

TENNESSEE BOARD OF PHARMACY  
665 Mainstream Drive, Poplar Room  
Nashville, TN  
January 22-23, 2014

**BOARD MEMBERS PRESENT**

Charles Stephens, D.Ph., President  
Nina Smothers, D.Ph.  
Will Bunch, D.Ph.  
Kevin Eidson, D.Ph.  
R. Michael Dickenson, D. Ph.  
Joyce McDaniel, Consumer Member  
Jason Kizer, D.Ph., Vice President

**STAFF PRESENT**

Reginald Dilliard, Executive Director  
Stefan Cange, Assistant General Counsel  
Jane Young, Chief General Counsel  
Terry Grinder, Pharmacy Investigator  
Richard Hadden, Pharmacy Investigator  
Scott Denaburg, Pharmacy Investigator  
Rebecca Moak, Pharmacy Investigator  
Tommy Chrisp, Pharmacy Investigator  
Robert Shutt, Pharmacy Investigator  
Andrea Miller, Pharmacy Investigator  
Larry Hill, Pharmacy Investigator  
Sheila Bush, Administrative Manager

The Tennessee Board of Pharmacy convened on Wednesday, January 22, 2014 in the Iris Room, 665 Mainstream Drive, Nashville, TN. A quorum of the members being present, the meeting was called to order at 9:04 a.m.

**Elections**

Dr. Stephens thanked the Board and Board staff for their cooperation and help during his leadership as president. Dr. Bunch made the motion to nominate Dr. Jason Kizer as president of the board. Dr. Eidson seconded the motion. The motion carried. Dr. Bunch made the motion to nominate Dr. Nina Smothers as vice president of the board. Dr. Dickenson seconded the motion. The motion carried.

**Minutes**

Dr. Eidson made the motion to approve the minutes from the November 13-14, 2013 and the December 11, 2013 meeting as amended. Dr. Smothers seconded the motion. The motion carried.

**Office of General Counsel**

Mr. Cange informed the board that the emergency rules were received from the Attorney General on January 20, 2014 and that they had some minor typographically errors. The errors have been corrected and the emergency rules were sent back January 21, 2014.

Mr. Cange informed the board that they will need to promulgate rules with reporting of controlled substance sales by manufacturer/wholesale/distributor license holders. This provision

was part of Public Chapter 430 (the Addison Sharp Prescription Regulatory Act of 2013). The Act took effect October 1, 2013 but the system to receive the reports was not finished until recently.

Mr. Cange informed the board that the Attorney General's Office has released Opinion 14-05. The Question asked in the Opinion was whether the Board had the statutory authority to enact a rule imposing a fee or charge on out-of-state compounding pharmacies, when that fee or charge was related to the cost of inspecting those pharmacies? Secondly, the Question asked whether the assessment of such fees violated the Commerce Clause. The Attorney General found that the language of T.C.A. 63-10-216 (the compounding bill passed last session), which requires license applicants to submit an inspection (conducted within the last 12 months) report from the regulatory authority where the facility is geographically located, precluded the Board's ability to conduct out of state inspections, rendering the question moot.

### **Complaint Summary**

#### **1.**

Complaint alleged that Respondent pharmacist was terminated from employment based on unprofessional conduct (sexual harassment) that allegedly occurred between December 2012 and January 2013. Respondent also self-reported a misdemeanor conviction for reckless driving in July, 2013.

Prior discipline: License revoked, September 2008; Reinstated February, 2010

**Recommendation:** Dimiss.

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

#### **2.**

Complaint alleged misfill by Respondent pharmacy. Complainant patient alleged that the manufacturer of the tablets they received a generic prescription from a different manufacturer (Company A) than what they had always gotten in the past (Company B). Complainant alleged that they suffered stomach aches, dizziness, and other undesirable side effects as a result of the switch. Respondent pharmacist alleges that they counseled the patient at the time of dispensing, and that the patient inquired about the manufacturer of their prescription. Respondent pharmacist informed the patient that the prescription was made by Company A; the patient accepted the prescription and paid for it. Investigation also indicated that pharmacy software may have been changed (without the knowledge of the Respondent pharmacist) after a merger between Company A and Company B.

Prior discipline: none

**Recommendation:** Dismiss.

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

3.

Complainant alleged that Respondent pharmacy changed the amount of prescription (two 90-day prescriptions with one refill into two 30-day prescriptions with five refills). When Complainant requested their prescription back, Respondent pharmacy could only transfer it to another pharmacy. Complainant alleged that the transfer pharmacy then only dispensed two 30-day prescriptions. Investigation revealed Complainant's prescriptions were entered into computer system (at both Respondent and transfer pharmacies) as 90-day supplies. Investigators concluded that the issue was likely due to Complainant's insurance.

Prior discipline: Respondent pharmacy was fined \$1000 for a counseling violation in 2008.

**Recommendation:** Dismiss.

Mr. Bunch made the motion to accept counsel's recommendation. Ms. McDaniel seconded the motion. The motion carried.

4.

Complainant alleged that Respondent pharmacy overcharged her for prescriptions. Complainant patient had a 90-day prescription with 2 refills, with \$30 copay. Review of records indicated that patient picked up a 30-day prescription with a copay of \$12, then a 90-day prescription with a copay of \$30, another 90-day prescription with a copay of \$30, and finally a 60-day prescription with a copay of \$30.

Prior discipline: none

**Recommendation:** Dismiss.

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

5.

Respondent pharmacist failed to report a misdemeanor conviction for reckless endangerment in November, 2011. Respondent pharmacist also failed to report misdemeanor convictions for two counts of harassment in April, 2013.

Prior discipline: none

**Recommendation:** Discuss.

Dr. Stephens made the motion to issue a Letter of Instruction for failure to report convictions and to authorize a formal hearing with 3 year probation. Dr. Eidson seconded the motion. The motion carried.

**6.**

Complainant patient alleged that Respondent pharmacy deliberately refused to dispense controlled substance prescriptions, and refused to provide an alternative location where Complainant could get the prescriptions filled, citing “new procedures.” Respondent pharmacy alleged that they did not have Complainant’s medication in stock, and that changes in pharmacy software no longer allowed them to view the inventories at sister stores, so they could not tell Complainant where to go to get their prescription filled.

Prior discipline: Respondent pharmacy was fined \$1000 for a counseling violation in 2009.

**Recommendation:** Dismiss.

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

**7.**

Complainant alleged that they had an adverse reaction (infected bursitis on right arm) to Pneumovax and Fluvirin injections given at Respondent pharmacy. Medical diagnosis did not link bursitis injection. Investigation also indicated that immunizing pharmacist offered patient the choice of one injection in each arm, or two injections in one arm, and that the patient chose two injections in a single arm.

Prior discipline: Respondent pharmacy was fined \$500 for a medication error in 2008.

**Recommendation:** Dismiss.

Dr. Smothers made the motion to accept counsel’s recommendation. DR. Stephens seconded the motion. The motion carried.

**8.**

Complainant alleged unprofessional conduct on the part of employees at Respondent pharmacy (pharmacist-on-duty and technician). Complainant alleged that employees were rude and condescending towards the patient, belittled the fact that Complainant had TennCare and laughed at Complainant when they asked employees why TennCare didn’t cover one of the medications they had been prescribed (Robitussin AC). Statement from Respondent technician alleges that Complainant became irate when he informed them that they were using an out-of-date TennCare

card with an incorrect ID number. Respondent did admit to laughing at Complainant, but claimed it was after Complainant, who was on their cell phone at the time, loudly complained about Respondent technician's alleged behavior.

Prior discipline: none

**Recommendation:** Dismiss.

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

**9.**

Respondent technician was terminated for removing controlled substances from the pharmacy without proper authorization or a prescription.

Amount and Type of Controlled Substances Listed on DEA 106:

831 alprazolam 2mg  
121 hydrocodone 10/325mg  
4236 hydrocodone 10/500mg

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.

**10.**

Complainant alleged misfill by Respondent pharmacy caused their pet to overdose. Investigation indicates that misunderstanding between dispensing pharmacist and veterinarian (conversation conducted entirely via text message with Vet's "on call service" between 3:00 and 6:19pm) resulted in misfill. Log of text messages reproduced below:

*Respondent pharmacist:* "I don't have Tribissen. sub bactrim reg 400/80 or 800/160 for [patient name]"

*Veterinarian:* "I need the dose I scripted in mg...who'll I which was... 120? could use ¼ of 480"

*Respondent pharmacist:* "120, I'll 1 & ½ the reg which gives 120 trimethoprim"

*Veterinarian:* "Yes" (and then in a subsequent text) "Sounds good"

Prior discipline: none

**Recommendation:** Discuss.

Dr. Smothers made the motion to issue a Letter of Warning to the dispensing pharmacist for concerning the use of text messaging for clarification of dosage when a phone call should have been used. Dr. Eidson seconded the motion. The motion carried.

**11.**

Complainant alleged unprofessional conduct by Respondent pharmacist, who refused to dispense Sudafed to Complainant. Respondent pharmacist alleged that they determined Complainant, who presented with symptoms of chest congestion, but did not claim any nasal congestion, did not have any medical need for Sudafed and as such, could not dispense any to them.

Prior discipline: none

**Recommendation:** Dismiss.

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

**12.**

Complainant alleged unprofessional conduct on the part of Respondent pharmacist, who refused to fill a controlled substance prescription from a particular pain management practice. Respondent pharmacist then allegedly ordered Complainant to leave their store after Complainant asked why Respondent would not fill their prescription. Respondent pharmacist alleged that they first told Complainant that they had not verified their stocks of the prescribed drug, and that after further consideration of other factors (dosage and quantity of C-II opioid analgesics prescribed, the Complainant had no patient history with the pharmacy and had told the pharmacist that they had driven across town to fill the prescription), informed the Complainant that they would not fill the prescription.

Prior discipline: none

**Recommendation:** Dismiss.

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

**13.**

Respondent wholesaler was implicated in a complaint forwarded by the Missouri Board of Pharmacy. Respondent wholesaler allegedly purchased "gray market" drugs from a wholesaler in

Arizona (the Missouri Board was investigating this Arizona company). Investigation did not reveal evidence of a violation of Tennessee law.

Prior discipline: none

**Recommendation:** Dismiss.

Dr. Dickenson made the motion to defer until the results from the Missouri Board of Pharmacy investigation have been received. Dr. Eidson seconded the motion. The motion carried.

**14.**

Complainant alleged misfill by Respondent pharmacy. Respondent dispensed Opana ER instead of Opana IR. Written prescription called for "Opana" (without specifying ER), and specified that the medicine was "for BTP" (break-through pain). Respondent pharmacist admitted error, did not realize that Opana came in IR form.

Prior discipline: none

**Recommendation:** Letter of Warning.

Dr. Stephens made the motion to issue a Letter of Warning to the dispensing pharmacist. Dr. Smothers seconded the motion. The motion carried.

**15.**

Respondent technician was terminated for removing controlled substances from the pharmacy without proper authorization or a prescription. Respondent admitted to diverting controlled substances on numerous occasions. Termination was initially reported to the Board in May, 2012. Evidence from Complainant (Loss Prevention statement) was not received until August 29, 2013. Respondent technician's registration expired in November, 2012 and Respondent technician has not renewed their registration since.

Prior discipline: none

**Recommendation:** Dismiss, but flag Respondent's profile in case they ever attempt to renew.

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

**16.**

Anonymous complaint alleged that Respondent pharmacy was shipping controlled substance prescriptions to physicians' offices, rather than to patients. Respondent pharmacy admitted that they had shipped controlled substance prescriptions to physicians' offices in the past, but had

discontinued the practice and will only ship to patients now (and henceforth).

Prior discipline: none

**Recommendation:** Letter of Warning.

Dr. Stephens made the motion to issue a Letter of Warning. Dr. Dickenson seconded the motion. The motion carried.

**17.**

Complaint generated pursuant to periodic inspection. Inspection revealed that PIC at Respondent pharmacy had failed to complete annual continuing education requirements for sterile compounding (required by Board Rule 1140-07-.02(1) (c) and 1140-07-.02(2) (b)). Further, there was no documentation for aseptic technique testing and evaluation, nor had any been performed (required by Board Rule 1140-07-.02(6)). Inspection also revealed that laminar flow hood had not been changed “in about a year” (in the words of Respondent PIC).

Prior discipline: none

**Recommendation:** Letter of Warning and require submission of a CAP within 30 days.

Dr. Stephens made the motion to issue a Letter of Warning and require submission of a CAP within 30 days. Dr. Eidson seconded the motion. The motion carried.

**18.**

Respondent wholesaler/distributor, which held two licenses for separate facilities, closed down without notifying the Board. Investigators have been unable to locate owner. Files and product were removed at the time of closure, but no notification of where they were sent was provided.

Prior discipline: none

**Recommendation:** Dismiss.

Dr. Stephens made the motion to accept counsel’s recommendation. Dr. Smothers seconded the motion. The motion carried.

**19.**

Respondent pharmacy was found to have closed without notifying the Board. Respondent pharmacy’s license expired January 31, 2013. Failure to notify was discovered during attempted inspection on June 12, 2013.

Prior discipline: none

**Recommendation:** Civil penalty to PIC for failure to notify.

Dr. Stephens made the motion to authorize a formal hearing for a \$50.00 civil penalty for each month that the pharmacy closed until the date of inspection and a letter of instruction to the pharmacist. Ms. McDaniel seconded the motion. After further discussion, Dr. Dickenson amended the motion

**20.**

Respondent M/W/D self reported discipline by the Kentucky Board of Pharmacy regarding the untimely filing of technician registrations for workers at a Kentucky facility. Respondent paid a civil penalty of \$2900 to the Kentucky Board. The matter was referred to the Texas Board of Pharmacy, who declined to impose disciplinary action.

Prior discipline: none

**Recommendation:** Discuss.

Dr. Stephens made the motion to dismiss the complaint. Dr. Smothers seconded the motion. The motion carried.

**21.**

Anonymous complaint alleged that Respondent pharmacy was backdating prescriptions after selling bulk medications to appear to be patient specific, selling bulk compounded medications without a M/W/D license, retrieving prescriptions after the delivery of medications, and delivering controlled substances to prescribers' offices that are not patient-specific. Investigation could not substantiate allegations in complaint.

Prior discipline: none

**Recommendation:** Dismiss.

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

**22.**

Respondent pharmacist commented series of unprofessional social media posts by Colleague pharmacist. In the posts in question, Colleague pharmacist insulted Complainant, who'd gone on a date with Respondent (the date did not go well) and who subsequently bad-mouthed Respondent pharmacist (whether by word of mouth or via social media). Complainant happened to be a patient at the pharmacy where Respondent and Colleague worked, and Colleague stated, amidst other offensive and unprofessional remarks, "you should see [Complainant's] medication

list!” Colleague pharmacist subsequently self-reported impairment to the Board, and entered into a consent order whereby they agreed to the indefinite suspension of their license (the order was ratified at the December board meeting).

Prior discipline: none

**Recommendation:** Dismiss, while Respondent did comment on Colleague’s social media posts, their posts lacked the unprofessional character of Colleague’s.

Dr. Bunch made the motion to accept counsel’s recommendation. Dr. Eidson seconded the motion. The motion carried.

**23.**

Complainant manufacturer alleged that Respondent pharmacy was unlawfully producing and dispensing unapproved “new drugs” in violation of the federal Food, Drug, and Cosmetic Act. Respondent pharmacy has not been subject to enforcement action or any sort of final determination by FDA or other federal authorities.

Prior discipline: none

**Recommendation:** Dismiss

Dr. Smothers made the motion to accept counsel’s recommendation. Dr. Bunch seconded the motion. The motion carried.

**24.**

Respondent compounding pharmacy was suspected to be the source of tainted drugs. Internal investigation by pharmacy did not verify that contamination came from pharmacy. No other evidence provided which confirmed contamination or otherwise implicated Respondent pharmacy.

Prior discipline: none

**Recommendation:** Dismiss.

Dr. Stephens made the motion to accept counsel’s recommendation. Dr. Dickenson seconded the motion. The motion carried.

**25.**

Complaint generated after follow-up inspection. Technician was found to have been working without any registration from July, 2011 until March, 2013.

Prior discipline: none

**Recommendation:** Civil penalty of \$100/month to PIC for every month of unregistered work by technician

Dr. Stephens made the motion to authorize a formal hearing with a \$100.00 civil penalty per month to the PIC for allowing a pharmacy technician to work unregistered. Dr. Smothers seconded the motion. The motion carried.

**26.**

Respondent pharmacist was terminated after knowingly dispensing 3 expired Lortab prescriptions to technician without proper authorization or a prescription.

Prior discipline: none

**Recommendation:** Revoke.

Dr. Dickenson made the motion for the pharmacist to appear. After discussion, Dr. Dickenson withdrew his motion. Dr. Stephens made the motion to authorize a formal hearing with a \$1000.00 civil penalty for each prescription unlawfully dispensed and an 3 year probation. Dr. Bunch seconded the motion. The motion carried.

**27.**

Respondent technician was terminated for removing controlled substances from the pharmacy without proper authorization or a prescription (Respondent technician is the same technician from 201300112 above).

Amount and Type of Controlled Substances:

Lortab (statement says "3 prescriptions")

Prior discipline: none

**Recommendation:** Revoke.

Dr. Stephens made the motion to authorize a formal hearing with a \$100.00 civil penalty for each prescription unlawfully dispensed and three year probation. Ms. McDaniel seconded the motion. The motion carried.

**28.**

Respondent pharmacy and PIC were implicated in criminal investigation by Judicial District Drug Task Force. Respondent PIC, on several occasions, dispensed unlawful prescriptions that

were part of a convoluted diversion scheme. Prescriptions were written by a licensed prescriber, but some were made out to fictitious patients. Others were for actual patients, but were medically inappropriate. Board investigators concluded that while PIC was negligent, it was unintentional.

Prior discipline: none

**Recommendation:** Discuss.

Ms. McDaniel made the motion to dismiss the complaint. Dr. Stephens seconded the motion. The motion carried.

## 29.

Complaint alleged that Respondent pharmacist was arrested on domestic violence charges. The matter has not yet been resolved. Respondent pharmacist may have also moved without notifying the Board, but current permanent address is unknown.

Prior discipline: none

**Recommendation:** Discuss.

Dr. Stephens made the motion to dismiss the complaint. Dr. Smothers seconded the motion. The motion carried.

Mr. Cange presented correspondence from Respiratory Home Care, Inc. requesting that the civil penalty assessed by the board be reduced or if the civil penalty had to be paid that they be given 90 days to pay. After discussion, Dr. Bunch made the motion to keep the civil penalty amount the same and grant them 90 days to pay. Dr. Eidson seconded the motion. The motion carried.

## Waivers

### Board rule 1140-01-.07(3) (b) 5(i)

Ms. McDaniel made the motion to approve the request from **Jennifer Stables** to waive the internship hours but she must successfully take and pass the MPJE. Dr. Stephens seconded the motion. The motion carried.

Ms. McDaniel made the motion to approve the request from **Marvin Adams** to waive the internship hours but he must successfully take and pass the MPJE. Dr. Smothers seconded the motion. The motion carried.

Ms. McDaniel made the motion to approve the request from **Brandon Nesler** to waive the internship hours but he must successfully take and pass the MPJE. Dr. Eidson seconded the motion. The motion carried.

**Board rule 1140-01-.12(3) (e)**

Dr. Stephens made the motion to approve the request from **PharMerica at Dove of Collierville Healthcare and Rehab** to waive the requirement for the pharmacy to have hot and cold running water and refrigeration. Ms. McDaniel seconded the motion. The motion carried.

Dr. Stephens made the motion to approve the request from **PharMerica at King's Daughters & Sons** to waive the requirement for the pharmacy to have hot and cold running water and refrigeration. Dr. Smothers seconded the motion. The motion carried.

**Board rule 1140-03-.14(12)**

Dr. Stephens made the motion to deny the request from **Debralee Carroll, D.Ph.**, to be pharmacist in charge of the two automated dispensing machines at Primacy Healthcare and Rehab. Dr. Bunch seconded the motion. The motion carried.

Dr. Stephens made the motion to deny the request from **Fadeyi Tosin, R.Ph.** to be pharmacist in charge at PharMerica at Dove of Collierville and PharMerica at King's Daughters and Sons . Dr. Eidson seconded the motion. The motion carried.

**Appearance**

**Robert Wade, D.Ph. (presented at the November 2013 board meeting)**

Dr. Wade is appearing before the board because he answered no to the question that asked "Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated, or otherwise been subject to disciplinary action (public or private) by any board of pharmacy or other state authority?" Documentation submitted indicates that Dr. Wade was denied renewal of his IL pharmacist license on 3/11/2010 due to discipline by the MI BoP. His MI license was placed on probation for 4 months on 5/25/2007 for error in prescribing, dispensing or administering medication. On 1/6/2011, his MO pharmacist license was reprimanded or censure due to disciplinary action in another state. After discussion at the November 2013 board meeting, Ms. McDaniel made the motion to deny Dr. Wade's application for licensure by reciprocity. Dr. Smothers seconded the motion. The motion carried. After discussion, Ms. McDaniel made the motion to approve Dr. Wade's application for licensure by reciprocity. Dr. Smothers seconded the motion. The motion carried.

**Eric Belew, RT**

Mr. Belew is appearing before the board because he answered yes to "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?" Documentation submitted shows that Mr. Belew was convicted on 05/20/2013 for simple possession schedule VI

and underage consumption. He was sentenced to 11 months and 29 days of supervised probation. After discussion, Ms. McDaniel made to approve Mr. Belew's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

**Angelo Johnson, RT**

Mr. Johnson is appearing before the board because he answered no to "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?" Documentation submitted shows that Mr. Johnson was arrested for robbery by sudden snatching. Juvenile adjudication withheld. After discussion, Ms. McDaniel made the motion to approve Mr. Johnson's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

**Andrew Atkins, RT**

Mr. Atkins is appearing before the board because he answered no the question that asked "Have you been convicted of a misdemeanor (except minor traffic offenses) including alcohol or drug related offenses (including marijuana or hallucinogens)?" Documentation submitted shows that Mr. Atkins was found guilty of operating a motor vehicle under the influence on 08/8/2001. On 11/10/01 he was arrested for operating a motor vehicle under the influence and driving on suspended license. After discussion, Ms. McDaniel made the motion to approve Mr. Atkins's application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

**Appearance**

**Board rule 1140-4-.09**

Scott Gentry, D.Ph. from Precision Infusion appeared before the board to request using mini IV bags with controlled substance locked in an office as emergency kits at Methodist Hospice. Precision Infusion serves the hospice care patients at Methodist Hospice. After discussion, Dr. Smothers made a motion to approve. After further discussion, Dr. Smothers withdrew her motion. Dr. Stephens made the motion that Precision Infusion submits to the board a copy of their policy and procedures, the definition of hospice to limit the type of environment it can be used in and unit dose. Ms. McDaniel seconded the motion. The motion carried.

**Application Review**

**Pharmacist**

**Thomas Clancy**

Dr. Clancy answered yes to the question that asked "Have you ever voluntarily surrendered your pharmacist license or any pharmacy registrations issued by federal or state controlled substances authority?" and "Have you ever been charged or convicted (including nolo contendere plea or

guilty pleas) of a felony or misdemeanor (other than minor traffic offenses) whether or not sentence was imposed, suspended, expunged, or whether you were pardoned from any such offenses?" Documentation submitted shows that Dr. Clancy's NJ pharmacist license was disciplined on 03/8/19985 for diversion. His license was suspended for 1 year. The suspension was stayed with conditions. On 07/1/2004, Dr. Clancy was arrested for theft and on 9/8/2004 he voluntarily surrendered his NJ pharmacist license. Dr. Clancy was granted Pretrial Intervention Program and his criminal history has been expunged. His NJ pharmacist license was reinstated on 1/11/2006. On 5/7/2012, OH BoP directed him to appear before the Reciprocity Review Session on 05/7/2012. He has active licenses in NJ and OH. After discussion, Ms. McDaniel made the motion to approve Dr. Clancy's application for licensure by reciprocity. Dr. Stephens seconded the motion. The motion carried.

### **Pharmacy Technician**

#### **Maranda McGinnis**

Ms. McGinnis answered yes to the questions that asked "Have you ever been charged or convicted (including nolo contendere plea or guilty pleas) of a felony or misdemeanor (other than minor traffic offenses) whether or not sentence was imposed, suspended, expunged, or whether you were pardoned from any such offenses?" Documentation submitted shows that Ms. McGinnis pled guilty on 10/4/07 for violation of probation; convicted on worthless checks on 12/8/2006; 11/7/2006 pled guilty of 4 counts violation of check law; nolle prosequi on 10/4/2006 worthless checks; 10/26/2006 nolle prosequi for worthless checks (2); 2/16/2006 pled guilty theft of property; 6/2/2005 pled guilty of simple possession of schedule VI. After discussion, Ms. McDaniel made the motion to approve Ms. McGinnis' application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

#### **Ashley Silas**

Ms. Silas answered yes to the questions that asked "Have you ever been charged or convicted (including nolo contendere plea or guilty pleas) of a felony or misdemeanor (other than minor traffic offenses) whether or not sentence was imposed, suspended, expunged, or whether you were pardoned from any such offenses?" Documentation submitted shows that Ms. Silas was given nolle prosequi on 3/18/2013 for prostitution near church/school. . After discussion, Ms. McDaniel made the motion to approve Ms. Silas' application for registration as a pharmacy technician. Dr. Stephens seconded the motion. The motion carried.

### **Director's Report**

Dr. Dilliard presented HB1428/SB1632 to the board and asked for a statement concerning eliminating the process where the health department would have to come before the board for approval of their drug formularies. The bill requires that the Health Department to develop policies and protocols for ambulatory control, accountability, repackaging, security, re-storage, issuance, and dispensing of drugs by the state and local health department. The Commissioner may appoint a state or regional pharmacist to oversee these activities. The Commission of health

is also authorized to promulgate rules and regulations to effectuate the purposes of this section. Dr. Dilliard stated that the board's statute requires that the board approve the formularies that the health department uses and this statute would eliminate the board of pharmacy from approving the formularies. Dr. Eidson stated that his concern is that it is drugs and that it should come before the board of pharmacy and not be approved by the commissioner. He also asked if it could be done by policy statement without having to go through additional legislation. Dr. Stephens stated that the problem is that the list of drugs is in rule and if they need to make a modification to the rule it usual takes a year or so for the rule change to become effective. Dr. Dilliard informed the board of section (a) of the bill which states that "The board shall, at the request of the commissioner of health provide consultation to the department regarding drugs to be dispensed by the department or by a local health clinic". Dr. Eidson stated that he thinks that if the Board of Pharmacy needed consultation with the Commissioner that should be able to ask for it. Dr. Calita Richards, Director of Pharmacy for the Department of Health, stated that they have regional pharmacists that cover 16 to 23 counties each and they order the drugs that are either dropped shipped to that health clinic. If there are prescriptions that come to the counter the pharmacist manage all the inventory issues. Ms. McDaniel stated that she is comfortable with the change as long as they are in consultation with a pharmacist. She doesn't necessarily think that it should come before the board. Dr. Stephens stated that he would be comfortable changing the wording from "may appoint" to "shall appoint" and that way that it will always require a pharmacist to be consulted when they are changing their formulary. Dr. Eidson asked if in section (c) where it states that the commissioner should promulgate rules shouldn't it be the board of pharmacy because it is dealing with drugs. Dr. Richards stated that they do have policies and guidelines on how to manage the inventory and that it is an internal management of the inventory. Dr. Richards stated that she does understand about the drug list because the pharmacists are not in the clinics and that the services are provided by the nurse and physicians and they have public health protocols for nurses who are not nurse practitioners to follow and they are under the auspice of their supervising physician. The main thing that they were trying to do a few years back concerning board rule 1140-01-.14 is specifically list the drugs that can be used in the health department and this statute is being change so that they would not have to come back before the board to make changes. Dr. Richards stated that they do have a pharmacy and therapeutic committee that meets and discuss the needs and changes that may be needed. Dr. Kizer stated that the general concern is that a pharmacist is involved with the process. After discussion, Dr. Stephens made the motion that the board finds Senate Bill 1632 acceptable with the changes in section 1 (b) which states that the Commissioner may appoint a state or regional pharmacist to oversee these activities" to "the commissioner shall appoint a state or regional pharmacist to oversee these activities". Dr. Eidson seconded the motion. The motion carried.

Dr. Dilliard asked the board for approval of continuing pharmaceutical education hours for pharmacist attending the symposium for the chronic pain guidelines presented by Dr. Mitchell Mutter. After discussion, Dr. Stephens made the motion approve three (3) continuing pharmaceutical education hours for pharmacists that attend the symposium for the chronic pain guidelines. Dr. Smothers seconded the motion. The motion carried.

Dr. Dilliard asked the board for approval of continuing pharmaceutical education hours for the Tennessee Pharmacist Association House of Delegates meeting. The hours would be considered

non-ACPE live hours. After discussion, Dr. Smothers made the motion to approve non ACPE live hours for continuing pharmaceutical education hours for the Tennessee Pharmacist Association House of Delegates meeting. Dr. Eidson seconded the motion. The motion carried.

Dr. Dilliard informed the board that he spoke at MAPS and CAPS and that Dr. Eidson spoke to NAPA.

Dr. Dilliard stated that the New England Compounding Center lawsuit is in aberration and that they are trying to negotiate a settlement. New England Compounding Center has file bankruptcy.

Dr. Stephens made the motion to adjourn at 4:20 p.m. Dr. Eidson seconded the motion. The motion carried.

### **January 23, 2014**

The Tennessee Board of Pharmacy reconvened on Thursday, January 23, 2014 in the Poplar Room, 665 Mainstream Drive, Nashville, TN. A quorum of the members were present, the meeting was called to order at 8:00 a.m., by Dr. Kizer, president

#### **Appearance**

Dr. Mitchell Mutter, Director of Special Projects for the Department of Health, appeared before the board to explain the board about the chronic pain guidelines and to invite them to attend one of the symposiums that he has scheduled.

#### **General Discussion**

Dr. Eidson stated that he is concern that the wholesalers are practicing medicine or pharmacy without a license. He thinks that they are looking at the chronic pain guidelines and try to determine how many bottles of medicines to send to pharmacies. Dr. Eidson suggested that the board ask a wholesaler to appear before the board to discuss the guidelines that they are using to determine how much medication to send to a pharmacy. Dr. Eidson asked if we could open a complaint against the wholesaler and send an investigator out to investigate the process. Dr. Stephens stated that as a board we need to make them address the issue of how they determine who they ship to and how much to send to each pharmacy that they do business with. Dr. Dilliard informed the board of Senate Bill 1663. This bill adds to the minimum reporting requirements wholesalers and manufacturers must make to the controlled substance database advisory committee. This bill requires wholesalers to take reasonable measures to know their customers, understand the customers' normal transactions, and identify those transactions that are suspicious. Wholesalers will be required to establish internal polices for identifying suspicious orders and prevent suspicious transactions. Wholesalers will be required to asses orders of greater than 5,000 unit doses of any controlled substance in any month to determine if the purchase is reasonable. The wholesale will report to the committee any regulated transaction involving extraordinary quantities of a listed chemical, an uncommon method of delivery or payment, or any other circumstances that may indicate that it will be used in violation of law.

The wholesaler must maintain records that document the report submitted to the committee. A wholesaler will be required to report a theft or significant loss to the committee and local law enforcement within 24 hours of discovery. Dr. Dilliard stated that this bill does not address the issue for a high volume pharmacy. Dr. Cange stated that he has various concerns on how this would appear and the board using its power to in a business dispute. He also stated that while he agrees that it is a public health issue it is a business decision and the board should not be subpoena or process a complaint concerning this issue. The best way to do discuss it is in the meeting with the legislators. Dr. Dilliard stated the he has been invited with the legislative committee along with wholesalers to try and resolve this issue. Dr. Baeteena Black, Executive Director, Tennessee Pharmacist Association, stated that the National Association leadership has meet with DEA representatives and large corporate wholesaler and the issue is that in certain areas in the United States there have been pharmacies who have been invaded and disciplined by the DEA for not doing their due diligence in ascertaining patient needs for use of controlled substances. It started on the pharmacy level and then went to the wholesale level due to their relationship with the pharmacies. Several wholesalers have had their lost their right to distribute controlled substances for a certain time period by the DEA. The DEA has requested that the suspended wholesalers submit a plan of correction and explain how they are going to avoid this issue in the future. Dr. Black stated that she has been told that each wholesaler has submitted different plans of correction. The DEA sets the quotas every year for what can be manufactured and the manufacturers allocate those quotas to wholesalers. The wholesalers then pass that allocation to the pharmacies. Dr. Black also stated that the agreement between the DEA and wholesalers is confidential and that is why they will not speak on it to others.

### **Waiver**

#### **Board rule 1140-01-.12(3)(d)**

Dr. Williams Bendell, PIC Central Shared Services, LLC dba Parallon Supply Chain Solutions is requesting modification of the pharmacist to tech ratio. Central Shared Services, LLC dba Parallon Supply Chain Solutions current ratio is 4:1 and they would like to change it to 6:1. After discussion, Dr. Stephens made the motion to approve the waiver request. Any changes to the modification will need to be brought before the board. Dr. Eidson seconded the motion. The motion carried

### **Reinstatement**

#### **Robin Renee Hammons, D.Ph.**

Dr. Hammons requested to have her licensed reinstated. Dr. Hammons' license was revoked on 05/15/2013. After discussion, Dr. Eidson made the motion to reinstate Dr. Hammons' license. Dr. Hammons' license will be on five (5) year probation once she has completed all the necessary requirements for reinstatement with the following conditions. Dr. Bunch 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) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, except in the case of an emergency or upon proper referral from the Respondent's primary physician Dr. Mark Reed. 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 the 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 successfully complete the Multistate Pharmacy Jurisprudence Examination
- (h) The Respondent shall not serve as pharmacist-in-charge the respondent's pharmacist-in-charge shall submit to the Board quarterly reports detailing Respondent's work performance for a period of three (3) years from the state date of Probation; the Respondent may not work more than 40 hours over a 5 day period, however, the Respondent may petition the Board for a modification of this time limitation after (2) years from the start date of Probation;
- (i) Respondent shall not work as a "floater" for a period of three (3) years from the start of Probation, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without permission of the Board;

- (j) Respondent shall complete a period of pharmacy internship for a minimum of one hundred and sixty (160) hours and must be completed within ninety (90) consecutive days.

**Jonathan Barnett, D.Ph.**

Dr. Barnett requested to have his license reinstated. Dr. Barnett's license was revoked on 05/13/2013. After discussion, Dr. Dickenson made the motion to reinstate Dr. Barnett's license. Dr. Barnett's license will be on five (5) year probation once she 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, except in the case of an emergency or upon proper referral from the Respondent's primary physician Dr. Stephen Dowlen. 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 the 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 successfully complete the Multistate Pharmacy Jurisprudence Examination
- (h) The Respondent shall not serve as pharmacist-in-charge the respondent's pharmacist-in-charge shall submit to the Board quarterly reports detailing Respondent's work performance for a period of three (3) years from the state date of Probation; the Respondent may not work more than 40 hours over a 5 day period, however, the Respondent may petition the Board for a modification of this time limitation after (2) years from the start date of Probation;
- (i) Respondent shall not work as a "floater" for a period of three (3) years from the start of Probation, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without permission of the Board;
- (j) Respondent shall complete a period of pharmacy internship for a minimum of one hundred and sixty (160) hours and must be completed within ninety (90) consecutive days.

**Appearance**  
**Allison Copas, RT**

Ms. Copas is appearing before the board because she answered yes to "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?" Documentation submitted shows Ms. Copas was convicted of DUI, Consumption under 21, no insurance, no seat belt on 7/12/2005 and was sentence to 48 hours in jail and probation; 2/16/2006 convicted of theft under \$500.00 and was sentence to 10 days in jail and given probation; 01/27/2006 arrested for public intoxication and underage consumption; 12/19/2006 convicted of violating probation sentence to supervised probation; 6/13/2011 arrested for possession of K2, simple possession scheduled VI and drug paraphernalia; 11/14/2011 theft under \$500.00; 6/18/2013 violated probation. After discussion, Dr. Dickenson made the motion to deny Ms. Copas request for registration as a pharmacy technician. Dr. Eidson seconded the motion. The motion carried. Ms. McDaniel voted no.

**John Lochridge, D.Ph.**

Dr. Lochridge is appearing before the board because he answered no 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 minor traffic offenses) whether or not sentence was imposed, suspended, expunged or whether you were pardoned from any such offense?" He answered yes to the questions that asked "Have you ever voluntarily surrendered your pharmacist license or any pharmacist registration issued by a federal or state controlled substance authority?", Has your pharmacist license in any jurisdiction ever been revoked, suspended, restricted, terminated or otherwise been subject to disciplinary action (public or private) by any board of pharmacy or other state authority?" and "Are you presently or have you within the last five years ever

participated in a chemical substance rehabilitation program?”. Documentation submitted shows that Dr. Lochridge was arrested on 8/1/2013 for embezzlement due to diverting narcotics. Dr. Lochridge voluntarily surrendered his MS pharmacist license on 5/17/2012 due to being unable to practice safely by reason of alcohol or other substances. On 10/23/2012 his MS pharmacist license was reinstated and placed on probation for 10 years. After discussion, Ms. McDaniel made the motion to approve Dr. Lochridge’s application for licensure in Tennessee by reciprocity and to place the license on probation to run concurrent with the Mississippi Consent Order. If Mr. Lochridge decides to move to Tennessee he would need to sign a Tennessee Pharmacist Recovery Network (TPRN) contract and to notify the board. Dr. Eidson seconded the motion. The motion carried.

## **Legislation**

### **Senate Bill 1992**

Authorizes collaborative pharmacy practice and amends T.C.A. Title 63 Chapter 10, T.C.A. title 36 Chapter 6 and Title 63, Chapter 9

### **Senate Bill 1716**

Creates the criminal offenses of robbery of a pharmacy punishable as a Class B felony and aggravated robbery of a pharmacy punishable as a Class A felony.

### **Senate Bill 1629**

Authorizes online applications for various occupations regulated by the division of health related boards; revises public record status of certain investigatory records of the department of health.

### **Senate Bill 1630**

Authorizes certain health care providers to place a copy of a patient’s controlled substances database report in the patient’s medical record; authorizes controlled substance database committee to disclose certain aggregate unidentifiable personal data from the database for educational outreach purposes.

### **Senate Bill 1647**

Regulates dispensing of immediate methamphetamine precursor by making it a controlled substance requiring a prescription.

### **House Bill 1427**

Provides immunity from civil liability for prescribers of opioid antagonists and those who administer it in order to address opioid-related drug overdoses.

**House Bill 1657**

Authorizes prescribers to dispense an up to three-day supply of non-narcotic schedule V controlled substances in their offices.

**House Bill 1713**

Deletes the Intractable Pain Treatment Act

**House Bill 1737**

Reduces from six months to two months the maximum period for filling or refilling a prescription for a Scheduled III or IV substance; and reduces from five to four the maximum numbers of times a prescription for a Scheduled III or IV substance may be refilled.

**Gap Analysis**

Scott Denaburg, D.Ph., pharmacist investigator, introduced James W. Torr, Assistant Professor at Lipscomb University, Lisa Straughn and Kate Voltz, Student Pharmacists (P-4). They were asked to review the Sterile Compounding GAP Analysis and to see if it could be shortened. Dr. Torr stated that while the product is extension everything that is in the Sterile Compounding GAP Analysis is needed. Dr. Smothers asked Dr. Denaburg about the Sterile Compounding Gap Analysis being used every six months. Dr. Denaburg stated that the pharmacy would do the Sterile Compounding Gap Analysis at six months and when the investigators do the yearly inspection they would go over the GAP Analysis. Dr. Smothers will speak at the Tennessee Pharmacist Association Mid-Year Conference and explain the Sterile Compounding Gap Analysis.

Dr. Eidson made the motion to adjourn at 1:40p.m. Dr. Stephens seconded the motion. The motion carried.

**These minutes were approved and ratified as amended at the March 11-12, 2014 board meeting.**