President W. Benjamin Fry, R.Ph., called the meeting to order at 1:05 p.m. Other Board Members present were Treasurer Jeanne Waggener, R.Ph.; Buford T. Abeldt, Sr., R.Ph.; L. Suzan Kedron; Alice Mendoza, R.Ph.; and Dennis F. Wiesner, R.Ph.

Board Members Kim A. Caldwell, R.Ph.; Marcelo Laijas, Jr.; and Rosemary Forester Combs were not present.

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; Mitra Woody, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; Kay Wilson, Executive Assistant; and Becky Damon, Executive Assistant.

Also present were Pharmacist Interns Chad Gibson and Jacob Williamson.

1See agenda and corresponding attachments for supporting materials.
President W. Benjamin Fry read an opening statement regarding a public hearing to receive comments on the following rules:

- Amendments to §§291.72-291.75 Concerning Definitions, Personnel, Operational Standards, and Records in a Class C Pharmacy to Implement the Provisions of H.B. 1924 that Allow Pharmacy Technicians to Perform Certain Duties Without the Direct Supervision of a Pharmacist.

- Amendments to §§291.31, 291.33, 291.34, and 295.13 Concerning:
  - Placing a Beyond-use Date on the Prescription Label in Class A Pharmacies;
  - Pharmacists Signing Prescriptions; and
  - Administration of Immunizations by Pharmacists to Patients Over Seven Years of Age.

- Amendments to §291.104 Concerning Beyond-Use Dates on the Prescription Labels in Class E Pharmacies.

State Representative Joe Heflin and State Senator Kel Seliger presented oral testimony to the Board regarding proposed amendments to §§291.72-291.75, concerning Provisions of H.B. 1924 that Allow Pharmacy Technicians to Perform Certain Duties Without the Direct Supervision of a Pharmacist. Additionally, TSBP received a joint letter from Representative Heflin and Senator Seliger concerning proposed amendments to §§291.72-291.75 prior to the Board meeting.

The following individuals presented oral testimony to the Board regarding proposed amendments to §§291.72-291.75.

<table>
<thead>
<tr>
<th>Name</th>
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<tr>
<td>Kevin Storey</td>
<td>Comanche County Medical Center</td>
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<td>Gyale C. Pirkle</td>
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<td>Rick Rickard, R.Ph.</td>
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<td>Don McBeath</td>
<td>Texas Organization of Rural and Community Hospitals</td>
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<td>Matthew T. (Matt) Wall</td>
<td>Texas Hospital Association</td>
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<tr>
<td>Paul F. Davis</td>
<td>Texas Society of Health-System Pharmacists</td>
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The following individuals, who provided verbal testimony concerning proposed amendments to §§291.72-291.75, also provided written comments at the hearing.

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<td>Texas Society of Health-System Pharmacists</td>
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The following individuals, who provided verbal testimony concerning proposed amendments to §§291.72-291.75, also provided written comments both at the hearing and prior to the hearing.

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<td>Texas Hospital Association</td>
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The following State Senators provided written comments concerning proposed amendments to §§291.72-291.75, prior to the Board meeting:

Senator Craig Estes
Senator Glenn Hegar
Senator Robert L. Duncan

The following State Representatives provided written comments concerning proposed amendments to §§291.72-291.75, prior to the Board meeting.

Representative Wayne Christian
Representative Drew Darby
Representative Dennis Bonnen
Representative Rob Orr
Representative Betty Brown
Representative Mark Homer
Representative Sid Miller
Representative Geanie W. Morrison
Joint letter from Representatives:
  Warren Chisum
  Rick Hardcastle
  Jim Jackson
  David Swinford
  Jim McReynolds
The following individuals provided written comments concerning proposed amendments to §§291.72-291.75, prior to the Board meeting.

<table>
<thead>
<tr>
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<tr>
<td>Michael K. Hare</td>
<td>Hamilton Hospital</td>
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<td>Michael Morris</td>
<td>Bellville General Hospital</td>
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<td>Randy Richards</td>
<td>Permian Regional Medical Center</td>
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<td>Sharon Hunt</td>
<td>W. J. Mangold Memorial Hospital</td>
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<td>Beverly Gruber, Jesse Oviedo, R.Ph.</td>
<td>Medina Healthcare System</td>
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<td>Penny U. Gray, R.N.</td>
<td>Limestone Medical Center</td>
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<td>Kevin A. Leeper</td>
<td>Llano Memorial Healthcare System</td>
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<td>James R. Shafer</td>
<td>Hamilton Healthcare System</td>
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<tr>
<td>Rebecca Conditt</td>
<td>Texas Rural Health Association</td>
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<td>Stephen A. Keuhler</td>
<td>Knox County Hospital</td>
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<td>Clint Jones</td>
<td>Knox County Hospital</td>
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<td>Shirley Gass</td>
<td>Knox County Hospital</td>
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<td>Jo Ann Allus</td>
<td>Knox County Hospital</td>
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<td>Dale Lovett</td>
<td>Hamilton Hospital</td>
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<tr>
<td>Travis C. Floyd</td>
<td>Knox County Hospital</td>
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<td>Charley Hyche</td>
<td>Crane Memorial Hospital</td>
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<td>Joe Henderson</td>
<td>Crane Memorial Hospital</td>
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<td>Cherri Brents</td>
<td>Crane Memorial Hospital</td>
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<td>Kim Harrelson</td>
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<td>Gena Norvell</td>
<td>Crane Memorial Hospital</td>
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<td>Paul McKinney</td>
<td>Martin County Hospital District</td>
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<td>Ladelle Bates</td>
<td>Culberson Hospital</td>
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<td>Phil Yocom</td>
<td>Sabine County Hospital District</td>
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<td>Stephen Pitts</td>
<td>Sabine County Hospital</td>
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<tr>
<td>Grover C. Winslow, M.D.</td>
<td>Self</td>
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<td>David Pearson</td>
<td>Texas Organization of Rural &amp; Community Hospitals</td>
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<td>Jo Nell Wischkaemper</td>
<td>Lamb Healthcare Center</td>
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<td>Daniel Burkeen</td>
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<td>Chuck Norris</td>
<td>Gonzales Healthcare System</td>
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<tr>
<td>Jan Reed</td>
<td>Electra Memorial Hospital</td>
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<tr>
<td>James Vanek, Mike Hoelscher, R.Ph.</td>
<td>Lavaca Medical Center</td>
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<td>Mike Click, R.N.</td>
<td>Brownfield Regional Medical Center</td>
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<td>Rick DeFoore</td>
<td>Stamford Memorial Hospital</td>
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<td>James E. Buckner</td>
<td>Uvalde Memorial Hospital</td>
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<td>Kay Campbell, R.Ph.</td>
<td>Lamb Healthcare Center</td>
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<td>Chris Jolly, R.Ph.</td>
<td>Electra Memorial Hospital</td>
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<tr>
<td>Katie Garrett</td>
<td>Gonzales Healthcare Systems</td>
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</table>
Kathy Barber representing the Texas Federation of Drug Stores presented oral testimony to the Board regarding proposed amendments to §295.15, concerning Administration of Immunizations by Pharmacists to Patients Over Seven Years of Age.

There were no verbal comments concerning proposed amendments to §§291.31, 291.33, 291.34, 291.104, and 295.13.

President Fry adjourned the Public Hearing at 2:45 p.m.

APPROVED:

_________________________________________________________________
Jeanne Waggener, R.Ph.
President

_________________________________________________________________
Gay Dodson, R.Ph.
Executive Director/Secretary

February 9, 2010
November 9, 2009

President W. Benjamin Fry, R.Ph., called the meeting to order at 1:05 p.m. Other Board Members present were Treasurer Jeanne Waggener, R.Ph.; Buford T. Abeldt, Sr., R.Ph.; L. Suzan Kedron; Alice Mendoza, R.Ph.; and Dennis F. Wiesner, R.Ph.

Board Members Kim A. Caldwell, R.Ph.; Marcelo Laijas, Jr.; and Rosemary Forester Combs were not present.

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; Mitra Woody, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; Kay Wilson, Executive Assistant; and Becky Damon, Executive Assistant.

See agenda and corresponding attachments for supporting materials.
Also present were Pharmacist Interns Chad Gibson and Jacob Williamson.

President Fry convened the Board Business Meeting at 3:05 p.m.

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

Pilot Projects

- Final Report by H-E-B on Pilot Project Concerning Pharmacy Technician Ratios in Contact Center Pharmacies (Tab 18)

Ms. Benz advised the Board that in August 2008, based on the recommendation of a task force composed of Ms. Waggener, Ms. Arnold, and Ms. Benz, the Board approved a pilot project to allow a 6:1 technician to pharmacist ratio for the portion of the H-E-B Fulfillment Center performing call center and prescription processing activity. The pilot project began in September 2008 and involved the H-E-B Contact Center and 13 H-E-B pharmacies.

Ms. Benz introduced Jay Bueche, R.Ph., Director of Pharmacy Regulatory Affairs, H-E-B. Mr. Bueche introduced H-E-B personnel Sheryll Brown, R.Ph., Pharmacist-in-Charge; Wendy Faldet, R.Ph.; and Craig Norman, Senior Vice President, H-E-B.

Mr. Bueche directed the Board’s attention to H-E-B’s final report on the project. He reviewed the report for the Board and answered questions posed by Board Members.

Following discussion a motion was made by Ms. Waggener to approve continuation of the pilot project throughout the time necessary to adopt new rules for a new class of pharmacy for central processing pharmacies that do not have prescription drugs on-site. The motion was seconded by Ms. Kedron and passed 4-0-1. Mr. Wiesner abstained. The Board directed staff to develop suggested rule language for consideration at the February 2010 Board meeting.

C. Discussion of and Possible Action Regarding Rules

Final Adoption of Rules

- Rules Concerning Definitions, Personnel, Operational Standards, and Records in a Class C Pharmacy to Implement the Rural Hospital Provisions of H.B. 1924, Passed by the 81st Texas Legislature (§§291.72-291.75) (Tab 6)
Ms. Dodson advised the Board, based on testimony heard earlier in the meeting, that it was the recommendation of staff that amendments to §§291.72-291.75, to implement the rural hospital provisions of H.B. 1924, be withdrawn. She further advised the Board that staff recommended appointment of a task force to study the issue and make recommendations to the Board concerning rule changes to implement the rural hospital provisions of H.B. 1924. Ms. Dodson suggested that the task force be comprised of members from the Texas Hospital Association, Texas Organization of Rural and Community Hospitals, the Texas Society of Health-System Pharmacists, and representatives from the offices of State Representative Heflin and State Senator Seliger.

Following discussion the motion was made by Mr. Abeldt to withdraw from consideration for final adoption amendments to §§291.72-291.75 and approve the appointment of a task force on rural hospital pharmacies. The motion was seconded by Ms. Mendoza and passed unanimously.

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.

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

Following discussion, the motion was made by Ms. Mendoza to approve the minutes of the TSBP Board Business Meeting, held August 11-12, 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 Schedule of Administrative Penalties and Fingerprinting of Applicants for Reinstatement (§§281.65-281.66) (Tab 2)
Ms. Benz explained that the Board voted to propose the amendments to §§281.65-281.66 during its August 11-12, 2009, meeting. The proposed amendments were published in the October 2, 2009, issue of the Texas Register, and no comments were received. Ms. Benz explained that the proposed amendments would clarify that violating a contract with a program to aid impaired pharmacists or pharmacy students may result in an administrative penalty and that individuals applying for reinstatement or removal of restrictions may be required to submit fingerprints required for criminal background checks.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Ms. Waggener to approve for adoption, by Board Order, amendments to §§281.65-281.66, as published. The motion was seconded by Mr. Abeldt and passed unanimously.

- Rules Concerning Return of Prescription Drugs (§291.8) (Tab 3) and Fees Charged to Third Parties for Providing Copies of Patient’s Confidential Records (§291.28) (Tab 4)

Ms. Benz explained that the Board voted to propose the amendments to §291.8 and §291.28 during its August 11-12, 2009, meeting. The proposed amendments were published in the October 2, 2009, issue of the Texas Register, and no comments were received.

Ms. Benz explained that the proposed amendments to §291.8 would clarify that the signature of a licensed health care professional is required on the inventory of drugs returned to a pharmacy from a penal institution.

Ms. Benz explained that the proposed amendments to §291.28 would clarify the requirements regarding access to confidential patient records, increase the maximum fee to be charged for the first twenty pages from $25 to $50, and allow a charge of up to $50 for completing a survey or questionnaire.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Mr. Abeldt to approve for adoption, by Board Order, amendments to §291.8 and §291.28, as published. The motion was seconded by Ms. Waggener and passed unanimously.

- Rules Concerning Placing a Beyond-Use Date on a Prescription Label to Implement Provisions of H.B. 19, Passed by the 81st Texas Legislature (§§291.33 and 291.104) (Tab 5)
Ms. Benz explained that the Board voted to propose the amendments to §§291.33 and 291.104 during its August 11-12, 2009, meeting. The proposed amendments were published in the October 2, 2009, issue of the Texas Register, and no comments were received. Ms. Benz explained that the proposed amendments would require pharmacists to place a beyond-use date on the prescription label in Class A and Class E pharmacies.

Following discussion, the Board delayed action on the proposed amendments to §291.33, and §291.104 until later in the meeting.

- Rules Concerning Pharmacies Compounding Sterile Pharmaceuticals to Implement the Recommendations of the Task Force on Class C Pharmacies (§291.133) (Tab 7)

Ms. Benz explained that the Board voted to propose the amendments to §291.133 during its August 11-12, 2009, meeting. The proposed amendments were published in the October 2, 2009, issue of the Texas Register. Ms. Benz explained that the proposed amendments would implement the recommendations of the Task Force on Class C Pharmacies.

The Board reviewed comments received from Omnicare of Houston, concerning the use of a hands-free sink for sterile compounding and the exclusions permitted by USP 797.

Following discussion, the Board delayed action on the proposed amendments to §291.133 until later in the meeting.

- Rules Concerning Pharmacist Signing Prescriptions to Implement the Provisions of S.B. 381, Passed by the 81st Texas Legislature (§§, 291.31, 291.33, 291.34 and 295.13) (Tab 8)

Ms. Benz explained that the Board voted to propose amendments to §§291.31, 291.33, 291.34, and 295.13 during its August 11-12, 2009, meeting. The proposed amendments were published in the October 2, 2009, issue of the Texas Register, and no comments were received. Ms. Benz explained that the proposed amendments would implement the provisions of S.B. 381, as passed by the 81st Texas Legislature, to allow a physician to delegate to a pharmacist the authority to implement or modify a patient’s drug therapy under a protocol, including the authority to sign a prescription drug order for dangerous drugs.
Following discussion, the Board delayed action on the proposed amendments to §§295.13, 291.31, 291.33 and 291.34 until later in the meeting.

- Rules Concerning Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol of a Physician to Implement the Provisions of H.B. 1409, Passed by the 81st Texas Legislature (§295.15) (Tab 9)

Ms. Benz explained that the Board voted to propose the amendments to §295.15 during its August 11-12, 2009, meeting. The proposed amendments were published in the October 2, 2009, issue of the Texas Register. Ms. Benz explained that the proposed amendments would implement the provisions of H.B. 1409, as passed by the 81st Texas Legislature, authorizing pharmacists to administer influenza immunizations under the written protocol of a physician to patients over seven years of age without an established patient-physician relationship.

Comments were received from State Senator Robert L. Nichols stating that the intent of H.B. 1409 was to allow pharmacists to administer vaccinations for influenza to children seven years and older without a physicians prior order. Comments were also received from the Texas Federation of Chain Drug Stores stating the rule should not require patients to be eight years of age in order to receive an influenza immunization without an established patient-physician relationship.

Following discussion, the Board directed staff to modify language to require that the patient be over seven years of age and delayed action on the proposed amendments to §295.15 until later in the meeting.

- Rules Concerning Placing a Beyond-Use Date on a Prescription Label to Implement Provisions of H.B. 19, Passed by the 81st Texas Legislature (§291.33 and §291.104) (Tab 5) (cont.)

Following discussion, the Board directed staff to revise the proposed amendments to include a delayed effective date of June 1, 2010, for placing a beyond-use date on prescription labels.
Proposal of Rules

- Rules Concerning Requirements for Electronic Prescriptions (§291.34) (Tab 10)

  Mr. Benz explained that the Board voted to propose amendments to §291.34 during its August 11-12, 2009, meeting, and Board staff failed to publish in the *Texas Register*. The amendments will now be proposed and will be considered for final adoption at the February 9-10, 2010, Board meeting.

- Rules Concerning Freestanding Emergency Medical Care Centers (§291.151) (Tab 11)

  Ms. Benz directed the Board’s attention to the suggested amendments to establish a new class of pharmacy, Class F Pharmacies, Freestanding Emergency Medical Care Facilities.

  Following discussion, the Board delayed action on the suggested amendments to §291.151 until later in the meeting.

- Rules Concerning Class C Rules to Implement the Tech-Check-Tech Provisions of H.B. 1924, Passed by the 81st Texas Legislature (§§291.72-291.75) (Tab 12)

  Ms. Benz directed the Board’s attention to suggested amendments to §§291.72-291.75. She explained that the amendments would implement the provisions of H.B. 1924, as passed by the 81st Texas Legislature. Ms. Benz reviewed the suggested language for the Board, and pointed out that this new section 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 filling of floor stock and unit dose distribution systems if the patient’s orders have previously been reviewed and approved by a pharmacist.

  Ms. Benz directed the Board’s attention to staff suggested changes to §291.73(e)(1)(D). (Tab 12)

  Following discussion, the motion was made by Ms. Waggener to approve for proposal amendments to §§291.72-291.75, with changes recommended by staff. The motion was seconded by Ms. Mendoza and passed unanimously.
Rule Reviews

- For Proposal

Ms. Benz directed the Board’s attention to the TSBP Rule Review Plan for FY2010-2013. (Tab 13)

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

- Chapter 291 (§§291.51-291.55) Concerning Class B (Nuclear) Pharmacies (Tab 14)
- Chapter 305 (§§305.1-305.2) Concerning Educational Requirements (Tab 15)
- Chapter 309 (§§309.1-309.8) Concerning Generic Substitution of Drug Products (Tab 16)

Following discussion, in accordance with Government Code §2001.039, the motion was made by Ms. Waggener to approve for proposal, as presented, the review of Chapter 291 (§§291.51-291.55); Chapter 305 (§§305.1-305.2), and Chapter 309 (§§309.1-309.8). The motion was seconded by Ms. Kedron and passed unanimously.

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

- Task Force on Class B (Nuclear) Pharmacies (Tab 17)

Ms. Benz reported that the Task Force on Nuclear Pharmacies met on September 21, 2009, and was in the process of developing recommendations. A final report and suggested rule language will be presented to the Board at its February 2010 meeting.

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

- Financial Update

  - Review of FY2009 Operating Budget (Tab 21)

Ms. Stella reviewed the expenditures for all four quarters of FY2009 (September 1, 2008, through August 31, 2009) for the Board. She noted that the agency ended the year with about $57,000 remaining or 1.33% of the $4.2 million appropriation.
Following discussion, the motion was made by Ms. Waggener to approve the FY2009 expenditures, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

○ Board Member Travel Budget (Tab 22)

Ms. Stella reviewed the FY2009 Board Member travel budget as of October 19, 2009.

○ Update on Request for Qualifications Process for Pharmacy Technician Certification Examination (Tab 23)

Ms. Stella reported the Request for Qualifications was posted on the Electronic State Business Daily on November 4, 2009. Providers have until December 4, 2009, to ask questions and the deadline for proposals to be submitted to TSBP is 5:00 p.m. on January 6, 2010.

● Discussion Concerning TSBP FY2011-2015 Strategic Plan (Tab 26)

Ms. Stella directed the Board’s attention to materials concerning the FY2011-2015 Strategic Plan, which included the timeline, policy issues from the FY2009-2013 Strategic Plan, and comments received from:

○ Kathy Barbar of the Texas Federation of Drug Stores;
○ Inda K. Reddy of A&M Rangel School of Pharmacy;
○ William A. Gouveia of the Accreditation Council for Pharmacy Education;
○ Kevin Nicholson, R.Ph., and Mary Staples of the National Association of Chain Drug Stores;
○ Arthur Nelson of Texas Tech School of Pharmacy; and
○ David L. Lakey, M.D., of the Texas Department of State Health Services.

Following discussion and review of the policy issues and comments received, the Board determined that no additional issues would be added. The following individuals volunteered to draft the policy issues for the FY2011-2015 Strategic Plan.

○ Policy Issue #1 – The Changing Focus of Pharmacy Practice – Ms. Kedron, Mr. Abeldt, and Ms. Dodson;

○ Policy Issue #2 – Increased Use of Technology in the Practice of Pharmacy – Ms. Mendoza and Ms. Benz;
Policy Issue #3 – Pharmacy Personnel and Working Conditions – Ms. Waggener and Dr. Holder; and

Policy Issue #4 – To Maintain the Agency’s Leadership Position in Pharmacy Practice Regulation and Establish a Key Leadership Position for Addressing Public Needs – Mr. Wiesner and Ms. Stella.

The Board will receive a draft of the FY2011-2015 Strategic Plan issue statements for its review and approval at the February 2010 Board Meeting.

Discussion Concerning Pharmacy Technician Ratios in Class A (Community) Pharmacies (§291.32) (Tab 28)

Ms. Dodson introduced Kathy Barbar, Executive Director, of the Texas Federation of Drug Stores (TFDS).

Ms. Barbar advised the Board that TFDS would like the Board to consider increasing the ratio of pharmacy technicians that pharmacists are allowed to supervise in a Class A Pharmacy. She stated that they would like a discretionary ratio of pharmacy technicians to pharmacists that will allow the ratio to be set at a level appropriate to the practice setting. Ms. Barbar also stated that TFDS would like to recommend the appointment of a task force to review the ratio based on advances in technology and technician education.

Following discussion, the Board took no action.

President Fry recessed the meeting at 5:27 p.m.

Tuesday, November 10, 2009

President W. Benjamin Fry, R.Ph., called the meeting to order at 8:08 am. Other Board Members present were Treasurer Jeanne Waggener, R.Ph.; Buford T. Abeldt, Sr., R.Ph.; L. Suzan Kedron; Alice Mendoza, R.Ph.; and Dennis F. Wiesner, R.Ph.

Board Members Kim A. Caldwell, R.Ph.; Marcelo Laijas, Jr.; and Rosemary Forester Combs were not present.

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; Mitra Woody, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; Kay Wilson, Executive Assistant; and Becky Damon, Executive Assistant.
Also present were Pharmacist Interns Chad Gibson, Jacob Williamson, Amy Morton, and Lou Garza, III.

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

- Discussion Concerning Licensing Requirements for Pharmacist Performing Duties Out-of-State (Tab 27).
  
  ○ Discussion Concerning Personnel and Operational Standards in a Class A Pharmacy Regarding Remote Verification of Prescription Data Entry (§§291.32-291.33); and

  ○ Discussion Concerning Pharmacist Performing Cognitive Duties Such as Medication Therapy Management, Drug Utilization Review.

Ms. Fisher advised the Board that at the August 2009 meeting, the Board directed staff to survey other states concerning the use of the shared services pharmacy model that Prescription Solutions developed for its mail service operations. In the model, the work of a pharmacy technician working in Texas under the supervision of a Texas-licensed pharmacist may be checked by a pharmacist from another state who may or may not be licensed in Texas; or a pharmacist licensed and working in Texas may be checking the work of a pharmacy technician located in another state and working under the direct supervision of a pharmacist in that state.

Amy Morton, Pharmacist Intern, presented the results of the survey concerning *Remote Order Statistics* she had conducted by contacting other states to determine what rules, if any, they had in place concerning the work of a pharmacy technician being checked by an out-of-state pharmacist. She reported that she had received responses from 40 states and that 90% of the 40 states reported having rules or regulations allowing remote entry or verification, either in retail or institutional settings.

Ms. Dodson advised the Board that the National Association of Boards of Pharmacy (NABP) is starting a pilot project regarding multi-state licenses.

President Fry recognized, Rich Palumbo, R.Ph., the current past president of NABP. Mr. Palumbo advised the Board that the multi-state license being considered by NABP would carry a certification similar to the VIPP’s certification and would require that the pharmacist be licensed the state(s) where he/she is practicing.
Ms. Dodson directed the Board’s attention to TSBP rules §§291.32-291.33 and reviewed the current rules for the Board. She also directed the Board’s attention to an email from John D. Jones of Prescription Solutions requesting TSBP’s review of their shared services pharmacy model, as well as an email from Laura Webster of Kerr Drug, Inc., concerning telephonic consulting.

Following discussion, the Board directed staff to provide the Board with suggested language to clarify TSBP rules regarding licensing requirements for pharmacists providing cognitive duties for Texas patients in another state and for remotely supervising pharmacy technicians.

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

Final Adoption of Rules

- Rules Concerning Placing a Beyond-Use Date on a Prescription Label to Implement Provisions of H.B. 19, Passed by the 81st Texas Legislature (§§291.33 and 291.104) (Tab 5) (cont.)

  Ms. Benz explained that the Board reviewed these proposed amendments earlier in meeting and, as directed by the Board, the amendments were revised to include an effective date of June 1, 2010, for placing a beyond-use date on prescription labels.

- Rules Concerning Pharmacies Compounding Sterile Pharmaceuticals to Implement the Recommendations of the Task Force on Class C Pharmacies (§291.133) (Tab 7) (cont.)

  Ms. Benz explained that the Board reviewed and discussed the proposed amendments to §291.133 earlier in meeting. In response to Mr. Fry’s question, Dr. Holder recommended that the rules be amended to require the use of sterile gloves and sterile alcohol when compounding sterile preparations. After discussion, the Board determined this requirement would be addressed as a separate issue during the February 9-10, 2010, Board Meeting.

- Rules Concerning Pharmacist Signing Prescriptions to Implement the Provisions of S.B. 381, Passed by the 81st Texas Legislature (§295.13, §291.31, §291.33 and §291.34) (Tab 8) (cont.)

  Ms. Benz explained that the Board reviewed these proposed amendments earlier in meeting and had no suggestions for change.
● Rules Concerning Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol of a Physician to Implement the Provisions of H.B. 1409, Passed by the 81st Texas Legislature (§295.15) (Tab 9) (cont.)

Ms. Benz explained that the Board reviewed these proposed amendments earlier in meeting and, as directed by the Board, the amendments to §295.15 were revised to indicate that the patient should be over seven years of age.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Waggener to approve for adoption, by Board Order, amendments to §§291.31, 291.33, 291.34, 291.104, 291.133, 295.13, and 295.15, with the changes noted above. The motion was seconded by Ms. Mendoza and passed unanimously.

Proposal of Rules

● Rules Concerning Freestanding Emergency Medical Care Centers (§291.151) (Tab 11) (cont.)

Ms. Benz explained that the Board reviewed these suggested amendments earlier in meeting. She pointed out that §291.151 included drugs supplied for outpatient use.

Following discussion, the motion was made by Ms. Mendoza to approve for proposal amendments to §291.151. The motion was seconded by Ms. Waggener and passed unanimously.

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

● Discussion Concerning Requirements Relating to Font Size on Patient Information (§291.33) (Tab 29)

Ms. Dodson introduced Kathy Barbar, Executive Director of the Texas Federation of Drug Stores, and A. J. Patel of Walgreens. Ms. Barbar and Mr. Patel asked the Board whether both the dispensing container and the patient leaflet are required to be in 10 point font or if only certain information contained on the patient leaflet is required to be in 10 point font.

Following discussion the Board advised Ms. Barbar and Mr. Patel that,
according to §291.33, both designated items on the prescription label and all of the information on the patient leaflet are required to be in at least a 10 point font.

- Update on TSBP Action on Legislation Passed During the 81st Texas Legislative Session that Has an Impact on TSBP and/or the Practice of Pharmacy (Tab 30)

Ms. Dodson directed the Board’s attention to an Action Chart of Implementation of Legislation Passed by the 2009 Texas Legislature. The chart included the bill number, a summary of the bill, the bill’s effective date, an internal deadline, and TSBP’s action/status. Ms. Dodson reviewed the chart for the Board.

- Discussion of Possible Statutory Changes for Consideration During the 82nd Session of the Texas Legislature (Tab 31)

Ms. Dodson advised the Board that at the February 2010 meeting, they would receive a list of possible statutory changes for the next legislative session.

Ms. Dodson advised the Board they would be provided with a list of items previously approved by the Board for recommendation for action during the 81st Legislative Session on which no action was taken for their review.

F. Consideration of and Possible Action Concerning Enforcement Reports

- Report on Complaints Closed and Dismissed During the Previous Quarter (Tab 32)

The Board received a report on complaints dismissed and closed during FY2009 (September 1, 2008 – August 31, 2009). The report also included quarterly averages for FY2008 as compared to FY2009, as well as the percentage change from FY2008 to FY2009. Ms. Fisher reviewed the report for the Board.

- Report on Status of Active/Pending Complaints (Tab 33)

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

G. Disciplinary Orders
Consideration of Proposals for Decision

In the Matter of Ramish P. Patel, R.Ph. (Tab 34)

Ms. Arnold directed the Board’s attention to a Proposal for Decision in the matter of Ramish P. Patel, R.Ph. She advised the Board that a hearing was held on July 29, 2009, before State Office of Administrative Hearings (SOAH) Administrative Law Judge Richard R. Wilfong. TSBP was represented by Ms. Hildebrand.

Ms. Hildebrand advised the Board that Mr. Patel did not appear at the hearing nor was he represented at the hearing. Ms. Hildebrand directed the Board’s attention to proposed Board Order #F-08-002. Ms. Hildebrand reviewed the proposed Order for the Board. She pointed out that on or about September 25, 2007, Mr. Patel received deferred adjudication based on his plea of guilty, to the misdemeanor offense of Terroristic Threat. Mr. Patel was placed on probation for six months. Subsequently, Mr. Patel submitted an application to the Board for renewal of his pharmacist license. Mr. Patel indicated that he had not pled guilty, received deferred adjudication, or been subject to court-ordered probation within the last 36 months.

Ms. Hildebrand directed the Board’s attention to the Proposal for Decision issued by Judge Wilfong. It was Judge Wilfong’s recommendation that Mr. Patel be assessed an administrative penalty of $1,000.00.

Under proposed Board Order #F-08-002, the $1000.00 penalty would be due 90 days after the entry of the Order. If Mr. Patel fails to pay the penalty within 90 days of entry of the Order, his pharmacist license shall be suspended until such payment is received by TSBP.

The motion was made by Mr. Wiesner to accept the Findings of Fact and Conclusions of Law in the Proposal for Decision and approve proposed Board Order #F-08-002 as presented. The motion was seconded by Ms. Waggener and passed unanimously.

President Fry recessed the meeting at 9:22 a.m.

President Fry reconvened the meeting at 9:48 a.m.
E. **Discussion of and Possible Action Concerning the Following Reports and Discussions** (cont.)

- **Professional Recovery Network**
  - Dr. Holder directed the Board’s attention to charts showing participation in the peer assistance program. (Tab 24)
  - President Fry recognized Donna Chamberlain, Director of the Pharmacy Recovery Network (PRN). Ms. Chamberlain directed the Board’s attention to the PRN budget for September 1, 2008, through August 31, 2009, and reviewed current PRN activities for the Board. (Tab 25)

G. **Disciplinary Orders**

Ms. Arnold advised the Board, that they would begin reviewing Board Orders electronically at the February 2010 meeting, rather than receiving paper notebooks.

- **Report on Agreed Board Orders Entered by Executive Director**
  - The Board received and reviewed a list of 35 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 August 21, 2009, through November 3, 2009.

- **Discussion of and Action on Proposed Agreed Board Orders and Default Orders**

  The Board received and reviewed a list of 24 Agreed Board Orders for pharmacy technicians and pharmacy technician trainees following informal conferences, which were held on:
  - July 21, 2009 (two Orders);
  - August 27, 2009 (nine Orders);
  - September 24, 2009 (eight Orders);
  - October 20, 2009 (five Orders);

  The Board also received a list of 24 Default Orders for pharmacy technicians and pharmacy technician trainees who did not appear for informal conferences.
The motion was made by Ms. Waggener to approve the 24 Agreed Board Orders for pharmacy technicians and pharmacy technician trainees following informal conferences and the 24 Default Board Orders for pharmacy technicians and pharmacy technician trainees. The motion was seconded by Ms. Kedron and passed 5-0-0.

- Report on Technician Agreed Board Orders Entered by Executive Director
  
  - The Board received and reviewed a list of 67 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 August 13, 2009, through November 6, 2009.

- Discussion of and Action on Proposed Agreed Board Orders and Default Orders (cont.)
  
  - The Board received notebooks containing 67 Agreed Board Orders for pharmacists, pharmacies, student pharmacist-interns, and pharmacy technicians, 11 of which were Confidential Agreed Board Orders.

  Ms. Hildebrand and 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. Mita Dilsukhrai Mehta   ABO #H-09-020-A
  2. CVS/pharmacy #7806  ABO #H-09-020-B

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

  3. Xerxes Wolff    ABO #H-09-024-A
  4. Walgreeen Co. #6753  ABO #H-09-024-B

  The motion was made by Ms. Waggener to approve the Orders as presented. The motion was seconded by Ms. Kedron and passed 5-0-0.
5. Kimberly Doreen Burnette Brown  ABO #H-08-029-A

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

6. Aida Leticia Palacios  ABO #H-09-002-A
7. Walgreen Co. #6435  ABO #H-09-002-B

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

8. Susan P. Pham  ABO #H-08-034-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.

9. Bonnie Kay Carr  ABO #H-08-050-A
10. Wal-Mart Pharmacy #10-1303  ABO #H-08-050-B

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

11. Pamela Lynn Towery-Belt  ABO #H-08-041-A
12. CVS/pharmacy #6727  ABO #H-08-041-B

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

13. Janet Marie Hemingway  ABO #H-08-044-A
14. Walgreen Co. #3924  ABO #H-08-044-B

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

15. Cecilia Alba Ellis  ABO #H-08-015-A
16. CVS/pharmacy #7463  ABO #H-08-015-B

The motion was made by Ms. Kedron to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 5-0-0.
17. Frances Ton    ABO #H-08-057-A
18. CVS/pharmacy #7575  ABO #H-08-057-B

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

19. Ronak Amin    ABO #H-09-008-A
20. CVS/pharmacy #6894  ABO #H-09-008-B

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

21. Walgreen Co. #5092  ABO #J-07-018

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

22. CVS/pharmacy #3881  ABO #H-09-013-B

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

Ms. Woody 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.

23. Anthony Vo    ABO #H-08-010-A
24. Walgreen Co. #4605  ABO #H-08-010-B

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

25. Angela Elizabeth Hughes  ABO #H-08-051-A
26. Wal-Mart Pharmacy #10-3572 ABO #H-08-051-B

The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 4-0-1. Ms. Waggener abstained.
27. Luis P. Villanueva       ABO #H-08-026-A
28. Super Drug Mart         ABO #H-08-026-B

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

29. John Warren Chadbourne Jr.  ABO #F-09-003

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

30. CVS/pharmacy #3190      ABO #B-09-002

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

31. Tom Ray Cariker         ABO #H-08-033-A

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

32. Bridget O. Fabusuyi     ABO #H-08-038-A
33. Walgreen Co. #1580      ABO #H-08-038-B

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

34. David Etin Osa Uwubanmwen ABO #K-08-037-A
35. Wal-Mart Pharmacy #10-1118 ABO #K-08-037-B

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

36. Ruth Martine Yonkeu    ABO #K-08-034-A
37. CVS/pharmacy #5838      ABO #K-08-034-B

The motion was made by Ms. Waggener to approve the Orders as presented. The motion was seconded by Ms. Kedron and passed 5-0-1 Mr. Wiesner abstained.
38. Walgreen Co. #3760  ABO #H-08-029-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. Gabriel O. Balonwu  ABO #S-09-016
   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.

40. Paul Edward Drumgoole  ABO #B-07-024-A
   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.

41. Amanuel T. Ghebremicael  ABO #K-09-007-A
42. Prestige Pharmacy  ABO #K-09-007-B
   The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Ms. Waggener and passed 5-0-0.

43. Lori Denise Farr  ABO #J-07-016
44. Nicole Marie Jameson  ABO #J-07-014
45. Michael William Brod  ABO #J-07-017
46. Sily Shaji Philips  ABO #J-07-013
47. Ravin Michelle Ellis  ABO #J-07-015
   The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 4-0-1. Ms. Waggener abstained.

48. Jacque K. Washington  ABO #E-09-002
   The motion was made by Ms. Kedron to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 4-0-1. Mr. Wiesner abstained.
49. Margaret Elizabeth McGuinness  ABO #L-08-034

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

50. Raymond Lee Gregory III  ABO #G-08-016

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. Ms. Kedron abstained.

51. Eugenia Nnenna Agugua  ABO #E-09-010

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

52. Ramon Kidder Acosta  ABO #J-08-015-A
53. Acosta-Muniz Rio Grande Pharmacy  ABO #J-08-015-B
54. Jose Roberto Muniz  ABO #A-08-021

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

55. David Wayne Rice  ABO #E-09-004

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.

56. Wayne Murphy English  ABO #E-08-008

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.

President Fry recessed the meeting at 10:55 a.m.

President Fry reconvened the meeting at 11:10 a.m.
Executive Session to Consider Confidential Agreed Board Order

Ms. Mendoza 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, §564.002. The motion was seconded by Mr. Wiesner and passed 5-0-0.

President Fry declared the Board in Executive Session at 11:13 a.m.

At 11:28 a.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.

Mr. Waggener made motions to approve the following confidential Orders:

1. ABO #N-09-019
2. ABO #G-09-032
3. ABO #N-09-018
4. ABO #L-09-007
5. ABO #G-09-022
6. ABO #G-08-026
7. ABO #G-09-012
8. ABO #G-09-017
9. ABO #S-09-013
10. ABO #E-09-020
11. ABO #E-09-013

The motions were seconded by Ms. Mendoza and passed a follows:

1. 5-0-0
2. 5-0-0
3. 4-0-1 Ms. Mendoza abstained.
4. 4-0-1 Ms. Waggener abstained.
5. 4-0-1 Ms. Mendoza abstained.
6. 5-0-0
7. 4-0-1 Ms. Mendoza abstained.
8. 4-0-1 Ms. Mendoza abstained
9. 4-0-1 Mr. Wiesner abstained.
10. 4-0-1 Ms. Mendoza abstained.
11. 5-0-0

Mr. Fry recessed the meeting at 11:30 a.m.

Mr. Fry reconvened the meeting at 12:30 p.m.
D. Discussion of and Possible Action Concerning Reports of Committees/Task Forces (cont.)

- Pilot Projects

Ms. Benz explained to the Board that the Montgomery County Hospital District (Tab 19) and the Big Bend Regional Hospital District had requested approval of pilot projects and rule variances to provide mail order prescription pickup locations to indigent clients. (Tab 20)

Ms. Benz introduced Allan Johnson and Kelly Curry with the Montgomery County Hospital District, and Tom O'Leary attorney for the Montgomery County Hospital District and the Big Bend Regional Hospital District. Mr. Johnson and Mr. Curry presented an overview of the Montgomery County proposed pilot project and answered questions posed by Board Members. Mr. O'Leary presented an overview of the Big Bend proposed pilot project and answered questions posed by Board members.

Following discussion, the Board directed staff to survey other states concerning prescription pickup locations.

The Board also directed staff to work with the Montgomery County and Big Bend Hospital Districts to determine eligibility of the pilot projects. The Board asked staff to present the results of the survey and recommendations concerning the request for the pilot projects to the Board at its February 2010 meeting.

H. Miscellaneous

- Personnel Matters

  - Steve Rapp, TSBP Network Manager, made a brief presentation to the Board concerning the use of agency email accounts.
  
  - Ms. Benz made a brief presentation concerning social networking procedures.

- Items to be Placed on Agenda for February 2010 Board Meeting
Board Members and/or Ms. Dodson requested that the following items be placed on the agenda for the February 2010 Board Meeting.

- Suggested rule language concerning creation of a new class of pharmacy for central processing pharmacies without drugs;
- Suggested rule language concerning licensing requirements for pharmacist performing duties out-of-state;
- Suggested rule language to amend §291.133 concerning the use of sterile gloves and sterile alcohol in pharmacies compounding sterile preparations.
- Review and approval of issues for the TSBP Strategic Plan for FY2011-2015;
- Results of survey and review and of rules to determine the eligibility of Montgomery County and Big Bend Hospital Districts Pilot Projects requests.

- 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.

President Fry adjourned the meeting at 1:53 p.m.

APPROVED:
Jeanne Waggener, R.Ph.
President

Gay Dodson, R.Ph.
Executive Director/Secretary

February 9, 2010