



TEXAS STATE BOARD OF PHARMACY

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

MINUTES¹

August 11, 2009

President W. Benjamin Fry, R.Ph., called the meeting to order at 9:00 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; Marcelo Lajjas, Jr.; and Alice Mendoza, R.Ph.

Board Members L. Suzan Kedron and Dennis F. Wiesner, R.Ph., 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; Caroline Hotchkiss, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; and Kay Wilson, Executive Assistant.

Also present were Pharmacist Intern Shawna Rutherford and Legal Intern Jennifer Littlefield.

¹See agenda and corresponding attachments for supporting materials.

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 Mr. Caldwell to approve the minutes of the TSBP Board Business Meeting, held May 5, 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 License Fees (§291.6, §295.5, and §297.4) (Tab 2)

Ms. Dodson advised that the proposed amendments to rules concerning license fees would be considered later in the meeting in conjunction with financial reports.

- Rules Concerning Ratio of Pharmacists to Pharmacy Technicians (§291.32) (Tab 3)

Ms. Benz explained that the Board voted to propose the amendments to §291.32 during its May 5, 2009, meeting. The proposed amendments were published in the June 12, 2009, issue of the *Texas Register*, and no comments were received. Ms. Benz explained that the proposed amendments would allow a Class A pharmacy to have a ratio of 1:5 pharmacists to pharmacy technicians/pharmacy technician trainees if the pharmacy dispenses no more than 20 different prescription drugs regardless of whether or not the pharmacy compounds non-sterile preparations, with the requirement that a pharmacy technician/pharmacy technician trainee who is compounding non-sterile preparations or is involved in the preparation of prescription drug orders may only be involved in one process at a time.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Mr. Caldwell to approve for adoption, by Board Order, amendments to §291.32, as published. The motion was seconded by Ms. Waggener and passed unanimously.

- Rules to Implement the Recommendations of the Task Force on Class C Rules (§§291.72-291.76) (Tab 4)

Ms. Benz explained that the Board voted to propose the amendments to §§291.72-291.76 during its May 5, 2009, meeting. The proposed amendments were published in the June 12, 2009, issue of the *Texas Register*, and comments were received from the Texas Society of Health-System Pharmacists (TSHP) and Envision.

Ms. Benz explained that the proposed amendments incorporate recommendations made by the Task Force on Class C Pharmacy Rules as follows:

- clarify the definition of an inpatient and change all references from inpatient to patient;
- allow for a quarterly inspection of automated medication supply systems provided certain monitoring and security features are present;
- delete the need for in-process checking of prepacking and technicians, but keep the final check by pharmacists;
- change the word typewriter to data processing system and printer;
- add electronic receiving of medication orders;
- define labeling requirements for discharge prescriptions;
- allow pharmacy technicians to restock automated medication supply cabinets without a final check by a pharmacist provided: (1) a pharmacist verifies the drugs pulled against the pull list; (2) the drugs are labeled with machine readable product identifier; (3) prepackaging has been verified by a pharmacist; and (4) qualify assurance audits are conducted;
- delete tripelethamine (PBZ) from drugs considered as controlled substances;
- replace references to supportive personnel with pharmacy technicians and pharmacy technician trainees; and

- delete requirements that dangerous drugs be supplied to discharged emergency room patients on a telephone call by physician.

She advised that the proposed amendments also incorporate staff recommendations to update/correct references to other rules and update the rules to be consistent with other sections of the rules.

The Board reviewed comments received from the Texas Society of Health-System Pharmacists (TSHP) and Envision. TSHP commented that "in-process" checking by a pharmacist may have been inadvertently left in several sections of the rules and recommended that it be deleted from these sections; and also suggested that §291.74(j)(2)(D) be changed to allow IV admixtures in medication supply systems and to reference verified and labeled prescription drugs. Envision commented that the requirement to have a pharmacist visit the pharmacy every seven days should not be included or changed to allow for electronic supervision.

Following discussion, the Board directed staff to change the proposed amendments to include TSHP's recommendation that §291.74(j)(2)(D) be changed to reference verified instead of labeled prescription drugs and present the proposed amendments with changes for the Board's consideration later in the meeting.

- Rules Concerning Continuing Education Credit (§295.8) (Tab 5)

Ms. Benz explained that the Board voted to propose the amendments to §295.8 during its May 5, 2009, meeting. The proposed amendments were published in the June 12, 2009, issue of the *Texas Register*, and comments were received from the American Safety and Health Institute (ASHI). She pointed out that the proposed amendments:

- clarify that the Accreditation Council for Pharmacy Education (ACPE) number must indicate that the program is for pharmacists by the designation of the letter P;
- allow pharmacists to complete the same program once per licensure period;
- clarify that pediatric advanced life support certification is also approved for CE credit;

- allow pharmacists to receive three hours of CE credit for certification by the Board of Pharmaceutical Specialty; and
- allow pharmacists to receive credit for attending a program provided by the Texas State Board of Pharmacy or a course offered by the Texas State Board of Pharmacy.

The Board reviewed the comments received from ASHI, which recommended that programs equivalent to the American Heart Association Cardiopulmonary Resuscitation, Advanced Cardiac Life Support, and Pediatric Life Support should be allowed for CE credit under this rule. Ms. Benz directed the Board's attention to revisions (dated August 11, 2009) to the proposed rules that incorporated the recommendations received from ASHI.

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 §295.8, with changes to allow continuing education credit for equivalent programs. The motion was seconded by Mr. Caldwell and passed unanimously.

- Rules Concerning Destruction of Drugs (§§303.1-303.2) (Tab 6)

Ms. Benz explained that the Board voted to propose the amendments to §§303.1-303.2 during its May 5, 2009, meeting. The proposed amendments were published in the June 12, 2009, issue of the *Texas Register*, and no comments were received. She explained that the proposed amendments would clarify that only dangerous drugs that have been previously dispensed to a patient may be accepted by a pharmacy and destroyed based on DEA requirements. The amendments would also make the rules consistent with DEA requirements and remove references to tripelethamine, a drug no longer on the market.

Ms. Benz directed the Board's attention to suggested changes to the proposed amendments (dated August 11, 2009) that would clarify that the pharmacist accepting returned prescription drugs must be in a pharmacy and allow for the return of controlled substances if allowed by federal laws of the Drug Enforcement Administration.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Mr. Caldwell to approve for adoption, by Board Order, amendments to §§303.1-303.2, with changes to clarify that the pharmacist accepting returned prescription drugs must be in a pharmacy and allow for the return of controlled substances if allowed by federal laws of the Drug Enforcement Administration. The motion was seconded by Mr. Abeldt and passed unanimously.

Proposal of Rules

- Rules Concerning Schedule of Administrative Penalties (§281.65) and Fingerprinting of Applicants for Reinstatement (§281.66) (Tab 7)

Ms. Benz directed the Board's attention to suggested amendments to §281.65 and §281.66 and explained that the 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, the motion was made by Ms. Mendoza to approve for proposal, as presented, amendments to §281.65 and §281.66. The motion was seconded by Mr. Laijas and passed unanimously.

- Rules Concerning Return of Prescription Drugs (§291.8) (Tab 8)

Ms. Benz directed the Board's attention to suggested amendments to §291.8 and explained that the amendments would clarify that the signature of a licensed healthcare professional or consultant pharmacist is required on the inventory of drugs returned to a pharmacy from a penal institution.

Following discussion, the motion was made by Mr. Caldwell to approve for proposal, as presented, amendments to §291.8. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Fees Charged to Third Parties for Providing Copies of Patient's Confidential Records (§291.28) (Tab 9)

Ms. Benz directed the Board's attention to suggested amendments to §291.28 and explained that the amendments would clarify the requirements regarding the access to confidential patient records; increase the maximum fee to be charged for copying records from \$25 to \$50; and allow a charge of up to \$50 for completing a survey or questionnaire.

Following discussion, the motion was made by Ms. Waggener to approve for proposal amendments to §291.28, as presented. The motion was seconded by Mr. Abeldt and passed unanimously.

- Rules Concerning Placing a Beyond-Use Date on a Prescription Label [§291.33 (Class A Pharmacies) and §291.104 (Class E Pharmacies)] (Tab 10)

Ms. Benz directed the Board's attention to amendments to §291.33 and §291.104 and explained that the amendments would implement provisions of H.B. 19, which was passed during the 81st Regular Session of the Texas Legislature. She explained that H.B. 19 required TSBP to adopt rules that would require pharmacists to place a beyond-use date on prescription labels in Class A and Class E pharmacies.

Following discussion, the motion was made by Ms. Waggener to approve for proposal amendments to §291.33 and §291.104, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Definitions, Personnel, Operational Standards, and Records in a Class C Pharmacy (§§291.72-291.75) (Tab 11)

Ms. Dodson directed the Board's attention to amendments to §§291.72-291.75 and explained that the amendments would implement provisions of H.B. 1924, which was passed during the 81st Regular Session of the Texas Legislature. She explained that H.B. 1924 added a new Section to the Texas Pharmacy Act (562.1011) titled *Operation of Class C Pharmacy in Certain Rural Hospitals*. She advised the Board that this new section of the Pharmacy Act:

- establishes a new definition for a rural hospital;
- adds current rule language to the Act that outlines the procedures for a nurse to enter a pharmacy when the pharmacy is closed and remove drugs for administration to a patient;
- allows pharmacy technicians in a "rural hospital" to perform certain duties without the direct supervision of a pharmacist; and
- allows that hospitals with ongoing "clinical pharmacy programs" may 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 (Tech-Check-Tech). Draft rules to implement Tech-Check-Tech will be presented to the Board for consideration for proposal at the November 2009 meeting.

The Board reviewed comments received from David Pearson, President/CEO of the Texas Organization of Rural and Community Hospitals concerning:

- *limiting expanded pharmacy tech duties to when one pharmacy tech is present;*
- *the requirement for a quality control/peer review program;*
- *additional training requirement for rural hospital pharmacy techs; and*
- *requiring a hospital to make application to the Board before allowing pharmacy technicians to perform the additional duties.*

Following discussion, the motion was made by Mr. Caldwell to approve for proposal amendments to §§291.72-291.75, with grammatical and reference corrections only. The motion was seconded by Ms. Combs and passed unanimously.

The Board directed staff to schedule a public hearing concerning these proposed amendments at the November 2009 Board Meeting.

- Rules Concerning Pharmacists Signing Prescriptions (§295.13, §291.31, §291.33, and §291.34) (Tab 12)

Ms. Benz directed the Board's attention to amendments to §295.13, §291.31, §291.33, and §291.34 and explained that the amendments would implement provisions of S.B. 381, which was passed during the 81st Regular Session of the Texas Legislature. She explained that S.B. 381 amended Chapter 157 of the Medical Practices Act 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 if the pharmacist works in a hospital or hospital-based or academic healthcare institution. The bill also granted TSBP the authority to adopt rules to implement the legislation, with the advice of the Texas Medical Board.

Following discussion, the motion was made by Ms. Waggener, to approve for proposal amendments to §295.13, §291.31, §291.33, and §291.34, with changes concerning confidentiality; the addition of language concerning beyond-use date on label; the replacement of *typewriter* with *data processing system including a printer*, and clarification of labeling on a med-pak. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Administration of Immunizations or Vaccinations by a Pharmacist under Written Protocol of a Physician (§295.15) (Tab 13)

Ms. Benz directed the Board's attention to amendments to §295.15 and explained that the amendments would implement provisions of H.B. 1409, which was passed during the 81st Regular Session of the Texas Legislature. She explained that the amendments would authorize 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.

Following discussion, the motion was made by Mr. Caldwell to approve for proposal amendments to §295.15, with a clarification that over seven years means eight years of age and over. The motion was seconded by Ms. Waggener and passed unanimously.

President Fry recessed the meeting at 10:25 a.m.

President Fry reconvened the meeting at 10:47 a.m.

D. Updates and Reports of Committees/Task Forces

- Task Force on Class C Pharmacies (Tab 14)

Dr. Holder advised the Board that the final meeting of the Task Force on Class C Pharmacies was held on June 30, 2009, to address revisions to USP 797. He directed the Board's attention to suggested amendments to §291.133 to incorporate changes suggested by the task force and staff concerning definitions and operational standards. Dr. Holder reviewed the recommended changes for the Board.

Following discussion, the motion was made by Ms. Mendoza to approve for proposal, as presented, amendments to §291.133. The motion was seconded by Ms. Waggener and passed unanimously.

- Task Force on Class B (Nuclear) Pharmacies (Tab 15)

Ms. Benz advised the Board that President Fry had made appointments to the Task Force on Nuclear Pharmacies (Class B) and directed their attention to a list of the members. She pointed out that the task force would be chaired by Steve Williamson, R.Ph., and that an additional member would be appointed to represent the Department of State Health Services, Bureau of Radiation Control. The task force will hold its first meeting on September 21, 2009.

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

- Financial Update

- Review of FY2009 Operating Budget (Tab 17)

Ms. Stella reviewed the expenditures for the first three quarters of FY2009 (September 1, 2008, through May 31, 2009) for the Board.

- Board Member Travel Budget (Tab 18)

Ms. Stella reviewed the FY2009 Board Member travel budget as of July 20, 2009.

- Legislative Appropriations Request (LAR) for FY2010-2011 (Tab 19)

Ms. Stella reviewed a summary of the agency's appropriations for FY2010-2011, as compared to FY2008-2009.

- FY2010 Operating Budget (Tab 20)

Ms. Stella directed the Board's attention to a proposed operating budget for FY2010, as compared to FY2009. She reviewed the budget, including Board Member travel.

Following discussion, the motion was made by Mr. Laijas to approve the FY2010 operating budget, as presented. The motion was seconded by Ms. Waggener and passed unanimously.

- Revenue Estimate for FY2010-2011 (Tab 21)

Ms. Stella directed the Board's attention to revenue projections for FY2010-2011. She explained that while the agency had received an increase in appropriations for FY2010-2011, the agency is required to raise fees in order to receive the appropriations. She pointed out that riders to the TSBP Appropriation Bill require the agency to assess or increase fees sufficient to generate \$3,185,130 in excess of the biennial revenue estimate of \$12,081,060 during the FY2010-2011 biennium. Based on these requirements, she directed the Board's attention to three possible fee scenarios that would meet these requirements.

Ms. Stella pointed out that at the May 2009 Board meeting, the Board proposed rules concerning license fees for pharmacies (§291.6), pharmacists (§295.5), and pharmacy technicians and pharmacy technician trainees (§297.4) (Tab 2). The proposed fees were based on an estimated budget since the budget had not been approved by the Texas Legislature at that time.

Following discussion, based on the actual appropriated budgets for FY2010-2011, the motion was made by Ms. Waggner to approve for adoption amendments to §291.6, §295.5, and §297.4; increasing pharmacist license fees by \$67, increasing pharmacy license fees by \$67, increasing pharmacy technician registration fees by \$24; and establishing a new fee of \$53 for a pharmacy technician trainee. The motion was seconded by Mr. Abeldt and passed unanimously.

- Remote Verification of Prescription Data Entry (Tab 16)

Ms. Dodson introduced John D. Jones, Senior Vice President, Professional Practice and Pharmacy Policy, Prescription Solutions. Mr. Jones provided the Board information concerning a shared services pharmacy model that Prescription Solutions developed for its mail service operations and asked whether the model would be allowed in Texas. 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.

Following discussion, the Board directed staff to survey other states concerning the use of this model and provide the Board suggested language to amend TSBP rules regarding the use of the model at the November 2009 Board meeting.

- Request for Qualifications Process for Pharmacy Technician Certification Examination (Tab 22)

Ms. Stella advised the Board that the request for qualifications bid (RFQ) for the pharmacy technician certification examination was submitted to the Comptroller's Office in July. Once the RFQ has been approved, it will be posted on the Texas electronic marketplace. The Board will be advised of the outcome of this process at a later meeting.

- Professional Recovery Network
 - Dr. Holder directed the Board's attention to charts showing participation in the peer assistance program. (Tab 23)
 - President Fry recognized Donna Chamberlain, Director of the Pharmacy Recovery Network (PRN). (Tab 24) Ms. Chamberlain directed the Board's attention to the PRN budget for September 1, 2008, through May 31, 2009, and reviewed current PRN activities for the Board.

Ms. Dodson introduced Joe DaSilva, new Executive Director of the Texas Pharmacy Association.

- Requirements for Electronic Prescriptions and Possible Amendment of §291.34(b) (Tab 40)

Mr. Fry advised the Board of a situation where a pharmacy was denied reimbursement for an electronically-transmitted prescription because it did not meet all the criteria for an electronic prescription under Texas rules. Mr. Caldwell provided the Board background concerning how CMS defines an electronic prescription.

Ms. Dodson directed the Board's attention to suggested amendments to §291.34 to clarify what is required for a prescription to meet TSBP's definition of an electronic prescription.

Following discussion, the motion was made by Mr. Caldwell to approve for proposal amendments to §291.34, with the deletion of (b)(6)(B)(x) and (b)(6)(B)(xi). The motion was seconded by Ms. Waggener and passed unanimously.

- *TSBP FY2011-2015 Strategic Plan* (Tab 26)

Ms. Stella directed the Board's attention to a timeline for development of *TSBP's Strategic Plan* for FY2011-2015, as well as the issues addressed in the agency's strategic plan for FY2009-2013. She explained that, according to the timeline, staff would send questionnaires to interested parties asking for their input and suggestions. At the Board's meeting in November 2009, the Board would review input from the outside parties and assign staff and Board Members to work on each issue. The Board discussed the possibility of working with a facilitator at the November 2009 meeting, but decided to proceed as scheduled with the strategic plan for FY2011-2015. However, the Board determined that for the development of the

FY2013-2017 strategic plan they would like to consider conducting a forum with interested parties and then working with a facilitator to develop the plan.

President Fry recessed the meeting at 2:22 p.m.

President Fry reconvened the meeting at 2:33 p.m.

G. Disciplinary Orders

- Consideration of Proposals for Decision

- In the Matter of Nene Ubak Akpaffiong, R.Ph. (Tab 36)

Ms. Arnold advised the Board that on May 28, 2009, State Office of Administrative Hearings (SOAH) Administrative Law Judge Michael J. Borkland issued a Proposal for Decision in the matter of Nene Ubak Akpaffiong, R.Ph. Ms. Arnold introduced Judge Borkland. Judge Borkland reviewed the *Proposal for Decision* for the Board, and advised the Board that it was his opinion that based on the Findings of Fact and Conclusions of Law, revocation of Ms. Akpaffiong's license was not justified. It was his recommendation that the Board suspend Ms. Akpaffiong's license, with the suspension fully probated, for the greater term of her criminal probation or ten years, and that she be assessed an administrative penalty of \$5,000.

Ms. Hildebrand directed the Board's attention to TSBP's response to the *Proposal for Decision* titled *TSBP Staff's Exceptions to the Proposal for Decision and Motion for Reconsideration of Proposal for Decision*, which was filed on June 10, 2009, requesting that the court reconsider and recommend revocation of Ms. Akpaffiong's license. She then directed the Board's attention to Judge Borkland's response, dated June 30, 2009, denying TSBP's staff's exceptions.

Ms. Hildebrand directed the Board's attention to proposed Board Order #E-08-006, of which there were three versions. She explained that one version would probate Ms. Akpaffiong's license; one version would suspend Ms. Akpaffiong's license concurrent with criminal probation followed by five-years probation, a \$1,200 probation fee, and a \$5,000 administrative penalty; and one version would revoke Ms. Akpaffiong's license.

Ms. Hildebrand reviewed the *Findings of Fact* for the Board.

The motion was made by Mr. Caldwell to accept the *Findings of Fact* and items 1-8 under *Conclusions of Law* in the *Proposal for Decision* and approve the version of Board Order #E-08-006 to revoke Ms. Akpaffiong's license. The motion was seconded by Ms. Waggener and passed unanimously.

- In the Matter of Oluwafemi Awe, R.Ph. (Tab 37)

Ms. Hildebrand advised the Board that on July 16, 2009, State Office of Administrative Hearings (SOAH) Administrative Law Judge Ami L. Larson issued a Proposal for Decision in the matter of Oluwafemi Awe, R.Ph. Ms. Hildebrand reviewed the *Proposal for Decision* for the Board, in which Judge Larson found that Mr. Awe's pharmacy license should be revoked.

Ms. Hildebrand directed the Board's attention to Agreed Board Order #G-06-001 (ABO), which she reviewed for the Board.

The motion was made by Mr. Caldwell to accept the *Findings of Fact* and *Conclusions of Law* in the *Proposal for Decision* and approve Board Order #G-06-001, as presented, in the matter of Oluwafemi Awe, R.Ph., to revoke Mr. Oluwafemi's pharmacist license. The motion was seconded by Ms. Waggener and passed unanimously.

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

- Review and Approval of Accreditation Council for Pharmacy Education (ACPE) Accredited Professional Programs of Colleges and Schools of Pharmacy (Tab 28)

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. Waggener and passed unanimously.

- *TSBP FY2010 Goals and Objectives (Tab 27)*

Ms. Dodson directed the Board's attention to a draft of the *TSBP FY2010 Goals and Objectives*, which she reviewed for the Board.

Following review of the Goals and Objectives, the motion was made by Mr. Abeldt to approve, as presented, the *TSBP FY2010 Goals and Objectives*. The motion was seconded by Ms. Waggener and passed unanimously.

- Prescription Drug Recalls and their Handling and Follow-up by Pharmacies (Tab 29)

Ms. Fisher advised the Board that staff had received complaints from patients concerning drugs that have been recalled. She pointed out that the only rules TSBP has concerning recalled drugs are found in the sterile compounding rules. She advised the Board that most states have some type of rules concerning recalled drugs. She directed the Board's attention to examples of rules concerning recalled drugs from other states (Pennsylvania, Louisiana, Vermont, and Washington, D.C.).

Following discussion and review of possible rule language, the Board directed staff to present suggested rule language for consideration at a future meeting, with the stipulation that a recalled drug has to be removed from inventory immediately (no more than 24 hours).

- Survey Concerning Purchase/Delivery of Medications from an Automated Storage and Distribution Device (Tab 30)

Ms. Fisher advised the Board that at its May 2009 meeting, the Board adopted rule language concerning automated pharmacy dispensing machines and that the rule did not allow dispensing of new prescriptions or controlled substances by the machines. She explained that at the Board's direction a survey of other states' rules concerning dispensing from automated pharmacy machines was conducted. Ms. Fisher asked Pharmacist Intern Shawna Rutherford, who conducted the survey, to present the findings to the Board.

Ms. Rutherford directed the Board's attention to the survey concerning automated pharmacy dispensing machines. She advised the Board that of the 16 states that currently have rules concerning automated pharmacy dispensing machines, nine allow dispensing of new prescriptions by the machines, 13 allow dispensing of controlled substances by the machines, and eight allow after pharmacy hours dispensing by the machines. She also reported that nine states

currently have pilot projects; and of the nine states, three allow dispensing of new prescriptions by the machines, four allow dispensing of controlled substances by the machines, and four allow after pharmacy hours dispensing by the machines. She reported that seven states had board statements only; and of the seven states, one allows dispensing of new prescriptions by the machines, none allow dispensing of controlled substances by the machines, and one allows after pharmacy hours dispensing by the machines.

No action was taken by the Board.

- Legislation Passed During the 81st Texas Legislative Session that Has an Impact on TSBP and/or the Practice of Pharmacy (Tab 31)

Ms. Dodson directed the Board's attention to an *Action Chart for 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.

- Possible Statutory Changes (Tab 32)

Ms. Dodson advised the Board that at the November 2009 meeting they would receive a list of possible statutory changes for the next legislative session for the Board's review.

F. Consideration of and Possible Action Concerning Enforcement Reports

- Petition(s) to Serve as a Preceptor (Tab 33)

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

Following discussion, the motion was made by Ms. Waggener to approve the petition of Patti M. Black, R.Ph., to serve as a preceptor. The motion was seconded by Ms. Mendoza and passed 5-1-0. Mr. Abeldt opposed.

- Report on Complaints Closed and Dismissed During the Previous Quarter (Tab 34)

The Board received a report on complaints dismissed and closed during the first three quarters of FY2009 (September 1, 2008 – May 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 35)

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

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

Final Adoption of Rules

- Rules to Implement the Recommendations of the Task Force on Class C Rules (§§291.72-291.76) (Tab 4)

Ms. Benz explained that the Board reviewed and discussed the proposed amendments to §§291.72-291.76 earlier in the meeting. The Board also considered comments received from the Texas Society of Health-System Pharmacists (TSHP) and Envision.

Ms. Benz explained that earlier in the meeting, following consideration of the proposed amendments and review of the comments received, the Board directed staff to change §291.74(j)(2)(D) to include *verified and labeled*. She then directed the Board's attention to the Preamble and Order Adopting Rule, which included the change requested by the Board in response to TSHP's comment.

Following discussion and review of the Preamble and Order Adopting Rule, the motion was made by Ms. Mendoza to approve for adoption, by Board Order, amendments to §§291.72-291.76, as changed. The motion was seconded by Ms. Waggener and passed unanimously.

H. Miscellaneous

- Items to be Placed on Agenda for November 2009 Board Meeting (Tab 38)

Board Members and/or Ms. Dodson requested that the following items be placed on the agenda for the November 2009 Board Meeting.

- Public hearing concerning amendments to §§291.72-291.75 regarding definitions, personnel, operational standards, and records in a Class C Pharmacy and amendments to §295.13, §291.31, §291.33, and §291.34 regarding pharmacists signing prescriptions;
 - Review of comments received from interested parties concerning the *TSBP Strategic Plan for FY2011-2015* and assignment of Board Members and staff to revise/develop issues;
 - Survey results and suggested rule language concerning remote verification of prescription data entry; and
 - Suggested rule language concerning prescription drug recalls and their handling and follow-up by pharmacies.
- 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.

- Executive Director's Contract (Tab 39)

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. Mendoza and passed unanimously.

President Fry declared the Board in Executive Session at 3:37 p.m.

At 3:52 p.m., President Fry announced that the Board would resume the meeting in Open Session. President Fry announced that no action was taken and no decisions were made during Executive Session.

The motion was made by Mr. Caldwell to continue the employment of Executive Director Gay Dodson, but not to require an employment contract with the Executive Director after the current contract expires on August 31, 2009. The motion was seconded by Ms. Mendoza and passed unanimously.

A. Announcements

- Ms. Dodson advised the Board that Tamiflu® had been ordered by the agency and would be held by a designated pharmacy for dispensing to staff who contract the flu. The Tamiflu® would be dispensed by the pharmacy after the employee's primary care physician issued a prescription for the drug.
- President Fry advised the Board that Mr. Laijas would be unable to attend the remainder of the meeting on August 12. He explained that if the Governor appoints new members prior to the November 2009 meeting, this would be Mr. Laijas' last meeting. He thanked Mr. Laijas for his service on the Board.

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

August 12, 2009

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

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

Also present was Pharmacist Intern Shawna Rutherford and Legal Intern Jennifer Littlefield.

G. Disciplinary Orders

- Report on Agreed Board Orders Entered by Executive Director
 - The Board received and reviewed a list of 29 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 May 21, 2009, through August 6, 2009.
 - Petition(s) to Serve as a Preceptor (Tab 33)

Ms. Arnold directed the Board's attention to a petition from Jose Antonio Mendoza, R.Ph., to serve as a preceptor. Ms. Arnold advised the Board that Mr. Mendoza was currently under a Board Order entered by the Executive Director on July 17, 2009. She explained that under Board rule §283.6, no pharmacist may serve as a preceptor if his/her license has been the subject of an order of the Board during the period he or she is serving as a preceptor or within the three-year period immediately preceding application for approval as a preceptor. However, a pharmacist who is or has been the subject of an order may petition the Board to act as a preceptor. Ms. Arnold directed the Board's attention to Mr. Mendoza's petition and supporting documentation.

Following discussion, the motion was made by Ms. Waggener to approve the petition of Jose Antonio Mendoza, R.Ph., to serve as a preceptor. The motion was seconded by Mr. Abeldt and passed 5-0-1. Ms. Mendoza abstained.

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

The Board received and reviewed a list of 28 Agreed Board Orders for pharmacy technicians and pharmacy technician trainees following informal conferences, which were held on:

- August 21, 2008 (one Order);
- December 18, 2008 (one Order);
- April 23, 2009 (one Order);
- May 21, 2009 (13 Orders);
- June 25, 2009 (nine Orders); and
- July 21, 2009 (three 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.

The motion was made by Ms. Kedron to approve the 28 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. Waggener and passed 6-0-0.

- Report on Agreed Board Orders Entered by Executive Director

- The Board received and reviewed a list of 55 Technician Agreed Board Orders (Alternative Resolution and Falsification) that had been signed by the Executive Director on behalf of the Board in accordance with the Board's directives during the period May 13, 2009, through July 29, 2009.

- Discussion of and Action on Proposed Agreed Board Orders and Default Orders
 - The Board received notebooks containing 42 Agreed Board Orders for pharmacists, pharmacies, student pharmacist-interns, and pharmacy technicians, 12 of which were Confidential Agreed Board Orders.

Ms. Hotchkiss 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. Daniel Craig Waters ABO #N-08-019

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

2. James Charles Miller ABO #H-08-048-A
3. Cattles Pharmacy, Inc. ABO #H-08-048-B

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

4. Tuankhoi To ABO #H-08-045-A
5. Kroger Pharmacy #598 ABO #H-08-045-B

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

6. Kelly D. Brown ABO #H-08-047-A
7. CVS/pharmacy #7439 ABO #H-08-047-B

The motion was made by Mr. Caldwell to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 6-0-0.

8. Walgreen Co. #4014 ABO #H-08-033-B

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

9. Omobola Taiwo ABO #L-09-002

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

Ms. Hotchkiss and 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.

10. Hoang Thi Le ABO #E-08-010

The motion was made by Ms. Kedron to approve the Order as presented. The motion was seconded by Mr. Caldwell and passed 5-0-1. Ms. Waggener abstained.

11. Jon Michael Reeves ABO #E-08-012

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Ms. Kedron and passed 5-0-1. Ms. Combs abstained.

12. Jerry Raymond Stone ABO #B-07-048

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Ms. Kedron and passed 5-0-1. Ms. Waggener abstained.

13. Parul Robert Troiano ABO #L-09-010

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

14. Mother Frances Hospital ABO #H-08-017-B

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

15. Prime Therapeutics, LLC ABO #H-08-020-B

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Kedron and passed 5-0-1. Ms. Combs abstained.

16. Jan Holley Pattillo ABO #A-08-011-A

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Ms. Kedron and passed 5-0-1. Ms. Waggener abstained.

17. Kim Thien Hoang ABO #L-08-032

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

18. Danny Manop Narat ABO #F-09-011

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Ms. Kedron and passed 5-0-1. Ms. Combs abstained.

19. UT Health Center at Tyler ABO #B-09-001

The motion was made by Ms. Mendoza to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 5-0-1. Ms. Waggener abstained.

20. Wheatland Pharmacy ABO #L-09-016

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

21. Michael Paul LeDuc ABO #H-08-001-A
22. CVS/pharmacy #7472 ABO #H-08-001-B

The motion was made by Ms. Mendoza to approve the Orders as presented. The motion was seconded by Mr. Abeldt and passed 5-0-1. Ms. Waggener abstained.

23. Howard W. Biel ABO #J-08-022

The motion was made by Ms. Kedron to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 5-0-1. Ms. Waggener abstained.

24. Eastside Pharmacy ABO #K-09-006

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 5-0-1. Ms. Combs abstained.

25. Veronica Victoria Ortega ABO #T-09-160

The motion was made by Ms. Waggener to approve the Order as presented. The motion was seconded by Mr. Abeldt and passed 5-0-1. Ms. Combs abstained.

26. Titilayo Omodele Owojori ABO #E-09-012

The motion was made by Ms. Kedron to approve the Order as presented. The motion was seconded by Ms. Waggener and passed 5-0-1. Ms. Combs abstained.

27. College Pharmacy ABO #L-08-031

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Mendoza and passed 5-0-1. Ms. Waggener abstained.

28. Jack Randall Munn ABO #J-08-002-A

29. Medical Park Pharmacy ABO #J-08-002-B

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

30. Martin Luther Raabe Jr. ABO #E-08-013

The motion was made by Mr. Caldwell to approve the Order as presented. The motion was seconded by Ms. Kedron and passed 5-0-1. Ms. Waggener abstained.

E. Reports and Discussions (cont.)

- Presentation by ScriptPro and Discussion Concerning Current Telepharmacy Laws and Rules (Tab 25)

Russell Wheeler of ScriptPro presented a PowerPoint presentation concerning telepharmacy technologies and their implementation.

Mr. Wheeler answered questions posed by the Board Members. The Board took no action on this issue.

G. Disciplinary Orders (cont.)

- Executive Session to Consider Confidential Agreed Board Orders

Mr. Caldwell made a motion that the Board go into Executive Session to consider Agreed Board Orders involving impaired pharmacists, pharmacist applicants, and pharmacist interns, under the authority of the Texas Pharmacy Act, Section 564.002. The motion was seconded by Ms. Waggener and passed 6-0-0.

President Fry declared the Board in Executive Session at 9:37 a.m.

At 9:45 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. Caldwell made motions to approve the following confidential Orders:

1. ABO #N-09-016
2. ABO #N-09-014
3. ABO #G-09-007
4. ABO #M-09-008
5. ABO #G-09-016
6. ABO #S-09-006
7. ABO #G-09-020
8. ABO #M-09-010
9. ABO #M-09-009
10. ABO #N-09-011
11. ABO #G-08-033
12. ABO #G-09-008

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

1. 6-0-0.
2. 6-0-0.
3. 6-0-0.
4. 5-0-1. Ms. Combs abstained.
5. 6-0-0.
6. 5-0-1. Ms. Combs abstained.
7. 5-0-1. Ms. Kedron abstained.
8. 6-0-0.
9. 6-0-0.
10. 5-0-1. Ms. Combs abstained.
11. 6-0-0.
12. 5-0-1. Ms. Combs abstained.

A. Announcements (cont.)

- President Fry announced that this would be the last Board Meeting Mr. Caldwell would attend as a Board Member. He thanked Mr. Caldwell for his 12 years of service on the Board.
- Ms. Combs announced that if new Board Members were appointed before the November 2009 meeting and Mr. Fry was not reappointed, this would also be his last meeting as a Board Member and Board President. On behalf of the Board, she thanked Mr. Fry for his service and leadership.

President Fry adjourned the meeting at 10:07 a.m.

APPROVED:

W. Benjamin Fry, R.Ph.
President

Gay Dodson, R.Ph.
Executive Director/Secretary

November 9, 2009