



TEXAS STATE BOARD OF PHARMACY

Held via Videoconference

Tuesday, August 4, 2020

MINUTES¹

BOARD BUSINESS MEETING

Tuesday, August 4, 2020

President Julie Spier, R.Ph., called the meeting to order at 9:00 a.m. via videoconference in accordance with the Office of the Texas Governor's suspension of applicable sections of Chapter 551 of the Tex. Gov't Code, effective March 16, 2020, in response to the disaster declaration issued March 13, 2020, for the State of Texas. Other Board Members present via videoconference were Vice President Donnie Lewis, R.Ph.; Treasurer Jenny Downing Yoakum, R.Ph.; Rick Fernandez, R.Ph.; Daniel Guerrero; Lori Henke, Pharm.D.; Bradley A. Miller, Ph.T.R.; Donna Montemayor, R.Ph.; Chip Thornsburg; Suzette Tijerina, R.Ph.; and Rick Tisch.

Staff present via videoconference were Allison Vordenbaumen Benz, R.Ph., M.S., Executive Director/Secretary; Kerstin Arnold, General Counsel; Megan Holloway, Deputy General Counsel; Caroline Hotchkiss, Director of Enforcement; John Griffith, Litigation Counsel; Ann Driscoll, Ph.T.R., Team Manager; Lily Moreno, Executive Assistant; and Shayda Bakhshi, Outreach Coordinator.

A. Announcements

- Ms. Benz made general announcements and reviewed the meeting procedures.

B. Discussion and Approval of Minutes of Previous Meetings (Item B)

Following discussion, the motion was made by Mr. Guerrero to approve the minutes of the Board Business Meeting held May 5, 2020. The motion was seconded by Ms. Henke and passed unanimously by roll call vote.

¹See agenda and corresponding attachments for supporting materials.

C. Public Comments

The Board heard public comments from the following individuals concerning Pharmacy Technician/Technician Trainee and Pharmacist-Intern Ratios and Duties:

- Debbie Garza, R.Ph., Chief Executive Officer, Texas Pharmacy Association;
- Craig Chapman, R.Ph.;
- Sandra Guckian, IOM, MS, R.Ph., Vice President, Health Policy & Pharmacy Care, National Association of Chain Drug Stores (NACDS);
- Brian Fagan, R.Ph., H.E.B. Grocery Company, LP;
- Matt Hanson, R.Ph., Walgreen Co.;
- Haley Webber, Ph.T.R., Walgreen Co.;
- Aimee Lusson, Pharm.D., Walgreen Co.;
- Jerald "Craig" Gracey, R.Ph., H.E.B. Grocery Company, LP;
- Allera Porter, R.Ph., Walgreen Co.;
- Joseph Coy, Ph.T.R., Walgreen Co.;
- Minal Thakkar, Pharm.D., R.Ph., Walgreen Co.;
- Jeenu Philip, Ph.T.R., Walgreen Co.;
- Douglas Read, Pharm.D., Director of Pharmacy Compliance and Regulatory Affairs, H.E.B. Grocery Company, LP;
- Jarrod Baum, Pharm.D., Bonham Family Drug;
- David Le, Pharm.D., Kroger;
- John Rocchio, Pharm.D., R.Ph., CVS Health;
- Richard Gustafson, Pharm.D., R.Ph. MM.;
- Jeff Loesch, Pharm.D., R.Ph., CHC, Board of Directors - Treasurer and Secretary, Texas Federation of Drug Stores;
- Jeff Carson, R.Ph., Oakdell Pharmacy, LLC;
- Joyce A. Tipton, R.Ph., MBA, FASHP;
- Jill Lester, Pharm.D., BCPS, BCACP, R.Ph.;
- Sarah Lake-Wallace, M.S., Pharm. D., President-Elect, Texas Society of Health-System Pharmacists, who also requested the Board review rules concerning the Prescription Monitoring Program access requirements; and
- Rob Geddes, Pharm.D., Director, Pharmacy Legislative and Regulatory Affairs, Albertsons Companies, Inc.

President Spier recessed the meeting at 10:18 a.m.

President Spier reconvened the meeting at 10:30 a.m.

D. Discussion of and Possible Action Regarding Rules

Final Adoption of Rules

- Rules Concerning Penalty for Failure to Access Prescription Monitoring Program (§281.65) (Item D.1.1)

Ms. Holloway explained that the Board voted to propose amendments to §281.65 during its May 5, 2020 meeting. The proposed amendments were published in the July 3, 2020 issue of the *Texas Register*, and no comments were received.

Ms. Holloway directed the Board's attention to the amendments to §281.65 and explained that the amendments add an administrative penalty for the violation of failing to access the Prescription Monitoring Program for a patient's information before dispensing opioids, benzodiazepines, barbiturates, or carisoprodol, and update a citation reference.

Following discussion and review of the Preamble and Order Adopting Rules, the motion was made by Mr. Guerrero to approve for adoption, by Board Order, amendments to §281.65, as presented. The motion was seconded by Mr. Tisch and passed unanimously by roll call vote.

- Rules Concerning Prescription Pick Up Locations (§291.9) (Item D.1.2)

Ms. Holloway explained that the Board voted to propose the amendments to §291.9 during its May 5, 2020 meeting. The proposed amendments were published in the July 3, 2020 issue of the *Texas Register*, and no comments were received.

Ms. Holloway directed the Board's attention to the amendments to §291.9 and explained that the amendments remove an outdated reference to Class H pharmacies which no longer exist.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Lewis to approve for adoption, by Board Order, amendments to §291.9, as presented. The motion was seconded by Mr. Miller and passed unanimously by roll call vote.

- Rules Concerning Requirements for Using an Automated Pharmacy System (§291.121) (Item D.1.3)

Ms. Holloway explained that the Board voted to propose the amendments to §291.121 during its May 5, 2020 meeting. The proposed amendments were published in the July 3, 2020 issue of the *Texas Register*, and no comments were received.

Ms. Holloway directed the Board's attention to the amendments to §291.121 and explained that the amendments allow remote pharmacies services using an automated pharmacy system to be provided at healthcare facilities regulated under Chapter 241 of the Texas Health & Safety Code Ann., and removes the limitation that the services may only be provided to inpatients of the remote site.

Following discussion and review of the Preambles and Orders Adopting Rules, the motion was made by Mr. Lewis to approve for adoption, by Board Order, amendments to §291.121, as presented. The motion was seconded by Mr. Thornsburg and passed unanimously by roll call vote.

- Rules Concerning Requirement for Sink (§291.155) (Item D.1.4)

Ms. Holloway explained that the Board voted to propose the amendments to §291.155 during its May 5, 2020 meeting. The proposed amendments were published in the July 3, 2020 issue of the *Texas Register*, and no comments were received.

Ms. Holloway directed the Board's attention to the amendments to §291.155 and explained that the amendments clarify that a sink exclusive of restroom facilities is not required for a Class G pharmacy and correct grammatical errors.

Following discussion and review of the Preamble and Order Adopting Rules, the motion was made by Ms. Henke to approve for adoption, by Board Order, amendments to §291.155, as presented. The motion was seconded by Mr. Lewis and passed unanimously by roll call vote.

Proposal of Rules

- Rules Concerning Healthcare Professional Preceptor Definition (§283.2) (Item D.2.1)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning the definition of Healthcare Professional Preceptor. She explained the proposed amendments to §283.2 remove the reference to a pharmacist intern-trainee to provide clearer regulatory language that accurately reflects the current preceptor supervision duties.

Following discussion, the motion was made by Mr. Thornsburg to approve for proposal amendments to §283.2, as presented. The motion was seconded by Ms. Henke and passed unanimously by roll call vote.

- Rules Concerning Pharmacist-Intern Change of Name Requirements (§283.4) (Item D.2.2)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning pharmacist-intern change of name requirements and explained the proposed amendments to §283.4 remove the change of name fee and outdated requirements to reflect current procedures.

Following discussion, the motion was made by Ms. Montemayor to approve for proposal amendments to §283.4, as presented. The motion was seconded by Mr. Lewis and passed unanimously by roll call vote.

- Rules Concerning Pharmacy Technician and Pharmacist-Intern Ratios and Duties
 - Rules Concerning Pharmacist-Intern Duties (§283.5) (Item D.2.3.1)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning pharmacist-intern duties. She explained the proposed amendments to §283.5 remove the pharmacist to pharmacist-intern ratio.
 - Rules Concerning Class A (Community) Pharmacy (§§291.31, 291.32, 291.33 and 291.34) (Item D.2.3.2)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning Class A (Community) Pharmacy. She explained the proposed amendments to §291.31 update the definition of original prescription and correct grammatical errors; the proposed amendments to §291.32 expand the duties pharmacy technicians/pharmacy technician trainees may perform to include receiving oral prescriptions, transferring prescriptions, and contacting a prescriber for information regarding a prescription, remove the ratio of pharmacists to pharmacy technicians and pharmacy technician trainees, except as provided in Section 568.006 of the Texas Pharmacy Act, and correct grammatical errors; the proposed amendments to §291.33 expand the duties pharmacy technicians may perform during the temporary absence of a pharmacist to include receiving oral prescriptions and prescription transfers and contacting a prescriber for information regarding a prescription; and the proposed amendments to §291.34 expand the duties which pharmacist-interns and pharmacy technicians/pharmacy technician trainees may perform to include receiving oral prescriptions, transferring prescriptions, and contacting a prescriber for information regarding a prescription, and correct grammatical errors.
 - Rules Concerning Class B (Nuclear) Pharmacy (§§291.52, 291.53, and 291.55) (Item D.2.3.3)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning Class B (Nuclear) Pharmacy. She explained the proposed amendments to §291.52 update the definition of original prescription and correct grammatical errors; the proposed amendments to §291.53 remove the receipt and reduction into writing of verbal therapeutic and diagnostic prescription drug orders from the duties which may only be performed by an authorized nuclear pharmacist, remove the pharmacist to pharmacy technician/pharmacy technician trainee

ratio requirements, and correct grammatical errors; and the proposed amendments to §291.55 expand the duties pharmacy technicians/pharmacy technician trainees can perform to include receiving oral therapeutic and diagnostic prescription drug orders and correct grammatical errors.

- Rules Concerning Class C (Institutional) Pharmacy (§§291.73, 291.74, and 291.76) (Item D.2.3.4)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning Class C (Institutional) Pharmacy. She explained the proposed amendments to §291.73 expand the duties which pharmacy technicians/pharmacy technician trainees may perform to include receiving oral medication orders; the proposed amendments to §291.74 remove a prohibition against pharmacy technicians/pharmacy technician trainees receiving oral medication orders, update certain application requirements, and correct grammatical errors; and the proposed amendments to §291.76 remove a prohibition against pharmacy technicians/pharmacy technician trainees receiving prescription drug orders and oral medication orders.

- Rules Concerning Remote Pharmacy Services (§291.121) (Item D.2.3.5)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning remote pharmacy services. She explained the proposed amendments to §291.121 remove the receipt of oral prescription drug orders from the duties which may only be performed by a pharmacist.

- Rules Concerning Satellite Pharmacy (§291.129) (Item D.2.3.6)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning Satellite Pharmacy. She explained the proposed amendments to §291.129 remove the receipt of oral prescription drug orders from the duties which may only be performed by a pharmacist, and remove the pharmacist to pharmacy technician/pharmacy technician trainee ratio.

- Rules Concerning Class F (Located in a Freestanding Emergency Medical Care Facility) Pharmacy (§291.151) (Item D.2.3.7)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning Class F (Located in a Freestanding Emergency Medical Care Facility) Pharmacy. She explained the proposed amendments to §291.151 expand the duties which pharmacy technicians and pharmacy technician

trainees may perform to include the receipt of prescription drug orders and oral medication orders.

- Rules Concerning Class G (Central Prescription Drug or Medication Order Processing) Pharmacy (§291.153) (Item D.2.3.8)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning Class G (Central Prescription Drug or Medication Order Processing) Pharmacy. She explained the proposed amendments to §291.153 remove the receipt of oral prescription drug or medication orders from the duties which may only be performed by a pharmacist, and remove the pharmacist to pharmacy technician/pharmacy technician trainee ratio.

- Rules Concerning Other Classes of Pharmacy (§§309.2 and 309.3) (Item D.2.3.9)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning substitution of drug products. She explained the proposed amendments to §309.2 update the definition of original prescription and the proposed amendments to §309.3 expand the duties which pharmacist-interns and pharmacy technicians/pharmacy technician trainees may perform to include receiving oral prescription drug orders and correct grammatical errors.

Written comments regarding pharmacy technician and pharmacist-intern ratios and duties were received from the following:

- State Representative Donna Howard;
- Jeff Carson, R.Ph., President/Owner, Oakdell Pharmacy, LLC;
- Rob Geddes, Pharm.D., Director, Pharmacy Legislative and Regulatory Affairs, Albertsons Companies, Inc.;
- Nario R. Cantu, R.Ph., Pharmacist-in-Charge/Officer, Cantu's Pharmacy;
- Jim Hrnecir, R.Ph., Pharmacist-in-Charge/Officer, Las Colinas Pharmacy;
- Kim A. Caldwell, R.Ph.;
- Robin Turner, R.Ph.;
- Brady Shimek, Pharm.D., R.Ph., Pharmacy District Director, Brookshire Brothers Pharmacy;
- Richard Timko, Director, Pharmacy and Retail Operations, Walgreen Co.;
- Aimee Lussion, Pharm.D., R.Ph., Healthcare Supervisor, Walgreen Co.;
- Anjanette Wyatt, Pharm.D., R.Ph., Pharmacist-in-Charge/Officer, Clinical Care Pharmacy, LLC;

- Alejandra Del Valle, C.Ph.T., Ph.T.R., Staff, Clinical Care Pharmacy, LLC;
- Sebrina Wyatt, Clinical Care Pharmacy, LLC;
- Damita Wyatt, Pharm.D., R.Ph., Relief Pharmacist, Clinical Care Pharmacy, LLC;
- Corliss Flournoy, R.Ph.;
- Unknown Source;
- Laird Leavoy, President, and Alton Kanak, R.Ph., Chairman, Board of Directors, American Pharmacies;
- Stephen Crocco, R.Ph., Staff Pharmacist, Walgreens #12330;
- Debbie B. Garza, R.Ph., Chief Executive Officer, Texas Pharmacy Association;
- Russell Davidson, Pharm.D., R.Ph., Pharmacist-in-Charge, Walgreens #03730;
- Bobbigai Tribble, R.Ph.;
- Linda Vaughan;
- Connie Latta, Regional Vice President - Texas, Oklahoma, New Mexico, Walgreen Co.;
- Joshua Moore, Pharm.D., R.Ph., Pharmacist-in-Charge/Officer, Moore Than Medicine;
- Steven C. Anderson, FASAE, CAE, IOM, President and Chief Executive Officer, National Association of Chain Drug Stores;
- Brandon Canady, C.Ph.T., Ph.T.R.;
- Juan Adame, C.Ph.T., Ph.T.R.;
- Matthew Pataky, Pharm.D., R.Ph., Pharmacist-in-Charge, Walgreens #5211;
- Dorian Maloy, C.Ph.T., Ph.T.R.;
- Shannon Wiesendanger, Ph.T.R.;
- Nhat Nguyen, R.Ph.;
- Casey Nicholas, Pharm.D., R.Ph., Pharmacist-in-Charge, Walgreens #1933;
- Cody Cribbs, Pharm.D., R.Ph., Fort Worth Area Healthcare Supervisor, Walgreen Co.;
- Justin Cooper, Pharm.D., R.Ph.;
- Ray Carvajal, R.Ph., Officer, Carvajal Pharmacy; and
- Carter High, Pharm.D., R.Ph., Director of Legislative Affairs, Best Value Pharmacies.

Following discussion, the motion was made by Mr. Thornsburg to approve for proposal amendments to §§291.31, 291.32, 291.33, and 291.34, allowing for the expansion of nonjudgmental duties in the Class A pharmacy setting, as presented, for pharmacy technicians only. The motion was seconded by Mr. Tisch. A roll call vote was taken and the motion passed 6-4-0, with Mr. Lewis, Ms. Yoakum, Ms. Henke and Mr. Miller opposed.

Following discussion, the motion was made by Mr. Thornsburg to approve for proposal amendments to §§291.52, 291.53, and 291.55, allowing for

the expansion of nonjudgmental duties in the Class B pharmacy setting, as presented, for pharmacy technicians only. The motion was seconded by Ms. Montemayor. A roll call vote was taken and the motion passed 6-4-0, with Mr. Lewis, Ms. Yoakum, Ms. Henke, and Mr. Miller opposed.

Following discussion, the motion was made by Ms. Yoakum to approve for proposal amendments to §291.74 concerning only corrections to grammatical errors and updates to certain application requirements, as presented. The motion was seconded by Mr. Lewis. A roll call vote was taken and the motion passed 8-2-0, with Mr. Fernandez and Ms. Montemayor opposed.

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

- Review and Approval of TSPB FY2020 Annual Internal Audit Report (Item G.3)

President Spier recognized Kimberly Lopez-Gonzales and Chika Cherry, with Garza/Gonzalez & Associates. Ms. Lopez-Gonzales explained the observations and findings of the FY2020 Annual Internal Audit Report along with the recommendations.

Following discussion, the motion was made by Mr. Guerrero to approve the FY2020 Annual Internal Audit Report, as presented. The motion was seconded by Mr. Lewis and passed unanimously by roll call vote.

President Spier recessed the meeting at 11:47 a.m.
President Spier reconvened the meeting at 12:30 p.m.

D. Discussion of and Possible Action Regarding Rules, continued

- Rules Concerning Pharmacy Technician and Pharmacist-Intern Ratios and Duties, continued

Ms. Arnold explained that following review during the preceding break, it was determined that under U.S. Drug Enforcement Administration regulations, the ability to transfer, receive, or clarify oral controlled substance prescriptions is a duty that may not be performed by pharmacy technicians.

Following discussion, the motion was made by Mr. Guerrero to add language to the proposed amendments concerning expansion of pharmacy technician duties in Class A and Class B pharmacy settings clarifying that technicians may not receive, transfer or clarify oral controlled substance prescriptions, in accordance with federal law. The motion was seconded by Ms. Yoakum and passed unanimously by roll call vote.

Following discussion, the motion was made by Mr. Thornsburg to approve for proposal amendments to §291.129, allowing for the expansion of nonjudgmental duties in the satellite pharmacy setting, as presented, for pharmacy technicians only and adding clarifying language concerning controlled substances in accordance with federal law. The motion was seconded by Mr. Guerrero. A roll call vote was taken and the motion passed 6-4-0, with Mr. Lewis, Ms. Yoakum, Ms. Henke, and Mr. Miller opposed.

Following discussion, the motion was made by Ms. Tijerina to approve for proposal amendments to §291.121, allowing for the expansion of nonjudgmental duties in the provision of remote pharmacy services, as presented, for pharmacy technicians only and adding clarifying language concerning controlled substances in accordance with federal law. The motion was seconded by Mr. Tisch. A roll call vote was taken and the motion passed 6-4-0, with Mr. Lewis, Ms. Yoakum, Ms. Henke, and Mr. Miller opposed.

Following discussion, the motion was made by Ms. Montemayor to approve for proposal amendments to §291.153, allowing for the expansion of nonjudgmental duties in the Class G pharmacy setting, as presented, for pharmacy technicians only and adding clarifying language concerning controlled substances in accordance with federal law. The motion was seconded by Mr. Guerrero. A roll call vote was taken and the motion passed 6-4-0, with Mr. Lewis, Ms. Yoakum, Ms. Henke, and Mr. Miller opposed.

Following discussion, the motion was made by Mr. Guerrero to approve for proposal amendments to §§309.2 and 309.3, allowing for the expansion of nonjudgmental duties concerning the substitution of drug products, as presented, for pharmacy technicians only and adding clarifying language concerning controlled substances in accordance with federal law. The motion was seconded by Mr. Fernandez. A roll call vote was taken with Mr. Lewis, Ms. Yoakum, Ms. Henke, Mr. Miller, and Mr. Thornsburg opposed. President Spier cast the deciding vote in favor and the motion passed 6-5-0.

Following discussion, the motion was made by Mr. Thornsburg to approve for proposal amendments to §§283.5, 291.31, 291.32, 291.34, 291.52, 291.53, 291.55, 291.121, 309.2 and 309.3, to correct grammatical errors, as presented. The motion was seconded by Mr. Guerrero and passed unanimously by roll call vote.

Following discussion, the motion was made by Mr. Guerrero to approve for proposal amendments to §283.5, to remove the pharmacist to pharmacist-intern ratio, as presented. The motion was seconded by Mr. Tisch. A roll call vote was taken and the motion passed 8-2-0 with Mr. Lewis and Ms. Yoakum opposed.

Following discussion, the motion was made by Mr. Tisch to approve for proposal amendments to §291.32, to increase the pharmacist to pharmacy technicians/pharmacy technician trainees ratio to 1:6 in the Class A pharmacy setting. The motion was seconded by Ms. Yoakum. A roll call vote was taken and the motion passed 7-3-0, with Mr. Guerrero, Ms. Montemayor and Mr. Thornsburg opposed.

Following discussion, the motion was made by Ms. Yoakum to approve for proposal amendments to §291.32, to limit the pharmacist to pharmacy technician trainee ratio to 1:1 for a maximum of one pharmacy technician trainee in the Class A pharmacy setting. The motion was seconded by Mr. Lewis. A roll call vote was taken and the motion failed 3-6-1 with Mr. Fernandez, Ms. Henke, Mr. Miller, Ms. Montemayor, Mr. Thornsburg, and Ms. Tijerina opposed and Mr. Guerrero abstained.

Following discussion, the motion was made by Mr. Guerrero to approve for proposal amendments to §§291.53, 291.129, and 291.153, to remove the pharmacist to pharmacy technicians/pharmacy technician trainees ratio, as presented. This motion failed with no second.

G. Discussion of and Possible Action Concerning the Following Reports and Discussions, continued

- Professional Recovery Network
 - Ms. Hotchkiss discussed performance measures regarding the number of individuals participating in the peer assistance program for the third quarter of FY2020 (March 1, 2020 – May 31, 2020). (Item G.2.1)
 - President Spier recognized Eden Males, Program Director, Professional Recovery Network (PRN). Ms. Males directed the Board's attention to the PRN expense report through the second quarter of FY2020 (March 1, 2020 – May 31, 2020) and reviewed PRN activities for the Board. (Item G.2.2)

E. Discussion of and Possible Action Concerning Pilot Projects

- Report on Pilot Project Concerning Automated Dispensing and Delivery (Item E.1)

The Board reviewed a report from Sam's Club and MedAvail regarding the pilot project concerning Automated Dispensing and Delivery Systems.

I. Disciplinary Orders

- Consideration of Proposal for Decision in the Matter of CVS Pharmacy #5799, Pharmacy License #24888 (Item I.1.1)

Ms. Arnold directed the Board's attention to the Proposal for Decision and the corresponding proposed Board Order. Ms. Arnold recognized John Griffith, Litigation Counsel, who advised the Board that following a hearing held before State Office of Administrative Hearings (SOAH) Administrative Law Judge Sarah Starnes, a Proposal for Decision was issued on April 27, 2020, in the matter of CVS Pharmacy #5799.

Mr. Griffith reviewed the background in the case for the Board and reviewed proposed Board Order #2018-02509, which would impose a two-year probation period and a \$2,000 administrative penalty.

Ms. Arnold recognized Ethan Ranis, Legal Counsel representing CVS Pharmacy #5799, who indicated there were no objections to proposed Board Order #2018-02509.

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 the entry of Board Order #2018-02509, as presented, in the matter of CVS Pharmacy #5799. The motion was seconded by Mr. Lewis and passed unanimously by roll call vote.

D. Discussion of and Possible Action Regarding Rules, continued

- Rules Concerning Pharmacy Technician and Pharmacist-Intern Ratios and Duties, continued

Following discussion, the motion was made by Mr. Thornsburg to approve for proposal amendments to §291.32, to allow a maximum of three pharmacy technician trainees to be included in the increased pharmacist to pharmacy technicians/pharmacy technician trainees ratio of 1:6 in a Class A pharmacy setting that was previously approved for proposal. The motion was seconded by Ms. Henke and passed unanimously by roll call vote.

Following discussion, the motion was made by Mr. Thornsburg to approve for proposal amendments to §291.53, to increase the pharmacist to pharmacy technicians/pharmacy technician trainees ratio to 1:6 with a maximum of three pharmacy technician trainees in a Class B pharmacy setting. The motion was seconded by Ms. Yoakum and passed unanimously by roll call vote.

Following discussion, the motion was made by Mr. Guerrero to approve for proposal amendments to §291.129, to remove the pharmacist to

pharmacy technicians/pharmacy technician trainees ratio, as presented, in the satellite pharmacy setting. The motion was seconded by Mr. Miller and passed unanimously by roll call vote.

Following discussion, the motion was made by Mr. Guerrero to approve for proposal amendments to §291.153, to remove the pharmacist to pharmacy technicians/pharmacy technician trainees ratio, as presented, in the Class G pharmacy setting. The motion was seconded by Ms. Montemayor. A roll call was taken with Mr. Lewis, Ms. Yoakum, Ms. Henke, Mr. Miller, and Mr. Thornsburg opposed. President Spier cast the deciding vote in favor and the motion passed 6-5-0.

Rule Review

- For Adoption

Ms. Holloway directed the Board's attention to the Board Rule Review Plan for FY 2018-2021 (Item D.3)

- Chapter 291 Concerning Pharmacies (Institutional Pharmacy (Class C)) (§§291.71 – 291.77) (Item D.3.1.1)
- Chapter 303 Concerning Destruction of Dangerous Drugs & Controlled Substances (§§303.1 – 303.3) (Item D.3.1.2)

Following discussion, in accordance with Government Code §2001.039, the motion was made by Ms. Henke to approve for adoption as presented, the review of Chapter 291 (§§291.71 – 291.77) and Chapter 303 (§§303.1 – 303.3). The motion was seconded by Mr. Miller and passed unanimously by roll call vote.

I. Disciplinary Orders, continued

- Consideration of Proposal for Decision in the Matter of Gerald Edward Zimmerman, Pharmacist License #30404 (Item I.1.2)

Ms. Arnold directed the Board's attention to the Proposal for Decision and the corresponding proposed Board Order. Ms. Arnold recognized Mr. Griffith who advised the Board that following a hearing held before State Office of Administrative Hearings (SOAH) Administrative Law Judge Srinivas Behara, a Proposal for Decision was issued on June 11, 2020, in the matter of Gerald Edward Zimmerman.

Mr. Griffith reviewed the background in the case for the Board and reviewed proposed Board Order # 2019-03298, which would impose a \$1,000 administrative penalty.

Following discussion, the motion was made by Mr. Lewis to accept the

Findings of Fact and Conclusions of Law in the Proposal for Decision, and approve the entry of Board Order #2019-03298, as presented, in the matter of Gerald Edward Zimmerman. The motion was seconded by Mr. Fernandez and passed unanimously by roll call vote.

D. Discussion of and Possible Action Regarding Rules, continued

- Rules Concerning Examination Retake Requirements (§283.11) (Item D.2.4)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning examination retake requirements. She explained the proposed amendments to §283.11 clarify the course work requirements for reciprocity applicants retaking the Texas Pharmacy Jurisprudence Examination to be consistent with section 558.055 of the Texas Pharmacy Act.

Following discussion, the motion was made by Ms. Yoakum to approve for proposal amendments to §283.11, as presented. The motion was seconded by Mr. Guerrero and passed unanimously by roll call vote.

- Rules Concerning Non-Pharmacist Pharmacy Ownership Training Course (§§291.1 and 291.3) (Items D.2.5.1 and D.2.5.2)

Ms. Benz provided background to the suggested amendments concerning a non-pharmacist pharmacy ownership training course. She explained that several Board members had observed during Informal Conferences the impact of non-pharmacist owners being unfamiliar with the rules and requirements of having a pharmacy. Ms. Benz indicated that compliance staff had started developing a course for non-pharmacist owners.

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning a non-pharmacist pharmacy ownership training course. She explained the proposed amendments to §291.1 add a requirement for each non-pharmacist individual owner or managing officer of a Class A pharmacy license applicant to attend a pharmacy ownership training course and the proposed amendments to §291.3 add a requirement for each non-pharmacist individual owner or managing officer of a Class A pharmacy to attend a pharmacy ownership training course within 90 days of notifying the board of a change of managing officer and clarify the change of ownership notification requirements.

Following discussion, the motion was made by Mr. Thornsburg to approve for proposal amendments to §§291.1 and 291.3, as presented. The motion was seconded by Mr. Lewis and passed unanimously by roll call vote.

- Rules Concerning Definition of Class E Pharmacy License (§§291.101 and 291.102) (Items D.2.6.1 and D.2.6.2)

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning the definition of a Class E Pharmacy License. She explained the proposed amendments to §§291.101 and 291.102 permit Class E pharmacies to process prescription drug orders and perform other pharmaceutical services as defined by Board rule, in accordance with House Bill 2847 of the 86th Legislative Session.

Following discussion, the motion was made by Mr. Lewis to approve for proposal amendments to §§291.101 and 291.102, as presented. The motion was seconded by Ms. Yoakum and passed unanimously by roll call vote.

- Rules Concerning Electronic Prescribing Waivers (§315.3) (Item D.2.7)

Ms. Holloway explained that the Board previously voted to propose amendments to rule language concerning electronic prescribing waivers at the February 4, 2020 meeting.

Ms. Holloway directed the Board's attention to suggested amendments to rule language concerning electronic prescribing waivers. She explained the proposed amendments to §315.3, which clarify the circumstances under which a controlled substance prescription is not required to be issued electronically and the procedures for requesting a waiver of the electronic prescribing requirement, include the amendments previously voted on with the addition of language suggested by the Governor's Office defining economic hardship.

Following discussion, the motion was made by Mr. Lewis to approve for proposal amendments to §315.3, as presented. The motion was seconded by Mr. Guerrero and passed unanimously by roll call vote.

Mr. Lewis left the meeting at 2:01 p.m.

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

- Report on Compounding Advisory Group (Item F.1)

Ms. Benz reported that the first Compounding Advisory Group meeting is scheduled for September as a virtual meeting.

- Report on Prescription Monitoring Program (PMP) Advisory Committee (Item F.2)

Ms. Benz reported that the PMP Advisory Committee meeting was held virtually on July 20, 2020, and included a presentation from Appriss. The next meeting will be held in October.

G. Discussion of and Possible Action Concerning the Following Reports and Discussions, continued

- Financial Report

- Review of FY2020 Expenditures (Item G.1.1)

Ms. Benz reviewed the expenditures for the third quarter of FY2020 (March 1, 2020 – May 31, 2020) for the Board. She explained that the Board received a request in May 2020 from the Governor to develop a 5% reduction to the budget for the biennium (FY2020 and FY2021) and reported the areas affected by the budget reduction, as notated in the budget report.

- Review of Board Member Travel Budget (Item G.1.2)

Ms. Benz reviewed the Board Member Travel Budget for the third quarter of FY2020 (March 1, 2020 – May 31, 2020).

- Consideration of Material Changes to Contracts for Goods and Services Awarded Under Chapter 2155 of Texas Government Code (Item E.1.3)

Ms. Benz reported that there were no material changes to contracts for goods and services.

- Update on Legislative Appropriations Request for FY2022-2023 (Item G.1.4)

Ms. Benz reported the agency is still awaiting instructions for the Legislative Appropriations Request. Ms. Benz indicated that there may be a request for a reduction of license fees.

- Review and Approval of TSBP FY2021 Goals and Objectives (Item G.4)

Ms. Benz directed the Board's attention to the Goals and Objectives for FY2021.

Following review, the motion was made by Mr. Miller to approve the TSBP FY2021 Goals and Objectives. The motion was seconded by Mr. Tisch and passed unanimously by roll call vote.

President Spier recessed the meeting at 2:12 p.m.
President Spier reconvened the meeting at 2:30 p.m.

- Review and Approval of *Accreditation Council for Pharmacy Education (ACPE) Accredited Professional Programs of Colleges and Schools of Pharmacy* (Item G.5)

Ms. Benz directed the Board's attention to a list of ACPE accredited programs of colleges and schools of pharmacy.

Following review, a motion was made by Mr. Miller to approve the list of ACPE accredited programs of colleges and schools of pharmacy, as presented. The motion was seconded by Mr. Guerrero and passed unanimously by roll call vote.

- Report on the Prescription Monitoring Program (Item G.6)

Ms. Benz presented a report on the Prescription Monitoring Program regarding data for the third quarter of FY2020 (March 1, 2020 – May 31, 2020).

- Report on Agency Activities in Response to COVID-19 (Coronavirus) (Item G.7)

Ms. Benz provided a report regarding actions and activities taken by Board staff in response to the COVID-19 pandemic. Ms. Benz reported that no additional rules had been waived and that Emergency Rule 291.30, concerning the dispensing of hydroxychloroquine and chloroquine, which was passed on March 20, 2020, expired July 17, 2020. Ms. Benz also reported on the virtual compliance inspection process.

- Report on Appeals from State Office of Administrative Hearing Cases and Other Court Actions (Item G.8)

Ms. Arnold provided an update concerning a petition filed in district court in Travis County that seeks to invalidate the restriction that licensed Texas physicians cannot dispense prescriptions to patients at their offices without a pharmacy license. Ms. Arnold advised the Board that its attorney from the Texas Attorney General's Office had filed a motion for a summary judgment and staff is awaiting a ruling.

- Discussion of Possible Statutory Changes for Consideration During the 87th Session of the Texas Legislature (Item G.9)

Ms. Benz explained that during the upcoming legislative session hearings may be limited, which may impact bills involving pharmacy.

H. Consideration of and Possible Action Concerning Enforcement Reports

- Report on Complaints Closed and Dismissed During the Previous Quarter (Item H.1)

Ms. Hotchkiss reported on complaints dismissed and closed during the third quarter of FY2020 (March 1, 2020 – May 31, 2020). The report also included quarterly averages for FY2020 as compared to FY2019, as well as percentage change from FY2019 to FY2020.

- Report on Status of Active/Pending Complaints (Item H.2)

Ms. Hotchkiss reviewed the *Report on Status of Active/Pending Complaints* for the Board.

I. Disciplinary Orders, continued

- Report on Agreed Board Orders Entered by Executive Director (Item I.2)
 - The Board reviewed 14 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 May 11, 2020, through July 31, 2020.
 - The Board reviewed 9 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 May 11, 2020, through June 29, 2020.
 - The Board reviewed 4 Confidential Agreed Board Orders concerning 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 June 29, 2020, through July 8, 2020.
- Discussion of and Action on Proposed Agreed Board Orders and Proposed Default Board Orders, Executive Session to Consider Discussion of and Action on Disciplinary Orders and Discussion of and Action on Proposed Remedial Plans (Items I.3, I.4, and I.5)

The Board reviewed the alleged violations, as well as the recommended sanctions for each of the following:

- 23 proposed Agreed Board Orders concerning pharmacy technicians and pharmacy technician trainees who appeared for an Informal Conference;

- 8 proposed Agreed Board Orders concerning pharmacies and pharmacists (Alternative Resolutions);
- 25 proposed Agreed Board Orders concerning pharmacies and pharmacists who appeared for an Informal Conference;
- 5 proposed Confidential Agreed Board Orders concerning pharmacists who appeared for an Informal Conference; and
- 2 proposed Remedial Plans concerning pharmacies and pharmacists following an Informal Conference.

The motion was made by Mr. Guerrero to approve the proposed Disciplinary Orders and Remedial Plans, as presented. The motion was seconded by Mr. Fernandez and passed as follows:

No.	Name	T, R, or P*	ABO or RP**	Order # or Plan #	Board Vote (Yes-No- Recuse)	Recused Board Members
1	Crystal Lynne Faulk	T	ABO	2020-01262	7-0-2	Henke, Guerrero
2	Jasmine Lavonshae Barber	T	ABO	2019-06038	9-0-0	-
3	Nicole Jenea Munford	T	ABO	2019-05021	9-0-0	-
4	Jonah Matthew Parton	T	ABO	2019-00353	9-0-0	-
5	Darlene Boone	T	ABO	2020-01633	8-0-1	Yoakum
6	Patrick Joseph Leonard	T	ABO	2019-02658	8-0-1	Yoakum
7	Socorro Parada	T	ABO	2020-02051	8-0-1	Yoakum
8	Samantha Rodriguez	T	ABO	2020-00157	8-0-1	Yoakum
9	Amanda Inez Rowan	T	ABO	2020-00159	8-0-1	Yoakum
10	Thaylore B. Sheffield	T	ABO	2020-00411	8-0-1	Yoakum
11	Melrose Suzanne Short	T	ABO	2020-01293	8-0-1	Yoakum
12	Jennifer Cooper	T	ABO	2020-01641	7-0-2	Tijerina, Tisch
13	Cathleen Deann Dugan	T	ABO	2020-01760	7-0-2	Tijerina, Tisch
14	Lisa Wong Nga	T	ABO	2019-03770	7-0-2	Tijerina, Tisch
15	Miranda Michelle Parker	T	ABO	2020-02602	7-0-2	Tijerina, Tisch
16	Lusena Lucrecia Tapia	T	ABO	2020-02044	7-0-2	Tijerina, Tisch
17	Brinda Varghese	T	ABO	2020-01893	7-0-2	Tijerina, Tisch
18	Le'Mica Daigle	T	ABO	2020-01222	8-0-1	Montemayor
19	Holly Morgan Hernandez	T	ABO	2020-02596	8-0-1	Montemayor
20	Heidi Kristine Ingram	T	ABO	2020-02719	8-0-1	Montemayor
21	Cydney Jolyn Jackson	T	ABO	2020-03185	7-0-2	Tijerina, Tisch
22	Rodney Scott Pena	T	ABO	2019-04103	8-0-1	Montemayor
23	Tasha Lashun Woods	T	ABO	2020-02061	8-0-1	Montemayor
24	Ben Franklin Apothecary	P	ABO	2019-06140	9-0-0	-
25	CVS/pharmacy #8978	P	ABO	2020-00950	8-0-1	Tijerina
26	EMRX LLC	P	ABO	2020-00186	9-0-0	-
27	H.E.B. Pharmacy #668	P	ABO	2019-05092	8-0-1	Montemayor
28	Henry Ford Pharmacy	P	ABO	2020-01826	9-0-0	-

*Technician or Technician Trainee (T), Pharmacist (R), and Pharmacy (P)

**Agreed Board Order (ABO) and Remedial Plan (RP)

No.	Name	T, R, or P*	ABO or RP**	Order # or Plan #	Board Vote (Yes-No- Recuse)	Recused Board Members
29	Fawei Huang	R	ABO	2020-01829	9-0-0	-
30	Siamak Kiani Keivan	R	ABO	2020-01388	9-0-0	-
31	Walgreens #4314	P	ABO	2019-05332	8-0-1	Fernandez
32	1960 Pharmacy	P	ABO	2019-06141	7-0-2	Tijerina, Tisch
33	Nida Shahab	R	ABO	2020-00820	7-0-2	Tijerina, Tisch
34	Brookshire Brothers Pharmacy #23	P	ABO	2019-02512	7-0-2	Tijerina, Tisch
35	Cynthia Lynn Petrash	R	ABO	2019-05438	7-0-2	Tijerina, Tisch
36	Stacey James Shirley	R	ABO	2019-05439	7-0-2	Tijerina, Tisch
37	Carepharm Pharmacy LTC	P	ABO	2020-03850	7-0-2	Tijerina, Tisch
38	Comet Specialty Pharmacy	P	ABO	2020-01120	9-0-0	-
39	Joseph Ghebremichael	R	ABO	2020-01121	9-0-0	-
40	CVS/pharmacy #7401	P	ABO	2019-04001	8-0-1	Tijerina
41	John Austin Wuensche	R	ABO	2020-00168	8-0-1	Tijerina
42	CVS/pharmacy #7808	P	ABO	H-18-047-B	7-0-2	Henke, Tijerina
43	Goliad Pharmacy, Inc.	P	ABO	2020-01135	7-0-2	Tijerina, Tisch
44	Lawrence Semander	R	ABO	2020-02748	7-0-2	Tijerina, Tisch
45	Meds for Vets, LLC	P	ABO	2020-02718	7-0-2	Tijerina, Tisch
46	Neighborhood Pharmacy	P	ABO	2020-00288	8-0-1	Montemayor
47	Jose Ignacio Gutierrez	R	ABO	2020-00969	8-0-1	Montemayor
48	Dien Nguyen	R	ABO	2020-03891	8-0-1	Montemayor
49	Pharmacy at Cullen Commons	P	ABO	2019-02924	7-0-2	Tijerina, Tisch
50	Josephine V. Daniels	R	ABO	2020-00379	7-0-2	Tijerina, Tisch
51	Southside Pharmacy 4	P	ABO	2019-04858	8-0-1	Montemayor
52	Sterling Pharmacy	P	ABO	2020-03099	7-0-2	Tijerina, Tisch
53	Tarrytown Pharmacy	P	ABO	2019-05154	7-0-2	Henke, Guerrero
54	Myron Joseph Thompson	R	ABO	2019-05943	7-0-2	Tijerina, Tisch
55	U.S. Drug Mart No. 4	P	ABO	2020-01890	8-0-1	Montemayor
56	Sylvester Chinagorom Udeze	R	ABO	2020-00284	7-0-2	Henke, Guerrero
57	<i>Confidential</i>	R	ABO	2020-03461	8-0-1	Montemayor
58	<i>Confidential</i>	R	ABO	2020-01205	7-0-2	Tijerina, Tisch
59	<i>Confidential</i>	R	ABO	2020-03693	8-0-1	Montemayor
60	<i>Confidential</i>	R	ABO	2020-03498	8-0-1	Montemayor
61	<i>Confidential</i>	R	ABO	2020-03414	8-0-1	Montemayor
62	Drew Robert Bakken	R	RP	2020-01259	7-0-2	Tijerina, Tisch
63	Farmacia La Unica	P	RP	2020-01615	8-0-1	Montemayor

*Technician or Technician Trainee (T), Pharmacist (R), and Pharmacy (P)
 **Agreed Board Order (ABO), Default Board Order (DBO), and Remedial Plan (RP)

J. Miscellaneous

- Items to be Placed on Agenda for November 3, 2020 Board Meeting
 - Request from Texas Society of Health-System Pharmacists
Concerning Prescription Monitoring Program

- Review of Board's Mission Statement
- Discussion of and Possible Action on Upcoming Meetings

Ms. Benz reminded Board Members about upcoming informal conferences.


Mr. Tisch made a motion to adjourn the meeting. The motion was seconded by Mr. Guerrero.

President Spier adjourned the meeting at 2:54 p.m.

APPROVED:



Julie Spier, R.Ph.
President



Allison Vordenbaumen Benz, R.Ph., M.S.
Executive Director/Secretary

November 3, 2020