

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

August 5-6, 2008

MINUTES¹

Tuesday, August 5, 2008

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

Board Member Marcelo Laijas, Jr. was 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; Caroline Hotchkiss, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; and Kay Wilson, Executive Assistant.

Ms. Dodson introduced TSBP's recently-appointed Board Members: Buford T. Abeldt, Sr., R.Ph.; L. Suzan Kedron; and Dennis F. Wiesner, R.Ph. She advised that Mr. Abeldt, Ms. Kedron, and Mr. Wiesner were appointed to a six-year term on the Board by Governor Perry on May 9, 2008.

Also present were Pharmacist Interns John Carpio and Sang Luong and Legal Intern Lance Brenton.

¹See agenda and corresponding attachments for supporting materials.

Public Hearing

A public hearing was held to receive testimony concerning amendments to Chapter 309 concerning generic substitution.

President Fry made an opening statement.

The following persons presented oral testimony to the Board regarding the above-referenced amendments:

<u>Name</u>	<u>Representing</u>
Richard Beck	American Pharmacies
Mark Cloer	UCB
Jim Martin	Texas Pharmacy Association
Fred Brinkley	Medco Health Solutions

The Board received written comments from Richard Beck of American Pharmacies, Kathleen Jaeger of the Generic Pharmaceutical Association, and Donna Stalhut of the Epilepsy Foundation of Southeast Texas.

(See Public Hearing tab.)

President Fry closed the Public Hearing at 9:29 a.m.

Board Business Meeting

President Fry convened the Board Business Meeting at 9:29 a.m.

A. Announcements

- President Fry made general announcements.
- Announcements were made concerning Board Members and staff.
- Ms. Dodson announced that use of electronic notebooks was being implemented at this meeting and that the audience could access board meeting materials on the agency's website by using wireless Internet access, which was available in the meeting room.

- President Fry recognized Representative Fred Brown.
- 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 Ms. Waggener to approve the minutes of the Executive Committee Meeting, held July 17, 2008, and Public Hearing and Board Business Meeting, held May 6-7, 2008. The motion was seconded by Ms. Mendoza and passed unanimously.

C. Discussion of and Possible Action Regarding Rules

Final Adoption of Rules

- Rules Concerning Generic Substitution (Chapter 309) (Tab 7)

Ms. Benz directed the Board's attention to proposed amendments to §309.1 and §309.3 concerning generic substitution. She explained that the proposed amendments would establish procedures for dispensing refills of prescriptions that have a generic equivalent available but did not have a generic equivalent at the time the prescription was issued and procedures for practitioners to prohibit substitution based on the manufacturer of the brand or generic product. She pointed out that the Board had heard verbal comments concerning the proposed amendments during the public hearing earlier in the meeting, and she directed the Board's attention to written comments received from Richard Beck of American Pharmacies, Kathleen Jaeger of the Generic Pharmaceutical Association, and Donna Stalhut of the Epilepsy Foundation of Southeast Texas. Ms. Arnold addressed issues concerning whether TSBP had the authority to adopt the rule.

Following discussion, the Board directed staff to make no changes to the rule language for §309.1. The Board directed staff to revise amendments to §309.3 by removing §309.3(c)(1)(B) from the proposed rules and delayed consideration of the language in §309.3(c)(1)(B) until the November 2008 board meeting. The Board also asked staff to correct the language on §309.3(c)(1)(A) by removing *that the* from line 22 of page 2. The Board delayed action on the proposed amendments to §309.1 and §309.3 until August 6, 2008.

- Rules Concerning Disciplinary Guidelines (Chapter 281) (Tab 2)

Ms. Benz directed the Board's attention to proposed amendments to §§281.62-281.65 and explained that the Board voted to propose these amendments at its May 2008 meeting. The amendments were published in the June 20, 2008, issue of the *Texas Register*, and no comments were received. She explained that these amendments would clarify disciplinary guidelines for use in informal conferences and proceedings before the State Office of Administrative Hearings.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Mr. Caldwell to approve for adoption, as presented, by Board Order, amendments to §§281.62-281.65. The motion was seconded by Mr. Wiesner and passed unanimously.

- Rules Concerning Storage of Drugs (§291.15 and §291.133) (Tab 3)

Ms. Benz directed the Board's attention to proposed language for new rule §291.15 and amendments to §291.133. She advised the Board that the proposed new rule and amendments were approved for proposal by the Board at its May 2008 board meeting. They were published in the June 20, 2008, issue of the *Texas Register*, and no comments were received. She explained that the new rule and amendments were being proposed to achieve consistency by placing the requirements for storage of drugs in one section of the rules.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Ms. Kedron to approve for adoption, by Board Order, as presented, new rule §291.15 and amendments to §291.133. The motion was seconded by Mr. Abeldt and passed unanimously.

- Rules Concerning Security in Class A Pharmacies (§§291.31-291.34) (Tab 4)

Ms. Benz explained that the proposed amendments to §§291.31-291.34 would implement the recommendations of the Task Force on Security in Class A Pharmacies by:

- clarifying the definition of the prescription department;
- clarifying the responsibilities of the owner to include establishing policies and procedures for the security of the prescription department;
- outlining the security requirements for Class A pharmacies;

- clarifying the temporary absence requirements for pharmacists;
- requiring the pharmacy to document the identity of each pharmacist involved in a specific portion of the dispensing process if the pharmacy's data processing system is capable of recording such information; and
- requiring the pharmacy to document the identity of the pharmacist responsible for providing verbal counseling on a new prescription.

Ms. Benz advised that the Board reviewed and voted to propose amendments to the security rules during its February 5, 2008, meeting. The proposed amendments were published in the March 21, 2008, issue of the *Texas Register*. At the May 2008 board meeting the Board received public testimony and written comments concerning the proposed rules. At its May 2008 meeting, the Board voted to continue to review the proposed rule language and reconsider it for adoption at the August 2008 meeting.

Ms. Benz directed the Board's attention to two versions of the rules: version one was the proposed rules as published in the March 21, 2008, issue of the *Texas Register*, and version two was the proposed rules with changes recommended by the Board at the May 2008 Board meeting to:

- allow pharmacies additional time to comply with the rules regarding documentation of patient counseling;
- include other types of locking systems with regard to security of the pharmacy; and
- allow pharmacists to take short breaks from the pharmacy while on-site but not define a specific amount of time that the pharmacist may take a break.

Following discussion, review of the two versions of the rules, and review of the Preamble and Order Adopting Rule, the motion was made by Mr. Caldwell to approve for adoption, as presented, version two of the amendments to §§291.31-291.34, which contained the changes suggested by the Board at its May 2008 board meeting. The motion was seconded by Ms. Waggener and passed unanimously.

- Rules Concerning Personnel (§§291.72-291.73) and Operational Standards in Class C Pharmacies (Formularies) (§291.74) (Tab 5)

Ms. Benz directed the Board's attention to proposed amendments to §§291.72-291.73, which would allow pharmacists in facilities licensed for 100 beds or less to supervise pharmacy technicians electronically. She reported that the amendments were developed at the Board's direction, following completion of a pilot project by Envision Pharmacy and at the recommendation of the Board's task force that rules be adopted to continue the process established in the pilot project. She pointed out that the amendments to §291.74 would replace the term "substitute" with "interchange." Ms. Benz reviewed the proposed amendments for the Board.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Ms. Mendoza to approve for adoption amendments to §§291.72-291.73 concerning supervision and §291.74 concerning formularies, by Board Order, as presented. The motion was seconded by Ms. Kedron and passed unanimously.

- Rules Concerning Pharmacy Technician Training Programs (§305.2) (Tab 6)

Ms. Benz directed the Board's attention to proposed amendments to §305.2 and explained that the amendments clarify that individuals enrolled in pharmacy technician training programs must be registered with the Board prior to working in a pharmacy as part of the experiential component of the training program.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Ms. Kedron to approve for adoption, by Board Order, as presented, amendments to §305.2. The motion was seconded by Ms. Waggener and passed unanimously.

- Rules Concerning Class D Pharmacies (§291.91-291.94) (Tab 8)

Ms. Benz directed the Board's attention to proposed amendments to §§291.91-291.94. and explained that the proposed amendments, which would implement the recommendations of the Class D Pharmacy Task Force and recommendations by staff, were approved for proposal by the Board at its May 2008 board meeting. The amendments were published in the June 20, 2008, issue of the *Texas Register*, and no comments were received. Ms. Benz reviewed the proposed amendments for the Board.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Ms. Waggener to approve for proposal, by Board Order, as presented, amendments to §§291.91-291.94. The motion was seconded by Mr. Abeltdt and passed unanimously.

President Fry recessed the meeting at 10:58 a.m.

President Fry reconvened the meeting at 11:03 a.m.

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

Proposal of Rules

- Rules Concerning Applications for Reissuance or Removal of Restrictions of a License (§281.66) (Tab 9)

Ms. Benz directed the Board's attention to suggested amendments to §281.66. She explained that staff was recommending these changes to clarify that the rules regarding reissuance of a license or registration or the removal of restrictions on a license or registration are applicable to pharmacy technicians.

Following discussion, the motion was made by Mr. Caldwell to approve for proposal, as presented, amendments to §281.66. The motion was seconded by Ms. Waggener and passed unanimously.

- Rules Concerning Storage of Drugs (§291.33) (Tab 10)

Ms. Benz directed the Board's attention to suggested amendments to §291.33 concerning storage of drugs. She explained that the suggested amendments, which were being provided to the Board at this time for information only, since they were previously approved for proposal by the Board, would place the requirements for the storage of drugs in one section.

- Rules Concerning Continuing Education Requirements for Pharmacists (§295.8) (Tab 11)

Ms. Benz directed the Board's attention to suggested amendments to §295.8 concerning continuing education requirements for pharmacists. She explained that staff was suggesting these amendments to clarify the procedures for pharmacists who have been licensed for 50 years wanting to return to the practice of pharmacy and to conform these rules to other sections relating to pharmacist continuing education.

Following discussion, the motion was made by Ms. Waggener to approve for proposal amendments to §295.8, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Registration Requirements for Pharmacy Technicians (§297.3) (Tab 12)

Ms. Benz directed the Board's attention to suggested amendments to §297.3 concerning registration requirements for pharmacy technicians. She explained that the suggested rule language was being presented by staff to clarify the requirements for registration as a pharmacy technician trainee and pharmacy technician and that the Board may require individuals to submit the required information to perform a criminal background check, including fingerprinting.

Following discussion, the motion was made by Mr. Caldwell to approve for proposal amendments to §297.3, as presented. The motion was seconded by Mr. Wiesner and passed unanimously.

- Rules Concerning Examinations and Reciprocity Requirements (§§283.7-283.8) (Tab 13)

Ms. Benz directed the Board's attention to suggested amendments to §§283.7-283.8 concerning examinations and reciprocity requirements. She explained that the suggested rule language was being presented by staff to clarify that criminal background information may be required for licensure.

Following discussion, the motion was made by Mr. Caldwell to approve for proposal amendments to §§283.7-283.8, as presented. The motion was seconded by Ms. Waggener and passed unanimously.

- Rule Reviews

Ms. Benz directed the Board's attention to the TSBP Rule Review Plan for FY2006-2009. (Tab 14)

Ms. Benz directed the Board's attention to the proposed review of Chapter 291 (§§291.71-291.76) concerning Class C (institutional) pharmacies (Tab 15) and Chapter 303 (§§303.1-303.3) concerning destruction of dangerous drugs and controlled substances (Tab 16).

Following discussion, in accordance with Government Code §2001.039, the motion was made by Ms. Mendoza to approve for final adoption, as presented, the review of Chapter 291 (§§291.71-291.76) and Chapter 303 (§§303.1-303.3). The motion was seconded by Mr. Caldwell and passed unanimously.

D. Updates and Reports of Committees/Task Forces

- Task Force on Class C Pharmacies (Tab 17)

Dr. Holder advised the Board that the second meeting of the Task Force on Class C Pharmacies was held on June 27, 2008. He provided the Board a brief progress report on behalf of the task force.

- Task Force on Pilot Project Request by HEB Concerning Pharmacist to Pharmacy Technician Ratios in Class A Pharmacies with Central Processing Facilities (Tab 18)

Ms. Benz directed the Board's attention to a proposal for a pilot project submitted by HEB. She reported that President Fry appointed Ms. Waggener, Ms. Arnold, and Ms. Benz to serve on a task force to evaluate the pilot project request. Ms. Benz reviewed the request for the Board and explained that the goal of the pilot project would be to improve pharmaceutical care for patients and create positive patient outcomes by redirecting store based pharmacy activities to a central processing environment utilizing an increased number of pharmacy technicians. Ms. Benz advised the Board that it was the recommendation of the task force that the proposal be approved with modifications under the terms and conditions set forth in the task force report. Ms. Benz introduced Jay Bueche, R.Ph., of HEB. Mr. Bueche introduced Wendy Faldet, R.Ph., and Sheryll Brown, R.Ph., also of HEB. Mr. Bueche provided the Board a PowerPoint presentation concerning the proposal.

Following discussion, the motion was made by Ms. Combs to approve for implementation the pilot project by HEB, under the terms and conditions set forth in the task force report. The motion was seconded by Ms. Waggener and passed 6-0-1. Mr. Wiesner abstained.

President Fry recessed the meeting at 11:44 a.m.

President Fry reconvened the meeting at 1:02 p.m.

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

- Financial Update
 - Review of FY2008 Operating Budget (Tab 19)

Ms. Stella reviewed the expenditures for the first three quarters of FY2008 (September 1, 2007, through May 31, 2008) for the Board.
 - Review of Board Member Travel Budget (Tab 20)

Ms. Stella briefly reviewed the Board Member FY2008 Travel Budget.
- Review and Approval of FY2009 Operating Budget (Tab 21)

Ms. Stella directed the Board's attention to the proposed budget for FY2009 (September 1, 2008 – August 31, 2009). Ms. Stella reviewed the budget for the Board.

The motion was made by Mr. Caldwell to approve the FY2009 budget, as presented. The motion was seconded by Mr. Wiesner and passed unanimously.
- Update on Submission of Legislative Appropriations Request (Tab 22)

Ms. Stella directed the Board's attention to the Exceptional Item Request for the FY2010-2011 Legislative Appropriations Request (LAR). She advised the Board that the LAR was submitted to the Legislative Budget Board and Governor's Office of Budget, Planning, and Policy on July 30, 2008.
- Professional Recovery Network (PRN) Update
 - Dr. Holder directed the Board's attention to charts showing participation in the peer assistance program. (Tab 23)
 - Jennifer Graydon, Director of PRN, directed the Board's attention to the PRN budget for September 1, 2007, through May 31, 2008. She reviewed current PRN activities for the Board. (Tab 24)

- Discussion Concerning the Initials of the Dispensing Pharmacist on the Container Label at the Time of Delivery of the Drug in a Class A Pharmacy (Tab 26)

Mr. Wiesner advised the Board that HEB was asking the Board to consider allowing an alternative to placing the initials of the dispensing pharmacist on a prescription label. Following discussion, the Board directed staff to draft amendments to §291.33(c)(A) for the Board's consideration at its November 2008 meeting.

- Audit Conducted by State Auditor's Office (Tab 25)

Ms. Dodson directed the Board's attention to *An Audit Report on Complaint Processing and Enforcement at the Board of Pharmacy*, dated June 2008. She explained that the audit had been conducted by the State Auditor's Office. She reviewed the recommendations contained in the report, as well as TSBP's responses to the Auditor's office.

- Update on Sampling of Compounded Products (Tab 27)

Dr. Holder advised the Board that TSBP received legislative approval to sample compounded drugs in FY2005. In FY2007, TSBP received funding that allowed TSBP to actually begin testing samples of compounded drugs. Dr. Holder advised the Board that the TSBP Compliance Officers began collecting samples for testing in June 2008. He directed the Board's attention to a summary of compounded preparation sampling for FY2008 (to date), which included 24 samples taken from 20 pharmacies. He reviewed the summary for the Board.

Staff asked the Board for direction in developing a policy for actions to be taken following sampling when the laboratory finds that the potency of the sampled product is not acceptable. The Board received comments from Tammy Folsom of Hotze Pharmacy and Travis Leeah of Unique Pharmaceuticals. The Board also discussed whether the results of the product testing should be confidential.

Following discussion, the Board directed staff to:

- (1) Establish a policy that if a sample of a compounded product is tested and found to be not in compliance with potency, endotoxin, and/or sterility tests, a written warning notice will be issued; the compounding pharmacy will be required to respond in writing and explain how the pharmacy has corrected its compounding procedures; if another sample is collected during the follow-up inspection, and the sample compounded product

is not in compliance with testing standards, disciplinary action will be instituted against the compounding pharmacy; and

- (2) Add to the list of possible legislative changes during the next session to make the results and associated documentation of product testing confidential.

President Fry recessed the meeting at 2:48 p.m.

President Fry reconvened the meeting at 3:10 p.m.

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

- *TSBP FY2007 Annual Report* (Tab 28)

Ms. Dodson directed the Board's attention to a draft of the *TSBP FY2007 Annual Report*. She reviewed the agency's significant accomplishments for FY2007 for the Board. Ms. Fisher directed the Board's attention to data contained in the report concerning *Thefts/losses of Controlled Substances in Texas Pharmacies Due to Employee Pilferage* for FY2006 and FY2007.

Following review of the report, the motion was made by Ms. Waggener to approve the *TSBP FY2007 Annual Report*, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- *TSBP 2009 Goals and Objectives* (Tab 29)

Ms. Dodson directed the Board's attention to a draft of the *TSBP FY2009 Goals and Objectives*, which she reviewed for the Board.

Following review of the Goals and Objectives, the motion was made by Mr. Caldwell to approve, as presented, the *TSBP FY2009 Goals and Objectives*. The motion was seconded by Mr. Abeldt and passed unanimously.

- Review and Approval of Accreditation Council for Pharmacy Education (ACPE) Accredited Professional Programs of Colleges and Schools of Pharmacy (Tab 30)

Following review of a list of ACPE-approved professional degree programs of colleges and schools of pharmacy, a motion was made by Mr. Abeldt to approve the list of ACPE-accredited professional

programs of colleges and schools of pharmacy, as presented, as required under Board Rule §305.1. The motion was seconded by Ms. Kedron and passed unanimously.

- Health Professions Council (HPC) (Tab 31)

Ms. Dodson reported on ongoing joint efforts between HPC agencies.

- House and Senate Interim Committees (Tab 32)

Ms. Dodson reported that TSBP staff was monitoring activities of the interim committees, but that to date there had been no actions directly affecting TSBP.

- Update on TSBP Action on Legislation Passed by the 80th Texas Legislature that has an Impact on TSBP and/or the Practice of Pharmacy (Tab 33)

Ms. Dodson directed the Board's attention to an action chart concerning legislation that was passed during the 80th Legislative Session 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.

- Possible Statutory Changes (Tab 34)

Ms. Dodson directed the Board's attention to a list of *Recommendations for Legislative Action Approved by the Board* for consideration during the next legislative session. She advised the Board that staff was suggesting changes to Sections 565.001 and 568.003 of the *Texas Pharmacy Act*, which deal with disciplinary actions, be added to the list. Ms. Arnold explained that the suggested changes would make it a ground for discipline for both pharmacists and pharmacy technicians to have "had a license or registration revoked, surrendered, or suspended by a health licensing agency in this state or any other state for conduct substantially similar to conduct described in Section 565.001 and Section 568.003." The Board concurred that this item should be added to the list of *Recommendations for Legislative Action*.

F. Consideration of and Possible Action Concerning Enforcement Reports

- Petition(s) to Serve as a Preceptor

There was no business under this item.

- Report on Dismissed Complaints (Tab 35)

The Board received a report on complaints dismissed and closed during the first three quarters of FY2008 (September 1, 2007 – May 31, 2008). The report also included quarterly averages for FY2007 as compared to FY2008, as well as percentage of change from FY2007 to FY2008. Ms. Fisher reviewed the report for the Board.

President Fry recessed the meeting at 3:43 p.m.

President Fry reconvened the meeting at 4:00 p.m.

G. Disciplinary Orders

- Discussion of and Action on Proposed Agreed Board Orders and Default Orders
 - Executive Session to Consider Confidential Agreed Board Orders

Ms. Combs made a motion that the Board go into Executive Session to consider Agreed Board Orders involving impaired pharmacists, pharmacist applicants, and pharmacist interns, under the authority of the Texas Pharmacy Act, Section 564.002. The motion was seconded by Mr. Caldwell and passed 7-0-0.

President Fry declared the Board in Executive Session at 4:01 p.m.

At 4:15 p.m., President Fry announced that the Board would resume the meeting in Open Session. President Fry announced that no action was taken and no decisions were made during Executive Session.

H. Miscellaneous

- Discussion of and Possible Action on Recent Conferences and Events

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

- Discussion of and Possible Action on Upcoming Conferences and Events (Tab 39)

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

- Items to be Placed on Agenda for November 2008 Board Meeting (Tab 38)

Board Members and/or Ms. Dodson requested the following items be placed on the agenda for the November 2008 or future Board Meetings:

- Review and consideration of draft rule language that will allow an alternative to placing the initials of the dispensing pharmacist on a prescription label;
 - Discussion concerning a request from the Institute for the Certification of Pharmacy Technicians (ICPT) for Texas to use the ICPT's Exam for the Certification of Pharmacy Technicians (ExCPT) as a certification exam for pharmacy technicians (Tab 38);
 - Review and consideration of draft rule language concerning the ability of a physician to specify a specific generic or that the same generic be dispensed every time; and
 - Update and/or final report of Task Force on Class C Pharmacies.
- Consideration of Personnel Matters (Tab 40)

Mr. Caldwell made a motion that the Board go into Executive Session to consider personnel matters under the authority of the Texas Government Code, Section 551.074. The motion was seconded by Ms. Waggener and passed 7-0-0.

President Fry declared the Board in Executive Session at 4:26 p.m.

At 5:00 p.m., President Fry announced that the Board would resume the meeting in Open Session. President Fry announced that no action was taken and no decisions were made during Executive Session.

President Fry recessed the meeting at 5:02 p.m.

Wednesday, August 6, 2008

President W. Benjamin Fry, R.Ph., called the meeting to order at 8:05 a.m. Other Board Members present were Vice President Kim A. Caldwell, R.Ph.; Treasurer Jeanne Waggener, R.Ph.; Buford T. Abeldt, Sr., R.Ph.; Rosemary Forester Combs; L. Suzan Kedron; Alice Mendoza, R.Ph.; and Dennis F. Wiesner, R.Ph.

Board Member Marcelo Laijas, Jr. was 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; Kerstin Arnold, General Counsel; Julie Hildebrand, Litigation Counsel; Mitra Woody, Staff Attorney; Caroline Hotchkiss, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; and Kay Wilson, Executive Assistant.

Also present were Pharmacist Interns John Carpio and Sang Luong and Legal Intern Lance Brenton.

G. Disciplinary Orders

- Consideration of Proposal for Decision
 - In the Matter of Victor Mireles Valadez, Pharmacy Technician (Tab 37)

Ms. Arnold advised the Board that on July 16, 2008, State Office of Administrative Hearings (SOAH) Administrative Law Judge Michael J. Borkland issued a Proposal for Decision granting TSBP's Motion for Summary Judgment in the matter of Victor Mireles Valadez. Ms. Arnold reviewed the *Proposal for Decision* for the Board, in which Judge Borkland found that as an incarcerated individual, Mr. Valadez was not entitled to hold an occupational license. Judge Borkland concurred with staff that Mr. Valadez's pharmacy technician registration should be revoked.

Ms. Arnold directed the Board's attention to Agreed Board Order #T-08-270 (ABO), which she reviewed for the Board.

The motion was made by Ms. Combs to accept the *Findings of Fact* and *Conclusions of Law* in the *Proposal for Decision* and approve Board Order #T-08-270, as presented, in the matter of Victor Mireles Valadez to revoke Mr. Valadez's pharmacy technician registration. The motion was seconded by Ms. Waggener and passed 7-0-0.

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

Final Adoption of Rules

- Rules Concerning Generic Substitution (Chapter 309) (Tab 7)

Ms. Benz explained that earlier in the meeting, the Board had reviewed and discussed rules regarding generic substitution that were being considered for final adoption. At that time, the Board directed staff to make no changes to the rule language for §309.1. However, the Board directed staff to revise amendments to §309.3 by removing §309.3(c)(1)(B) from the proposed rules and delaying consideration of §309.3(c)(1)(B) until the November 2008 board meeting. The Board also asked staff to correct the language on §309.3(c)(1)(A) by removing *that the* from line 22 of page 2. She provided the Board a Preamble and Order Adopting Rule for Chapter 309 that reflected the changes requested by the Board.

Following review of the Preamble and Order Adopting Rule, the motion was made by Mr. Caldwell to approve for final adoption, by Board Order, amendments to Chapter 309, with changes. The motion was seconded by Mr. Wiesner and passed unanimously.

F. Consideration of and Possible Action Concerning Enforcement Reports

- Report on Status of Active/Pending Complaints (Tab 36)

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

G. Disciplinary Orders

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

The Board received and reviewed a list of 21 Agreed Board Orders for pharmacy technicians and pharmacy technician trainees following informal conferences, which were held on:

- April 24, 2008 (two Orders);
- May 22, 2008 (seven Orders);

- June 26, 2008 (four Orders); and
- July 24, 2008 (eight Orders).

The Board also received a list of 22 Default Orders for pharmacy technicians and pharmacy technician trainees who did not appear for informal conferences.

Ms. Arnold advised the Board that an additional Agreed Board Order had been received for William Robert Crim. Mr. Crim's case was considered at the July 24, 2008, informal conference.

The motion was made by Ms. Waggener to approve the 22 Agreed Board Orders for pharmacy technicians and pharmacy technician trainees following informal conferences and the 22 Default Board Orders for pharmacy technicians and pharmacy technician trainees. The motion was seconded by Ms. Mendoza and passed 7-0-0.

- Report on Agreed Board Orders Entered by Executive Director
 - The Board received and reviewed a list of 23 Technician Agreed Board Orders (Alternative Resolution and Falsification) that had been signed by the Executive Director on behalf of the Board in accordance with their directives during the period May 23, 2008, through April 30, 2008.
- Discussion of and Action on Proposed Agreed Board Orders and Default Orders
 - The Board received notebooks containing 59 Agreed Board Orders for pharmacists, pharmacies, student pharmacist-interns, and pharmacy technicians, 15 of which were Confidential Agreed Board Orders.

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

- | | | |
|----|--------------------|-----------------|
| 1. | Lisa Gail Jackson | ABO #H-06-038-A |
| 2. | Walgreen Co. #6189 | ABO #H-06-038-B |

The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Ms. Waggener and passed 7-0-0.

3. Gretchen Lynn Moore ABO #H-08-024-A
4. Kroger Pharmacy #434 ABO #H-08-024-B

The motion was made by Mr. Abeldt to approve the Orders as presented. The motion was seconded by Ms. Mendoza and passed 7-0-0.

5. Samuel Ackah Naykene ABO #H-07-017-A
6. Walgreen Co. #3957 ABO #H-07-017-B

The motion was made by Ms. Kedron to approve the Orders as presented. The motion was seconded by Ms. Waggener and passed 7-0-0.

7. Ester Chinedozi Amaka ABO #H-06-034-A
8. Wal-Mart Pharmacy #10-471 ABO #H-06-034-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Ms. Mendoza and passed 6-0-1. Ms. Waggener abstained.

9. Timothy A. Strange ABO #H-06-039-A
10. Walgreen Co. #4189 ABO #H-06-039-B

The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Mr. Wiesner and passed 7-0-0.

11. Walgreen Co. #3637 ABO #H-07-016-B

The motion was made by Mr. Abeldt to approve the Order as presented. The motion was seconded by Ms. Kedron and passed 7-0-0.

12. Walgreen Co. #9411 ABO #H-07-025-B

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Ms. Kedron and passed 7-0-0.

13. Dean C. Lyda ABO #H-07-024-A

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Mr. Caldwell and passed 7-0-0.

14. Walgreen Co. #3734 ABO #H-07-040

The motion was made by Ms. Kedron to approve the Order as presented. The motion was seconded by Mr. Wiesner and passed 7-0-0.

15. Janell Marie Fontenot ABO #L-07-015

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Ms. Combs and passed 7-0-0.

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.

16. Debra Ann Davis Dupuy ABO #B-06-026-A
17. Wal-Mart Pharmacy #10-0140 ABO #B-06-026-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Ms. Mendoza and passed 5-0-2. Mr. Abeldt and Ms. Waggener abstained.

18. Sylvester Chinagorom Udeze ABO #J-07-003-A
19. CVS/pharmacy #7739 ABO #J-07-003-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Ms. Kedron and passed 7-0-0.

20. Joseph Paul Bonno ABO #B-06-004-A
21. Wal-Mart Pharmacy #10-3451 ABO #B-06-004-B

The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Mr. Wiesner and passed 6-0-1. Ms. Waggener abstained.

- 22. Lorenzo Torres, Jr. ABO #B-07-093-A
- 23. Community Pharmacy ABO #B-07-093-B
- 24. Melissa Christine Garza Calzada ABO #T-08-220

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Ms. Mendoza and passed 6-0-1. Ms. Waggener abstained.

- 25. Jose Ricardo Rivas ABO #H-07-020-A
- 26. Med-Aid Pharmacy ABO #H-07-020-B

The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Mr. Wiesner and passed 7-0-0.

- 27. Maxor Pharmacies ABO #B-08-017

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 6-0-1. Ms. Waggener abstained.

- 28. Jose Abraham Dino ABO #K-08-010-A
- 29. Walgreen Co. #3820 ABO #K-08-010-B
- 30. Abelina Luna ABO #T-07-777

The motion was made by Ms. Waggener to approve the Orders as presented. The motion was seconded by Ms. Mendoza and passed 7-0-0.

- 31. Faust LTC Pharmacy, Inc. ABO #L-08-018

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 6-0-1. Ms. Combs abstained.

- 32. Ifiok Macjohn Akpaffiong ABO #L-08-017

The motion was made by Mr. Abeldt to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 6-0-1. Ms. Combs abstained.

- 33. Stephen Thomas Pratt ABO #A-05-011

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 7-0-0.

- 34. Russell Cleve West ABO #B-07-078-A
- 35. Austin Pharmacy ABO #B-07-078-B

The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Ms. Waggener and passed 7-0-0.

- 36. Brandon Cleveland Monk ABO #L-08-016

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 6-0-1. Ms. Combs abstained.

- 37. Phyllis Marie Booker-Hagger ABO #J-06-002

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Mr. Caldwell and passed 7-0-0.

- 38. Theodore Yariyep Lot ABO #E-08-004

The motion was made by Mr. Wiesner to approve the Order as presented. The motion was seconded by Ms. Kedron and passed 6-0-1. Ms. Waggener abstained.

- 39. Karen Guynes Bjerke ABO #G-08-007-A
- 40. Mainland Pharmacy, Inc. ABO #G-08-007-B

The motion was made by Ms. Kedron to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 6-0-1. Ms. Waggener abstained.

Ms. Woody reviewed the alleged violations, as well as the recommended sanctions for each of the following Default Board Orders concerning pharmacists, pharmacies, students, pharmacist-interns, and pharmacy technicians.

- 41. Alliance Pharmacy Services, Inc. ABO #E-07-009

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 6-0-1. Ms. Waggener abstained.

42. Precision Pharmacy Services, Inc. ABO #E-07-016

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 6-0-1. Ms. Waggener abstained.

43. Quantum Infusion, Inc. ABO #E-07-017

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 6-0-1. Ms. Waggener abstained.

44. Texas Home Infusion, LLC ABO #E-07-021

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 6-0-1. Ms. Waggener abstained.

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

1. ABO #G-08-012
2. ABO #M-08-010
3. ABO #N-08-007
4. ABO #N-08-009
5. ABO #G-07-005
6. ABO #L-08-013
7. ABO #E-05-008
8. ABO #M-08-011
9. ABO #G-08-014
10. ABO #G-08-005
11. ABO #G-07-013
12. ABO #L-08-019
13. ABO #B-04-027
14. ABO #G-08-109
15. ABO #G-08-021

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

1. 7-0-0.
2. 6-0-1. Ms. Waggener abstained.
3. 6-0-1. Ms. Combs abstained.
4. 6-0-1. Ms. Waggener abstained.
5. 6-0-1. Ms. Waggener abstained.
6. 6-0-1. Ms. Waggener abstained.

7. 7-0-0.
8. 6-0-1. Ms. Waggener abstained.
9. 6-0-1. Ms. Combs abstained.
10. 6-0-1. Ms. Combs abstained.
11. 6-0-1. Ms. Waggener abstained.
12. 6-0-1. Ms. Combs abstained.
13. 6-0-1. Ms. Waggener abstained.
14. 6-0-1. Ms. Waggener abstained.
15. 6-0-1. Ms. Combs abstained.

President Fry adjourned the meeting at 8:55 a.m.

APPROVED:

W. Benjamin Fry, R.Ph.
President

Gay Dodson, R.Ph.
Executive Director/Secretary