



TEXAS STATE BOARD OF PHARMACY

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

August 10 - 11, 2010

MINUTES¹

Tuesday, August 10, 2010

President Jeanne D. Waggener, R.Ph., called the meeting to order at 9:02 a.m. Other Board Members present were Buford T. Abeldt, Sr., R.Ph.; Alice Mendoza, R.Ph.; Dennis F. Wiesner, R.Ph.; W. Benjamin Fry, R.Ph.; Joyce A. Tipton, R.Ph.; and Charles Wetherbee.

Board Members Rosemary Forester Combs and L. Suzan Kedron 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; Caroline Hotchkiss, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; and Becky Damon, Executive Assistant.

Also present were Pharmacist Interns Synthia Hill, University of Incarnate Word Feik School of Pharmacy, and Julie Kerslake, University of Texas College of Pharmacy, and Legal Intern Laura Cathelyn, University of Texas Law School.

¹See agenda and corresponding attachments for supporting materials.

A. Announcements

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

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

Following discussion, the motion was made by Ms. Mendoza to approve the minutes of the TSBP Board Business Meeting, held May 4-5, 2010; the Board Committee Meeting on Pharmacy Technician Certification Examinations, held May 4, 2010; and the Temporary Suspension Hearing, held May 28, 2010, as presented. The motion was seconded by Mr. Abeldt and passed unanimously.

C. Discussion of and Possible Action Regarding Rules

Final Adoption of Rules

- Rules Concerning Grounds for Discipline of Pharmacist License (§281.8) (Tab 02)

Ms. Benz explained that the Board voted to propose the amendments to §281.8 during its May 4-5, 2010, meeting. The proposed amendments were published in the June 25, 2010, 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 would correct references to Chapter 565 of the Texas Pharmacy Act.

Ms. Benz explained that rules §281.8, the repeal of §281.11, and new rules §§281.11 and 281.12 (Tab 3) were published together and recommended the Board consider them at the same time.

- Rules Concerning Repeal of Rules Governing Cooperating Practitioners (§281.11); New Rule Concerning Criminal History Evaluation Letter (§281.11); and New Rule Concerning Rules Governing Cooperating Practitioners (§281.12) (Tab 03)

Ms. Benz explained that the Board voted to propose the repeal of §281.11, and to propose new rules §§281.11 and 281.12 during its

May 4-5, 2010, meeting. The proposed repeal and the proposed new rules were published in the June 25, 2010, issue of the *Texas Register*, and no comments were received.

Ms. Benz directed the Board's attention to the proposed repeal of §281.11, and proposed new rules §§281.12 and 281.11. She explained the repeal of §281.11 provides for a more organized subchapter and is proposed as new rule §281.12. She explained that new rule §281.11 outlines the requirements for individuals seeking to obtain a criminal history evaluation letter regarding eligibility for a license or registration.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Fry to approve for adoption, by Board Order, amendments to §281.8; the repeal of §281.11; and new rules §§281.11 and 281.12. The motion was seconded by Ms. Tipton and passed unanimously.

- Rules Concerning Informal Disposition of a Contested Case (§281.22) (Tab 04)

Ms. Benz explained that the Board voted to propose the amendments to §281.22 during its May 4-5, 2010, meeting. The proposed amendments were published in the June 25, 2010, issue of the *Texas Register*, and no comments were received.

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

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Wetherbee to approve for adoption, by Board Order, amendments to §281.22. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Sanctions for Criminal Offenses (§281.64) (Tab 05)

Ms. Benz explained that the Board voted to propose amendments to §281.64 during its May 4-5, 2010, meeting. The proposed amendments were published in the June 25, 2010, issue of the *Texas Register*, and no comments were received.

Ms. Benz directed the Board's attention to amendments to §281.64 and explained that the amendments would clarify disciplinary guidelines to reflect the regulatory policies and goals of the Board to protect the public health and safety.

Ms. Benz explained that proposed amendments to §§281.64 and 281.66 (Tab 6) were published together and recommended the Board consider them at the same time.

- Rules Concerning Application Fee for Pharmacist and Pharmacy Technician Reinstatement Applicants (§281.66) (Tab 06)

Ms. Benz explained that the Board voted to propose the amendments to §281.66 during its May 4-5, 2010, meeting. The proposed amendments were published in the June 25, 2010, issue of the *Texas Register*, no comments were received.

Ms. Benz directed the Board's attention to the proposed amendments to §281.66 and explained that the proposed amendments clarify disciplinary guidelines to include a fee for individuals applying for reinstatement of their license or registration.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Abeldt to approve for adoption, by Board Order, amendments to §§281.64 and 281.66. The motion was seconded by Mr. Fry and passed unanimously.

- Rules Concerning Nuclear Pharmacies (Class B) (§§291.51-291.55) (Tab 07)

Ms. Benz explained that the Board voted to propose the amendments to §§291.51-291.55 during its May 4-5, 2010, meeting. The proposed amendments were published in the June 25, 2010, issue of the *Texas Register*, no comments were received.

Ms. Benz directed the Board's attention to the proposed amendments to §§291.51-291.55 and explained the amendments incorporate recommendations made by the Task Force on Nuclear Pharmacy (Class B) and incorporate staff recommendations to update/correct references to other rules and update the rules to be consistent with other sections of the rules.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Mendoza to approve for adoption, by Board Order, amendments to §§291.51-291.55. The motion was seconded by Mr. Wiesner and passed unanimously.

- Rules Concerning Emergency Medication Kits (§291.121) (Tab 08)

Ms. Benz explained that the Board voted to propose the amendments to §291.121 during its May 4-5, 2010, meeting. The proposed amendments were published in the June 25, 2010, issue of the *Texas Register*, no comments were received.

Ms. Benz directed the Board's attention to proposed amendments to §291.121 and explained that the amendments allow more than one pharmacy to supply emergency medication kits to an institution when one pharmacy can not meet the emergency medication needs of the residents.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Fry to approve for adoption, by Board Order, amendments to §291.121. The motion was seconded by Mr. Abeldt and passed unanimously.

- New Rules Concerning Central Prescription Drug or Medication Order Processing (Class G) (§291.153) (Tab 09)

Ms. Benz explained that the Board voted to propose new rule §291.153 during its May 4-5, 2010, meeting. The proposed new rule was published in the June 25, 2010, issue of the *Texas Register*. Comments were received from Express Scripts; the National Association of Chain Drug Stores (NACDS); and H.E.B.

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

Express Scripts recommended to the Board that the new rule be amended to require the pharmacist-in-charge of a Class G pharmacy be licensed in Texas.

NACDS recommended to the Board that the security requirements be revised to accommodate various security systems since the pharmacy will not be storing prescription drugs.

H.E.B. recommended to the Board that the rule regarding the ratio of pharmacist to pharmacy technicians and pharmacy technician trainees be amended to allow four pharmacy technicians and two pharmacy technician trainees.

Following review of the comments and discussion, the Board directed staff to make changes to the rule language to clarify the security requirements in a Class G pharmacy since the pharmacy will be storing records and not drugs. The Board also directed staff to bring suggested rule language to the November 2010 Board meeting concerning pharmacist license requirements and the ratio of pharmacy technicians and pharmacy technician trainees.

The Board delayed action on proposed new rule §291.153 until later in the meeting.

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

- Discussion and Possible Proposal of Rule Amendments Concerning Remote Verification of Prescription Data Entry (§291.32) (Tab 32)

Ms. Benz directed the Board's attention to suggested amendments to §291.32, and explained the amendments clarify that a pharmacist electronically conducting verification must be a Texas licensed pharmacist, unless employed by a Class E pharmacy.

The Board reviewed written comments received from Express Scripts and the National Association of Chain Drug Stores (NACDS).

The Board asked Dennis McAlister from Medco to speak to the Board concerning the number of pharmacists that might be involved in remote verification and Mr. McAlister stated he thought the number could be in the thousands.

Following discussion, the motion was made by Mr. Wetherbee to approve for proposal amendments to §291.32, with changes recommended by the Board. The motion was seconded by Mr. Wiesner and passed unanimously.

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

Final Adoption of Rules

- New Rule Concerning Limited Prescription Delivery Pharmacy (Class H) (§291.155) and Rules Concerning Prescription Pick-up Locations (§291.9) (Tab 10)

Ms. Benz explained that the Board voted to propose new rule §291.155, and amendments to §291.9 during its May 4-5, 2010, meeting. The proposed new rule and amendments were published in

the June 25, 2010, issue of the *Texas Register*. Comments were received from Hudson & O'Leary, Attorneys at Law, on behalf of the Montgomery County Hospital District.

Ms. Benz directed the Board's attention to suggested new rule §291.155 and amendments to §291.9 and explained that new rule §291.155 establishes a new Class H pharmacy to allow for the limited delivery of prescriptions for dangerous drugs and the amendments to §291.9 clarify the requirements for prescription pick up locations based on new rule §291.155.

Following review of the comments and discussion, the Board directed staff to make changes to §291.155 rule language to allow Class H pharmacies to store prescriptions for 15 days.

The Board delayed action on the proposed new rule §291.155 until later in the meeting.

Ms. Benz explained that proposed amendments to §§291.9 and 291.6 (Tab 11) were published together and recommended the Board consider them at the same time.

- Rules Concerning License Fees (§§291.6, 295.5 and 297.4) (Tab 11)

Ms. Stella explained that the Board voted to propose the amendments to §§291.6, 295.5 and 297.4 during its May 4-5, 2010, meeting. The proposed amendments were published in the June 25, 2010, issue of the *Texas Register*, no comments were received.

Ms. Stella directed the Board's attention to proposed amendments to §§291.6, 295.5, and 297.4 and explained that the proposed amendments would decrease pharmacy and pharmacists licensing fees; decrease pharmacy technician registration fees; and decrease the application fee for pharmacy technician trainees.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Wetherbee to approve for adoption, by Board Order, amendments to §§291.6, 295.5 and 297.4. The motion was seconded by Mr. Fry. Mr. Abeldt moved to amend the motion to include the approval for adoption amendments to §291.9. The amended motion was seconded by Mr. Wetherbee and passed unanimously.

- Rules Concerning Freestanding Emergency Medical Centers (§291.151) (Tab 12)

Ms. Benz explained that the Board voted to propose the amendments to §291.151 during its May 4-5, 2010, meeting. The proposed amendments were published in the June 25, 2010, issue of the *Texas Register*, no comments were received.

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

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Ms. Tipton to approve for adoption, by Board Order, amendments to §291.151. The motion was seconded by Mr. Abeldt and passed unanimously.

President Waggener recessed the meeting at 10:38 a.m.

President Waggener reconvened the meeting at 10:50 a.m.

Proposal of Rules

- Rules Concerning Mental or Physical Examination (§281.6) (Tab 13)

Ms. Benz directed the Board's attention to suggested amendments to §281.6 and explained the amendments clarify the requirements for mental or physical examinations.

Following discussion, the motion was made by Mr. Wetherbee to approve for proposal amendments to §281.6, with changes recommended by the Board. The motion was seconded by Mr. Fry and passed unanimously.

- Rules Concerning Subpoenas (§281.23) (Tab 14)

Ms. Benz directed the Board's attention to suggested new rule §281.23 and explained that the new rule outlines the guidelines for issuing and requesting subpoenas.

Following discussion, the motion was made by Mr. Wetherbee to approve for proposal new rule §281.23, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Burden of Proof (§281.31) (Tab 15)

Ms. Benz directed the Board's attention to suggested amendments to §281.31 and explained that the amendments clarify that the applicant, licensee, or registrant has the burden of proof with regard to mental or physical evaluations.

Following discussion, the motion was made by Ms. Mendoza to approve for proposal amendments to §281.31, as presented. The motion was seconded by Mr. Fry and passed unanimously.

- Rules Concerning General Guidance (§281.60) (Tab 16)

Ms. Benz directed the Board's attention to suggested amendments to §281.60 and explained that the amendments clarify disciplinary guidelines for use in informal conferences and proceedings before the State Office of Administrative Hearings.

Following discussion, the motion was made by Mr. Wetherbee to approve for proposal amendments to §281.60, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Considerations for Criminal Offenses (§281.63) (Tab 17)

Ms. Benz directed the Board's attention to suggested amendments to §281.63 and explained that the amendments clarify disciplinary guidelines for use in informal conferences and proceedings before the State Office of Administrative Hearings.

Following discussion, the Board directed staff to revise the suggested amendments to §281.63 by removing the word **convicted** from §281.63(g)(6)(C). The motion was made by Mr. Wetherbee to approve for proposal amendments to §281.63, with the change recommended by the Board. The motion was seconded by Mr. Fry and passed unanimously.

- Rules Concerning Sanctions for Criminal Offenses (§281.64) (Tab 18)

Ms. Benz directed the Board's attention to suggested amendments to §281.64 and explained that the amendments clarify disciplinary

guidelines for use in informal conferences and proceedings before the State Office of Administrative Hearings.

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

- Rules Concerning Generic Substitution on Electronic Prescription Orders (§§291.33 and 309.3) (Tab 19)

Ms. Benz directed the Board's attention to suggested amendments to §§291.33 and 309.3 and explained that the amendments remove references to dates no longer needed; correct a reference to supportive personnel to pharmacy technicians and pharmacy technician trainees; and deletes the language regarding generic substitution since this language is repetitive of language in Chapter 309.

Following discussion, the motion was made by Mr. Wetherbee to approve for proposal amendments to §§291.33 and 309.3, with changes recommended by the Board. The motion was seconded by Mr. Fry and passed unanimously.

- Rules Concerning Tech-Check-Tech (§§291.72 and 291.73) (Tab 20)

Ms. Benz directed the Board's attention to suggested amendments to §§291.72 and 291.73 and explained the amendments clarify the requirements for pharmacies utilizing tech-check-tech and the clinical pharmacy program.

Following discussion, the motion was made by Mr. Wetherbee to approve for proposal amendments to §§291.72 and 291.73, as presented. The motion was seconded by Ms. Mendoza and passed unanimously.

- Rules Concerning Substitution of Drug Products (§§309.4 and 309.5) (Tab 21)

Ms. Benz directed the Board's attention to suggested amendments to §309.4 and the repeal of §309.5 and explained the amendments and repeal clarify the requirements for generic substitution on electronic prescription drug orders, removes the language regarding substitution of dosage form since is duplicative of language in §291.33, eliminate the date references, and repeals §309.5 since the language is in §291.33.

Following discussion, the motion was made by Mr. Fry to approve for proposal amendments to §309.4 and repeal of §309.5, as presented. The motion was seconded by Ms. Tipton and passed unanimously.

Rule Reviews

- For Final Adoption

Ms. Benz directed the Board's attention to the TSBP Rule Review Plan for FY2010-2013. (Tab 22)

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

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

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

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

- Shared Regulatory Data Base Project (Tab 23)

Ms. Dodson reported to the Board on the progress of the data conversion and explained that the go live date has been set for September 27, 2010.

- Financial Update

- Review of FY2010 Operating Budget (Tab 24)

Ms. Stella reviewed the expenditures for the first three quarters of FY2010 (September 1, 2009 - through May 31, 2010) for the Board.

- Review of Board Member Travel Budget (Tab 25)

Ms. Stella reviewed the Board Member FY2010 Travel Budget.

- Review and approval of Request to Exceed the Full Time Employee Cap (Tab 53)

Ms. Stella reported to the Board on the receipt of forfeiture funds from the DEA. She explained that strict guidelines require the funds be used for law enforcement purposes only.

Ms. Stella explained to the Board that funds could be used to hire an additional investigator, specifically for the Houston area, for up to one year. She explained that before the investigator could be hired, the Board would need to request an exemption to the Full Time Employee Cap from the Legislative Budget Board and Governor's Budget Office.

Following discussion, Mr. Fry moved to approve the request for an exemption to the Full Time Employee Cap. The motion was seconded by Ms. Tipton and passed unanimously.

- Review and Approval of FY2011 Operating Budget (Tab 26)

Ms. Stella directed the Board's attention to a proposed operating budget for FY2011, which includes recommended budget reductions. She reviewed the budget, including Board Member travel.

Following discussion, the motion was made by Ms. Mendoza to approve the FY2011 operating budget, as presented. The motion was seconded by Mr. Wetherbee and passed unanimously.

President Waggener recessed the meeting at 11:47 a.m.

President Waggener reconvened the meeting at 12:42 p.m.

- Review of Legislative Appropriations Request for FY2012-2013 (Tab 27)

Ms. Stella and Ms. Dodson directed the Board's attention to the Exemption Item Request for FY2012-2013 Legislative Appropriations Request (LAR).

- Review and approval of *TSBP FY2011 Goals and Objectives* (Tab 30)

Following review of the Goals and Objective, the motion was made by Mr. Fry to approve, as presented, the *TSBP FY2011 Goals and Objectives*. The motion was seconded by Mr. Abeldt and passed unanimously.

- Review and approval of Accreditation Council for Pharmacy Educations (ACPE) Accredited Professional Programs of Colleges and Schools of Pharmacy (Tab 31)

Following review of a list of ACPE approved professional degree programs of colleges and schools of pharmacy, a motion was made by Ms. Tipton 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. Mendoza and passed unanimously.

- Discussion Concerning Deletion of Records Relating to Dispensing Errors (Tab 33)

Ms. Fisher directed the Board's attention to rules §§291.32 and 291.34 concerning the pharmacist-in-charge's responsibilities and the maintenance of records. Ms. Fisher explained that often pharmacies either delete or change patient records when a dispensing error has been identified.

Following discussion the Board directed staff to develop suggested rule language concerning the maintenance of records when a dispensing error has occurred, for consideration by the Board at the November 2010 meeting.

- Discussion Concerning Duties a Pharmacy Clerk May Not Perform (Tab 34)

Ms. Fisher directed the Board's attention to a chart detailing the duties a pharmacy technician can perform. Ms. Fisher suggested additional clarification was needed as to the duties a technician can perform and the duties a cashier or clerk can not perform.

Following discussion the Board directed staff to develop suggested rule language concerning additional technician duties to include: the stocking/restocking of shelves; and the selling of insulin with pharmacist supervision, for consideration by the Board at the November 2010 meeting.

- Discussion Concerning Nevada Pharmacy Inspection Process (Tab 35)

Ms. Dodson directed the Board's attention to the Nevada State Board of Pharmacy Self Assessment Form.

Following discussion the Board directed staff to review TSBP's inspection form and to develop a handout of Institute for Safe Medications Practices (ISMP) recommendations to distribute during compliance inspections.

G. Disciplinary Orders

- Consideration of Proposal for Decision
 - In the Matter of James Tate, Pharmacy Technician, Registration #105808 (Tab 45)

Ms. Hildebrand advised the Board that a hearing was held before State Office of Administrative Hearings (SOAH) Administrative Judge Catherine C. Egan on June 2, 2010, in the matter of James Tate, in which TSBP staff sought to revoke the pharmacy technician registration of James Tate and impose a \$5,000 administrative penalty.

Ms. Hildebrand introduced Judge Egan, who reviewed the *Proposal for Decision* for the Board. Judge Egan recommended that Mr. Tate's pharmacy technician registration be revoked and a \$5,000 administrative penalty be imposed.

Ms. Hildebrand reviewed the background in the case for the Board. She directed the Board's attention to Board Order #B-08-023 and reviewed the options available for the Board. Following discussion, the motion was made by Mr. Wetherbee to accept the *Findings of Fact and Conclusions of Law* in the *Proposal for Decision*, and approve Board Order #B-08-023, as presented, in the matter of James Tate, to revoke Mr. Tate's pharmacy technician registration and impose a \$5,000 administrative penalty. The motion was seconded by Mr. Fry and passed unanimously.

- In the Matter of Terry Louis Green, Pharmacist License #30770 (Tab 46)

Ms. Hildebrand advised the Board that a hearing was held before State Office of Administrative Hearings (SOAH) Administrative Judge Cassandra J. Church on January 27, 2010, in the matter of Terry Louise Green, R.Ph., in which TSBP staff sought to revoke the pharmacist license of Terry Louis Green and impose a \$5,000 administrative penalty.

Ms. Hildebrand introduced Judge Church, who reviewed the *Amended Proposal for Decision* for the Board. Judge Church recommended that Mr. Green's pharmacist license be revoked and a \$5,000 administrative penalty be imposed.

The Board recognized Mr. Louis Leichter, attorney for Mr. Green, who requested that the Board consider a one year suspension of Mr. Green's license instead of revocation.

Ms. Hildebrand reviewed the background in the case for the Board. She directed the Board's attention to Board Order #E-09-009 and reviewed the options available for the Board.

- Executive Session

The motion was made by Mr. Fry that the Board go into Executive Session, under the authority of Texas Occupations Code §552.011, to deliberate relating to discipline of a licensee. The motion was seconded by Mr. Wetherbee and passed unanimously. President Waggener declared the Board in Executive session at 2:20 p.m.

President Waggener announced the Board would enter Open Session at 2:39 p.m. and announced that no actions were taken and no decision were made during Executive Session.

Following discussion, the motion was made by Mr. Wetherbee to accept the *Findings of Fact and Conclusions of Law* in the *Amended Proposal for Decision*, and approve Board Order #E-09-009, as presented, in the matter of Terry Louis Green, to revoke Mr. Green's pharmacist license and impose a \$5,000 administrative penalty. The motion was seconded by Ms. Mendoza and passed unanimously.

- In the Matter of Dennis Martin George, Pharmacist License #31603 (Tab 47)

Ms. Hildebrand advised the Board that a hearing was held before State Office of Administrative Hearings (SOAH) Administrative Judge Bill Zukauckas on January 19, 2010, in the matter of Dennis Martin George, R.Ph., in which TSBP staff sought to revoke the pharmacist license of Dennis Martin George and impose a \$5,000 administrative penalty.

Ms. Hildebrand introduced Judge Cathy Egan, who reviewed the *Proposal for Decision* for the Board. She advised the Board that Judge Zukauckas had retired and she was representing SOAH on his behalf. Judge Egan advised the Board that Judge Zukauckas was of the opinion that based on the *Findings of Fact and Conclusions of Law*, revocation of Mr. George's license was not justified. It was recommended that the Board suspend Mr. George's license for eight years with all but the first six months following his criminal probation being probated and impose a \$5,000 administrative penalty.

The Board recognized Mr. Jon Porter, attorney for Mr. George, who requested that the Board accept the recommendations made by the SOAH judge.

Ms. Hildebrand reviewed the background in the case for the Board. She directed the Board's attention to Board Order #E-09-008, of which there were two versions. She explained that one version would implement the SOAH judge's recommendations; the other version would revoke Mr. George's license and impose a \$5,000 administrative penalty.

- Executive Session

The motion was made by Mr. Fry that the Board go into Executive Session, under the authority of Texas Occupations Code §552.011, to deliberate relating to discipline of a licensee. The motion was seconded by Ms. Mendoza and passed unanimously. President Waggener declared the Board in Executive session at 3:25 p.m.

President Waggener announced the Board would enter Open Session at 4:01 p.m. and announced that no actions were taken and no decision were made during Executive Session.

Following discussion, the motion was made by Mr. Wetherbee to accept the *Findings of Fact and Conclusions of Law* in the *Proposal for Decision*, and approve Board Order #E-09-008, as presented, in the matter of Dennis Martin George R.Ph., to revoke Mr. George's pharmacist license and impose a \$5,000 administrative penalty. The motion was seconded by Mr. Fry and passed unanimously.

- In the Matter of Emmanuel Kanu, Pharmacist License #34077(Tab 48)

Ms. Hildebrand advised the Board that a hearing was held before State Office of Administrative Hearings (SOAH) Administrative Judge Renee M. Rusch on April 13, 2010, in the matter of Emmanuel Kanu, R.Ph., in which TSBP staff sought to revoke the pharmacist license of Emmanuel Kanu and impose a \$5,000 administrative penalty.

Ms. Hildebrand introduced Judge Rusch, who reviewed the *Proposal for Decision* for the Board. Judge Rusch advised the Board it was her opinion that based on the *Findings of Fact and Conclusions of Law*, revocation of Mr. Kanu's license was not justified. It was her recommendation that the Board suspend Mr. Kanu's license for three years with all but the first six months being probated and a \$5,000 administrative penalty.

The Board recognized Mr. Dan Lype, attorney for Mr. Kanu, who requested that the Board accept the recommendations made by the SOAH judge.

Ms. Hildebrand reviewed the background in the case for the Board. She directed the Board's attention to Board Order #E-08-015, of which there were two versions. She explained that one version would implement the SOAH judge's recommendations; the other version would revoke Mr. Kanu's license and impose a \$5,000 administrative penalty.

- Executive Session

The motion was made by Mr. Wetherbee that the Board go into Executive Session, under the authority of Texas Occupations Code §552.011, to deliberate relating to discipline of a licensee. The motion was seconded by Mr. Fry and passed unanimously. President Waggener declared the Board in Executive session at 4:38 p.m.

President Waggener announced the Board would enter Open Session at 4:56 p.m. and announced that no actions were taken and no decision were made during Executive Session.

Following discussion, the motion was made by Mr. Fry to accept the *Findings of Fact and Conclusions of Law in the Proposal for Decision*, and approve Board Order #E-08-015, as presented, in the matter of Emmanuel Kanu, R.Ph., to revoke Mr. Kanu's pharmacist license and impose a \$5,000 administrative penalty. The motion was seconded by Mr. Abeldt and passed unanimously.

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

- Discussion Concerning Omnicare Pharmacies Providing Pharmacy Services to Institutional Residents (Tab 36)

Ms. Dodson introduced Sue Neuber, Roberta Halerson, and Tom Schleigh, representatives from Omnicare. Ms. Neuber, Ms. Halerson, and Mr. Schleigh presented the Board an overview of Omnicare's process for a technician to complete the final medication verification with a process involving a bar code scan under the direct supervision of a pharmacist. They explained that Omnicare provides pharmacy services to institutional residents and the patients receive their medications in sealed unit dose packages.

Following discussion, the Board directed staff to work with Omnicare to determine the eligibility of a pilot project. The Board asked staff to present recommendations concerning the request for a pilot project to the Board at its November 2010 meeting.

- Discussion Regarding a Class A Pharmacy Community Advisory Panel (Tab 39)

Ms. Dodson introduced Richard Beck, Executive Director, of the Texas Pharmacy Business Council (TPBC). Mr. Beck requested that the Board consider the appointment of a Class A Community Advisory Panel, to assist the Board in its rulemaking process.

Following discussion, the Board took no action.

President Waggener recessed the meeting at 6:10 p.m.

Tuesday, August 11, 2010

President Jeanne D. Waggener, R.Ph., called the meeting to order at 8:04 a.m. Other Board Members present were Buford T. Abeldt, Sr., R.Ph.; Alice Mendoza, R.Ph.; Dennis F. Wiesner, R.Ph.; W. Benjamin Fry, R.Ph.; Joyce A. Tipton, R.Ph.; and Charles Wetherbee.

Board Members Rosemary Forester Combs and L. Suzan Kedron 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; Caroline Hotchkiss, Staff Attorney; Allison Benz, R.Ph., M.S., Director of Professional Services; Ann Driscoll, Legal Assistant; and Becky Damon, Executive Assistant.

Also present were Pharmacist Interns Synthia Hill, University of Incarnate Word Feik School of Pharmacy, and Julie Kerslake, University of Texas College of Pharmacy, and Legal Intern Laura Cathelyn, University of Texas Law School.

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

- Professional Recovery Network
 - Dr. Holder discussed the charts which reflect the performance measures regarding the number of individuals participating in the peer assistance program for the past three fiscal years (FY2007-2009), as well as the number of pharmacists participating in the program during the first three quarters of FY2010. (Tab 28)
 - President Waggener recognized Donna Chamberlain, Director of the Pharmacy Recovery Network (PRN). Ms. Chamberlain directed the Board's attention to the PRN budget for September 1, 2009, through August 31, 2010, and reviewed current PRN activities for the Board. (Tab 29)
- Discussion Concerning Requirement to Report to Healthcare Integrity and Protection Data Bank (HIPBD) (Tab 37)

Ms. Dodson explained to the Board that federal law requires TSBP to report to HIPBD all disciplinary actions imposed.

Ms. Dodson directed the Board's attention to copies of two TSBP Newsletters (Fall/Winter 2000/2001 and Summer 2009) that notified licensees of the notification process. The Fall/Winter 2000/2001 Newsletter contained the first notice of HIPDB requirements and the Summer 2009 Newsletter contained the notice that has been in each Newsletter since TSBP began reporting to HIPDB.

Following discussion, the Board took no action.

- Discussion of a Pharmacy Technician Working Without a Valid Registration (Tab 38)

Ms. Dodson directed the Board's attention to a letter received from Doyle High, R.Ph., Past President of TSBP, concerning administrative penalties for allowing a pharmacy technician to work in a pharmacy without a valid registration. Ms. Dodson also presented excerpts from the minutes of two previous Board meetings (February 7-8, 2006 and May 5, 2009) regarding the history of actions taken by the Board concerning administrative penalties for pharmacist and pharmacies who allow pharmacy technicians to work without a valid registration.

Ms. Tipton request that staff investigate ways to increase educational opportunities for the pharmacist-in-charge concerning pharmacy technician registration requirements and bring recommendations back to the Board at its November 2010 meeting.

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

Final Adoption of Rules

- New Rule Concerning Central Prescription Drug or Medication Order Processing (Glass G) (§291.153) (Tab 09) (cont.)

Ms. Benz explained that the Board reviewed the proposed new rule earlier in the meeting, and as directed by the Board, the rule was revised to change the security requirements for the pharmacy since the pharmacy will be storing records and not drugs.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Wetherbee to approve for adoption, by Board Order, new rule §291.153, with an effective date of January 1, 2011. The motion was seconded by Mr. Fry and passed unanimously.

- New Rule Concerning Limited Prescription Delivery Pharmacy (Class H) (§291.155) (Tab 10) (cont.)

Ms. Benz explained that the Board reviewed the proposed new rule earlier in the meeting, and as directed by the Board, the rule was revised to allow Class H pharmacies to store prescriptions for 15 days.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Wetherbee to approve for adoption, by Board Order, new rule §291.155, with an effective date of January 1, 2011. The motion was seconded by Ms. Mendoza and passed unanimously.

- Discussion of Possible Statutory Changes for Consideration During the 82nd Session of the Texas Legislature (Tab 41)

Ms. Dodson directed the Board's attention to reports on:

- Recommendations for Legislative Action Approved by the Board for the 2009 Legislative Session but not passed;
- Staff Suggested Priority; and
- Staff Suggestions for Law Changes.

Following discussion the Board made recommendations concerning additional law changes and the order of priority.

President Waggener recessed the meeting at 10:23 a.m.

President Waggener reconvened the meeting at 10:33 a.m.

F. Consideration of and Possible Action Concerning Enforcement Reports

- Petition(s) to Serve as a Preceptor (Tab 42)

Ms. Fisher directed the Board's attention to a petition from Shalondria Simpson, Pharm. D. who is currently under Board orders, to serve as a preceptor. Under Board Rule §283.6, a pharmacist who has been the subject of an order of the Board may not serve as a preceptor if the pharmacist has been the subject of a Board order during a 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 the petition and supporting documentation for the Board.

The motion was made by Mr. Wetherbee that the Board approve the petition of Shalondria Simpson, Pharm. D., to serve as a preceptor. The motion was seconded by Ms. Mendoza and passed unanimously.

- Report on Complaints Closed and Dismissed During the Previous Quarter (Tab 43)

The Board received a report on complaints dismissed and closed during the first three quarters of FY2010 (September 1, 2009 – May 31, 2010). The report also included quarterly averages for FY2009 as compared to FY2010, as well as percentage change from FY2009 to FY2010. Ms. Fisher reviewed the report for the Board.

- Report on Status of Active/Pending Complaints (Tab 44)

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

G. Disciplinary Orders

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

- Report on Agreed Board Orders Entered by Executive Director (Tab 49)
 - The Board reviewed 67 Technician Agreed Board Orders that had been entered by the Executive Director on behalf of the Board, in accordance with the Board's directives, during the period May 6, 2010, through July 28, 2010.
 - The Board reviewed 39 Agreed Board Orders concerning pharmacy technicians, pharmacists, and pharmacies that had been entered by the Executive Director on behalf of the Board in accordance with the Board's directive, during the period June 2, 2010, through July 30, 2010.
- Discussion of and Action on Proposed Agreed Board Orders and Proposed Default Board Orders (Tab 50)
 - The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following 25 proposed Agreed Board Orders concerning pharmacy technicians and pharmacy technician trainees who appeared for an informal conference and 22 proposed Default Board Orders concerning

pharmacy technicians and pharmacy technician trainees who did not appear for informal conferences.

The motion was made by Ms. Mendoza to approve the following 25 proposed Agreed Board Orders and 22 proposed Default Board Orders as presented.

Agreed Board Orders

1.	Deloras Jessica Shubert	ABO #T-08-625
2.	Sharon Sue Beaver	ABO #T-09-454
3.	Carolyn Kay Scott	ABO #T-09-364-N
4.	Lori Dawn Marshall	ABO #T-09-534
5.	Amanda Quae Moore	ABO #T-08-909
6.	Pamela Lanell Bible	ABO #T-10-055-N
7.	Yousaf Ahmed Danawala	ABO #T-09-645-N
8.	Kristin Alysa Ginter	ABO #T-09-587-N
9.	Sandra Lydia Meza	ABO #T-09-547
10.	Vincent Hoan To	ABO #T-09-658
11.	Phillipe Marcel Craig	ABO #T-09-287
12.	Latoya Shivon Henry	ABO #T-09-113
13.	Barbara Arlene Juarez	ABO #T-09-489-N
14.	Jon Calvice Landry	ABO #T-10-314-N
15.	Vincente Lopez	ABO #T-09-601
16.	Tamara Dawn McVarish	ABO #T-10-232-N
17.	Christopher Pittman	ABO #T-10-111
18.	Hector Raul Venzor	ABO #T-09-297
19.	Josiah Ben Alanis	ABO #T-09-451
20.	Roxanne Coulter	ABO #T-10-053-N
21.	Katayna Kinisha Curtis	ABO #T-09-639
22.	Venus Chante Ford	ABO #T-10-198
23.	Tammy Lou Fulton	ABO #T-09-532-N
24.	Farin Nicole Vasquez	ABO #T-10-073
25.	Jay Whitaker	ABO #T-09-574

Default Board Orders

26.	Lisa Elaine Engibous	BO #T-10-103-N
27.	Abraham Gonzalez	BO #T-10-016
28.	Nathaniel Philip Kennedy	BO #T-09-608-N
29.	Stephen Phi Nguyen	BO #T-09-646-N
30.	Nicholas Perkins	BO #T-09-636
31.	Yolanda Nicole See	BO #T-10-264
32.	Augustine Lara	BO #T-09-114
33.	Anthony Joseph Monk	BO #T-09-733
34.	Issac Morin	BO #T-09-496-N

35.	Amanda Michelle Petrosky	BO #T-10-289-N
36.	Mistee D. Salter	BO #T-10-058-N
37.	Quentin Lamont Smith	BO #T-10-056-N
38.	Laverne Rashan Stepney	BO #T-10-162
39.	Monecia Debonae Fezia	BO #T-10-110-N
40.	Sean Christopher Mays	BO #T-09-726
41.	Alan Okpechi	BO #T-10-223
42.	Scott Mackenzie Parker	BO #T-10-153
43.	Michael Andrew Pena	BO #T-10-163
44.	Daniel James Tirado	BO #T-10-402
45.	Laurie Ellen Tresch	BO #T-09-724
46.	Brandon Paul Wilson	BO #T-10-356-N
47.	Christopher C. Young	BO #T-09-735-N

The motion was seconded by Mr. Fry and passed 6-0-0.

- The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following 22 proposed Agreed Board Orders (Alternative Resolutions); 19 proposed Agreed Board Orders concerning pharmacist, pharmacies, students, pharmacist-interns, and pharmacy technicians who appeared for an informal conference; and one proposed Default Board Order concerning a technician who did not appear for informal conference.

The motion was made by Mr. Wetherbee to approve the following 41 proposed Agreed Board Orders and one proposed Default Board Order as presented.

Agreed Board Orders (Alternate Resolutions)

1.	Clifton Dave Griggs	ABO #H-08-052-A
2.	CVS/pharmacy #7461	ABO #H-08-052-B
3.	H.E.B. Pharmacy #416	ABO #H-09-037-B
4.	Charles Phillip Hillis	ABO #H-09-009-A
5.	Randy Warren Faulk	ABO #H-09-027-A
6.	ReCept Pharmacy #1	ABO #H-09-027-B
7.	Deanna Marye Dimmitt	ABO #K-08-038
8.	Phillip B. Bailey	ABO #H-09-003-A
9.	Judith Virginia Flesher	ABO #H-09-052-A
10.	Anh Ngoc Nguyen	ABO #E-09-025
11.	Ali Moshtaghfard	ABO #H-09-016-A
12.	Sandhya Sunil Shenoy	ABO #H-09-051-A
13.	Sheila Ann Ventura	ABO #H-09-012-A
14.	Randall's Pharmacy #1066	ABO #H-09-028
15.	CVS/pharmacy #6805	ABO #H-10-006

16.	Greg A. Dayton	ABO #H-09-018-A
17.	Tom Thumb Pharmacy #2609	ABO #H-09-018-B
18.	Manuel Gonzalez Ortega	ABO #H-09-022-A
19.	Wal-Mart Pharmacy #10-1347	ABO #H-09-022-B
20.	John Milburn McNeill Jr.	ABO #H-10-010-A
21.	Nichols Southside Pharmacy	ABO #H-10-010-B
22.	Ira Thomas Lucas Jr.	ABO #L-10-002

Agreed Board Order (Following an Informal Conference)

23.	Sohrad Daneshfar	ABO #L-09-005
24.	Michelle Ann Joseph	ABO #T-10-011-N
25.	Alliance Pharmacy, LLC	ABO #F-09-014
26.	Jamilah Marie Ekpema	ABO #K-09-028-A
27.	CVS/pharmacy #6741	ABO #B-09-026
28.	CVS/pharmacy #7279	ABO #B-10-006
29.	CVS/pharmacy #7781	ABO #B-10-007
30.	Eden Embaye Teklay	ABO #J-09-007-A
31.	Walgreen Co. #4662	ABO #J-09-007-B
32.	Theophilus Kwasi Brown	ABO #A-08-006
33.	Patient Care Pharmacy	ABO #E-10-013
34.	Health Choice Pharmacy	ABO #K-10-029
35.	Stacy Lyn Dannels	ABO #H-08-054-A
36.	Grapevine Drug Mart Operations	ABO #H-08-054-B
37.	Frank Coedrond Cooper	ABO #B-09-023-A
38.	Houston South Side Pharmacy	ABO #B-09-023-B
39.	Bayo's Pharmacy	ABO #A-09-001
40.	Harold Patrick Blanton	ABO #G-09-019
41.	Paul Edward Drumgoole	ABO #E-10-008-A

Default Board Order (Following an Informal Conference)

42.	Rafael Antonio Zuniga III	ABO #T-10-061
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The motion was seconded by Mr. Fry and passed as follows.

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

11. 6-0-0
12. 6-0-0
13. 6-0-0
14. 6-0-0
15. 6-0-0
16. 6-0-0
17. 6-0-0
18. 6-0-0
19. 6-0-0
20. 6-0-0
21. 6-0-0
22. 6-0-0
23. 6-0-0
24. 5-0-1 Mr. Wiesner abstained
25. 6-0-0
26. 6-0-0
27. 6-0-0
28. 6-0-0
29. 6-0-0
30. 5-0-1 Mr. Wetherbee abstained
31. 5-0-1 Mr. Wetherbee abstained
32. 6-0-0
33. 5-0-1 Mr. Wiesner abstained
34. 5-0-1 Mr. Fry abstained
35. 6-0-0
36. 6-0-0
37. 5-0-1 Mr. Wetherbee abstained
38. 5-0-1 Mr. Wetherbee abstained
39. 5-0-1 Mr. Fry abstained
40. 5-0-1 Mr. Wiesner abstained
41. 5-0-1 Mr. Wetherbee abstained
42. 5-0-1 Mr. Wiesner abstained

- Executive Session to Consider Confidential Agreed Board Orders and Default Board Orders (Tab 51)

The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following 18 proposed Confidential Agreed Board Orders concerning pharmacist, pharmacies, and student pharmacist-interns.

The motion was made by Mr. Wetherbee to approve the following 18 proposed Confidential Agreed Board Order as presented.

Agreed Board Orders

1. ABO #L-10-012
2. ABO #M-10-008
3. ABO #M-10-013
4. ABO #R-10-004
5. ABO #R-10-001
6. ABO #R-09-001
7. ABO #M-10-006
8. ABO #G-09-028
9. ABO #S-10-004
10. ABO #L-10-003
11. ABO #S-10-001
12. ABO #G-10-005
13. ABO #G-09-037
14. ABO #A-09-026
15. ABO #E-10-010
16. ABO #B-08-038-A
17. ABO #B-08-038-B
18. ABO #N-10-014

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

1. 6-0-0
2. 5-0-1 Mr. Fry abstained
3. 5-0-1 Mr. Fry abstained
4. 5-0-1 Mr. Wetherbee abstained
5. 5-0-1 Mr. Wetherbee abstained
6. 6-0-0
7. 5-0-1 Mr. Fry abstained
8. 5-0-1 Mr. Wetherbee abstained
9. 5-0-1 Mr. Wetherbee abstained
10. 5-0-1 Mr. Fry abstained
11. 5-0-1 Mr. Wiesner abstained
12. 5-0-1 Mr. Wetherbee abstained
13. 5-0-1 Mr. Wetherbee abstained
14. 5-0-1 Mr. Wetherbee abstained
15. 5-0-1 Mr. Wetherbee abstained
16. 5-0-1 Mr. Wiesner abstained
17. 5-0-1 Mr. Wiesner abstained
18. 5-0-1 Mr. Wetherbee abstained

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

- Update on TSBP Action on Legislation Passed During the 81st Session of the Texas Legislature that has an Impact on TSBP and/or the Practice of Pharmacy (Tab 40)

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

H. Miscellaneous

- Items to be Placed on Agenda for November 2010 Board Meeting (Tab 52)

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

- Suggested rule language concerning Central Prescription Drug or Medication Order Processing (Class G);
- Suggested rule language concerning pharmacy technician duties;
- Suggested rule language regarding maintenance of records relating to dispensing errors;
- Staff recommendations for pharmacist-in-charge training, specifically with regard to technician registration requirements.

- 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 11:05 a.m.

APPROVED:

Jeanne D. Waggener, R.Ph.
President

Gay Dodson, R.Ph.
Executive Director/Secretary

November 9, 2010