

Tennessee Board of Pharmacy
Board Meeting
May 10-11, 2016

TENNESSEE BOARD OF PHARMACY
665 Mainstream Drive, Iris Room
Nashville, TN
May 10-11, 2016

BOARD MEMBERS PRESENT

Will Bunch, D.Ph., President
Kevin Eidson, D.Ph., Vice President
Michael Dickenson, D.Ph.
Rissa Pryse, D.Ph.
Nina Smothers, D.Ph.
Joyce McDaniel, Consumer Member

STAFF PRESENT

Reginald Dilliard, Executive Director
Stefan Cange, Assistant General Counsel
Terry Grinder, Pharmacy Investigator
Tommy Chrisp, Pharmacy Investigator
Richard Hadden, Pharmacy Investigator
Scott Denaburg, Pharmacist Investigator
Larry Hill, Pharmacy Investigator
Andrea Miller, Pharmacy Investigator
Sheila Bush, Administrative Manager

BOARD MEMBER ABSENT

Debra Wilson, D.Ph.

STAFF ABSENT

Rebecca Moak, Pharmacy Investigator
Robert Shutt, Pharmacy Investigator

The Tennessee Board of Pharmacy convened on Tuesday, May 10, 2016, in the Iris Room, 665 Mainstream Drive, Nashville, TN. A quorum of the members being present, the meeting was called to order at 9:00 a.m.

The minutes from the March 8-9, 2016 meeting was presented. Dr. Smothers made the motion to approve the minutes as presented. Dr. Eidson seconded the motion. The motion carried.

Office General Counsel

Mr. Cange informed the board that there are 35 cases for discipline at the Office of General Counsel and 10 of those cases are in litigation.

Mr. Cange stated that the rules from the December 18, 2015 rulemaking hearing are still under review by the Attorney General's office.

Mr. Cange informed the board that the RFI/RFGP process is ongoing and that the responses have been reviewed by Dr. Dilliard, Dr. Bunch and counsel. The next step is to draft a scope of services for the RFGP and send it to the Procurement Office.

Legislative Report

Ben Simpson, Legislative Liaison for the Department of Health, presented the following legislation to the board.

Public Chapter 912

As enacted, creates nonresidential office-based opiate treatment facilities. This legislation would require any facility that meets the definition of a nonresidential office-based opiate treatment facility to attain licensure as such by the Department of Mental Health & Substance Abuse Services. Nonresidential office-based opiate treatment facilities refers to facilities that are prescribing buprenorphine or products containing buprenorphine to 50% or more of its patients and to one hundred fifty patients or more. This legislation would require the TDMH&SAS to promulgate rules in consultation with the Department of Health. This act will take effect on January 1, 2017.

Public Chapter 763

Permits licensees whose licenses from a health-related board have expired to obtain reinstatement on the basis of a plan developed by the department of health for periodic payment of past due renewal fees and unattained continuing education instead of the current requirement of payment of all past due fees before reinstatement. This act will take effect on July 1, 2016.

Public Chapter 942

This public chapter authorizes a pharmacist to provide hormonal contraceptives according to a valid collaborative pharmacy practice agreement containing a non-patient specific prescriptive order and standardized procedures developed and executed by one or more authorized prescribers. Under such circumstances, the pharmacist may provide hormonal contraceptives to

1. Individuals who are: 18 years of age or older;
2. Individuals who are (2) under 18 years of age, if the individual is an emancipated minor.

This act was effective upon the Governor's signature on April 27, 2016.

Public Chapter 959

This bill authorizes the commissioner of health or the commissioner's designee to obtain records maintained by any licensed facility licensed to facilitate investigations and inquiries concerning opioid drug abuse, opioid drug overdoses, and opioid overdose deaths. Such facilities must provide records in the most efficient and expedient means possible. To determine these means, the department must:

- Consult with stakeholders to develop data reporting elements and a short term mechanism for near real-time electronic access to these data elements by July 1, 2016.
- Implement the short-term reporting system by October 1, 2016.
- Consult with stakeholders to develop a long-term electronic real-time data reporting plan utilizing electronic processes for opioid drug abuse, overdoses, and overdose deaths by January 1, 2017.

This legislation took effect on April 27, 2016.

Public Chapter 805

This act authorizes a health care prescriber to prescribe epinephrine auto-injectors in the name of an authorized entity for use in accordance with this bill, and authorizes pharmacist and health care prescribers to dispense epinephrine auto-injectors pursuant to a prescription issued in the name of an authorized entity.

Public Chapter 973

This act establishes requirements for the dispensing of opioids and benzodiazepines by physicians and other healthcare providers. Those requirements are:

- Dispenses opioids and benzodiazepines, as directed by the patient's prescription, in safety-sealed, prepackaged containers stamped with the manufacturer's national drug code (NOC) number.
- Administers and records pill-counts for opioids or benzodiazepines in order to ensure patient compliance with the prescription.
- Dispenses non-controlled substances which amount to at least fifty percent (50%) of the prescriptions filled annually from the practice.
- Submits controlled substance dispensing information to the controlled substances monitoring database under title 53, chapter 10, part 3, according to the requirements of state law.

This act took effect on April 27, 2016.

Public Chapter 990

This legislation requires an insurer to reimburse and provide coverage for telehealth services provided by a practitioner licensed in Tennessee, regardless of the patient's location. This act will take effect on January 1, 2017.

Public Chapter 859

Revises provisions governing construction of the Uniformed Administrative Procedures Act and hearings regarding rules; requires an agency to demonstrate by convincing evidence, certain factors that justify continued existence of an agency rule. This act will take effect on July 1, 2016.

Public Chapter 1002

Public Chapter 1002 enacts the "Tennessee Prescription Safety Act of 2016," which revises regulation of controlled substances primarily by means of procedures involving the controlled substances database. This act was effective upon the Governor's signature on April 27, 2016. The new act has four major highlights.

- Removes the sunset from the Prescription Safety Act of 2012 making the act permanent.

- Creates an operations committee to provide a check and balance the commissioner of health's rulemaking authority.
- Requires that a dispenser shall check the database when dispensing a controlled substance to a new patient or once a year to a known patient on a maintenance medication.
- Creates a professional duty to check the database before prescribing to someone exhibiting drug seeking behavior.

Public Chapter 719

Allows licensing authorities for certain state regulatory agencies to consider whether a person's conviction for the commission of a felony bears directly on the person's fitness to practice competently when making determinations regarding the person's licensure status. This act was effective upon the Governor's signature on April 6, 2016.

Public Chapter 656

As enacted this act permits a pharmacist to dispense medication in a quantity that varies from the prescription under certain circumstances, so long as the units dispensed do not exceed a 90-day supply.

Public Chapter 631

As enacted this act allows a pharmacy to designate a pharmacy services administrative organization to file and handle an appeal challenging the maximum allowable cost set for a particular drug or medical product or device on behalf of the pharmacy.

Public Chapter 596

As enacted, authorizes the chief medical officer of the department of health to implement a state-wide collaborative pharmacy practice agreement for opioid antagonist therapy with pharmacists.

Public Chapter 813

As enacted, prohibits a state employer from inquiring about an applicant's criminal history on an initial application form for employment under certain circumstances; excludes certain state employers from this prohibition.

Complaint Summary

Case 1.

Complainant employer alleged Respondent pharmacist took 18 tablets of Adderall without authorization. Respondent left a post-it note in the perpetual log book indicating he was borrowing them until he could get a new prescription. Respondent was terminated by employer.

Board investigator obtained sworn statements from staff and the Respondent. A hand-written post-it note was found which indicated Respondent had borrowed "12," then crossed it out and wrote "18" and changed the day he would see the prescriber from "Wednesday" to "Friday." Respondent brought in a new prescription and picked up the remainder on the day of termination.

Respondent admitted he knows "borrowing" is illegal, but claimed stress about a family member having lung surgery clouded his judgment. His prescriber cannot prescribe electronically and timing for an office visit would have interfered with time spent with the family member. Respondent also stated that he had previously gone without the medication and suffered severe withdrawal and depression. Respondent's sworn statement included "I clearly made a poor decision and regardless of my benign motive and efforts toward transparency I broke the law. Aside from the professional and financial consequences of my actions, more than anything I am ashamed to have put myself in this situation. Ultimately this is not a matter of impairment or theft but rather one of judgment and I can absolutely assure the Board that I am fully competent and of sound mind to be an excellent Pharmacist."

Investigator reviewed Respondent's medication profile and CSMD records. There were no excessive early fills and no overlap of prescriptions from multiple prescribers. During the investigation, it was discovered Respondent's pharmacist license expired 9/30/15. Work records revealed Respondent had worked on an expired license until 2/18/16 (about 4 ½ months).

Prior Discipline: None

Recommendation: Reprimand, 2 years of probation, \$4,500 civil penalty

Dr. Eidson made the motion to authorize a formal hearing with a public reprimand, 2 year probation and \$4500.00 civil penalty. Dr. Dickenson seconded the motion. The motion carried.

Case 2.

Board staff members were notified by Mississippi Board that Respondent technician was arrested for forging 2 prescriptions for Promethazine with Codeine and 1 prescription for Loratadine.

Board investigator retrieved information from the arresting officer including a statement from the pharmacist that caught the forgery and a statement from the prescriber denying authorizing the prescriptions. Respondent provided a sworn statement admitting forgery of the promethazine with codeine prescriptions and Respondent verbally admitted forging the loratadine prescription.

Prior Discipline: None

Recommendation: Revoke

Ms. McDaniel made the motion to authorize a formal hearing with revocation. Dr. Pryse seconded the motion. The motion carried.

Case 3.

Patient filed complaint alleging Respondent pharmacy and pharmacist refused to fill a legitimate prescription even after speaking to the prescriber's nurse. Patient has used a prescriber in Chicago for 25 years. Patient moved to Tennessee in 2008 and could not find a satisfactory prescriber so she visits the prescriber's office when visiting family and friends, at least on a yearly basis. Patient feels the pharmacist exceeded his authority by refusing to fill the prescription and violated HIPAA by asking for a diagnosis and other information from the prescriber.

Board Investigator obtained sworn statements from both pharmacists at the pharmacy. Patient had recently transferred to Respondent pharmacy. Pharmacist 1 noticed the Alprazolam prescription was phoned in by a prescriber in Illinois, and called the prescriber's office to verify the prescription and document a diagnosis. Pharmacist 1 was told the prescriber was on vacation and staff could not give out the diagnosis. Pharmacists later discovered the same prescription had been phoned in and dispensed by a competitor on the same day, but that discovery was made after the Respondent had filled the prescription. Approximately a month later, a different prescriber called in another prescription. Pharmacist 2 told Complainant patient that the prescription would not be filled because the patient should have an extra month's supply. Pharmacist 2 stated the patient and spouse became very angry, used profanity and stated that there are no good prescribers in Tennessee. Both pharmacists stated they used their professional judgment in deciding not to fill the prescription.

Prior Discipline: None

Recommendation: Dismiss

Dr. Eidson made the motion to accept counsel's recommendation. Ms. McDaniel seconded the motion. The motion carried.

Case 4. 2

PIC for Case 3 above.

Prior Discipline: None

Recommendation: Dismiss

Dr. Smothers made the motion to accept counsel's recommendation. Dr. Eidson seconded the motion. The motion carried.

Case 5.

Corporate management notified Board Investigator of Respondent technician's erratic and suspicious behavior resulting in an internal investigation for diversion. Complainant reported only small amounts missing from two pharmacy locations.

Board Investigator obtained a copy of Respondent's signed statement admitting to stealing APAP #3 in small amounts on several occasions. According to DEA 106 forms filed, 52 tablets were missing from one location and 11 at another location.

Prior Discipline: None

Recommendation: Revoke

Dr. Smothers made the motion to authorize a formal hearing for revocation. Dr. Dickenson seconded the motion. The motion carried.

Case 6.

Complainant patient alleged generic Celexa prescription was refilled with a statin drug resulting in patient becoming severely depressed, anxious, experiencing panic and unable to perform daily tasks for about 3 weeks until the mistake was discovered.

Board Investigator obtained written statements from the dispensing pharmacist and the pharmacist on duty when the mistake was discovered. The misfill was confirmed as Atorvastatin being dispensed instead of Citalopram. According to the pharmacy software, and the pharmacist's memory, the refill was processed but the incorrect NDC was discovered so it was credit returned so it could be reprocessed. Unfortunately, it appears that it was reprocessed the same way and the error was not caught again before dispensing. Atorvastatin and Citalopram (both from the same generic manufacturer and in similar looking bottles) were kept in a fast mover section but have now been moved so this mistake does not happen again.

Prior Discipline: None

Recommendation: LOW for misfill

Dr. Dickenson made the motion to issue a Letter of Warning for the misfill. Dr. Pryse seconded the motion. The motion carried.

Case 7.

This is the pharmacy named in the complaint in Case 6 above.

Prior Discipline: None

Recommendation: Dismiss

Dr. Dickenson made the motion to accept counsel's recommendation. Dr. Pryse seconded the motion. The motion carried.

Case 8.

Complainant (spouse of patient) alleged unprofessional conduct when Respondent pharmacy overcharged on a prescription that had always been \$10. It was also alleged that the pharmacy blamed the insurance and an insurance representative blamed the pharmacy.

Board Investigator obtained documentation from the pharmacy and determined that although there may have been ineffective communications between the pharmacy and patient, there was no violation by the pharmacy. The prescription in question was Pramosone which is a CMS excluded drug with a cash price of \$374.68. When processed as generic, the cash price was \$159.99. Patient's previous prescription was Hydrocortisone valerate 0.2%, which did have a copay of \$10. It was also discovered that the patient's insurance carrier in 2015 did cover generic Pramosone with a copay of \$10, but the current carrier does not cover it because it is a DESI drug.

Prior Discipline: None

Recommendation: Dismiss

Dr. Dickenson made the motion to accept counsel's recommendation. Dr. Smothers seconded the motion. The motion carried.

Case 9.

Complainant patient alleged Respondent pharmacy and pharmacist misfilled Bacitracin ophthalmic ointment with Mupirocin topical ointment. Complaint states that the medication was picked up at the drive-thru and that no one at the pharmacy counseled him. Patient had several eye procedures prior to using the ointment. He states his focus goes in and out, the Mupirocin caused burning in his eyes and vision has gone down from 20/20 to 20/25. Patient told Investigator he is being treated for the irritation and is scheduled to see his eye doctor for more follow up for using the incorrect medication.

Board Investigator obtained documentation verifying the misfill. PIC was also the pharmacist that verified the prescription before dispensing. Investigator noted that this pharmacist worked 8am to 10pm that day. The RX was entered at 4:15pm and sold at 4:59pm.

Patient told Investigator he has neither returned the wrong medication nor received the correct medication because he does not want to return to the pharmacy.

Prior Discipline: None

Recommendation: \$1000 civil penalty for counseling

Dr. Eidson made the motion to authorize a formal hearing with a \$1000.00 civil penalty for failure to offer patient counseling to the pharmacy. Dr. Smother seconded the motion. The motion carried.

Case 10.

PIC and verifying pharmacist for Case 9 above.

Prior Discipline: LoW for misfill, 2014

Recommendation: \$1000 civil penalty for counseling

Dr. Eidson made the motion to authorize a formal hearing with a \$1000.00 civil penalty for failure to offer patient counseling to the PIC. Dr. Smother seconded the motion. The motion carried.

Case 11.

Complainant patient alleged unprofessional conduct by Respondent pharmacist. Respondent pharmacist allegedly yelled in front of other patients on 2 separate occasions that it was too early to fill Complainant's pain medication. Patient states he was embarrassed and believes privacy rights were violated.

Board Investigator obtained a sworn statement from Respondent denying yelling, denying being unprofessional and denying that she ever said what type medication. Respondent stated that on the day in question, she noticed the patient was dropping off a prescription for Hydrocodone from a different prescriber than had prescribed the same drug a few days earlier and told the patient she would not fill the prescription until the other one ran out. Respondent offered to call both prescribers to discuss it but the patient did not want her to call either prescriber. According to the Respondent, the patient still uses the same pharmacy.

Prior Discipline: None

Recommendation: Dismiss

Dr. Dickenson made the motion to accept counsel's recommendation. Dr. Pryse seconded the motion. The motion carried.

Case 12.

Complainant prescriber alleged a misfill by Respondent pharmacy for filling MS IR 15mg (to take ½ tablet every 6 hours PRN) with MS Extended Release 15mg and instructing the patient to break the tablet in half.

Board Investigator obtained sworn statements from the PIC and from the dispensing pharmacist. Both stated they had not been made aware of the error but would follow up with the patient and prescriber

now that Board Investigator had brought it to their attention. The dispensing pharmacist admitted the prescription was filled with ER but also stated that the prescription did not say IR.

Investigator obtained a copy of the prescription and it does not designate IR, however, it is not acceptable practice to break an ER in half. The allegation is confirmed.

Prior Discipline: None

Recommendation: Dismiss as to pharmacy

Dr. Eidson made the motion to accept counsel's recommendation. Dr. Dickenson seconded the motion. The motion carried.

Case 13.

This is the dispensing pharmacist for Case 12 above.

Prior Discipline: None

Recommendation: LOW for misfill

Dr. Eidson made the motion to issue a Letter of Warning for the misfill. Dr. Dickenson seconded the motion. The motion carried.

Case 14.

Complainant prescriber alleged Respondent pharmacy logged a patient's name incorrectly in the CSMD. Complainant alleged that several times the pharmacy staff denied having the incorrect name and told the prescriber it is not a pharmacy issue and there is nothing they can do about it. Complaint states that the prescriber contacted staff at CSMD multiple times and has been told each time that it is not a CSMD issue but a pharmacy level issue.

Board Investigator visited the Respondent pharmacy and reviewed computer records and printouts. The incorrect name reported by the prescriber does not show up in the pharmacy system. The correct name of the patient is listed in the pharmacy system and his profile contains the correct medication list. However the CSMD report does show the alleged incorrect name. (Example: patient's name is John Doe. Pharmacy records show John Doe. However, CSMD records show Doe Doe, with no record for John Doe.) Investigator contacted CSMD to discuss the problem, which may be occurring when information is uploaded from the pharmacy's reporting system into the CSMD. A CSMD staff member is working on that issue. No reason for the error or violation by the pharmacy staff could be determined.

Prior Discipline: None

Recommendation: Dismiss

Dr. Eidson made the motion to accept counsel's recommendation. Dr. Smothers seconded the motion. The motion carried.

Case 15.

This is the PIC for Case 14 above.

Prior Discipline: None

Recommendation: Dismiss

Dr. Eidson made the motion to accept counsel's recommendation. Dr. Smothers seconded the motion. The motion carried.

Case 16.

During a periodic inspection, Board Investigator noted an excess of expired products intermingled with drug stock on pharmacy shelves. A total of 65 packages that were Legend Drugs (the oldest being 10/14) and 11 OTC products (the oldest being 4/14) were found on the shelves.

Board Investigator spoke to PIC who blamed a pharmacy technician and said the issue would be addressed with the tech.

Prior Discipline: None

Recommendation: \$760.00 civil penalty to the pharmacy

Dr. Eidson made the motion to authorize a formal hearing with a \$760.00 civil penalty to the pharmacy. Dr. Dickenson seconded the motion. The motion carried.

Case 17.

This is the PIC for Case 16 above.

Prior Discipline: Probation in 1997, "unprofessional conduct," original consent order not available online. License no longer on probation.

Recommendation: LOI to PIC to follow 1140-3-.11

Dr. Eidson made the motion to issue a Letter of Instruction to the PIC concerning board rule 1140-3-.11. Dr. Dickenson seconded the motion. The motion carried.

Case 18.

Board Investigator went to perform a relocation inspection only to find that the Respondent MWD had actually moved 10 months earlier. On the advice of counsel, the manager on site refused to give investigator a sworn statement.

Prior Discipline: None

Recommendation: \$1,000.00 civil penalty for 10 months at an unlicensed site.

Dr. Smothers made the motion to authorize a formal hearing with a \$1000.00 civil penalty for working 10 months at an unlicensed site. Ms. McDaniel seconded the motion. The motion carried. Dr. Eidson voted no.

Case 19.

Complainant patient alleged Respondent pharmacy shorted him 3 Subutex out of his prescription for 32 tablets. Patient also alleged this has happened before but he had not complained before.

Board Investigator interviewed Respondent pharmacy staff and obtained sworn statements that controlled substances are counted and initialed by two different people and that counting is performed directly in front of a video camera. Staff members stated that the camera footage clearly showed using a full bottle of 30 and adding 2 additional tablets. Two people verified and initialed the label. PIC refused to give the patient another 2 tablets. The allegation was not confirmed.

Prior Discipline: None

Recommendation: Dismiss

Dr. Smothers made the motion to accept counsel's recommendation. Dr. Pryse seconded the motion. The motion carried.

Case 20.

This is the PIC for Case 19 above.

Prior Discipline: \$200 civil penalty for unregistered technician, 2014

Recommendation: Dismiss

Dr. Smothers made the motion to accept counsel's recommendation. Dr. Pryse seconded the motion. The motion carried.

Case 21.

Complainant prescriber reported that patient's owner alleged Respondent pharmacy sold "Heartgard" without a valid prescription order, placing a canine patient in jeopardy because proper testing was not performed by a licensed veterinarian.

Board Investigator reviewed pharmacy records and interviewed staff. There was no evidence that the pharmacy dispensed the product without prescription. Product is not stocked at the pharmacy and is only ordered when a valid prescription is presented. There was no record of recently ordering or receiving the product, and no record of this patient at the Respondent pharmacy.

Prior Discipline: None

Recommendation: Dismiss

Dr. Dickenson made the motion to accept counsel's recommendation. Dr. Smothers seconded the motion. The motion carried.

Case 22.

Respondent technician was investigated by Loss Prevention after pills were found where the technician had been sitting during a performance review. Losses were discovered however Respondent denied any responsibility until confronted with video evidence. Respondent then wrote an admission statement admitting diversion of Oxycodone from two retail pharmacies and admitted being caught on video taking something from one hospital pharmacy, but claimed she did not remember what that was. Other drugs were discovered to be missing at the retail locations, but Respondent denies taking them. The internal investigation is ongoing.

Prior Discipline: None

Recommendation: Revoke

Dr. Eidson made the motion to authorize a formal hearing for revocation. Dr. Pryse seconded the motion. The motion carried.

Case 23.

Respondent technician, when questioned by a staff pharmacist, admitted removing 12 Hydrocodone APAP 10/325 from a patient's bag before dispensing it. Respondent provided Board Investigator with a sworn statement admitting the same. Respondent's employment was terminated.

Prior Discipline: None

Recommendation: Revoke

Dr. Dickenson made the motion to authorize a formal hearing for revocation. Dr. Eidson seconded the motion. The motion carried.

Case 24.

Complainant ex-employee made several allegations of tax fraud and billing fraud against Respondent pharmacy and pharmacist. A multi-agency investigation and site visit occurred in early 2015. Board Investigators accompanied the other agencies, reviewed records and interviewed Respondent pharmacist. No major Board related issues were found and minor issues were handled by educating the pharmacist. Board Investigator recently conducted a follow-up inspection and found no issues. Respondent told Investigator there had been no updates from any of the other agencies involved in the original visit.

Prior Discipline: None

Recommendation: Dismiss and reopen if fraud charges are filed at a later date.

Dr. Smothers made the motion to accept counsel's recommendation. Ms. McDaniel seconded the motion. The motion carried. Dr. Eidson abstained.

Case 25.

This is the Respondent pharmacist for Case 24 above.

Prior Discipline: None

Recommendation: Dismiss and reopen if fraud charges are filed at a later date.

Dr. Smothers made the motion to accept counsel's recommendation. Ms. McDaniel seconded the motion. The motion carried. Dr. Eidson abstained.

Case 26.

Anonymous complainant alleged Respondent pharmacy and pharmacist were unprofessional because techs were being left unattended, medications were being dispensed with no pharmacist present and non-pharmacist owner had keys to the pharmacy and sometimes opened the pharmacy before the pharmacist arrived.

Board Investigators observed opening of the pharmacy on at least 4 different dates and also observed for at least 2 occasions that the pharmacist did not leave for lunch. Investigators did find 1 occasion when the pharmacy was open and the pharmacist stated she had stepped across the hallway to the physician's office located in the same building. Respondent pharmacist told Investigators that she has disgruntled ex-employees that may have made allegations. The pharmacy does have back room areas used for paperwork and eating lunch which are not visible to the customer area. Respondent feels that being out-

of-sight may have contributed to the allegations. Respondent pharmacist and the non-pharmacist owner denied ever opening or entering the pharmacy unless the pharmacist was on the property. Both also stated only the pharmacist had keys to the pharmacy. Investigators educated them that the pharmacist should be in the pharmacy, not across the hall if the pharmacy is open. The allegations could not be confirmed.

Prior Discipline: None

Recommendation: Dismiss

Dr. Smothers made the motion to accept counsel's recommendation. Dr. Dickenson seconded the motion. The motion carried. Dr. Eidson and Dr. Pryse were recused and Ms. McDaniel abstained.

Case 27.

This is the Respondent pharmacist for Case 26 above.

Prior Discipline: None

Recommendation: Dismiss

Dr. Smothers made the motion to accept counsel's recommendation. Dr. Dickenson seconded the motion. The motion carried. Dr. Eidson and Dr. Pryse were recused and Ms. McDaniel abstained.

Case 28.

Board received DEA 106 indicating employee pilferage responsible for the loss of 2,684 Alprazolam 1mg, and 228 Suboxone 8mg/2ml SL Film. Loss Prevention was contacted for the name of the employee.

Board Investigator obtained a copy of a signed admission statement in which the Respondent admitted to stealing unknown amounts of Alprazolam and Suboxone from the pharmacy to give to a friend that is addicted. Respondent also admitted taking Chlorpheneramine for personal use.

Prior Discipline: None

Recommendation: Revoke

Dr. Smothers made the motion to authorize a formal hearing for revocation. Dr. Eidson seconded the motion. The motion carried.

Case 29.

Complaint was opened based upon FDA MedWatch advisory to "Pharmacy, Nursing, and Health Professionals" to not use sterile products from Respondent non-resident pharmacy due to a lack of

sterility assurance. The FDA bulletin also stated that a recall of all unexpired drug products that are intended to be sterile was recommended, but Respondent pharmacy had not voluntarily recalled any product as of publication date. Tennessee Board staff was notified that Respondent pharmacy was served with an Emergency Suspension Notice by their home state board. Tennessee Board staff then received Respondent's e-mail indicating that a circuit court had lifted the suspension of all pharmacy operations except sterile compounding pending a hearing in front of their Board.

Prior Discipline: None

Recommendation: Revoke

Ms. McDaniel made the motion to authorize a formal hearing for revocation. Dr. Smothers seconded the motion. The motion carried.

Case 30.

This is the Tennessee licensed PIC for case 29 above.

Prior Discipline: None

Recommendation: Revoke

Ms. McDaniel made the motion to authorize a formal hearing for revocation. Dr. Smothers seconded the motion. The motion carried.

Case 31.

Respondent pharmacist was arrested along with pharmacy staff during a multi-agency drug sting operation. All controlled substances and controlled substance records were seized and removed from the pharmacy. During interviews with Board Investigators, Respondent pharmacist/owner agreed to surrender his pharmacist license as well as the pharmacy license and DEA registration.

Prior Discipline: 3 years' probation in 2004 related to settlement of fraud allegations, \$400 civil penalty in 2010 for unregistered technician, 6 month suspension in 2012 for improper disposal of medication

Recommendation: Accept voluntary surrender

Dr. Smothers made the motion to accept the voluntary surrender of the respondent's pharmacist license. Ms. McDaniel seconded the motion. The motion carried.

Case 32.

Pharmacist owner of Respondent pharmacy was arrested along with pharmacy staff during a multi-agency drug sting operation. All controlled substances and controlled substance records were seized and

removed from the pharmacy. During interviews with Board Investigators, Respondent pharmacist/owner agreed to surrender his pharmacist license as well as the pharmacy license and DEA registration.

Prior Discipline: None

Recommendation: Accept voluntary surrender

Dr. Dickenson made the motion to accept the voluntary surrender of the respondent's pharmacy license. Dr. Smothers seconded the motion. The motion carried.

Case 33.

Respondent technician was arrested during a multi-agency drug sting operation. Allegations included selling prescription drugs illegally. All controlled substances and controlled substance records were seized and removed from the pharmacy.

Prior Discipline: None

Recommendation: Revoke

Dr. Eidson made the motion to authorize a formal hearing for revocation. Dr. Smothers seconded the motion. The motion carried.

Director's Report

Dr. Dilliard asked the board to consider hosting MALTAGON in 2019 instead of 2020. The Mississippi Board of Pharmacy is scheduled to host MALTAGON and NABP District III meeting in 2019. After discussion, the board decided to table the discussion for now.

Dr. Dilliard asked the board to approve travel for the Tennessee Pharmacist Association (TPA) 2016 Summer meeting scheduled for July 18-20, 2016 in Point Clear, AL. Dr. Eidson made the motion to authorize travel for the executive director, investigators, counsel and board members to attend. Ms. McDaniel seconded the motion. The motion carried. Dr. Eidson made the motion to authorize the cost of booth rental. Dr. Dickenson seconded the motion. The motion carried.

Dr. Dilliard presented a request from Andrea Marcket, D.Ph. to waive the internship hours and MPJE needed to reinstate her Tennessee pharmacist license. After discussion, Dr. Dickenson made the motion to grant Dr. Marcket's request. Dr. Pryse seconded the motion. The motion carried. Dr. Eidson voted no.

Consent Orders

Dr. Eidson made the motion to accept the consent orders as presented. Dr. Dickenson seconded the motion. The motion carried.

VIOLATED BOARD RULE 1140-03-.11
Super Discount Drugs, LLC, lic #417

REPRIMAND

Larry C. Worley, D.Ph.

REINSTATEMENT

April Anglea, D.Ph.
Terry S Moore, D.Ph.
Collis Campbell, D. Ph.

REVOKED

Joshua Perry, RT
Alexandra Barnette, D.Ph. (voluntarily surrender)
Amanda Sisco, RT

VIOLATED BOARD RULE 1140-07-.02(1)

Volunteer Pharmacy
Lindsey Clevinger, D.Ph.

VIOLATED BOARD RULE 1140-3-.01(1)(a) & (f)

Lanny R. Peters, D.Ph.

VIOLATED BOARD RULE 1140-2-.02(1)

Timothy Hoffman, D.Ph.
Martin Myers, III, D.Ph.
Yvette Bean, RT

Agreed Order

Jean Kolifrath, RT

Mr. Cange presented an agreed order signed by Ms. Kolifrath. Ms. Kolifrath's registration as a pharmacy technician will be revoked and she will be assessed cost. Dr. Smothers made the motion to accept the Agreed Order as presented. Dr. Eidson seconded the motion. The motion carried.

Waivers

Board rule 1140-01-.07(3) (b) 5(ii) & (iii)

Dr. Eidson made the motion to approve the request from **D'Andrea Skipwith**, D.Ph., to waive the one hundred and sixty (160) internship hours but she must successfully take and pass the MPJE. Dr. Smothers seconded the motion. The motion carried

Dr. Eidson made the motion to approve the request from **Phillip Douglass, D.Ph.**, to waive the one hundred and sixty (160) internship hours but he must successfully take and pass the MPJE. Dr. Dickenson seconded the motion. The motion carried.

Board rule 1140-03-.14 (12)

Dr. Eidson made the motion to approve the request from **Mary Potts, D.Ph.**, to be the pharmacist in charge of the two (2) automated dispensing machines located at Tennessee State Veterans Home in Humboldt, TN. Dr. Dickenson seconded the motion. The motion carried.

Appearance

Angela Dixon, RT

Ms. Dixon answered yes to the question that asked "Have you ever been charged or convicted (including a nolo contendere plea or guilty plea) of a felony or misdemeanor (other than a minor traffic offenses) whether or not sentence was imposed, suspended, expunged, or whether you were pardoned from any such offense?" Ms. Dixon has been convicted of DUI 11/14/2013, DUI 1st 12/16/2014 and has an arrest of DUI 3rd on 10/11/2015. After discussion, Dr. Eidson made the motion to deny Ms. Dixon's application for registration as a pharmacy technician. Dr. Dickenson seconded the motion. The motion carried.

Reinstatement

Brian Cole, D.Ph.

Dr. Cole requested to have his license reinstated. Dr. Cole's license was revoked on 08/3/2015. After discussion, Dr. Eidson made the motion to reinstate Dr. Campbell's license. Dr. Campbell's license will be on five (5) year probation once he has completed all the necessary requirements for reinstatement with the following conditions. Dr. Smothers seconded the motion. The motion carried.

(a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);

(b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. John Byrnes, except in the case of an emergency or upon proper referral from the Respondent's primary physician. Upon ratification of this order, the Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary care physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

(c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;

(d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;

(e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);

(f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

(g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he entered into with the Tennessee Pharmacist Recovery Network. Respondent shall return a copy of said contract with this consent order to the Board Office.

(h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years from the start date of probation; however, after a period of two (2) years' probation the respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon show of good causes. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without permission of the Board;

(i) Respondent shall complete all provisions required for the reinstatement of her license listed in Board Rule 1140-01-.07 (3) (a):

1. Provide written notice to the board requesting an active license;
2. Satisfy all past due continuing pharmaceutical education as required by the board;
3. Pay all cumulative license renewal fees and any applicable penalty fees for the period during which the license was inactive, delinquent, suspended or revoked;

Matthew Zeleznak, D.Ph.

Dr. Zeleznak requested to have his licensed reinstated. Dr. Zeleznak's license was revoked on 08/14/2015. After discussion, Dr. Smothers made the motion to reinstate Dr. Zeleznak's license. Dr. Zeleznak's license will be on five (5) year probation once he has completed all the necessary requirements for reinstatement with the following conditions. Dr. Eidson seconded the motion. The motion carried.

(a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);

(b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Stephen Cromer, except in the case of an emergency or upon proper referral from the Respondent's primary physician. Upon ratification of this order, the Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary care physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

(c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;

(d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;

(e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);

(f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

(g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he entered into with the Tennessee Pharmacist Recovery Network. Respondent shall return a copy of said contract with this consent order to the Board Office.

(h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years from the start date of probation; however, after a period of two (2) years' probation the respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon show of good causes. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without permission of the Board;

(i) Respondent shall complete all provisions required for the reinstatement of her license listed in Board Rule 1140-01-.07 (3) (a):

1. Provide written notice to the board requesting an active license;
2. Satisfy all past due continuing pharmaceutical education as required by the board;
3. Pay all cumulative license renewal fees and any applicable penalty fees for the period

during which the license was inactive, delinquent, suspended or revoked;

Robert Kilpatrick, D.Ph.

Dr. Kilpatrick requested to have his licensed reinstated. Dr. Kilpatrick's license was revoked on 03/13/2014. After discussion, Dr. Dickenson made the motion to reinstate Dr. Kilpatrick's license. Dr. Kilpatrick's license will be on lifetime probation once he has completed all the necessary requirements for reinstatement with the following conditions. Dr. Pryse seconded the motion. The motion carried.

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. William Daniel, except in the case of an emergency or upon proper referral from the Respondent's primary physician. Upon ratification of this order, the Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary care physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he entered into with the Tennessee Pharmacist Recovery Network. Respondent shall return a copy of said contract with this consent order to the Board Office.

(h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years from the start date of probation; however, after a period of two (2) years' probation the respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon show of good causes. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without permission of the Board;

(i) Respondent shall complete all provisions required for the reinstatement of her license listed in Board Rule 1140-01-.07 (3) (b):

1. Provide written notice to the board requesting an active license;
2. Satisfy all past due continuing pharmaceutical education as required by the board;
3. Pay all cumulative license renewal fees and any applicable penalty fees for the period during which the license was inactive, delinquent, suspended or revoked;
4. Successfully complete the jurisprudence examination
5. Complete one hundred and sixty (160) pharmaceutical internship hours within ninety (90) consecutive days

Jeremy Joiner, D.Ph.

Dr. Joiner requested to have his license reinstated. Dr. Joiner's license was revoked on 11/25/2015. After discussion, Dr. Pryse made the motion to reinstate Dr. Joiner's license. Dr. Joiner's license will be on five (5) year probation once he has completed all the necessary requirements for reinstatement with the following conditions. Ms. McDaniel seconded the motion. The motion carried.

(a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b);

(b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Dr. Tim Dibble, except in the case of an emergency or upon proper referral from the Respondent's primary physician. Upon ratification of this order, the Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary care physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

(c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;

(d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;

(e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);

(f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacist Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

(g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he entered into with the Tennessee Pharmacist Recovery Network. Respondent shall return a copy of said contract with this consent order to the Board Office.

(h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years from the start date of probation; however, after a period of two (2) years' probation the respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon show of good causes. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without permission of the Board;

(i) Respondent shall complete all provisions required for the reinstatement of her license listed in Board Rule 1140-01-.07 (3) (a):

1. Provide written notice to the board requesting an active license;
2. Satisfy all past due continuing pharmaceutical education as required by the board;
3. Pay all cumulative license renewal fees and any applicable penalty fees for the period during which the license was inactive, delinquent, suspended or revoked;

Appearance

Vanderbilt University Medical Center

James Manfred appeared before the board at the March 8-9, 2015 board meeting to ask for approval of Asteres ScriptCenter kiosk. The board tabled the discussion until the May meeting. The kiosk will be located outside of the Vanderbilt Medical Center Outpatient Pharmacy and Medical Center East Pharmacy for employees to pick up their prescription refills. Dr. Eidson made the motion to approve the Asteres ScriptCenter kiosk for Vanderbilt Medical Center Outpatient Pharmacy and Medical Center East Pharmacy for employees only. Dr. Smothers seconded the motion. The motion carried. Vanderbilt University Medical Center Outpatient Pharmacy and Medical Center East Pharmacy will be required to submit a report on how the machine is working, prescription dispensed and patient counseling.

Dr. Eidson made the motion to adjourn at 3:45 p.m. Dr. Dickenson seconded the motion. The motion carried.

May 11, 2016

The Tennessee Board of Pharmacy reconvened on Wednesday, May 11, 2016 in the Iris Room, 665 Mainstream Drive, Nashville, TN. A quorum of the members were present, the meeting was called to order at 9:05 a.m., by Dr. Bunch, president. Dr. Dickenson was absent.

Appearance

Board rule 1140-02-.02

Kristen Smith, D.Ph., PIC of Enclara Pharmacy appeared before the board to request an increase of the pharmacist to technician ratio from 4:1 to 6:1. After discussion, Dr. Eidson made the motion to approve the request to increase the pharmacist to technician ration to 6:1 as long as the additional technician is a certified technician. Dr. Dickenson seconded the motion. The motion carried.

Order Modification

T. Pat Rowan, D.Ph.

Dr. Rowan appeared before the board to request that he be allowed to be PIC. Dr. Rowan signed a consent order on 11/20/2015 placing her pharmacist license on 5 year probation and he would not be allowed to be PIC for 3 years of probation. After discussion, Dr. Smothers made the motion to amend Dr. Rowan's consent order and allow him to be PIC for six (6) weeks at ETSU Charitable Pharmacy. The PIC will be out of the out of the country. Ms. McDaniel seconded the motion. The motion carried. Dr. Eidson made the motion to amend Dr. Rowan's consent order and allow him to dispense controlled substances. Dr. Dickenson seconded the motion. The motion carried.

Patrick Ailey, D.Ph.

Dr. Ailey appeared before the board to request that he be allowed to be PIC. Dr. Ailey signed a consent order on 01/28/2016 placing her pharmacist license on 5 year probation and he would not be allowed to be PIC for 3 years of probation. After discussion, Dr. Dickenson made the motion to amend Dr. Ailey's consent order and allow him to be PIC at East End Pharmacy, Russellville, TN. Dr. Smothers seconded the motion. The motion carried.

Appearance

Application Review

Joshua Chapman, RT

Mr. Chapman answered yes to the question that asked "Have you ever been charged or convicted (including a nolo contendere plea or guilty plea) of a felony or misdemeanor (other than a minor traffic offenses) whether or not sentence was imposed, suspended, expunged, or whether you were pardoned from any such offense?" Mr. Chapman stated that he has been convicted of domestic violence (11/29 supervised probation). Documentation submitted also shows: probation violation on reckless driving 9/15/2014; assault 3/06/2010; failure to appear 5/7/08 and domestic assault (by intimidation) 9/8/06. After discussion, Ms. McDaniel made the motion to approve Mr. Chapman's application for registration as a pharmacy technician. Dr. Pryse seconded the motion. The motion carried. Dr. Dickenson voted no.

Christopher Webb, D.Ph.

Dr. Webb appeared before the board to report on his status. The board took no action.

General Discussion

Mr. Cange informed the board of a request to petition for a Declaratory Order from Publix. Publix's is seeking an interpretation of the federal Drug Supply Chain Security Act. Mr. Cange stated that while he has verbally agreed with the interpretation of the federal law and Publix does not need for its intracompany distribution facility in Florida to obtain a Tennessee license nor is it necessary for the facility to renew the license. Publix's would like it in writing. Mr. Cange stated that his would require a hearing for the Declaratory Order for the board's interpretation of the law but it will only be for this particular pharmacy and/or pharmacist license. After discussion, Ms. McDaniel made the motion to schedule a meeting for the Declaratory Order. Dr. Smothers seconded the motion. The motion was withdrawn. After further discussion, Dr. Eidson made the motion to send Publix a formal letter approving the opinion of the board in lieu of issuing a Declaratory Order. Dr. Dickenson seconded the motion. The motion carried.

Dr. Eidson made the motion to adjourn at 10:45 a.m. Dr. Dickenson seconded the motion. The motion carried.

The minutes were approved and ratified as amended at the July 26-27, 2016 board meeting.