rather than requiring a direct connection to another pharmacy; and
- clarify that the pharmacist can obtain authorization from a prescriber to deviate from the original prescription.

The Board also directed staff to survey other states that allow purchase/delivery of medications from an automated storage and distribution device to determine whether they allow purchase/delivery of new prescriptions through these devices.

Proposal of Rules

- Rules Concerning Continuing Education Credit (§295.8) (Tab 6)

Ms. Benz directed the Board's attention to suggested amendments to §295.8. She explained that the suggested amendments were in response to a request received at the February 2009 meeting to allow pharmacists to receive continuing education (CE) credit for taking and passing a Board of Pharmaceutical Specialty certification examination. Ms. Benz reviewed the suggested language for the Board, and pointed out that it would:

- Clarify that the Accreditation Council for Pharmacy Education (ACPE) number must indicate that the program is for pharmacists by the designation of the letter P;
- Allow pharmacists to complete the same program once per licensure period;
- Clarify that pediatric advanced life support certification is also approved for CE credit;
- Allow pharmacists to receive three hours of CE credit for certification by the Board of Pharmaceutical Specialty; and
- Allow pharmacists to receive credit for attending a program provided by the Texas State Board of Pharmacy or a course offered by the Texas State Board of Pharmacy.

Following discussion, the motion was made by Mr. Wiesner to approve for proposal amendments to §295.8, with the correction of **CEUS** to **CEUs** on line one of §295.8(e)(10). The motion was seconded by Ms. Waggener and passed unanimously.

- Rules Concerning Destruction of Drugs (§§303.1-303.2) (Tab 7)

Ms. Benz directed the Board's attention to suggested amendments to §§303.1-303.2 concerning destruction of drugs. She explained that the language would clarify that only dangerous drugs that have been previously dispensed to a patient may be accepted by a pharmacy and destroyed based on DEA requirements. The amendments would also make the rules consistent with DEA requirements and remove references to tripelethamine, a drug no longer on the market. Ms. Benz directed the Board's attention to information received from the Texas Panhandle Poison Center concerning a medication take-back program, including recommendations for rule changes.

Following discussion, the motion was made by Ms. Waggener to approve for proposal amendments to §§303.1-303.2, with changes to §303.1(b) to reflect that a pharmacy may not accept the return of controlled substances for destruction. The motion was seconded by Mr. Abeldt and passed unanimously.

Rule Review (Tab 9)

Ms. Benz directed the Board's attention to a proposed rule review schedule for the period FY2010-FY2013. She explained that during each four-year period the Board reviews all TSBP rules to determine whether a need for each rule continues to exist.

Following discussion, the motion was made by Mr. Caldwell to approve, as presented, the rule review plan for FY2010-2013. The motion was seconded by Mr. Wiesner and passed unanimously.

President Fry recessed the meeting at 10:00 a.m.

President Fry reconvened the meeting at 10:18 a.m.

Final Adoption of Rules (cont.)

- Rules Concerning Operational Standards in a Class A Pharmacy (§291.33) and Prescriber's Authorization on Original Prescriptions (§291.34) (Tab 5)

The Board confirmed that it wished to modify the proposed amendments to §291.33 and §291.34 as follows:

- clarify that an automated storage and distribution device may be used when the pharmacy is open and when it is closed;
- allow pharmacies to make available a telephone and telephone number for another pharmacy rather than requiring a direct connection to another pharmacy; and
- clarify that the pharmacist can obtain authorization from a prescriber to deviate from the original prescription.

A. Announcements

President Fry announced that Mr. Abeldt is the current President of ACA (American College of Apothecaries).

D. Updates and Reports of Committees/Task Forces

- Task Force on Class C Pharmacies (Tab 10)

President Fry recognized Donna Burkett, R.Ph., who served as Chair of the Task Force on Class C Pharmacies. Ms. Burkett presented the task force recommendations to the Board.

The Board also received comments from Task Force Members Matthew Wall and Amy Othold, and Jennifer Clayman (TORCH), Paul Davis (Texas Society of Health-System Pharmacists), and Emily Alexander (Envision).

President Fry recessed the meeting at 12:02 p.m.

President Fry reconvened the meeting at 12:50 p.m.

D. Updates and Reports of Committees/Task Forces (cont.)

- Task Force on Class C Pharmacies (Tab 10) (cont.)

Ms. Benz reviewed suggested amendments to §§291.72-291.76 to implement the recommendations of the task force. Following discussion, the motion was made by Mr. Wiesner to approve for proposal, amendments to §§291.72-291.76, with two changes:

- Deletion of language requiring prospective drug use review; and
- Insert **be** between **must** and **dispensed** in the first line of §291.74(f)(5)(6).

Additionally, direct staff to convene a meeting of stakeholders and develop compromise language concerning prospective drug use review, and survey other states concerning prospective drug use review. The motion was seconded by Ms. Waggener and passed unanimously.

E. Discussion of and Possible Action Concerning the Following Reports and Discussions

- Financial Update

- Review of FY2009 Operating Budget (Tab 11)

Ms. Stella reviewed the expenditures for the first two quarters of FY2009 (September 1, 2008, through February 28, 2009) for the Board.

- Board Member Travel Budget (Tab 12)

Ms. Stella reviewed the FY2009 Board Member travel budget as of April 9, 2009.

- Legislative Appropriations Request (LAR) for FY2010-2011 (Tab 13)

Ms. Stella directed the Board's attention to a copy of the agency's budget for FY2010-2011, as passed by the Senate. She explained that this might not be the final version to come out of the legislative session. She also explained that there were several pending bills that could impact the agency's budget and result in the need to raise fees for pharmacists, pharmacies, and pharmacy technicians.

Ms. Stella directed the Board's attention to suggested amendments to §291.6, §295.5, and §297.4 concerning license fees for pharmacies, pharmacists, pharmacy technicians and pharmacy technician trainees (Tab 8) and provided the Board a history of TSBP's fee structure and examples of fee increases that could be necessary to support the agency's final budget for FY2010-2011. (Tab 14)

Following discussion, the motion was made by Ms. Waggener to approve for proposal amendments to §291.6, §295.5, and §297.4 concerning fee structures for FY2010-2011 that would raise pharmacist and pharmacy license fees and pharmacy technician registration fees by \$53, and initiate a fee of \$58 for pharmacy technician trainees. The motion was seconded by Ms. Mendoza. Following discussion, the motion was withdrawn by Ms. Waggener. The second was withdrawn by Ms. Mendoza.

Following additional discussion, the motion was made by Mr. Abeldt to approve for proposal amendments to §291.6, §295.5, and §297.4 concerning fee structures for FY2010-2011 and approve an increase in fees for FY2010-2011 of \$106 for pharmacists and pharmacies, an increase in fees for pharmacy technicians of \$53, and initiate an application fee of \$53 for pharmacy technician trainees. The motion was seconded by Ms. Mendoza and passed unanimously.

- Administrative Services

- Internal Risk Assessment (Tab 15)

Ms. Stella directed the Board's attention to an internal risk assessment for TSBP dated March 30, 2009. She reviewed the assessment for the Board.

- Bid Process for Pharmacy Technician Certification Examination (Tab 16)

Ms. Stella advised the Board that staff was working with a psychometrician to develop a bid request for the pharmacy technician certification examination. After development of the bid request, it will be forwarded to the Comptroller's Office, and will then be posted for bidding by interested parties. Depending on the Comptroller's schedule, it may be finalized by November 2009.

- Professional Recovery Network

- Dr. Holder directed the Board's attention to charts showing participation in the peer assistance program. (Tab 17)

- President Fry recognized Kim Roberson of the Pharmacy Recovery Network (PRN). (Tab 18) Mr. Roberson directed the Board's attention to the PRN budget for September 1, 2008, through February 28, 2009, and reviewed current PRN activities for the Board.

D. Updates and Reports of Committees/Task Forces (cont.)

- Task Force on Class C Pharmacies (Tab 10)

The motion was made by Mr. Caldwell to accept the report of the Task Force on Class C Pharmacies, as presented. The motion was seconded by Mr. Wiesner and passed unanimously.

President Fry recessed the meeting at 1:55 p.m.

President Fry reconvened the meeting at 2:05 p.m.

G. Disciplinary Orders

- Consideration of Proposal for Decision
 - In the Matter of Samuel Carevich, Jr., R.Ph. (Tab 31)

Ms. Arnold advised the Board that on March 25, 2009, State Office of Administrative Hearings (SOAH) Administrative Law Judge Cassandra J. Church issued a Proposal for Decision in the matter of Samuel Carevich, Jr., R.Ph. Ms. Arnold introduced Judge Church. Judge Church reviewed the *Proposal for Decision* for the Board, and advised the Board that based on the preponderance of credible evidence and the application of the penalty factors the Board must consider, her recommendation was that the Board impose the disciplinary measures as proposed, which were suspension of Mr. Carevich's license for five months, assessment of an administrative penalty of \$5000, and probating Mr. Carevich's license through October 1, 2012.

Ms. Hildebrand directed the Board's attention to proposed Board Order #L-08-009, which she reviewed for the Board.

The motion was made by Ms. Waggener to accept the *Findings of Fact* and *Conclusions of Law* in the *Proposal for Decision* and approve Board Order #L-08-009, as presented, in the matter of Samuel Carevich, Jr., R.Ph., and suspend Mr. Carevich's license for five months, assess an administrative penalty of \$5000, and probate Mr. Carevich's license through October 1, 2012. The motion was seconded by Mr. Caldwell and passed 5-0-0.

E. Discussion of and Possible Action Concerning the Following Reports and Discussions (cont.)

- FY2008 Annual Report (Tab 19)

Ms. Dodson directed the Board's attention to a draft of the *TSBP FY2008 Annual Report*. She reviewed the agency's significant accomplishments for FY2008 for the Board.

Following discussion, the motion was made by Ms. Mendoza to approve the *FY2008 Annual Report* with the two following corrections on page 19:

- Under item 1 of FY2008 Significant Accomplishments, delete ***all*** on first line; and
- In chart on Licensee Information FY2003 – FY2008, reverse figures for Pharmacies and Pharmacists in FY2008.

The motion was seconded by Mr. Abeltdt and passed unanimously.

- Request from Medtronic Regarding the Ratio of Pharmacists to Pharmacy Technicians in a Call Center Pharmacy (Tab 24)

Ms. Benz directed the Board's attention to a request from MiniMed Distribution Corp., a subsidiary of Medtronic, Inc., for a TSBP rule change to allow a higher pharmacist-to-pharmacy technician ratio of up to 1:15 in Class A pharmacies that deal with a very limited number of prescription drugs. She explained that Medtronic was considering opening an order processing center for insulin pumps, continuous glucose monitoring devices and related supplies in San Antonio. Ms. Benz provided an overview of the proposed facility and operations. Medtronic representative Beth Sweeny answered questions posed by the Board.

Ms. Dodson directed the Board's attention to TSBP rule §291.32, which currently states that:

- . . . *the ratio of pharmacists to pharmacy technicians and pharmacy technician trainees may be 1:3, provided at least one of the three is a pharmacy technician.*
- *The ratio of pharmacists to pharmacy technician trainees may not exceed 1:2.*
- Under special circumstances, a pharmacy that *primarily compounds non-sterile pharmaceuticals may have a ratio of pharmacists to pharmacy technicians/pharmacy technician trainees of 1:5.*

Following discussion, the motion was made by Mr. Caldwell to approve for proposal amendments to §291.32 to allow a Class A pharmacy to have a ratio of 1:5 pharmacists to pharmacy technicians/pharmacy technician trainees if the pharmacy dispenses no more than 20 different prescription drugs regardless of whether or not the pharmacy

compounds non-sterile preparations, with the requirement that a pharmacy technician/pharmacy technician trainee who is compounding non-sterile preparations or is involved in the preparation of prescription drug orders may only be involved in one process at a time. The motion was seconded by Ms. Waggener and passed unanimously.

- *TSBP FY2010 Calendar of Events (Tab 20)*

Ms. Dodson directed the Board's attention to a draft of the *TSBP FY2010 Calendar of Events*. Following review, the motion was made by Ms. Waggener to approve the *TSBP FY2010 Calendar of Events*, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- Penalties for Pharmacies Who Report Thefts or Losses of Controlled Substances (Tab 21)

Ms. Dodson directed the Board's attention to charts that reflected the following information:

- for the period FY2004 through FY2008, the number of all disciplinary orders entered by the Board, as compared to the numerical subset of disciplinary orders entered against pharmacists and pharmacies for audit shortages of controlled substances;
- for the period FY2004 through FY2008, the number of complaints involving theft/loss reports that were closed, as compared to the number of disciplinary orders entered against pharmacists and pharmacies for audit shortages of controlled substances; and
- for the period FY2006 through FY2008, the number of disciplinary orders entered against chain pharmacies, as compared to the number of disciplinary orders entered against independent pharmacies, only with respect to audit shortages of controlled substances.

Ms. Dodson advised the Board that this information was being presented at the request of Mr. Fry.

Following discussion and receiving comments from Mr. Roberson of TPA, the Board directed staff to prepare an article for publication in the TSBP Newsletter concerning security guidelines and to instruct Compliance Inspectors to present information during inspections concerning how to handle thefts and losses.

President Fry recessed the meeting at 3:17 p.m.

President Fry reconvened the meeting at 3:32 p.m.

C. Discussion of and Possible Action Regarding Rules (cont.)

Final Adoption of Rules

- Rules Concerning Operational Standards in a Class A Pharmacy (§291.33) and Rules Concerning Prescriber's Authorization on Original Prescriptions (§291.34) (Tab 5)

Ms. Benz explained that the Board had considered proposed amendments to §291.33 and §291.34 earlier in the meeting and had directed staff to make changes to the proposed amendments. She directed the Board's attention to the revised amendments and pointed out that, as the Board had directed, changes had been made to:

- clarify that an automated storage and distribution device may be used when the pharmacy is open and when it is closed;
- allow pharmacies to make available a telephone and telephone number for another pharmacy rather than requiring a direct connection to another pharmacy; and
- clarify that the pharmacist can obtain authorization from a prescriber to deviate from the original prescription.

Following review of the Preamble and Order Adopting Rule, the motion was made by Mr. Caldwell, to approve for adoption, by Board Order, amendments to §291.33 and §291.34, with changes. The motion was seconded by Ms. Waggener and passed unanimously.

E. Discussion of and Possible Action Concerning the Following Reports and Discussions

- Fees Charged for Providing Copies of Patient's Confidential Records (Tab 22)

Ms. Dodson directed the Board's attention to §291.28 concerning patient access to confidential records. The Board reviewed a chart comparing rules and laws of TSBP, the Texas Medical Board, and rules and laws governing hospitals, concerning patient access to confidential records. Mr. Wiesner advised the Board that the volume of requests from third parties (not requests from the patient, patient's

agent, or caretaker) were increasing workloads for some pharmacies dramatically. The Board discussed that the original intent of the rule was to insure that patient requests for records were met in a timely manner.

Following discussion, the Board directed staff to review §291.28 and prepare suggested language for consideration by the Board at its August 2009 meeting concerning fees charged to third parties for providing copies of patient's confidential records.

- Prescription Pick-up Locations (Tab 23)

Ms. Dodson directed the Board's attention to a letter from Susan Delmonico, R.Ph., J.D., of CVS Caremark and explained that in the letter Ms. Delmonico outlined a procedure where a designated pharmacy would send a pharmacy technician to a business where the pharmacy technician would remain for a set period of time to pick up prescriptions. The technician would return to the pharmacy, where the prescriptions would be filled, and then delivered later in the day back to the same location. In the letter, Ms. Delmonico asked whether the outlined procedure was prohibited by Board rules. Ms. Dodson directed the Board attention to TSBP rule §291.9 concerning prescription pick up locations.

Following discussion, the Board determined that TSBP rules may not prohibit the process, and directed staff to prepare suggested language for consideration by the Board at its August 2009 meeting to clarify §291.9.

- *FY2011-2015 Strategic Plan* (Tab 25)

Ms. Stella directed the Board's attention to a timetable for preparation of the *FY2011-2015 Strategic Plan*. She advised the Board that they would be asked to review the strategic plan issues at the August 2009 board meeting.

- Legislation Filed During the 81st Texas Legislative Session that Would Have an Impact on TSBP and/or the Practice of Pharmacy (Tab 26)

Ms. Dodson directed the Board's attention to a report on legislation that had been filed to date that could impact pharmacy. She reviewed the list for the Board.

- Possible Statutory Changes (Tab 27)

There were no recommendations for changes.

F. Consideration of and Possible Action Concerning Enforcement Reports

- Petition(s) to Serve as a Preceptor (Tab 28)

Ms. Fisher directed the Board's attention to a petition from Sean Patrick Reilly, Pharm.D., to serve as a preceptor. Ms. Fisher advised the Board that Mr. Reilly was currently under a Board Order and that under Board rule §283.6, no pharmacist may serve as a preceptor if his/her license has been the subject of an order of the Board during the period he or she is serving as a preceptor or within the three-year period immediately preceding application for approval as a preceptor. However, a pharmacist who is or has been the subject of an order may petition the Board to act as a preceptor. Ms. Fisher reviewed Mr. Reilly's petition and supporting documentation for the Board.

Following discussion, the motion was made by Mr. Caldwell to deny the petition of Sean Patrick Reilly, Pharm.D., to serve as a preceptor. The motion was seconded by Ms. Mendoza and passed unanimously.

- Report on Complaints Closed and Dismissed During the Previous Quarter (Tab 29)

The Board received a report on complaints dismissed and closed during the first two quarters of FY2009 (September 1, 2008 – February 28, 2009). The report also included quarterly averages for FY2008 as compared to FY2009, as well as percentage of change from FY2008 to FY2009. Ms. Fisher reviewed the report for the Board.

- Report on Status of Active/Pending Complaints (Tab 30)

The Board received a *Report on Status of Active/Pending Complaints*. Ms. Fisher reviewed the report for the Board.

G. Disciplinary Orders

- Ms. Arnold directed the Board's attention to minutes of Temporary Suspension Hearings, held April 3, 2009, and April 17, 2009. (Tab 32) Both hearings were in the matter of Raven's Corner Pharmacy and Vikas Patel, R.Ph.

Following review of the minutes, the motion was made by Ms. Mendoza to approve the minutes of the Temporary Suspension Hearings, held April 3, 2009, and April 17, 2009, as presented. The motion was seconded by Ms. Waggener and passed unanimously.

H. **Miscellaneous**

- Items to be Placed on Agenda for May 2009 Board Meeting (Tab 33)

Board Members and/or Ms. Dodson requested the following items be placed on the agenda for the August 2009 or future Board Meetings:

- Additional update of recommendations from Task Force on Class C Pharmacies on sterile compounding;
- Suggested rule language to amend §291.28 concerning fees charged to third parties for providing copies of patient's confidential records;
- Suggested rule language to amend §291.9 to clarify rule concerning prescription pick up locations; and
- Discussion of issues for TSBP Strategic Plan for FY2011-2015 and approval of questionnaire to be sent to solicit information from interested parties.

G. **Disciplinary Orders** (cont.)

- Report on Agreed Board Orders Entered by Executive Director
 - The Board received and reviewed a list of 17 Agreed Board Orders concerning pharmacy technicians, pharmacists, and pharmacies that had been entered by the Executive Director on behalf of the Board, in accordance with the Board's directives, during the period March 3, 2009, through April 29, 2009.
- Discussion of and Action on Proposed Agreed Board Orders and Default Orders

The Board received and reviewed a list of 19 Agreed Board Orders for pharmacy technicians and pharmacy technician trainees following informal conferences, which were held on:

- September 18, 2008 (one Order);
- February 26, 2009 (three Orders);
- March 26, 2009 (four Orders);

- April 7, 2009 (one Order); and
- April 23, 2009 (ten Orders).

The Board also received a list of 17 Default Orders for pharmacy technicians and pharmacy technician trainees who did not appear for informal conferences.

The motion was made by Ms. Mendoza to approve the 19 Agreed Board Orders for pharmacy technicians and pharmacy technician trainees following informal conferences and the 17 Default Board Orders for pharmacy technicians and pharmacy technician trainees. The motion was seconded by Ms. Waggener and passed 5-0-0.

- Report on Agreed Board Orders Entered by Executive Director
 - The Board received and reviewed a list of 45 Technician Agreed Board Orders (Alternative Resolution and Falsification) that had been signed by the Executive Director on behalf of the Board in accordance with their directives during the period February 13, 2009, through April 28, 2009.
- Discussion of and Action on Proposed Agreed Board Orders and Default Orders
 - The Board received notebooks containing 67 Agreed Board Orders for pharmacists, pharmacies, student pharmacist-interns, and pharmacy technicians, 17 of which were Confidential Agreed Board Orders.

Ms. Woody reviewed the alleged violations, as well as the recommended sanctions for each of the following Board Orders (Alternative Resolution) concerning pharmacists, pharmacies, student pharmacist-interns, and pharmacy technicians.

1. Walgreen Co. #6876 ABO #H-07-030

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 5-0-0.

2. John Patrick Wong ABO #H-08-020-A

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Mr. Caldwell and passed 5-0-0.

3. Lauren Laine Giddens ABO #H-08-019-A
4. Walgreen Co. #7839 ABO #H-08-019-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 5-0-0.

5. Jan Newsom Schmidt ABO #F-09-005

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 5-0-0.

6. Kelly Raymond LaMotte ABO #H-07-034-A
7. Walgreen Co. #2809 ABO #H-07-034-B

The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 5-0-0.

Ms. Woody and Ms. Hotchkiss reviewed the alleged violations, as well as the recommended sanctions for each of the following Agreed Board Borders (following an Informal Conference) concerning pharmacists, pharmacies, students, pharmacist-interns, and pharmacy technicians.

8. Eldon F. Hunt Jr. ABO #L-08-015

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 5-0-0.

9. William K. McAuliff ABO #B-07-040-A

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 4-0-1. Ms. Waggener abstained.

10. Darlene Ridgeway Weaver ABO #K-08-029-A

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 5-0-0.

11. CVS/pharmacy #5907 ABO #B-07-086

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Mr. Wiesner and passed 4-0-1. Mr. Caldwell abstained.

12. Walgreen Co. #7964 ABO #B-08-029

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Mr. Wiesner and passed 5-0-0.

13. CVS/pharmacy #6944 ABO #G-08-031-B

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 5-0-0.

14. Juan Antonio Ibarra ABO #F-09-008

The motion was made by Mr. Abeldt to approve the Order as presented. The motion was seconded by Mr. Caldwell and passed 4-0-1. Ms. Waggener abstained.

15. Kroger Pharmacy #544 ABO #B-07-020

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 5-0-0.

16. Barry Lamon Sarchet ABO #B-05-044

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Mr. Caldwell and passed 5-0-0.

17. Merlin Ernest Rose ABO #H-07-022-A

18. Keyes Pharmacy ABO #H-07-022-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Mr. Wiesner and passed 5-0-0.

19. Walgreen Co. #3735 ABO #B-08-020

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 5-0-0.

20. Huntleigh Pharmacy ABO #B-08-036

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 4-0-1. Mr. Caldwell abstained.

21. Walgreen Co. #2686 ABO #K-08-024

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 5-0-0.

22. Brian Michael Chambers ABO #S-09-002

23. Brian Michael Chambers ABO #L-09-012

The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Mr. Wiesner and passed 4-0-1. Ms. Waggener abstained.

24. Ramiro Ignacio Galindo ABO #H-08-021-A

25. H.E.B. Pharmacy #586 ABO #H-08-021-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Ms. Waggener and passed 4-0-1. Mr. Wiesner abstained.

26. Sebastian Ned Gregorio ABO #L-08-020

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 5-0-0.

27. Lynn Carl Halamicek ABO #J-08-023-A

28. Myers Drug, Inc. ABO #J-08-023-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Ms. Waggener and passed 5-0-0.

29. Mark S. McKinney ABO #H-08-017-A

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 5-0-0.

30. Robert Robertson ABO #B-07-068-A

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Mr. Wiesner and passed 4-0-1. Mr. Caldwell abstained.

31. Joyce Lynn Scott ABO #H-08-012-A
32. H.E.B. Pharmacy #540 ABO #H-08-012-B

The motion was made by Ms. Waggener to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 3-0-2. Mr. Caldwell and Mr. Wiesner abstained.

33. Julie Renee Rhoads ABO #H-08-053
34. Paul Alan Wheelis ABO #H-08-022-A
35. Best Med, Inc. ABO #H-08-022-B

The motion was made by Ms. Waggener to approve the Orders as presented. The motion was seconded by Mr. Wiesner and passed 3-0-2. Mr. Abeldt and Mr. Caldwell abstained.

36. Tam Thi Ly ABO #C-08-008-A
37. Ly's Pharmacy, Inc. ABO #C-08-008-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Mr. Wiesner and passed 5-0-0.

38. Walgreen Co. #2458 ABO #H-07-015-B

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 5-0-0.

39. Jennifer Ann Miller ABO #L-09-009

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 4-0-1. Ms. Waggener abstained.

40. Henry Kermit Brown Jr. ABO #L-08-029

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Mr. Wiesner and passed 4-0-1. Mr. Caldwell abstained.

41. Pam Ann Gambol ABO #T-08-183

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 5-0-0.

42. Wendell Joseph Payne ABO #B-07-070-A
43. Arthur Hadley, MD, PA, Pharmacy ABO #B-07-070-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Ms. Mendoza and passed 5-0-0.

44. Thomas Register ABO #G-09-003

The motion was made by Mr. Abeldt to approve the Order as presented. The motion was seconded by Mr. Wiesner and passed 4-0-1. Ms. Waggener abstained.

45. Midtown Pharmacy, LLC ABO #B-07-024

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Mr. Caldwell and passed 5-0-0.

46. Scott Joseph Clemens ABO #K-08-021

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 4-0-1. Ms. Waggener abstained.

Ms. Hotchkiss reviewed the alleged violations, as well as the recommended sanctions for each of the following Default Board Orders concerning pharmacists and pharmacy technicians.

47. J & J Pharmacy BO #K-08-017

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 5-0-0.

48. Tojuana Deshauyindra Strather BO #T-08-354

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 4-0-1. Ms. Waggener abstained.

Ms. Hotchkiss explained that hearings were held without notice and with notice, and licenses of the following pharmacist and pharmacy were suspended. She reviewed the alleged violations, as well as the recommended sanctions for each of the following Temporary Suspension Orders.

Vikas Patel TSO #C-09-008-A-S
Ravens Corner Pharmacy TSO #C-09-008-B-S

Vikas Patel TSO #C-09-009-A-S
Ravens Corner Pharmacy TSO #C-08-009-B-S

Ms. Hotchkiss then reviewed the resulting proposed Agreed Board Orders to settle the cases following the Temporary Suspension Hearings.

49. Vikas Patel ABO #C-09-010-A
50. Ravens Corner Pharmacy ABO #C-09-010-B

The motion was made by Ms. Waggener to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 4-0-1. Mr. Wiesner abstained.

- Executive Session to Consider Confidential Agreed Board Orders

Mr. Caldwell made a motion that the Board go into Executive Session to consider Agreed Board Orders involving impaired pharmacists, pharmacist applicants, and pharmacist interns, under the authority of the Texas Pharmacy Act, Section 564.002. The motion was seconded by Ms. Waggener and passed 5-0-0.

President Fry declared the Board in Executive Session at 5:38 p.m.

At 5:55 p.m., President Fry announced that the Board would resume the meeting in Open Session. President Fry announced that no action was taken and no decisions were made during Executive Session.

Ms. Mendoza made motions to approve the following confidential Orders:

1. ABO #L-09-004
2. ABO #M-09-006
3. ABO #N-09-005
4. ABO #N-09-008
5. ABO #N-09-002
6. ABO #G-09-001-A
7. ABO #G-09-001-B
8. ABO #G-08-029
9. ABO #B-07-079
10. ABO #G-08-036
11. ABO #G-08-031-A
12. ABO #G-08-028
13. ABO #N-09-007
14. ABO #G-07-021
15. ABO #E-08-017
16. ABO #N-09-010
17. BO #N-09-006

The motions were seconded by Mr. Wiesner and passed as follows:

1. 5-0-0.
2. 5-0-0.
3. 5-0-0.
4. 4-0-1. Ms. Waggener abstained.
5. 4-0-1. Mr. Caldwell abstained.
6. 5-0-0.
7. 5-0-0.
8. 5-0-0.
9. 5-0-0.
10. 4-0-1. Mr. Caldwell abstained.
11. 5-0-0.
12. 5-0-0.
13. 5-0-0.
14. 4-0-1. Mr. Wiesner abstained.

15. 4-0-1. Ms. Waggener abstained.
16. 5-0-0.
17. 5-0-0.

H. **Miscellaneous**

- Discussion of and Possible Action on Recent Conferences and Events

The Board discussed Board Member and Executive Director attendance at recent conferences and events.

- Discussion of and Possible Action on Upcoming Conferences and Events

The Board discussed Board Member and Executive Director attendance at upcoming conferences and events.

- Personnel Matters

- Election of Officers

An election of officers was not held.

- Evaluation of Executive Director (Tab 34)

Mr. Caldwell made a motion that the Board go into Executive Session to consider personnel matters under the authority of the Texas Government Code, Section 551.074. The motion was seconded by Mr. Wiesner and passed 5-0-0.

President Fry declared the Board in Executive Session at 5:58 p.m.

At 6:29 p.m., President Fry announced that the Board would resume the meeting in Open Session. President Fry announced that no action was taken and no decisions were made during Executive Session.

The motion was made by Ms. Mendoza to approve a salary increase for the Executive Director effective September 1, 2009, of \$1,500, if funds are available, and to express the wholehearted gratitude of the Board for the work done by the Executive Director.

President Fry adjourned the meeting at 6:30 p.m.

APPROVED:

W. Benjamin Fry, R.Ph.
President

Gay Dodson, R.Ph.
Executive Director/Secretary

August 11, 2009