



TEXAS STATE BOARD OF PHARMACY

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

February 2, 2016

MINUTES¹

Tuesday, February 2, 2016

President Jeanne D. Waggener, R.Ph., called the meeting to order at 9:00 a.m. Other Board Members present were Vice President Christopher M. Dembny, R.Ph.; Treasurer Buford T. Abeldt, Sr., R.Ph.; Dennis F. Wiesner, R.Ph.; L. Suzan Kedron; Alice G. Mendoza, R.Ph.; Phyllis A. Stine; Bradley A. Miller, Ph.T.R.; Chip Thornsburg; Jenny Downing Yoakum, R.Ph.; and Suzette Tijerina, R.Ph.

Staff present were Gay Dodson, R.Ph., Executive Director/Secretary; Cathy Stella, Director of Licensing and Administrative Services; Carol Fisher, R.Ph., M.P.A., Director of Enforcement; Allison Benz, R.Ph., M.S., Director of Professional Services; Kerstin Arnold, General Counsel; Steve Rapp, Director of Information Technology; Caroline Hotchkiss, Assistant General Counsel; Ben Santana, R.Ph., Chief of Compliance; Tyler Vance, Staff Attorney; Megan Holloway, Staff Attorney; Ginger Shuffer, Staff Attorney; and Becky Damon, Executive Assistant.

Also present was Pharmacist Intern Julian Henderson.

A. Announcements

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

¹See agenda and corresponding attachments for supporting materials.

B. Discussion and Approval of Minutes of Previous Meetings (Tab 01)

Following discussion, the motion was made by Mr. Dembny to approve the minutes of the Board Business Meeting held November 3, 2015, as presented. The motion was seconded by Ms. Stine and passed unanimously.

C. Discussion of and Possible Action Regarding Rules

Final Adoption of Rules

- Rules Concerning Grounds for Discipline for a Pharmacy License (§281.8) (Tab 02)

Ms. Benz explained that the Board voted to propose the amendments to §281.8 during its November 3, 2015, meeting. The proposed amendments were published in the December 18, 2015, issue of the *Texas Register*, and no comments were received.

Ms. Benz directed the Board's attention to amendments to §281.8 and explained that the amendments add abusive, intimidating, or threatening behavior toward a board member or employee during the performance of such member's or employee's lawful duties by the owner, managing officer(s), or other pharmacy employee(s) as grounds for discipline of a pharmacy license.

Following discussion and review of the Preamble and Order Adopting Rules, the motion was made by Mr. Dembny to approve for adoption, by Board Order, amendments to §281.8, as presented. The motion was seconded by Mr. Abeldt and passed unanimously.

- Rules Concerning the Definition of a Healthcare Professional (§283.2) and Concerning the Duties of a Pharmacist-Intern (§283.5) (Tab 03)

Ms. Benz explained that the Board voted to propose the amendments to §283.2 and §283.5 during its November 3, 2015, meeting. The proposed amendments were published in the December 18, 2015, issue of the *Texas Register*, and no comments were received.

Ms. Benz directed the Board's attention to the amendments and explained the amendments to §283.2 update the definition of a healthcare professional preceptor to include dentists, veterinarians, advanced practice registered nurses, and physician assistants. The amendments to §283.5 allow intern-trainees to perform the duties of a pharmacist while under the supervision of a pharmacist preceptor at a site assigned by the college/school of pharmacy.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Yoakum to approve for adoption, by Board Order, amendments to §§283.2 and 283.5, as presented. The motion was seconded by Ms. Tijerina and passed unanimously.

- Rules Concerning Inspection Reports for Non-Resident Pharmacies (Class E) (§291.104) (Tab 04)

Ms. Benz explained that the Board voted to propose the amendments to §291.104 during its November 3, 2015, meeting. The proposed amendments were published in the December 18, 2015, issue of the *Texas Register*, and no comments were received.

Ms. Benz directed the Board's attention to amendments to §291.104 and explained that the amendments update the rules to require non-resident (Class E) pharmacies to submit an inspection conducted within the last two years as part of the pharmacy application. The proposed change makes the requirement consistent with other sections of the rules.

Ms. Benz explained that staff was recommending the Board withdraw these proposed amendments and allow staff to prepare revised rule language for consideration by the Board at a future Board Meeting.

Following discussion of the rule the motion was made by Mr. Thornsburg to withdraw from consideration for final adoption the proposed amendments to §291.104. The motion was seconded by Mr. Dembny and passed unanimously.

- New Rules Concerning Controlled Substances (§§315.1-315.14) (Tab 05)

Ms. Benz explained that the Board voted to propose the new rules §§315.1-315.14 during its November 3, 2015, meeting. The proposed new rules were published in the December 18, 2015, issue of the *Texas Register*, and comments were received from the National Association of Chain Drugs Stores, and the Advanced Practice Registered Nurse Strategic Alliance.

Ms. Benz directed the Board's attention to new rules §§315.1-315.14 which will implement the provisions of Senate Bill 195 passed during the 84th Texas Legislative Session

Following discussion of the rules, the Board postponed action on the proposed new rules §§315.1-315.14, until later in the meeting.

Proposal of Rules

- Rules Concerning Licensing Requirements for Pharmacists (§§283.4, 283.7, 283.8 and 283.11) (Tab 06)

Ms. Benz directed the Board's attention to suggested amendments to rule language concerning the licensing requirements for pharmacists. She explained the amendments to §§283.4, 283.7, and 283.8, eliminate the provisions allowing individuals who are unable to obtain a social security number, to provide an individual taxpayer identification number in lieu of a social security number because a social security number is required in order to process criminal background checks. She explained, the amendments to §283.11 implement provisions of Senate Bill 460 passed during the 84th Texas Legislative Session, allowing applicants applying for a Texas pharmacist license who fail to achieve the minimum passing grade to retake the NAPLEX and MPJE examinations four additional times for a total of five times.

Following discussion, the motion was made by Ms. Kedron to approve for proposal amendments to §§283.4, 283.7, 283.8 and 283.11, as presented. The motion was seconded by Mr. Thornsburg and passed unanimously.

- Rules Concerning Closing a Pharmacy (§291.5) and Concerning Pharmacy License Renewal (§291.14) (Tab 07)

Ms. Benz directed the Board's attention to suggested amendments to rule language concerning closing a pharmacy and a pharmacy license renewal. She explained the amendments to §291.5 clarify the requirements for closing a pharmacy and eliminate the requirements for a pharmacy to transfer records to a pharmacy within a reasonable distance. She explained the amendments to §291.14 implement provisions of Senate Bill 460 passed during the 84th Texas Legislative Session which change the expiration date for a pharmacy license that has expired from one year to 91 days and allows the board to not renew the license of a pharmacy if the board determines that the pharmacy is not located or no longer exists at the pharmacy's address of record.

Following discussion, the motion was made by Ms. Stine to approve for proposal amendments to §§291.5 and 291.14, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Prescription Transfer Requirements and the Log of Initials or Codes That Identify Individuals Involved in the Data Entry of a Prescription (§291.34) (Tab 08)

Ms. Benz directed the Board's attention to suggested amendments to rule language concerning prescription transfer requirements and the log of initials or codes that identify individuals involved in the data entry of a prescription. She explained the amendments clarify that prescriptions must be transferred by the close of the following business day; update the rules regarding distribution to include dangerous drugs; and implement provisions of House Bill 751 passed during the 84th Texas Legislative Session regarding interchangeable biological products.

Ms. Benz presented written comments received from the Alliance of Independent Pharmacists of Texas; Anjanette Wyatt, Pharm.D.; and Damita Wyatt, Pharm.D.

Following discussion, the motion was made by Mr. Dembny to approve for proposal the amendments to §291.34, with recommended changes. The motion was seconded by Ms. Stine.

Following additional discussion, the motion was made by Mr. Dembny to withdraw his motion to approve for proposal the amendments to §291.34 and Ms. Stine withdrew her second to the motion.

Following discussion, the motion was made by Mr. Dembny to approve for proposal amendments to §291.34, with recommended changes. The motion was seconded by Mr. Abeldt and passed unanimously.

- Rules Concerning Compounding Sterile Preparations (§291.133) (Tab 09)

Ms. Benz directed the Board's attention to suggested amendments to rule language concerning the compounding of sterile preparations. She explained the amendments eliminate training requirements that are out-of-date; update the requirements for sterility testing; clarify the requirements for temperature and humidity; and clarify the requirements for blood labeling procedures.

Ms. Benz presented written comments that were received from Sidney Phillips, R.Ph., and Don Warner, R.Ph.

Ms. Benz explained that staff was recommending the Board hold a Compounding Stakeholders Meeting to consider additional rule amendments. She explained that staff would like to schedule the meeting for March 1, 2016.

Following discussion, the motion was made by Mr. Abeldt to approve for proposal the amendments to §291.133, with recommended changes. The motion was seconded by Mr. Dembny and passed unanimously.

- Rules Concerning Registration Requirements for Pharmacy Technicians and Pharmacy Technician Trainees (§§297.3 and 297.10) (Tab 10)

Ms. Benz directed the Board's attention to suggested amendments to rule language concerning registration requirements for pharmacy technicians and pharmacy technician trainees. She explained the amendments eliminate the provisions allowing individuals who are unable to obtain a social security number, to provide an individual taxpayer identification number in lieu of a social security number because the social security number is required in order to process criminal background checks.

Following discussion, the motion was made by Ms. Stine to approve for proposal the amendments to §§297.3 and 297.10, as presented. The motion was seconded by Ms. Mendoza passed unanimously.

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

President Waggener reconvened the meeting at 10:39 a.m.

Rule Review

- For Adoption

Ms. Benz directed the Board's attention to the TSBP Rule Review Plan for FY2014-2017 (Tab 11)

- Chapter 291 Concerning Pharmacies (Community Pharmacy (Class A)) (§§291.31-291.35) (Tab 12)
- Chapter 283 Concerning Licensing Requirements for Pharmacists (§§283.1-283.12) (Tab 13)

Following discussion, in accordance with Government Code §2001.039, the motion was made by Ms. Kedron to approve for adoption as presented, the review of Chapter 291 (§§291.31-291.35); and Chapter 283 (§§283.1-283.12). The motion was seconded by Mr. Dembny and passed unanimously.

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

- Financial Update

- Review of FY2016 Operating Budget (Tab 14)

Ms. Stella reviewed the expenditures for the first quarter of FY2016 (September 1, 2015 - through November 30, 2015) for the Board.

- Review of Board Member Travel Budget (Tab 15)

Ms. Stella reviewed the Board Member FY2016 Travel Budget.

- Consideration of Material Changes to Contracts for Goods and Services Awarded Under Chapter 2155 of Texas Government Code (Tab 16)

Ms. Stella stated there were no material changes to contracts for goods and services during the first quarter of FY2016.

- Discussion Concerning *TSBP FY2017-2021 Strategic Plan* (Tab 19)

Ms. Dodson presented a draft of the External and Internal Assessment for the FY2017-2021 Strategic Plan. She presented a listing of the external and internal issues and the Board discussed the order of priority for the issues identified.

Ms. Dodson explained that a final draft of the *TSBP FY2017-2021 Strategic Plan* would be presented to the Board for review and approval at its May meeting.

- Discussion Concerning Maintaining a Perpetual Inventory of Schedule II Drugs in Class A and Class A-S Pharmacies (Tab 20)

Ms. Fisher presented the current rules concerning inventory requirements (§291.17). She explained that Class C Pharmacies have been required to maintain a perpetual inventory of all Schedule II controlled substances for over 20 years, whereas Class A Pharmacies have never been required to maintain a perpetual inventory of Schedule II controlled substances.

Ms. Fisher also mentioned that since 2001, TSBP has been tracking the reports submitted to the Board regarding thefts and losses of controlled substances due to employee pilferage. The number of dosage units of all controlled substances reported stolen by employees is averaging approximately one-half million dosage units per year. Hydrocodone-containing tablets are the drugs most commonly lost/stolen.

Ms. Fisher stated that a perpetual inventory of Schedule II controlled substances, particularly Hydrocodone-containing tablets, would provide Class A and Class A-S Pharmacies a valuable tool to track purchases and disposals of these drugs, which in turn, would allow the pharmacies to detect thefts/losses more quickly.

Following discussion the Board directed staff to bring back suggested rule language concerning the perpetual inventory of Schedule II drugs in Class A and Class A-S pharmacies, for the Board's consideration at its May meeting.

- Discussion Concerning Auto Refill Programs (Tab 22)

Ms. Dodson directed the Board's attention to an email received from Kimberly Haddock, R.Ph., concerning the Auto Refill Program rules.

Ms. Dodson explained that Ms. Haddock is requesting that the Board consider amending rule language to allow testosterone to be included in the Auto Refill Program.

Following discussion no action was taken by the Board.

- Discussion Concerning the Ratio of Pharmacist to Technicians When a Technician is a Student From a Tech School (Tab 23)

Ms. Dodson directed the Board's attention to an email received from Carole Hardin-Oliver, R.Ph., concerning allowing technician trainees, when part of a rotational experience from an accredited technician school, to be exempted from or added to the pharmacist to technician ratio.

President Waggener recognized Ms. Hardin-Oliver who requested the Board review the need to have pharmacists working with technician students in Class A pharmacies without staffing restrictions. She stated the current ratio restriction creates an obstacle when attempting to place the technician student in a pharmacy for their intern training rotation.

Following discussion the Board directed staff to survey other states and to bring back additional information for consideration at its May meeting.

President Waggener recessed the meeting at 11:45 a.m.

President Waggener reconvened the meeting at 12:45 p.m.

Ms. Kedron left the meeting during the recess.

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

Final Adoption of Rules (cont'd)

- New Rules Concerning Controlled Substances (§§315.1-315.14) (Tab 05) (cont'd)

Ms. Benz explained that the Board reviewed the proposed new rules §§315.1-315.14 earlier in the meeting and had directed staff to make revisions to the proposed new rules. She directed the Board's attention to the revised new rules concerning controlled substances.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Dembny to approve for adoption, by Board Order, new rules §§315.1-315.14, as revised. The motion was seconded by Mr. Abeldt and passed unanimously.

D. Discussion of and Possible Action Concerning the Following Reports and Discussions (cont'd)

- Discussion Concerning Medical Board Rules Regarding Telemedicine (Tab 24)

Ms. Arnold presented information concerning the Medical Board's rules regarding telemedicine.

- Report on Appeals from State Office of Administrative Hearing Cases (Tab 25)

Ms. Arnold presented information concerning the appeal of cases from the State Office of Administrative Hearing.

- Report on Interagency Prescription Monitoring Program Work Group (Tab 26)

Ms. Benz presented information concerning the Prescription Monitoring Program. She explained that the software company Appriss had been selected as the vendor to provide the program for the Prescription Drugs Monitoring Program and that the Appriss program was currently being used by 26 other states.

Ms. Benz provided an overview of the Appriss program and how it will operate.

F. Disciplinary Orders

- Consideration of Proposal for Decision
 - In the Matter of RX Max Pharmacy, Pharmacy License #27883; Artemis Pharmacy LLC, Pharmacy License #28030; Supreme RX Pharmacy, Pharmacy License #27422; and Jesse Cornell Sanders II, Pharmacist License #19454 (Tab 30)

Ms. Arnold advised the Board that a hearing was held before State Office of Administrative Hearings (SOAH) Administrative Judge Holly Vandrovec, on September 28-29, 2015, in the matter of RX Max Pharmacy; Artemis Pharmacy LLC; Supreme RX Pharmacy; and Jesse Cornell Sanders II, R.Ph.

Ms. Arnold introduced Judge Holly Vandrovec, who reviewed the *Proposal for Decision* for the Board. Judge Vandrovec advised the Board that her recommendation was that the RX Max Pharmacy's pharmacy license be revoked; that the Artemis Pharmacy LLC's pharmacy license be revoked; that the Supreme RX Pharmacy's pharmacy license be revoked; and that Mr. Sanders' pharmacist license be revoked.

Ms. Hotchkiss reviewed the background in the case for the Board.

Ms. Hotchkiss directed the Board's attention to proposed Board Order #A-15-015-B, concerning RX Max Pharmacy. She explained the Board Order would revoke RX Max Pharmacy's pharmacy license.

Ms. Hotchkiss directed the Board's attention to proposed Board Order #A-15-016-B, concerning Artemis Pharmacy LLC. She explained the Board Order would revoke Artemis Pharmacy LLC's pharmacy license.

Ms. Hotchkiss directed the Board's attention to proposed Board Order #A-15-017, concerning Supreme RX Pharmacy. She explained the Board Order would revoke Supreme RX Pharmacy's pharmacy license.

Ms. Hotchkiss directed the Board's attention to proposed Board Order #A-15-025, concerning Jesse Cornell Sanders II. She explained the Board Order would revoke Mr. Sanders' pharmacist license.

Following discussion, the motion was made by Mr. Thornsburg to accept the *Findings of Fact and Conclusions of Law* in the *Proposal for Decision* and approve Board Order #A-15-015-B, as presented, in the matter of RX Max Pharmacy, to revoke the RX Max Pharmacy's pharmacy license; to accept the *Findings of Fact and Conclusions of Law* in the *Proposal for Decision* and approve Board Order #A-15-016-B, as presented, in the matter of Artemis Pharmacy LLC, to revoke the Artemis Pharmacy LLC's pharmacy license; to accept the *Findings of Fact and Conclusions of Law* in the *Proposal for Decision* and approve Board Order #A-15-017, as presented, in the matter of Supreme RX Pharmacy, to revoke the Supreme RX Pharmacy's pharmacy license; and to accept the *Findings of Fact and Conclusions of Law* in the *Proposal for Decision* and approve Board Order #A-15-025, as presented, in the matter of Jesse Cornell Sanders II, R.Ph., to revoke Mr. Sanders' pharmacist license. The motion was seconded by Mr. Dembny and passed unanimously.

D. Discussion of and Possible Action Concerning the Following Reports and Discussions (cont'd)

- Professional Recovery Network
 - President Waggener recognized Courtney Hulbert with the Professional Recovery Network (PRN). Ms. Hulbert directed the Board's attention to the PRN budget report for FY2016 (September 1, 2015 – November 30, 2015). Ms. Hulbert reviewed current PRN activities for the Board. (Tab 18)
 - Ms. Fisher discussed performance measures regarding the number of individuals participating in the peer assistance program for the past three fiscal years (FY2013-2015) as well as the quarterly report on the number of pharmacists participating in the program during FY2016 (September 1, 2015 – November 30, 2015). (Tab 17)
- Report on Sunset Review (Tab 27)

Ms. Dodson presented information on the Sunset Commission's Review of the Board. She explained that Sunset Commission staff had accompanied TSBP staff conducting pharmacy inspections, investigations and hearings.

- Update on Legislation Filed During the 84th Texas Legislative Session that has an Impact on TSBP and/or the Practice of Pharmacy (Tab 28)

Ms. Dodson directed the Board's attention to an action chart concerning legislation that was passed during the 84th Session of the Texas Legislature that has an impact on TSBP and/or the practice of pharmacy.

Ms. Dodson explained that with the Board's adoption earlier in this meeting of new rules to implement Senate Bill 195, all items on the chart are now complete..

Ms. Kedron rejoined the meeting at 1:30 p.m.

- Discussion of Possible Statutory Changes for Consideration During the 85th Session of the Texas Legislature (Tab 29)

Ms. Dodson reported that staff was reviewing items recommended for action during the 84th Session of the Texas Legislature, on which no action was taken, to determine if any of these items should be recommended once again. She requested Board members send her their recommendations for the 85th Session.

- Discussion of Concerning Temperature Monitoring Devices (Tab 21)

President Waggener recognized Michael Rush, Executive Director, and Mike Montana, Business Development Manager, with Temptime Corporation.

Mr. Rush presented information concerning low-cost temperature monitoring solutions that have been implemented in other states and countries to assist patients to know that their temperature sensitive medications are safe and effective. Mr. Rush stated there are several companies that provide temperature monitoring products.

Following discussion the Board directed staff to bring back suggested rule language concerning temperature monitoring devices for the Board's consideration at its May meeting.

President Waggener recessed the meeting at 2:05 p.m.

President Waggener reconvened the meeting at 2:18 p.m.

F. Disciplinary Orders (cont'd)

Ms. Arnold directed the Board's attention to reports concerning disciplinary orders for pharmacy technicians and pharmacy technician trainees, pharmacies, and pharmacists.

- Report on Agreed Board Orders Entered by Executive Director (Tab 31)
 - The Board reviewed 30 Agreed Board Orders concerning pharmacy technicians and pharmacy technician trainees that had been entered by the Executive Director on behalf of the Board, in accordance with the Board's directives, during the period from November 6, 2015, through January 28, 2016.
 - The Board reviewed 10 Agreed Board Orders concerning pharmacies and pharmacists, that had been entered by the Executive Director on behalf of the Board, in accordance with the Board's directives, during the period from December 2, 2015, through January 25, 2016.
- Discussion of and Action on Proposed Agreed Board Orders and Proposed Default Board Orders (Tab 32)
 - The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following: 13 proposed Agreed Board Orders concerning pharmacy technicians and pharmacy technician trainees who appeared for an Informal Conference; and nine proposed Default Board Orders concerning pharmacy technicians and pharmacy technician trainees who did not appear for an Informal Conference.

Agreed Board Orders (Technicians and Technician Trainees)
(Following an Informal Conference)

- | | |
|------------------------------|-----------------|
| 1. Richard Njombe Monono | ABO #T-14-446 |
| 2. Kristen Nicole Austell | ABO #T-15-359 |
| 3. Elizabeth Ann Catlett | ABO #T-15-253-N |
| 4. Katrellle Harding | ABO #T-15-267 |
| 5. Denise Elizabeth Lopez | ABO #T-15-308 |
| 6. Erica Rae Moore | ABO #T-15-376 |
| 7. Keisha Nicole Shields | ABO #T-15-192-N |
| 8. Loren Nicole Cross | ABO #T-15-247-N |
| 9. Ricky Broshun Else | ABO #T-15-311 |
| 10. Nicholas William Herrold | ABO #T-15-286-N |
| 11. Kevin James Levy | ABO #T-15-224 |
| 12. Dorothea Marie McChester | ABO #T-15-155-N |
| 13. Anil Romell Monteiro | ABO #T-15-394 |

Default Board Orders (Technicians and Technician Trainees)

(Did not appear for an Informal Conference)

14. Theisha Meyatta Kawah	ABO #T-16-001
15. Tracy Knight	ABO #T-15-350-N
16. Marina Gutierrez Leon	ABO #T-15-080
17. Starla Cornelison	ABO #T-15-342-N
18. Michael David Lewis, Jr.	ABO #T-15-346
19. Lindsay Lianne Lindley	ABO #T-15-400
20. Teth Ryan Marshall	ABO #T-15-412-N
21. Darius Hassan Mehrdad	ABO #T-16-043
22. Eric James Villasi	ABO #T-15-377-N

- The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following: 16 proposed Agreed Board Orders (Alternative Resolutions); 30 proposed Agreed Board Orders concerning pharmacies; pharmacists; interns; and technicians following an Informal Conference; and one proposed Agreed Board Orders concerning a pharmacy following a mediated settlement conference.

Agreed Board Orders (Pharmacies and Pharmacists)

(Alternative Resolutions)

1. Aetna Rx Home Delivery, LLC	ABO #L-15-026
2. Brookshire Brothers Pharmacy #23	ABO #C-15-008-B
3. Stacey James Shirley	ABO #C-15-008-A
4. Brookshire Brothers Pharmacy #69	ABO #H-15-057
5. CVS/pharmacy #5807	ABO #H-15-043-B
6. Fanetta Gail Dickens	ABO #H-15-043-A
7. CVS/pharmacy #6777	ABO #H-15-016-B
8. CVS/pharmacy #6968	ABO #H-15-019
9. CVS/pharmacy #7748	ABO #C-15-025-B
10. Gregory Bryan Furman	ABO #C-15-025-A
11. Healthwarehouse.com	ABO #L-15-025
12. Kroger Pharmacy #336	ABO #H-15-011-B
13. Kroger Pharmacy #560	ABO #H-15-034-B
14. Walgreens #4328	ABO #H-15-010-B
15. Walgreens #7101	ABO #H-15-030-B
16. Walmart Pharmacy 10-1150	ABO #H-14-058-B

Agreed Board Orders (Pharmacies, Pharmacist, Interns and Technicians)

(Following an Informal Conference)

17. BioScrip Infusion Services	ABO #K-15-014
18. Elaine Chen	ABO #H-15-051-A
19. CVS/pharmacy #5896	ABO #H-14-060-B
20. Bharat Ramesh	ABO #H-14-060-A
21. CVS/pharmacy #7198	ABO #H-15-041-B
22. Diabetic Care Rx	ABO #K-15-021

23. Lisa Darlene Durden	ABO #A-16-003
24. Pamela Yeluma Fomunung	ABO #R-16-002
25. Kathy Pharmacy I	ABO #K-15-028-B
26. Maryana Attalla	ABO #K-15-028-A
27. Lynn's Lavega Pharmacy, Inc.	ABO #H-15-054-B
28. Mastery Pharmacy	ABO #E-15-004
29. Methodist Willowbrook Hospital	ABO #K-15-025-B
30. Linda Ann Drucker	ABO #K-15-025-A
31. North Cypress Village Pharmacy	ABO #C-15-010-B
32. Brittany June Jew	ABO #C-15-010-A
33. Karen Martinez	ABO #T-15-336
34. Bill Poulos	ABO #L-15-024
35. RGV Family Pharmacy	ABO #K-15-019-B
36. Marcus Wade Williams	ABO #K-15-019-A
37. Christina Lopez	ABO #K-15-024
38. Specialty Compounding, LLC	ABO #M-15-014
39. Target Store T-1339	ABO #B-15-004
40. Donald Wayne Thomas	ABO #H-15-022
41. Phillip Trieu	ABO #M-16-004
42. Trinity Pharmacy	ABO #B-15-013-B
43. Xavier Pharmacy III	ABO #K-15-022-B
44. William Edward Gutierrez	ABO #K-15-022-A
45. Xavier Pharmacy & Medical Supply	ABO #K-15-023-B
46. Binh H. Le	ABO #K-15-023-A

Agreed Board Order (Pharmacy)

(Following a Mediated Settlement Conference)

47. PCM Venture I, LLC	ABO #K-13-013
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- Confidential Agreed Board Orders (Tab 33)
 - The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following five proposed Confidential Agreed Board Orders following an Informal Conference.

Agreed Board Orders (Pharmacists and Intern)

(Following an Informal Conference)

1. ABO #S-16-001
2. ABO #N-16-004
3. ABO #G-15-022
4. ABO #G-15-020
5. ABO #M-16-001

- Discussion of and Action on Proposed Remedial Plans (Tab 34)
 - The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following four proposed Remedial Plans (Alternative Resolutions).

Remedial Plans (Pharmacies and Pharmacists)
(Alternative Resolutions)

- | | |
|-------------------------|-------------|
| 1. James Raymond Brown | #H-15-010-A |
| 2. Daniel P. Emady | #H-14-058-A |
| 3. Simone Claire Garcon | #H-15-023-A |
| 4. Jason Wirt | #H-15-016-A |

The motion was made by Ms. Stine to approve the following:

- 13 proposed Agreed Board Orders concerning pharmacy technicians and pharmacy technician trainees who appeared for an Informal Conference, and nine proposed Default Board Orders concerning pharmacy technicians and pharmacy technician trainees who did not appear for an Informal Conference.
- 16 proposed Agreed Board Orders (Alternative Resolutions) concerning pharmacies and pharmacists; 30 proposed Agreed Board Orders concerning pharmacies; pharmacists; interns; and technicians following an Informal Conference; and one Agreed Board Order concerning a pharmacy following a Mediated Settlement Conference.
- five proposed Confidential Agreed Board Orders following an Informal Conference.
- four proposed Remedial Plans (Alternative Resolutions).

The motion was seconded by Mr. Dembny and passed as follows.

Agreed Board Orders (Technicians and Technician Trainees)
(Following an Informal Conference)

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

Default Board Orders (Technicians and Technician Trainees)

(Did not appear for an Informal Conference)

14. 9-0-1 Mr. Miller abstained
15. 9-0-1 Mr. Miller abstained
16. 9-0-1 Mr. Miller abstained
17. 9-0-1 Mr. Dembny abstained
18. 9-0-1 Mr. Dembny abstained
19. 9-0-1 Mr. Dembny abstained
20. 9-0-1 Mr. Dembny abstained
21. 9-0-1 Mr. Dembny abstained
22. 9-0-1 Mr. Dembny abstained

Agreed Board Orders (Pharmacies & Pharmacists)

(Alternative Resolutions)

1. 10-0-0
2. 10-0-0
3. 10-0-0
4. 10-0-0
5. 10-0-0
6. 10-0-0
7. 10-0-0
8. 10-0-0
9. 10-0-0
10. 10-0-0
11. 10-0-0
12. 10-0-0
13. 10-0-0
14. 10-0-0
15. 10-0-0
16. 10-0-0

Agreed Board Orders (Pharmacies; Pharmacists; Interns; and Technicians)

(Following an Informal Conference)

17. 9-0-1 Ms. Stine abstained
18. 10-0-0
19. 9-0-1 Mr. Wiesner abstained
20. 9-0-1 Mr. Wiesner abstained
21. 9-0-1 Ms. Stine abstained
22. 9-0-1 Mr. Wiesner abstained
23. 9-0-1 Mr. Wiesner abstained
24. 9-0-1 Mr. Dembny abstained
25. 9-0-1 Mr. Wiesner abstained
26. 9-0-1 Mr. Wiesner abstained
27. 9-0-1 Mr. Wiesner abstained
28. 9-0-1 Mr. Miller abstained
29. 9-0-1 Mr. Wiesner abstained
30. 9-0-1 Mr. Wiesner abstained
31. 9-0-1 Mr. Wiesner abstained

32. 9-0-1 Mr. Wiesner abstained
33. 9-0-1 Mr. Wiesner abstained
34. 9-0-1 Mr. Wiesner abstained
35. 9-0-1 Mr. Wiesner abstained
36. 9-0-1 Mr. Wiesner abstained
37. 9-0-1 Mr. Wiesner abstained
38. 9-0-1 Ms. Stine abstained
39. 9-0-1 Mr. Wiesner abstained
40. 9-0-1 Ms. Stine abstained
41. 10-0-0
42. 9-0-1 Mr. Miller abstained
43. 9-0-1 Mr. Wiesner abstained
44. 9-0-1 Mr. Wiesner abstained
45. 9-0-1 Mr. Wiesner abstained
46. 9-0-1 Mr. Wiesner abstained

Agreed Board Order (Pharmacy)
(Following a Mediated Settlement Conference)

47. 9-0-1 Mr. Wiesner abstained

Confidential Agreed Board Orders (Pharmacists and Intern)
(Following an Informal Conference)

1. 10-0-0
2. 10-0-0
3. 9-0-1 Mr. Dembny abstained
4. 10-0-0
5. 10-0-0

Remedial Plans (Pharmacies and Pharmacists)
(Alternative Resolutions)

1. 10-0-0
2. 10-0-0
3. 10-0-0
4. 10-0-0

Ms. Arnold requested that the Board give the staff the authority to propose Agreed Board Orders by mail concerning pharmacies and pharmacists engaged in compounding sterile preparations at a pharmacy without a compounding license. She explained that the pharmacies would still have the option to attend an Informal Settlement Conference.

Following discussion, the motion was made by Mr. Dembny to allow for proposals of Agreed Board Orders by mail in this situation. The motion was seconded by Mr. Abeldt and passed unanimously.

F. Consideration of and Possible Action Concerning Enforcement Reports

- Report on Complaints Closed and Dismissed During the Previous Quarter (Tab 35)

The Board received a report on complaints dismissed and closed during the first quarter of FY2016 (September 1, 2015 – November 30, 2015). The report also included quarterly averages for FY2015 as compared to FY2016, as well as percentage change from FY2015 to FY2016.

Ms. Fisher reviewed the report for the Board.

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

The Board received the *Report on Status of Active/Pending Complaints*.

Ms. Fisher reviewed the report for the Board.

G. Miscellaneous

- Items to be Placed on Agenda for May Board Meeting (Tab 37)
 - Amendments concerning temperature monitoring devices.
 - Amendments concerning perpetual inventories in Class A and Class A-S Pharmacies.
 - Information concerning the ratio of pharmacists to technicians when a technician is a student from a tech school
 - Report on Compounding Stakeholders Meeting held March 1, 2016.
 - TSBP FY2017-2021 Strategic Plan.

- Discussion of and Possible Action on Recent Conferences and Events

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

- Discussion of and Possible Action on Upcoming Conferences and Events

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

President Waggener adjourned the meeting at 2:43 p.m.

APPROVED:

Jeanne D. Waggener, R.Ph.
President

Gay Dodson, R.Ph.
Executive Director/Secretary

May 3, 2016



TEXAS STATE BOARD OF PHARMACY

**TEXAS STATE BOARD OF PHARMACY
333 Guadalupe Street,
Tower 2, Room 400A
Austin, Texas**

Executive Committee Meeting

Monday, April 18, 2016

MINUTES¹

April 18, 2016

President Jeanne Waggener, R.Ph. called the meeting to order at 10:05 a.m. Other Board Members present were Vice President Christopher M. Dembny, R.Ph. and Treasurer Buford T. Abeldt, Sr., R.Ph.

Staff present were Gay Dodson, R.Ph., Executive Director/Secretary; Carol Fisher, R.Ph., M.P.A., Director of Enforcement; Cathy Stella, Director of Licensing and Administrative Services; Kerstin Arnold, General Counsel; Allison Benz, R.Ph., M.S., Director of Professional Services; and Jane Bennett, Chief Accountant.

Ms. Stella reviewed the Budget Proposal for FY2018-2019 (Attachment B), as well as the Prescription Drug Monitoring budget proposal. Ms. Dodson also noted the positions that were deleted from the original staff request and after further clarification of these positions, the Board recommended the following additions:

- 1) New position for the Professional Services Division beginning in FY2018: Program Supervisor III.
- 2) New position for the Legal Division beginning in FY2018: Attorney IV.

¹See agenda and corresponding attachments for supporting materials.

The Executive Committee reviewed the TSBP current and projected revenue projections for FY2018 – FY2019, as well as proposed licensure fee additions.

Ms Stella noted that the revenue projections and fee recommendations would change due to the additional staff members noted above.

After discussion, Mr. Abeldt recommended that the full board consider the approval of the Budget Proposal for FY2018-2019 as amended. Mr. Dembny seconded the motion which passed unanimously.

President Waggener adjourned the meeting at 11:30 a.m.

APPROVED:

Jeanne Waggener, R.Ph.
President

Gay Dodson, R.Ph.
Executive Director/Secretary



TEXAS STATE BOARD OF PHARMACY

February 3, 2016

Minutes of the Temporary Suspension Hearing of
Upshaw Pharmacy (Pharmacy License #28206);
Nikkol Francis Denson (Pharmacist License #38953); and
George Washington (Pharmacist License #53567)

Chair Jeanne D. Waggener, R.Ph., called the meeting to order at 9:02 a.m., in conference room number 225, Tower II, 333 Guadalupe Street, Austin, Texas 78701. Board Members, Dennis F. Wiesner, R.Ph., and Phyllis A. Stine were also present.

Staff present: Kerstin Arnold, General Counsel; Caroline Hotchkiss, Assistant General Counsel; Kathy Salinas, R.Ph., Compliance Officer; and Kate Hayden, Legal Assistant.

Respondents: Patricia Robinson, Individual Owner of Upshaw Pharmacy (Pharmacy License #28206), represented by Franklin Hopkins; Nikkol Francis Denson (Pharmacist License #38953), represented by Don E. Lewis; and George Jackson (Pharmacist License #53567), represented by Dan Lype.

Also present: Andrena Johnson (Registration #224584), employee of Upshaw Pharmacy (Pharmacy License #28206).

Court Reporter: Carissa Crocker, Integrity Legal Support Solutions.

A. Opening:

The Chair called the case of the Petitions for the Temporary Suspension in the Matters of Upshaw Pharmacy (Pharmacy License #28206); Nikkol Francis Denson (Pharmacist License #38953); and George Jackson (Pharmacist License #53567). She inquired into whether or not a panel member wished to be recused. All panel members responded negatively.

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

Board Staff: Caroline Hotchkiss, attorney for the Board staff.

Respondent: Franklin Hopkins, attorney for Upshaw Pharmacy; Don E. Lewis, attorney for Nikkol Francis Denson; and Dan Lype, attorney for George Jackson.

B. Presentation by Board's Attorney, Caroline Hotchkiss:

1. Verbal synopsis of allegations.
2. Introduction of documents into evidence. All admitted.
3. Testimony of Board witnesses: Kathy Salinas and Kate Hayden.
4. Cross examination of Patricia Robinson, Andrena Johnson, Nikkol Denson, and George Jackson.
5. Closing statement.

C. Presentation by Respondent's Attorney, Franklin Hopkins:

1. Opening statement.
2. Introduction of documents into evidence. All admitted.
3. Testimony of Patricia Robinson and Andrena Johnson.
4. Cross examination of Kathy Salinas, Kate Hayden, Nikkol Denson, and George Jackson.
5. Closing statement.

D. Presentation by Respondent's Attorney, Don E. Lewis:

1. Opening statement.
2. Introduction of documents into evidence. All admitted.
3. Testimony of Nikkol Denson.
4. Cross examination of Kathy Salinas, Kate Hayden, Patricia Robinson, Andrena Jackson, and George Jackson.
5. Closing statement.

E. Presentation by Respondent's Attorney, Dan Lype:

1. Opening statement.
2. Introduction of documents into evidence. All admitted.
3. Testimony of George Jackson.
4. Cross examination of Kathy Salinas, Kate Hayden, Patricia Robinson, and Andrena Johnson.
5. Closing statement.

F. Motions:

1. A motion was made by Mr. Wiesner to go into Executive Session pursuant to the Open Meetings Act, Section 551.071 of the Government Code, and Section 552.011 of the Texas Pharmacy Act to consult with counsel regarding pending disciplinary actions against the Respondents at 5:40 p.m. Ms. Stine seconded the motion. The motion passed unanimously.

The panel members went into Executive Session.

The Chair reconvened the meeting at 6:05 p.m., and announced that no action was taken during Executive Session.

2. A motion was made by Mr. Wiesner that the Petitions for the Temporary Suspension of Nikkol Francis Denson (Pharmacist License #38953) and George Jackson (Pharmacist License #53567) be denied, in that there was insufficient evidence and information to indicate that Ms. Denson's and Mr. Jackson's practice as pharmacists poses a continuing threat to the public welfare. Ms. Stine seconded the motion. The motion passed unanimously with the denial of the Petitions for Temporary Suspension.
3. A motion was made by Mr. Wiesner that the Petition for the Temporary Suspension of Upshaw Pharmacy (Pharmacy License #28206) be granted, in that the evidence and information indicates that the Respondent's operation as a pharmacy poses a continuing threat to the public welfare. Mr. Wiesner further moved that the staff proposed Temporary Suspension Order be adopted, that Respondent's pharmacy license be suspended and shall continue in effect, pending a hearing on the suspended license, until further Order of the Board, in accordance with the Administrative Procedure Act and the Board's rules. Ms. Stine seconded the motion. The motion passed unanimously with the Temporary Suspension Order being effective immediately.

The Chair announced that the Petition for Temporary Suspension of Upshaw Pharmacy was granted and the Petitions for Temporary Suspension of Nikkol Francis Denson and George Jackson were denied.

Chair Waggener adjourned the hearing at 6:12 p.m.

APPROVED:

Jeanne D. Waggener, R.Ph.
Chair

Gay Dodson, R.Ph.
Executive Director/Secretary



TEXAS STATE BOARD OF PHARMACY

February 18, 2016

**Minutes of the Temporary Suspension Hearing
of Shayna Kelly (Registration #199025)**

Chair Jeanne D. Waggener, R.Ph., called the meeting to order at 12:11 p.m., in conference room number 400A, Tower II, 333 Guadalupe Street, Austin, Texas 78701. Board Members, Dennis F. Wiesner, R.Ph., and Buford T. Abeldt Sr., R.Ph., were also present.

Staff present: Kerstin Arnold, General Counsel; Caroline Hotchkiss, Assistant General Counsel; and Kelly Clark, Legal Assistant.

Respondent: Shayna Kelly (Registration #199025).

Also present: Cheryl Rayl, MS, LPC-S, MAC (via teleconference).

Court Reporter: Amy Clark, Integrity Legal Support Solutions.

A. Opening:

The Chair called the case of the Petition for the Temporary Suspension in the Matter of Shayna Kelly (Registration #199025). She inquired into whether or not a panel member wished to be recused. All panel members responded negatively.

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

Board Staff: Caroline Hotchkiss, attorney for the Board staff.

Respondent: Shayna Kelly was in attendance for the hearing today.

B. Presentation by Board's Attorney, Caroline Hotchkiss:

1. Verbal synopsis of allegations.
2. Introduction of documents into evidence. All admitted.
3. Testimony of Board witnesses: Cheryl Rayl and Kelly Clark.
4. Cross examination of Shayna Kelly.
5. Closing statement.

C. Presentation by Respondent:

1. Opening statement.
2. Introduction of documents into evidence. All admitted.
3. Testimony of Shayna Kelly.
4. Closing statement.

D. Motions:

1. A motion was made by Mr. Wiesner to go into Executive Session pursuant to the Open Meetings Act, Section 551.071 of the Government Code, and Section 552.011 of the Texas Pharmacy Act to consult with counsel regarding pending disciplinary actions against the Respondent at 12:54 p.m. Mr. Abeldt seconded the motion. The motion passed unanimously.

The panel members went into Executive Session.

The Chair reconvened the meeting at 1:06 p.m., and announced that no action was taken during Executive Session.

2. A motion was made by Mr. Wiesner that the Petition for the Temporary Suspension of Shayna Kelly (Registration #199025) be granted, in that the evidence and information indicate that the Respondent's practice as a pharmacy technician or a pharmacy technician trainee poses a continuing threat to the public welfare. Mr. Wiesner further moved that the staff proposed Temporary Suspension Order be adopted, that Respondent's registration be suspended and shall continue in effect, pending a hearing on the suspended registration, until further Order of the Board, in accordance with the Administrative Procedure Act and the Board's rules. Mr. Abeldt seconded the motion. The motion passed unanimously with the Temporary Suspension Order being effective immediately.

The Chair announced that the Petition for Temporary Suspension of Shayna Kelly was granted.

Chair Waggener adjourned the hearing at 1:08 p.m.

APPROVED:

Jeanne D. Waggener, R.Ph.
Chair

Gay Dodson, R.Ph.
Executive Director/Secretary



TEXAS STATE BOARD OF PHARMACY

April 18, 2016

**Minutes of the Agreed Temporary Suspension Hearing
of Upshaw Pharmacy (Pharmacy License #28206)**

Chair Jeanne D. Waggener, R.Ph., called the meeting to order at 3:32 p.m., in Suite 3-600, 333 Guadalupe Street, Austin, Texas 78701. Board Members, Dennis F. Wiesner, R.Ph., and Phyllis A. Stine, were also present.

Staff present: Kerstin Arnold, General Counsel; and Caroline Hotchkiss, Assistant General Counsel.

Respondent: Upshaw Pharmacy (Pharmacy License #28206), represented by Franklin Hopkins.

A. Opening:

The Chair called the case of the Consideration of Agreed Temporary Suspension in the Matter of Upshaw Pharmacy (Pharmacy License #28206). She inquired into whether or not a panel member wished to be recused. All panel members responded negatively.

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

Board Staff: Caroline Hotchkiss, attorney for the Board staff.

Respondent: Franklin Hopkins, attorney for Upshaw Pharmacy.

B. Presentation by Board's Attorney, Caroline Hotchkiss:

Verbal synopsis of procedural history and proposed settlement, which had previously been presented to the panel members for review.

C. Motion:

A motion was made by Mr. Wiesner that the proposed Agreed Temporary Suspension Order of Upshaw Pharmacy (Pharmacy License #28206) be adopted, that Respondent's pharmacy license be suspended and shall continue in effect, pending a hearing on the suspended license, until further Order of the Board, in accordance with the Administrative Procedure Act and the Board's rules. Ms. Stine seconded the motion. The motion passed unanimously with the Agreed Temporary Suspension Order being effective immediately.

The Chair announced that the Agreed Temporary Suspension Order is adopted and Respondent's license is suspended.

Chair Waggener adjourned the hearing at 3:37 p.m.

APPROVED:

Jeanne D. Waggener, R.Ph.
Chair

Gay Dodson, R.Ph.
Executive Director/Secretary