



# TEXAS STATE BOARD OF PHARMACY

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TEXAS STATE BOARD OF PHARMACY  
Health Professions Council Board Room  
333 Guadalupe Street, Tower II, Suite 225  
Austin, Texas

May 4 - 5, 2010

## MINUTES<sup>1</sup>

### Tuesday, May 4, 2010

President Jeanne D. Waggener, R.Ph., called the meeting to order at 9:04 a.m. Other Board Members present were W. Buford T. Abeldt, Sr., R.Ph.; L. Suzan Kedron; Alice Mendoza, R.Ph.; Dennis F. Wiesner, R.Ph.; W. Benjamin Fry, R.Ph.; Rosemary Forester Combs; Joyce A. Tipton, R.Ph.; and Charles Wetherbee.

Staff present were Gay Dodson, R.Ph., Executive Director/Secretary; Carol Fisher, R.Ph., M.P.A., Director of Enforcement; Paul Holder, R.Ph., Pharm.D., Assistant Director of Enforcement; Cathy Stella, Director of Licensing and Administrative Services; Kerstin Arnold, General Counsel; Julie Hildebrand, Litigation Counsel; Caroline Hotchkiss, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; Lisa Stone, Compliance Inspector; and Becky Damon, Executive Assistant.

Also present were Pharmacist Intern Lori Jobe and Legal Intern John Maddox.

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<sup>1</sup>See agenda and corresponding attachments for supporting materials.

**A. Announcements**

- President Waggener 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.

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

Following discussion, the motion was made by Mr. Fry to approve the minutes of the TSBP Board Business Meeting, held February 9-10, 2010, and the TSBP Executive Committee Meeting, held March 19, 2010, as presented. The motion was seconded by Ms. Kedron and passed 7-0-1. Ms. Combs abstained.

**C. Discussion of and Possible Action Regarding Rules**

Final Adoption of Rules

- Rules Concerning Disciplinary Action for Pharmacy Technicians and Pharmacy Technician Trainees (§281.9) (Tab 02)

Ms. Benz explained that the Board voted to propose the amendments to §281.9 during its February 9-10, 2010, meeting. The proposed amendments were published in the March 26, 2010, issue of the *Texas Register*, and no comments were received.

Ms. Benz directed the Board's attention to amendments to §281.9 and explained that the amendments would implement provisions of S.B. 1853, which was passed by the 81<sup>st</sup> Session of the Texas Legislature.

Ms. Benz explained that S.B. 1853 amended the Texas Pharmacy Act to:

- a. Specify that the Board may discipline a pharmacy technician if the technician has:
  - Performed a duty only a pharmacist may perform;
  - Used alcohol or drugs in an "intemperate" manner;
  - Engaged in negligent, unreasonable, or inappropriate conduct when working in a pharmacy;
  - Violated a disciplinary order;
  - Been convicted of a criminal offense that requires registration as a sex offender; or
  - Been disciplined by pharmacy or other health regulatory board.

- b. Specify that a disciplinary action affecting the registration of a pharmacy technician trainee remains in effect if the trainee obtains registration as a pharmacy technician; and
- c. Give the Board the authority on probable cause, to order a pharmacy technician to submit to a mental or physical evaluation.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Mendoza to approve for adoption, by Board Order, amendments to §281.9. The motion was seconded by Mr. Fry and passed unanimously.

- Rules Concerning Sanctions for Criminal Offenses (§281.64 ) (Tab 03)

Ms. Benz explained that the Board voted to propose the amendments to §281.64 during its February 9-10, 2010, meeting. The proposed amendments were published in the March 26, 2010, issue of the *Texas Register*, and no comments were received.

Ms. Benz explained that the suggested amendments to §281.64 clarify sanctions for offenses involving impairment.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Kedron to approve for adoption, by Board Order, amendments to §281.64. The motion was seconded by Mr. Abeldt and passed unanimously.

- Rules Concerning Prescription Drug Recalls and Their Handling and Follow-up by Pharmacies (§291.7) (Tab 04)

Ms. Benz explained that the Board voted to propose new rule §291.7 during its February 9-10, 2010, meeting. The proposed new rule was published in the March 26, 2010, issue of the *Texas Register*. Comments were received from the Texas Pharmacy Business Council.

Ms. Dodson explained that most states have rules regarding requirements for the handling of prescription drug recalls and the proposed rule is similar to language in other states.

Ms. Benz explained that new rules §291.7 and §291.29 (Tab 5) were published together and recommended the Board consider them at the same time.

- Rules Concerning Professional Responsibility of Pharmacists (§291.29) (Tab 05)

Ms. Benz explained that the Board voted to propose new rule §291.29 during its February 9-10, 2010, meeting. The proposed new rule was published in the March 26, 2010, issue of the *Texas Register*. Comments were received from the National Association of Chain Drug Stores, the Texas Federation of Drug Stores and the Texas Pharmacy Business Council.

Ms. Benz explained that the new rule clarifies the requirements for a pharmacist's corresponding responsibility in verifying the validity of prescriptions issued via the internet or otherwise without a valid patient-practitioner relationship.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Tipton to approve for adoption, by Board Order, new rules §291.7 and §291.29. The motion was seconded by Mr. Abeldt and passed unanimously.

- Rules Concerning Remote Verification of Prescription Data Entry and the Implementation of the Provisions of H.B. 19 Regarding the Disposal of Prescription Drugs (§§291.32-291.33) (Tab 06)

Ms. Benz explained that the Board voted to propose the amendments to §§291.32-291.33 during its February 9-10, 2010, meeting. The proposed amendments were published in the March 26, 2010, issue of the *Texas Register*. Comments were received from the National Association of Chain Drug Stores, the Texas Federation of Drug Stores and the Texas Pharmacy Business Council.

Ms. Benz explained that the suggested amendments provide requirements for pharmacists providing cognitive services, supervising technicians, and conducting electronic verification of prescriptions from remote sites. The proposed rule change also requires pharmacists to place the statement "Do not flush unused medications or pour down a sink or drain" on the prescription label in Class A pharmacies.

Following discussion, the Board delayed action on the proposed amendments to §§291.32-291.33 until later in the meeting.

- Rules Concerning the Rural Hospital Provisions of H.B. 1924, as passed by the 81<sup>st</sup> Session of the Texas Legislature (§§291.72-291.75) (Tab 07)

Ms. Benz explained that the Board voted to propose the amendments to §§291.72-291.75 during its February 9-10, 2010, meeting. The proposed amendments were published in the March 26, 2010, issue of the *Texas Register*. Comments were received from the Texas Organization of Rural and Community Hospitals and the Texas Hospital Association.

Ms. Benz directed the Board's attention to amendments to §§291.72–291.75 and explained that the amendments would implement provisions of H.B. 1924, which was passed by the 81<sup>st</sup> Session of the Texas Legislature.

Ms. Benz explained that H.B. 1924 added a new Section 562.1011 titled Operation of Class C Pharmacy in Certain Rural Hospitals to the Pharmacy Act. This new Section:

- (1) establishes a new definition for a rural hospital;
- (2) outlines the procedures for a nurse to enter a pharmacy when the pharmacy is closed to remove drugs for administration to a patient to the Act;
- (3) allows pharmacy technicians in a “rural hospital” to perform certain enumerated duties without the direct supervision of a pharmacist; and
- (4) allows hospitals that have ongoing “clinical pharmacy programs” to allow pharmacy technicians to verify the accuracy of work performed by another pharmacy technician relating to the filing of floor stock and unit dose distribution systems if the patient's orders have previously been reviewed and approved by a pharmacist. (Tech-Check-Tech)

Ms. Benz explained that these amendments implement items (1) – (3) above. Item (4) was adopted by the Board at the February 2010 meeting.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Mendoza to approve for adoption, by Board Order, amendments to §§291.72-291.75. The motion was seconded by Mr. Fry and passed unanimously.

- Rules Concerning the Implementation of the Provisions of H.B. 19 Regarding the Disposal of Prescription Drugs (§291.104) (Tab 08)

Ms. Benz explained that the Board voted to propose the amendments to §291.104 during its February 9-10, 2010, meeting. The proposed amendments were published in the March 26, 2010, issue of the *Texas Register*. Comments were received from the Texas Federation of Drug Stores.

Ms. Benz explained that the suggested amendments to §291.104 require pharmacists to place the statement “Do not flush unused medications or pour down a sink or drain” on the prescription label in Class E pharmacies.

Following discussion, the Board delayed action on the proposed amendments to §291.104 until later in the meeting.

#### Proposal of Rules

- Rules Concerning Grounds for Discipline of Pharmacist License (§281.8) (Tab 09)

Ms. Benz explained that the proposed amendments would correct references to Chapter 565 of the Texas Pharmacy Act.

Following discussion, the motion was made by Mr. Fry to approve for proposal amendments to §281.8. The motion was seconded by Mr. Wetherbee and passed unanimously.

- Rules Concerning Governing Cooperating Practitioners and Criminal History Evaluation Letter (§§281.11-281.12) (Tab 10)

Ms. Benz directed the Board’s attention to the suggested repeal of §281.11 concerning Rules Governing Cooperating Practitioners. Ms. Benz explained that §281.11 would be relocated to proposed new rule §281.12.

Ms. Benz explained that H.B. 963 amended Chapter 53 of the Occupations code requiring all regulatory agencies to allow an applicant to request a preliminary evaluation of a person’s eligibility to be licensed. The agency has 90 days to respond to a request and a fee may be charged for the evaluation. Ms. Benz directed the Board’s attention to suggested language for new rule §281.11.

Following discussion, the motion was made by Mr. Fry to approve for proposal the following:

- repeal of rule §281.11;
- new rule §281.12; and
- new rule §281.11, with changes to recommended by the Board, including increasing the fee to \$150.00.

The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Informal Disposition of a Contested Case (§281.22) (Tab 11)

Ms. Benz directed the Board's attention to suggested amendments to §281.22 and explained that the amendments correct references to §281.30.

Following discussion, the motion was made by Mr. Abeldt to approve for proposal amendments to §281.22, as presented. The motion was seconded by Ms. Kedron and passed unanimously.

- Rules Concerning Sanctions for Criminal Offenses (§281.64) (Tab 12)

Ms. Benz directed the Board's attention to suggested amendments to §281.64 and explained that the amendments clarify disciplinary guidelines. She explained that staff presented these amendments to clarify disciplinary guidelines for use in informal conferences and proceedings before the State Office of Administrative Hearings.

Following discussion, the motion was made by Mr. Fry to approve for proposal amendments to §281.64, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Application Fee for Pharmacist and Pharmacy Technician Reinstatement Applicants (§281.66) (Tab 13)

Ms. Benz directed the Board's attention to suggested amendments to §281.66 and explained that the Board discussed adding a fee to the reinstatement application at its February 2010 meeting. At that meeting the Board directed staff to bring draft rules to allow a \$100.00 fee for individuals applying for reinstatement of their license or registration.

Following discussion, the motion was made by Mr. Abeldt to approve for proposal amendments to §281.66. The motion was seconded by Mr. Wetherbee and passed unanimously.

- Rules Concerning Emergency Medication Kits (§291.121) (Tab 14)

Ms. Benz directed the Board's attention to suggested amendments to §291.121 and explained that at its February 2010 meeting the Board discussed allowing more than one pharmacy to supply emergency medication kits in certain situations. At that meeting the Board directed staff to bring draft rules to allow more than one pharmacy to supply emergency medication kits to an institution when one pharmacy can not meet the emergency medication needs of the residents.

Following discussion, the motion was made by Mr. Fry to approve for proposal amendments to §291.121, as presented. The motion was seconded by Mr. Abeldt and passed unanimously.

- Rules Concerning Central Prescription Drug or Medication Order Processing (Class G) (§291.153) (Tab 15)

Ms. Benz directed the Board's attention to suggested language for proposed new rule §291.153 and explained that the new rule establishes a new Class G pharmacy to allow for centralized prescription processing.

Following discussion, the motion was made by Mr. Fry to approve for proposal new rule §291.153. The motion was seconded by Ms. Mendoza and passed 7-0-1. Ms. Combs abstained.

- Rules Concerning Limited Prescription Delivery Pharmacy (Class H) (§291.155) and Concerning Prescription Pick-Up Locations (§291.9) (Tab 16)

Ms. Benz directed the Board's attention to suggested language for proposed new rule §291.155 and explained the new rule establishes a new Class H pharmacy to allow for the limited delivery of prescriptions for dangerous drugs.

Ms. Benz directed the Board's attention to suggested amendments to §291.9 and explained the amendments clarify the rules concerning prescription pick-up locations.

Following discussion, the motion was made by Mr. Abeldt to approve for proposal new rule §291.155 and amendments to §291.9, as presented. The motion was seconded by Mr. Wiesner and passed unanimously.

President Waggener recessed the meeting at 10:48 a.m.

President Waggener reconvened the meeting at 11:07 a.m.

- Rules Concerning Freestanding Emergency Medical Centers (Class F) Pharmacies (§291.151) (Tab 18)

Ms. Benz directed the Board's attention to suggested amendments to §291.151 and explained the amendments clarify the licensing requirements for hospitals exempt from licensing requirements under Chapter 254, Health and Safety Code, operating freestanding emergency medical care centers.

Following discussion, the motion was made by Ms. Tipton to approve for proposal §291.151, as presented. The motion was seconded by Mr. Wiesner and passed unanimously.

#### Rule Reviews

- For Proposal

Ms. Benz directed the Board's attention to the TSBP Rule Review Plan for FY2010-2013. (Tab 19)

Ms. Benz directed the Board's attention to the suggested review of:

- Chapter 281 (§§281.1-281.11, 281.13, 281.15, 281.17-281.22, 281.30-281.34, 281.60-281.66) Concerning Administrative Practices and Procedures (Tab 20)
- Chapter 311 (§§311.1-311.2) Concerning Code of Conduct (Tab 21)

Following discussion, in accordance with Government Code §2001.039, the motion was made by Ms. Mendoza to approve for proposal, as presented, the review of Chapter 281 (§§281.1-281.11, 281.13, 281.15, 281.17-281.22, 281.30-281.34, 281.60-281.66), and Chapter 311 (§§311.1-311.2). The motion was seconded by Mr. Fry and passed unanimously.

#### **D. Discussion of and Possible Action Concerning Reports of Committees/Task Forces**

- Task Force on Class B (Nuclear) Pharmacies (Tab 22)

Ms. Benz directed the Board's attention to suggested amendments to §§291.51-291.55 to implement recommendations from the Task Force on Class B (Nuclear) Pharmacies. Ms. Benz reviewed the

recommended changes for the Board. President Waggener recognized Steve Williamson, who served as chair of the task force. Following discussion, the motion was made by Mr. Fry to approve for proposal amendments to §§291.51-291.55, as presented. The motion was seconded by Ms. Tipton and passed unanimously.

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

- *TSBP FY2011 Calendar of Events* (Tab 33)

Ms. Dodson directed the Board's attention to a draft of the *TSBP FY2011 Calendar of Events*. Following review, the motion was made by Mr. Abeldt to approve the *TSBP FY2011 Calendar of Events*, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- Customer Service Survey (Tab 34)

Ms. Dodson directed the Board's attention to the results of the TSBP customer service survey for FY2009. Ms. Dodson reviewed the report for the Board.

- Discussion of §291.33(c)(3)(C)(iii) Electronic Prescription Orders (Tab 46)

Mr. Wiesner stated that the applications doctors use to send electronic prescription orders allow the doctors to only mark Brand Necessary yes or no. He stated that most pharmacists think that unless the prescription states Brand Necessary they can substitute a generically equivalent drug.

Following discussion the Board directed staff to develop suggested rule language concerning electronic prescription orders for consideration by the Board at the August 2010 meeting.

President Waggener recessed the meeting at 11:48 a.m.

President Waggener reconvened the meeting at 12:39 p.m.

- Financial Update

- Review of FY2010 Operating Budget and 5% Budget Reduction (Tab 23)

Ms. Stella reviewed the expenditures for the first two quarters of FY2010 (September 1, 2009 - through February 28, 2010) for the Board.

Ms. Stella reviewed the Item Reductions by Method of Financing Report for the Board. This report details the reductions identified by TSBP staff to accomplish the 5% budget reduction requested by the state.

- Review of Board Member Travel Budget (Tab 24)

Ms. Stella reviewed the Board Member FY2010 Travel Budget.

- Review and Approval of *FY2011-2015 Strategic Plan* (Tab 25)

Ms. Dodson directed the Board's attention to a draft of the *TSBP FY2011-2015 Strategic Plan*. Following a brief review of the plan, the motion was made by Mr. Fry to approve the *TSBP FY2011-2015 Strategic Plan*. The motion was seconded by Ms. Mendoza and passed unanimously.

- Professional Recovery Network

- Dr. Holder discussed the charts which reflect the performance measures regarding the number of individuals participating in the peer assistance program for the past three fiscal years (FY2007-2009), as well as the number of pharmacists participating in the program during the first two quarters of FY2010. (Tab 26)

- President Waggener recognized Donna Chamberlain, Director of the Pharmacy Recovery Network (PRN). Ms. Chamberlain directed the Board's attention to the PRN budget for September 1, 2009, through August 31, 2010, and reviewed current PRN activities for the Board. (Tab 27)

- Ms. Chamberlain directed the Board's attention to the PRN Proposed Budget for FY2012-2013 and pointed out that PRN was not asking for any increase in funding. (Tab 28)

Following discussion, the motion was made by Mr. Abeldt to approve the PRN reports and Proposed Budget for FY2012-2013, as presented. The motion was seconded by Ms. Kedron and passed unanimously.

- Review and Approval of Proposed Budget for FY2012-2013 (Tab 29)

Ms. Stella directed the Board's attention to information concerning TSBP's proposed budgets for FY2012-2013, which included the following:

- Exceptional Item Request
- New Personnel Justifications
- FY2012-2013 Proposed Legislative Appropriation Requests Comparison Detail

Ms. Stella and Ms. Dodson reviewed the financial documents for the Board and answered questions posed by the Board.

Following review and discussion of the budget documents, the motion was made by Ms. Combs to approve the proposed budget and to give Ms. Waggener the authority to approve any necessary changes that arise between scheduled Board meetings. The motion was seconded by Ms. Mendoza and passed unanimously.

- Review and Approval of TSBP Revenue Projections and Fee Scenarios (Tab 30)

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 17) and provided the Board a report on revenue projections, a history of TSBP's fee structure and scenarios of fee structures necessary to support the agency's budget for FY2012-2013.

Following review and discussion of the revenue projections and the fee scenarios, the motion was made by Mr. Fry to approve for proposal amendments to §291.6, §295.5, and §297.4 concerning fee structures for FY2012-2013 that would decrease pharmacists and pharmacy licensing fees by \$89 and pharmacy technician registration fees by \$19, and decrease the application fee for pharmacy technician trainees by \$12. The motion was seconded by Ms. Mendoza and passed unanimously.

- Report on Internal Risk Assessment (Tab 31)

Ms. Stella directed the Board's attention to an internal risk assessment that is reported annually to the State Auditor's Office. She reviewed the risk assessment for the Board.

Following discussion, it was the consensus of the Board that the report was an adequate risk assessment for TSBP.

- Review and Approval of Committee Recommendations on Request for Qualifications for Providers of Pharmacy Technician Certification Examination (Tab 32)

Ms. Stella reviewed for the Board a summary of the evaluation scores regarding the proposals submitted to TSBP in response to a Request for Qualifications posted in November 2009 on the Electronic State Business Daily.

Ms. Waggener reported that after the Committee reviewed the evaluations received from the independent psychometricians contracted by the Board, the Committee voted to recommend to the full Board that the testing service rated the highest score by the psychometricians, Pharmacy Technician Certification Board, be chosen to be the only technician certification exam used by TSBP.

The motion was made by Mr. Fry to accept the Committee's recommendation and direct the Executive Director to exercise the option to renew this contract each year for four years. Ms. Tipton seconded the motion. The motion passed unanimously.

- Report on Audit Conducted by the Office of the State Comptroller (Tab 35)

Ms. Dodson advised the Board that the Texas Comptroller of Public Accounts had conducted an audit of TSBP expenditures. She directed the Board's attention to the Exit Conference report and explained that only minor audit issues were identified. She explained that the final audit report would be forwarded to the Board when received.

President Waggener recessed the meeting at 2:00 p.m.

President Waggener reconvened the meeting at 2:19 p.m.

**G. Disciplinary Orders**

- Consideration of Proposal for Decision
  - In the Matter of Antonio Martinez, Pharmacist, License #38929 (Tab 42) and A.M. Pharmacy, Pharmacy License #22602 (Tab 43)

Ms. Arnold advised the Board that a hearing was held before State Office of Administrative Hearings (SOAH) Administrative Judge Penny A. Wilkov on January 11, 2010, in the matter of Antonio Martinez and A.M. Pharmacy, in which TSBP staff sought an indefinite suspension against Antonio Martinez and A.M. Pharmacy until each licensee complied with previously entered Board Orders #G-06-022-A and #G-06-022-B, and an administrative penalty based on failure to comply with the Board Orders.

Ms. Arnold introduced Judge Wilkov, who reviewed the *Proposal for Decision* for the Board. She advised the Board that she concurred with the staff's recommendation for suspension.

Ms. Hildebrand reviewed the background in the case for the Board. She directed the Board's attention to two versions of Board Orders #N-08-020 and #N-08-021 and reviewed the options available for the Board.

Following discussion, the motion was made by Mr. Fry to accept the *Findings of Fact and Conclusions of Law* in the *Proposal for Decisions*, and approve Board Order #N-08-020, as presented, to suspend the pharmacist license of Antonio Martinez until full compliance with all terms and conditions of Board Order #G-06-022-A, with an administrative penalty of \$5,000, and approve Board Order #N-08-021, as presented, to suspend the pharmacy license of A.M. Pharmacy until full compliance with all terms and conditions of Board Order #G-06-022-B, with an administrative penalty of \$5,000. The motion was seconded by Mr. Abeldt and passed unanimously.

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

- FY2009 Annual Report (Tab 36)

Ms. Dodson directed the Board's attention to a draft of the *TSBP FY2009 Annual Report*. She reviewed the agency's significant accomplishments in FY2009 for the Board.

Following discussion, the motion was made by Mr. Wetherbee to approve the *TSBP FY2009 Annual Report* as presented. The motion was seconded by Mr. Abeldt and passed unanimously.

- Update on TSBP Action on Legislation Passed During the 81<sup>st</sup> Session of the Texas Legislature that has an Impact on TSBP and/or the Practice of Pharmacy (Tab 37)

Ms. Dodson directed the Board's attention to an action chart concerning legislation that was passed during the 81<sup>st</sup> Session of the Texas Legislature that had an impact on TSBP and/or the practice of pharmacy. The chart contained the bill number, action required of TSBP, effective date of the bill, TSBP's internal deadline, and the current status of TSBP's implementation of the bill.

- Discussion of Possible Statutory Changes for Consideration During the 82<sup>nd</sup> Session of the Texas Legislature (Tab 38)

Ms. Dodson directed the Board's attention to a list of items previously approved by the Board for recommendation for action during the 81<sup>st</sup> Session of the Texas Legislature on which no action was taken.

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

Final Adoption of Rules

- Rules Concerning Remote Verifications of Prescription Data Entry and the Implementation of the Provisions of H.B. 19 Regarding the Disposal of Prescription Drugs (§§291.32-291.33) (Tab 06) (cont.)

Ms. Benz explained that the Board reviewed these proposed amendments earlier in the meeting. She explained the preamble was revised to indicate that comments were received from the Texas Federation of Drug Stores and the Texas Pharmacy Business Council.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Kedron to approve for

adoption, by Board Order, amendments to §§291.32-291.33 with the change in the preamble noted above. The motion was seconded by Mr. Wetherbee and passed unanimously.

- Rules Concerning the Implementation of the Provisions of H.B. 19 Regarding the Disposal of Prescription Drugs (§291.104) (Tab 08) (cont.)

Ms. Benz explained that the Board reviewed these proposed amendments earlier in the meeting. She explained the preamble was revised to indicate that comments were received from the Texas Federation of Drug Stores.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Kedron to approve for adoption, by Board Order, amendments to §291.104 with the change in the preamble noted above. The motion was seconded by Mr. Wetherbee and passed unanimously.

#### **H. Miscellaneous**

- Items to be Placed on Agenda for August 2010 Board Meeting (Tab 44)

Board Members and/or Ms. Dodson requested that the following items be placed on the agenda for the August 2010 Board Meeting.

- Suggested rule language concerning Electronic Prescription Orders; and
- Discussion of Possible Statutory Changes for Consideration During the 82<sup>nd</sup> Session of the Texas Legislature.
- 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.

President Waggener recessed the meeting at 3:29 p.m.

**Tuesday, February 10, 2010**

President Jeanne D. Waggener, R.Ph., called the meeting to order at 8:08 a.m. Other Board Members present were W. Buford T. Abeldt, Sr., R.Ph.; L. Suzan Kedron; Alice Mendoza, R.Ph.; Dennis F. Wiesner, R.Ph.; W. Benjamin Fry, R.Ph.; Rosemary Forester Combs; Joyce A. Tipton, R.Ph.; and Charles Wetherbee.

Staff present were Gay Dodson, R.Ph., Executive Director/Secretary; Carol Fisher, R.Ph., M.P.A., Director of Enforcement; Paul Holder, R.Ph., Pharm.D., Assistant Director of Enforcement; Kerstin Arnold, General Counsel; Julie Hildebrand, Litigation Counsel; Caroline Hotchkiss, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; Ann Driscoll, Legal Assistant; Lisa Stone, Compliance Inspector and Becky Damon, Executive Assistant.

Also present was Pharmacist Intern Lori Jobe.

**F. Consideration of and Possible Action Concerning Enforcement Reports**

- Petition(s) to Serve as a Preceptor

Ms. Fisher directed the Board's attention to a petition from John W. Rudder, R.Ph. (Tab 39) who is currently under Board orders, to serve as a preceptor. Under Board Rule §283.6, no pharmacist who has been the subject of an order of the Board may serve as a preceptor if the pharmacist has been the subject of a Board order during a three-years 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 the petition and supporting documentation for the Board.

The motion was made by Ms. Tipton that the Board approve the petition of John W. Rudder, R.Ph., to serve as a preceptor. The motion was seconded by Ms. Mendoza and passed 7-0-1. Ms. Combs abstained.

- Report on Complaints Closed and Dismissed During the Previous Quarter (Tab 40)

The Board received a report on complaints dismissed and closed during the first two quarters of FY2010 (September 1, 2009 – February 28, 2010). The report also included quarterly averages for FY2009 as compared to FY2010, as well as percentage change from FY2009 to FY2010. Ms. Fisher reviewed the report for the Board.

- Report on Status of Active/Pending Complaints (Tab 41)

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 reports concerning disciplinary orders for pharmacists, pharmacies, pharmacy technicians, and pharmacy technician trainees. (See Attachment #1)

- The Board reviewed 43 Technician Agreed Board Orders that had been entered by the Executive Director on behalf of the Board, in accordance with the Board's directives during the period February 19, 2010, through April 27, 2010.
- The Board reviewed 39 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 directive, during the period March 2, 2010, through April 28, 2010.
- The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following 28 proposed Agreed Board Orders concerning pharmacy technicians and pharmacy technician trainees who appeared for an informal conference and 33 proposed Default Board Orders concerning pharmacy technicians and pharmacy technician trainees who did not appear for informal conferences.

The motion was made by Mr. Wetherbee to approve the following proposed Agreed Board Orders and proposed Default Board Orders as presented.

#### **Agreed Board Orders**

- |     |                                       |                 |
|-----|---------------------------------------|-----------------|
| 1.  | Rashida Maria<br>Reynososobeca-Thomas | ABO #T-08-816   |
| 2.  | Enrique Chavez                        | ABO #T-08-900-N |
| 3.  | Mary Ellen Baker                      | ABO #T-09-445   |
| 4.  | Melissa Renee Booker                  | ABO #T-09-384-N |
| 5.  | Irma Carrasco                         | ABO #T-09-426-N |
| 6.  | Jan A. Copeland                       | ABO #T-10-214   |
| 7.  | Reece Evan Davie                      | ABO #T-08-934   |
| 8.  | Louvenia Ethel Johnson                | ABO #T-10-028-N |
| 9.  | Marisela Sanchez                      | ABO #T-09-382   |
| 10. | Yanina Rubi Tienda                    | ABO #T-09-335-N |

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| 11. | Graciela Barrera            | ABO #T-09-437-N |
| 12. | Melissa Ann Campos          | ABO #T-09-264-N |
| 13. | Natosha Laquese Dehorney    | ABO #T-09-443-N |
| 14. | Angelica Escalante          | ABO #T-09-572-N |
| 15. | Roberto Flores              | ABO #T-09-618-N |
| 16. | Christine Denise Knoll      | ABO #T-10-067   |
| 17. | Maxamino Martinez           | ABO #T-09-525   |
| 18. | Shirley Ann McDonald        | ABO #T-09-561   |
| 19. | Joshua Daniel Price         | ABO #T-09-261-N |
| 20. | Erica Maxine Shimamura      | ABO #T-09-280   |
| 21. | Brandon William Brammer     | ABO #T-08-940-N |
| 22. | Pavel Alekseevich Chiryatev | ABO #T-09-674   |
| 23. | Stephen Daniel Fuentes      | ABO #T-09-385-N |
| 24. | Detrella McGowen            | ABO #T-09-631-N |
| 25. | Reginald Neely              | ABO #T-09-527-N |
| 26. | Fallon Ursula Rosignon      | ABO #T-09-414   |
| 27. | Jesus Soto                  | ABO #T-09-554   |
| 28. | Tiwana A. Williams          | ABO #T-09-596-N |

**Default Board Orders**

- |     |                          |                |
|-----|--------------------------|----------------|
| 29. | Benneth Akpa             | BO #T-09-239   |
| 30. | Martica Gabriel Bailey   | BO #T-09-526-N |
| 31. | Billie Leanne Bice       | BO #T-09-506   |
| 32. | Ginger Nichole Brooks    | BO #T-10-054   |
| 33. | Isabel Joy Burton        | BO #T-09-393-N |
| 34. | Efrain Flores            | BO #T-09-551   |
| 35. | Tatiana Shundale Gant    | BO #T-09-499-N |
| 36. | Marietta Lynett Hamilton | BO #T-09-419-N |
| 37. | Chanel Renee Livingston  | BO #T-09-570-N |
| 38. | Antonio Martinez         | BO #T-08-931   |
| 39. | Amanda P. Mata           | BO #T-09-390   |
| 40. | Daniel James McCollum    | BO #T-09-271-N |
| 41. | Whitney Nicole Perales   | BO #T-09-408-N |
| 42. | Kailie Beth Renteria     | BO #T-09-545-N |
| 43. | Tiffany Renee Woods      | BO #T-09-440   |
| 44. | Kasie Kay Bond           | BO #T-09-452-N |
| 45. | Andrea Sharisse Embers   | BO #T-09-501-N |
| 46. | Mauriunna Yvetta Ginns   | BO #T-09-520-N |
| 47. | Leo David Hebert         | BO #T-09-597   |
| 48. | Amanda Jo Peace          | BO #T-09-449-N |
| 49. | Joseph Patrick Shaw      | BO #T-07-855   |
| 50. | Brandee Marie Snider     | BO #T-10-082   |
| 51. | Marcus Leon Thompson     | BO #T-09-476-N |
| 52. | Rachel Aguilar           | BO #T-10-096-N |
| 53. | Erica Bradford           | BO #T-09-407   |
| 54. | Eddy Alberto Conejo      | BO #T-10-045-N |

55.	Laura Michelle Craft	BO #T-10-049-N
56.	Dietrich Le'Sha Jones	BO #T-09-415-N
57.	Bryan McDonald	BO #T-09-731-N
58.	Megan Deann Olivos	BO #T-10-068-N
59.	Jose M. Peralta	BO #T-09-299
60.	Angela D. Thompson	BO #T-09-576
61.	Babar Zuberi	BO #T-10-015

The motion was seconded by Mr. Abeldt and passed 8-0-0.

- The Board reviewed the alleged violations, as well as the recommended sanction for each of the following 16 proposed Agreed Board Orders (Alternative Resolutions) concerning pharmacist, pharmacies, student pharmacist-interns, and pharmacy technicians.

The motion was made by Mr. Fry to approve the following proposed Agreed Board Orders as presented.

1.	CVS/pharmacy #6925	ABO #H-09-009-B
2.	Target Store #T-1786	ABO #H-09-050-B
3.	Walgreen Co. #05094	ABO #H-08-040
4.	Chinh Gia Nguyen	ABO #H-09-053-A
5.	Walgreen Co. #7071	ABO #H-09-053-B
6.	Wal-Mart Pharmacy #10-0949	ABO #H-09-047
7.	Folarin Oluwole Ajijo	ABO #H-09-044-A
8.	CVS/pharmacy #7751	ABO #H-09-044-B
9.	David Lee Lundquist	ABO #H-09-038-A
10.	CVS/pharmacy #6982	ABO #H-09-038-B
11.	CVS/pharmacy #8335	ABO #H-09-051-B
12.	Joe Fred McKinzie	ABO #H-09-014-A
13.	H.E.B. Pharmacy #596	ABO #H-09-014-B
14.	CVS/pharmacy #6854	ABO #H-07-039
15.	H.E.B. Pharmacy #475	ABO #C-08-013
16.	Monument Pharmacy, Inc.	ABO #L-09-022

The motion was seconded by Ms. Mendoza and passed as follows.

1. 8-0-0
2. 8-0-0
3. 8-0-0
4. 8-0-0
5. 8-0-0
6. 8-0-0
7. 8-0-0
8. 8-0-0
9. 8-0-0

10. 8-0-0
11. 8-0-0
12. 7-0-1 Mr. Wiesner abstained
13. 7-0-1 Mr. Wiesner abstained
14. 8-0-0
15. 7-0-1 Mr. Wiesner abstained
16. 8-0-0

- The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following 22 proposed Agreed Board Orders concerning pharmacist, pharmacies, students, pharmacist-interns, and pharmacy technicians who appeared for an informal conference and one proposed Default Board Order concerning a pharmacist who did not appear for informal conference.

The motion was made by Ms. Mendoza to approve the following 22 proposed Agreed Board Orders and one proposed Default Board Order as presented.

**Agreed Board Orders**

- |     |   |                 |
|-----|---|-----------------|
| 1.  | Derek Joseph Kimani                                       | ABO #S-09-019   |
| 2.  | Deshanda Eshalle Firmin                                   | ABO #L-09-019   |
| 3.  | Kumi Frimpong   | ABO #K-09-041-A |
| 4.  | Mabank Family Pharmacy                                    | ABO #B-09-007   |
| 5.  | Omnicare of Pharr   | ABO #B-09-004   |
| 6.  | Anuradha Milind Padhye                                    | ABO #H-09-013-A |
| 7.  | CVS/pharmacy #6788  | ABO #B-09-018   |
| 8.  | Efton Byron Glover  | ABO #H-09-034-A |
| 9.  | CVS/pharmacy #6944  | ABO #H-09-034-B |
| 10. | George M. Handal  | ABO #A-09-006-A |
| 11. | AAPEX Community<br>Pharmacy, Inc.                         | ABO #A-09-006-B |
| 12. | Parkland Prescription Center                              | ABO #B-08-008-B |
| 13. | Parkland Memorial Hospital<br>Out Patient Clinic Pharmacy | ABO #B-08-009   |
| 14. | COPC Pharmacy Southeast<br>Campus                         | ABO #B-08-010   |
| 15. | Russell Cleve West  | ABO #B-09-019-A |
| 16. | Austin Pharmacy   | ABO #B-09-019-B |
| 17. | Joseph Adam Isbell  | ABO #E-10-007   |
| 18. | Teresa Sweet  | ABO #C-09-005-A |
| 19. | Mary B. Hill  | ABO #C-09-011   |
| 20. | Daniel Lopez  | ABO #T-09-377   |
| 21. | Diana Boukarim Naddaf                                     | ABO #B-08-004   |
| 22. | Byron Keith Brigham                                       | ABO #B-09-003   |

**Default Board Order**

23. Malarie Deshay Cooper

BO #T-09-536

The motion was seconded by Ms. Mendoza and passed as follows.

1. 8-0-0
2. 7-0-1 Mr. Wiesner abstained
3. 7-0-1 Mr. Wiesner abstained
4. 7-0-1 Mr. Wiesner abstained
5. 7-0-1 Mr. Wiesner abstained
6. 7-0-1 Mr. Wiesner abstained
7. 7-0-1 Mr. Wiesner abstained
8. 7-0-1 Mr. Wiesner abstained
9. 7-0-1 Mr. Wiesner abstained
10. 7-0-1 Mr. Wiesner abstained
11. 7-0-1 Mr. Wiesner abstained
12. 7-0-1 Ms. Kedron abstained
13. 7-0-1 Ms. Kedron abstained
14. 7-0-1 Ms. Kedron abstained
15. 7-0-1 Mr. Wiesner abstained
16. 7-0-1 Mr. Wiesner abstained
17. 8-0-0
18. 7-0-1 Mr. Wiesner abstained
19. 7-0-1 Mr. Wiesner abstained
20. 7-0-1 Mr. Wiesner abstained
21. 7-0-1 Mr. Wiesner abstained
22. 8-0-0
23. 7-0-1 Ms. Combs abstained

- The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following 12 proposed Confidential Agreed Board Orders and one proposed Default Board Order concerning pharmacist, pharmacies, and student pharmacist-interns.

The motion was made by Mr. Wetherbee to approve the following proposed Confidential Agreed Board Order as presented.

**Agreed Board Orders**

1. ABO #N-10-007
2. ABO #S-10-002
3. ABO #N-10-006
4. ABO #N-10-003
5. ABO #G-09-002
6. ABO #G-08-040
7. ABO #G-09-025
8. ABO #E-10-005

9. ABO #G-08-030
10. ABO #N-10-015
11. ABO #N-10-004
12. ABO #E-09-026

**Default Board Order**

13. BO #G-10-003

The motion were seconded by Ms. Combs and passed as follows:

1. 8-0-0
2. 8-0-0
3. 7-0-1 Mr. Wiesner abstained
4. 8-0-0
5. 7-0-1 Mr. Fry abstained
6. 7-0-1 Mr. Wiesner abstained
7. 7-0-1 Mr. Wiesner abstained
8. 7-0-1 Mr. Wiesner abstained
9. 8-0-0
10. 8-0-0
11. 7-0-1 Mr. Wiesner abstained
12. 7-0-1 Mr. Wiesner abstained
13. 8-0-0

**H. Miscellaneous (cont.d)**

Evaluation of Executive Director (Tab 45)

Mr. Fry 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 Ms. Mendoza and passed unanimously.

President Waggener declared the Board in Executive Session at 9:16 a.m.

At 10:02 a.m., President Waggener announced that the Board would resume the meeting in Open Session. President Waggener announced that no action was taken and no decisions were made during Executive Session.

A motion was made by Ms. Combs to express a vote of confidence and appreciation for Executive Director Gay Dodson. The motion was seconded by Ms. Mendoza and passed unanimously.

President Waggener adjourned the meeting at 10:35 a.m.

APPROVED:

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Jeanne D. Waggener, R.Ph.  
President

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Gay Dodson, R.Ph.  
Executive Director/Secretary

August 10, 2010



# TEXAS STATE BOARD OF PHARMACY

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## TEXAS STATE BOARD OF PHARMACY Board Committee on Pharmacy Technician Certification Examinations

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May 4, 2010

William Hobby Building, Room 102  
333 Guadalupe Street  
Austin, Texas

### MINUTES<sup>1</sup>

President Jeanne Waggener, R.Ph. called the meeting to order at 8:00 a.m.  
Committee members present were Alice Mendoza, R.Ph., and Rosemary Combs.

Staff present were Gay Dodson, R.Ph., Executive Director/Secretary; Kerstin Arnold, General Counsel, and Cathy Stella, Director of Licensing and Administrative Services.

Ms. Dodson explained that the purpose of the meeting was for the Committee to review the evaluations received from the independent psychometricians contracted by the Board regarding the proposals submitted to TSBP in response to a Request for Qualifications posted in November 2009 on the Electronic State Business Daily and to review a summary of the evaluation scores.

After reviewing the evaluations received from the independent psychometricians contracted by the Board and the summary of the evaluation scores, the Committee voted to recommend to the full Board that the certification examination from the company with the overall highest score from the independent psychometricians (Pharmacy Technician Certification Board (PTCB)), be chosen as the certification examination required for registration as a pharmacy technician in Texas.

President Waggener adjourned the meeting at 8:30 a.m.

APPROVED:

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Jeanne Waggener, R.Ph.  
President

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Gay Dodson, R.Ph.  
Executive Director/Secretary

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<sup>1</sup>See agenda and corresponding attachments for supporting materials.



# TEXAS STATE BOARD OF PHARMACY

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May 28, 2010

**Minutes of the Temporary Suspension Hearing  
of A.M. Pharmacy and Antonio Martinez**

Chairman Jeanne D. Waggener, R.Ph., called the meeting to order at 9:00 a.m., in conference room number 400A, Tower II, 333 Guadalupe Street, Austin, Texas 78701. Board Members, Dennis F. Wiesner, R.Ph., and Charles F. Wetherbee, J.D. were present.

Staff present: Kerstin E. Arnold, General Counsel; Julie C. Hildebrand, Litigation Counsel; Robert Ebrom, Chief Investigator; Sarah Guevara, Field Investigator; and Cheryl Watkins, Legal Assistant.

Respondent: A.M. Pharmacy and Antonio Martinez (not present).

Also present: Lori Barta, Staff Attorney; Amanda Huerta, Investigative Case Manager; Rachel Harris, Pharmacist Intern; John Maddox, Legal Intern; Janelle Nastri, Enforcement Program Specialist; and Annette Porterfield, Enforcement Specialist.

Court Reporter: Lorrie Schnoor.

**A. Opening:**

The Chairman called the case of the Application for the Temporary Suspension in the Matter of the pharmacy license #22603 issued to A.M. Pharmacy and the pharmacist license #38929 issued to Antonio Martinez. She inquired into whether or not a panel member wished to be recused. Mr. Wiesner and Mr. Wetherbee answered no.

The Chairman requested the parties to go on record stating their names and who they are representing.

Board Staff: Julie Hildebrand, attorney for the Board.

Respondent: Not present personally or through counsel.

A Motion for Continuance was submitted by Daniel Robledo, counsel for Respondent, via facsimile. The motion was presented to the panel by Julie Hildebrand. A motion was made by Mr. Wiesner to deny the Respondent's motion. Chairman Waggener seconded the motion. The motion passed unanimously.

**B. Presentation by Board's Attorney, Julie Hildebrand:**

1. Verbal synopsis of allegations.
2. Introduction of documents into evidence. All admitted.
3. Testimony of witnesses: Jose Contreras (via teleconference); William D. Massey (via teleconference); Daniel Salmon (via teleconference); Jeffrey Castillo (via teleconference); Adriana Rivera (via teleconference); and Alejandro Vallejo (via teleconference).
4. Testimony of Board witnesses: Robert Ebrom, Chief Investigator; and Sarah Guevara, Field Investigator.
5. Closing Statement.

**C. Motions**

1. A motion was made by Chairman Waggener to go into Executive Session pursuant to the Open Meetings Act, Section 551.071 of the Government Code, and Section 552.011 of the Texas Pharmacy Act, to deliberate regarding the disciplinary proceedings. Mr. Wetherbee seconded the motion. The motion passed unanimously.

(The Board members went into Executive Session at 11:27 a.m.)

Chairman Waggener reconvened the meeting at 11:32 a.m., and announced that no action was taken during Executive Session.

2. A motion was made by Chairman Waggener that the Application for the Temporary Suspension of the pharmacy license #22603 issued to A.M. Pharmacy and the pharmacist license #38929 issued to Antonio Martinez be granted, in that the evidence and information indicated that the practice of pharmacy by Mr. Martinez and the operation of A.M. Pharmacy are a continuing threat to the public welfare, and recommended that the orders of suspension remain in effect until superseded by subsequent orders of the Board. Mr. Wiesner seconded the motion. The motion passed unanimously with the Temporary Suspension Orders to be adopted effective immediately.

The Chairman announced that the pharmacy license #22603 issued to A.M. Pharmacy and the pharmacist license #38929 issued to Antonio Martinez are suspended.

3. A motion was made by Chairman Waggener to adjourn. Mr. Wiesner seconded the motion. The motion passed unanimously.

Chairman Waggener adjourned the hearing at 11:38 a.m.

**APPROVED:**

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Jeanne D. Waggener, R.Ph.  
Chairman

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Gay Dodson, R.Ph.  
Executive Director/Secretary