

TENNESSEE BOARD OF PHARMACY
665 Mainstream Dr.
Nashville, TN 37243

BOARD MEMBER PRESENT

Debra Wilson, D.Ph., President
Rissa Pryse, D.Ph., Vice President
Katy Wright, D. Ph.
Adam Rodgers, D.Ph.
R. Michael Dickenson, D.Ph.
Melissa McCall, D.Ph.
Lisa Tittle, Consumer Member

STAFF PRESENT

Reginald Dilliard, Executive Director
Matthew Gibbs, Associate General Counsel
Larry Hill, Pharmacy Investigator
Rebecca Moak, Pharmacy Investigator
Robert Shutt, Pharmacy Investigator
Terry Grinder, Pharmacy Investigator
Andrea Miller, Pharmacy Investigator
Richard Hadden, Pharmacy Investigator
Derek Johnston, Pharmacy Investigator
Scott Denaburg, Pharmacy Investigator
Rita Golden, Pharmacy Investigator
Patricia Beckham, Pharmacy Investigator
Sheila Bush, Administrator Director

The Tennessee Board of Pharmacy convened on Tuesday, July 16, 2019, in the Iris Room, 665 Mainstream Drive, Nashville, TN. A quorum of the members being present, the meeting was called to order at 8:01 a.m. Dr. Wilson welcomed the pharmacy students who were in attendance.

Minutes

Ms. Tittle made the motion to accept the minutes from the May 8, 2019 board meeting as presented. Dr. Dickenson seconded the motion carried.

Legislative Report

Sarah Warner, Legislative Liaison, informed the Board of the following bills that passed in the 2019 General Assembly Legislative Session.

Public Chapter 61

This act states that an entity responsible for an AED program is immune from civil liability for personal injury caused by maintenance or use of an AED if such conduct does not rise to the level of willful or wanton misconduct or gross negligence.

This act took effect on March 28, 2019.

Public Chapter 87

This act redefines hemp in 43-27-101 to mirror the federal Hemp Farming Act of 2018. The act excludes hemp and any nonnarcotic substance approved by the FDA that can lawfully be sold over the counter without a prescription from a schedule. A license from the Department of Agriculture is required in order to produce hemp. The Commissioner of Agriculture shall promulgate rules within 120 days of this bill becoming law.

This act took effect April 4, 2019.

Public Chapter 117

This act adds a definition of “alternative treatments” to 63-1-164 pertaining to the restrictions and limitations on treating patients with opioids.

This act took effect April 9, 2019.

Public Chapter 124

This act makes a variety of small changes and additions to the TN Together opioid initiative put in place in 2018. One addition is allowing access to CSMD data to a healthcare practitioner under review by a quality improvement committee (QIC), as well as to the QIC, if the information is furnished by a healthcare practitioner who is the subject of the review by the QIC.

The requirement for e-prescribing of all schedule II substances by January 1, 2020 has been delayed to January 1, 2021 and is modified to require all schedule II through V prescriptions to be e-prescribed except under certain circumstances. The law also requires all pharmacy dispensing software vendors operating in the state to update their systems to allow for partial filling of controlled substances.

Definitions are given by this act to the terms palliative care, severe burn and major physical trauma. Along with its new definition, palliative care has now joined severe burn and major physical trauma as an exception to the opioid dosage limits otherwise required under TN Together.

An unintended consequence of last year’s Public Chapter 1039 was on cough syrup. This act establishes that the law does not apply to opioids approved by the FDA to treat upper respiratory symptoms or cough, but limits such cough syrup to a 14 day supply.

Also changed from last year’s act is the requirement to partial fill. Partial filling of opioids is now permissive.

Finally, the opioid limits under have been simplified from the previous year’s act. The twenty day supply and morphine milligram equivalent limit has been eliminated. Three day and ten day requirements remain the same. Instances such as more than minimally invasive surgery, which previously fell under the twenty day provision, now can be treated under the limits of the thirty day category.

This act took effect on April 9, 2019.

Public Chapter 144

This act amends the Prevention of Youth Access to Tobacco and Vapor Products Act by limiting the places in which one may use vapor products. The act defines vapor products and prohibits the use of such products in a number of locations including child care centers, group care homes, healthcare facilities (excluding nursing homes), residential treatment facilities, school grounds, and several other areas. Several locations have specific exceptions set forth in the statute.

This act took effect on April 17, 2019.

Public Chapter 195

The majority of this act pertains to boards governed by the Department of Commerce and Insurance. One small section applies to the health related boards. Currently, the health related boards have an expedited licensure process for military members and their spouses. Previously, a spouse of an active military member had to leave active employment to be eligible for this expedited process. This act removes that requirement. This section applies to all health related boards. The Commissioner of Health is permitted to promulgate rules, but rules are not needed to implement the act.

This act takes effect July 1, 2019.

Public Chapter 229

This act allows healthcare professionals to accept goods or services as payment in direct exchange of barter for healthcare services. Bartering is only permissible if the patient to whom services are provided is not covered by health insurance. All barter accepted by a healthcare professional must be submitted to the IRS annually. This act does not apply to healthcare services provided at a pain management clinic.

This act took effect April 30, 2019.

Public Chapter 243

This act mandates that an agency that requires a person applying for a license to engage in an occupation, trade, or profession in this state to take an examination must provide appropriate accommodations in accordance with the Americans with Disabilities Act (ADA). Any state agency that administers a required examination for licensure (except for examinations required by federal law) shall promulgate rules in regard to eligibility criteria. This legislation was introduced to assist individuals with dyslexia.

This act took effect May 2, 2019 for the purpose of promulgating rules, and for all other purposes, takes effect July 1, 2020.

Public Chapter 255

The act permits a medical professional who has a current license to practice from another state, commonwealth territory, or the District of Columbia is exempt from the licensure requirements of such boards if: (1) the medical professional is a member of the armed forces; and (2) the medical professional is engaged in the practice of the medical profession listed in 68-1-101 through a partnership with the Federal Innovative Readiness Training. The respective health boards may promulgate rules for implementation.

This act took effect April 18, 2019 for the purpose of promulgating rules, and for all other purposes, takes effect July 1, 2019.

Public Chapter 264

This act permits the attorney general, reporter, and personnel to access confidential data from the Controlled Substance Monitoring Database upon request for the purposes of investigation or litigation of a civil action. Release of this information to other parties must be accompanied by an appropriate protective order. This bill was brought by the Office of the Attorney General.

This act took effect April 30, 2019.

Public Chapter 319

This act expands the practice of dental hygiene to include prescriptive authority limited to fluoride agents, topical oral anesthetic agents, and non-systemic oral antimicrobials provided that it is not a controlled substance under state and federal laws and it does not require a license by the federal drug enforcement agency. A dental hygienist's prescriptive authority must be exercised under the general supervision of a licensed dentist, pursuant to board rules, and in compliance with all applicable law concerning prescription packaging, labeling, and record keeping requirements. A prescription written by a dental hygienist must be reviewed by a dentist within thirty days. The board shall promulgate rules to implement this act.

This act took effect May 8, 2019 for the purpose of promulgating rules. For all other purposes, this act will take effect on July 1, 2020.

Public Chapter 327

This act requires the Commissioner of Health, by January 1, 2020, to study instances when co-prescribing of naloxone with an opioid is beneficial and publish the results to each prescribing board and to the board of pharmacy. The findings shall be included in the chronic pain guidelines adopted by the Chronic Pain Guidelines Committee.

This act took effect May 8, 2019.

Public Chapter 447

This act permits law enforcement agencies to subpoena materials and documents pertaining to an investigation conducted by the Department of Health prior to formal disciplinary charges being filed against the provider. This bill was brought by the Tennessee Bureau of Investigation.

This act went into effect May 22, 2019.

OGC Report

Mr. Gibbs informed that there are currently 56 cases open for discipline within the Office of General Counsel. Of those 56 cases, 3 are eligible for a contested hearing.

Mr. Gibbs informed the board that the Tennessee Board of Pharmacy along with the Tennessee Department of Health has been named as two of the defendants contained in the master docket for the National Prescription Opiate Litigation. The Office of the Attorney General is aware of this litigation.

Mr. Gibbs informed the board that the Board's pharmacy intern and pharmacy technician rules are currently in internal review. Executive Order #5, signed by Governor Lee on February 1, 2019, places a 90-day freeze on executive branch rulemaking. No department shall file a rule with the Secretary of State; however, the Governor may grant an exception for the protection of health, safety, and welfare of Tennesseans.

Complaint Summary

1.

Complaint alleged misconduct at the respondent pharmacy by way of aggressive marketing by a pharmacy technician for Sildenafil and a particular brand of multivitamin. It is alleged the technician obtains patient information and uses it to bill for prescriptions created even though the patients deny asking for it. Patients' insurance plans are reportedly being billed without the patients' knowledge.

During the investigation, BOP Investigator discovered the technician was falsely claiming to be a certified pharmacy technician. Documentation such as email correspondence lists the technician as the "Pharmacy Owner/Manager," however the Investigator determined this is not true, although the tech hopes to someday be the owner. The same technician was also untruthful about having approval for off-site storage of prescription files, messages, licenses and old computers. Respondent pharmacy staff could not produce any formal collaborative pharmacy practice agreement for the process used to create prescription orders for the two primary drugs being marketed, and according to statements made to the Investigator, the listed prescriber on the prescriptions in question authorized the prescriptions without seeing the patients. Many of the prescriptions were treated as verbal orders received by the non-certified tech. Other orders were

filled from the pharmacy's "call-in" prescription pads and the prescriber came in occasionally to sign the signature line, which also violates tamper resistant requirements.

Investigator interviewed the prescribing physician who insists nothing nefarious was happening and that he did have a verbal agreement with the pharmacy to serve as an intermediary sometimes between the doctor and the patient.

No prior discipline.

Recommend: Reprimand for misconduct by the pharmacy staff. Cost of the investigation.

Dr. Dickenson made the motion to **authorize a formal hearing** for a license reprimand to the pharmacy for misconduct by the pharmacy staff and the cost of the investigation. Dr. Wright seconded the motion. The motion carried.

2.

Respondent is PIC for Case 1 above.

No prior discipline.

Recommend: Reprimand for allowing uncertified tech to function as a certified tech.

Dr. Wright made the motion to **authorize a formal hearing** for a license reprimand to the PIC for allowing an uncertified pharmacy technician to function as a certified pharmacy technician. Ms. Tittle seconded the motion. The motion carried.

3.

Respondent is the tech for Case 1 above.

No prior discipline.

Recommend: Revoke technician registration

Dr. Dickenson made the motion to **authorize a formal hearing** of revocation for the pharmacy technician registration. Dr. Rodgers seconded the motion. The motion carried.

4.

Respondent practiced with an expired M/W/D license from 9/1/16 until reinstatement was requested on 5/9/19. Respondent is a welding supply business and only occasionally deals with medical gases.

No prior discipline.

Recommend: \$1,650 civil penalty (33 months X \$50)

Dr. Dickenson made the motion to **authorize a formal hearing** with a \$1650.00 civil penalty to the respondent for working on an expired license for 33 months. Dr. McCall seconded the motion. The motion carried.

5.

Complaint alleged possible misconduct by respondent pharmacy regarding ownership and dispensing practices related to an area pain clinic.

BOP Investigator obtained a sworn statement that there are no financial incentives from the pain clinic and that the pain clinic does not have any ownership in the pharmacy. PIC only dispenses patient specific prescriptions but did admit some prescriptions are delivered to clinics on the day of the patients' appointments. PIC agreed to stop this practice immediately and only deliver directly to the patients.

No prior discipline.

Recommend: LOI regarding delivery.

Dr. Wright made the motion to issue a **Letter of Instruction** to the pharmacy regarding delivery. Dr. Pryse seconded the motion. The motion carried.

6.

Complaint generated from BOP staff. Respondent technician renewed registration with a credit card belonging to a person who disputed the charge and the credit card charges were subsequently reversed. This reversal caused Respondent's registration to expire on 8/31/18. Respondent was notified by BOP by mail and by telephone but did not renew until 4/18/19. BOP staff also spoke to pharmacy management about the registration status and the technician was removed from technician duties 2/28/19.

BOP Investigator interviewed respondent who contended the renewed registration was sent by BOP in August but that correspondence that the charges had been reversed were never received. Investigator confirmed the technician had performed technician duties on an expired registration from 9/4/18 through 2/28/19.

No prior discipline.

Recommend: \$100 civil penalty

Dr. Wright made the motion to **authorize a formal hearing** with a \$100.00 civil penalty for working on an expired registration. Ms. Tittle seconded the motion. The motion carried.

7.

Respondent is PIC for Case 6 above. Considering the registration had been posted by the technician, the PIC had no reason to question its validity. PIC did immediately remove the technician from technician duties when notified of the circumstances of the renewal.

No prior discipline.

Recommend: Dismiss against the PIC

Dr. Dickenson made the motion to **dismiss** the complaint. Ms. Tittle seconded the motion. The motion carried.

8.

Complaint alleged respondent pharmacy inappropriately filled controlled substance prescriptions from multiple prescribers for a patient without consulting CSMD website.

BOP Investigator reviewed the patient's profile and found the patient is seen by different practitioners but all at the same clinic, with the same supervising physician and that the pharmacy fills on time after documenting the pharmacist checked the CSMD. Allegations could not be substantiated.

**Prior discipline: January 31, 2018 – Recordkeeping violations from a DEA audit.
One year of probation and monitoring.**

Recommend: Dismiss

Dr. Dickenson made the motion to **dismiss** the complaint. Dr. Rodgers seconded the motion. The motion carried.

9.

Complaint alleged respondent pharmacy inappropriately filled controlled substance prescriptions from multiple prescribers for a patient without consulting CSMD website.

BOP Investigator reviewed the patient's pharmacy profile which showed no prescriptions have been filled at this pharmacy since November 2017. Allegations could not be substantiated.

No prior discipline.

Recommend: Dismiss

Dr. Wright made the motion to **dismiss** the complaint. Dr. Pryse seconded the motion. The motion carried.

10.

Complaint alleged respondent pharmacy inappropriately filled controlled substance prescriptions from multiple prescribers for a patient without consulting CSMD website.

BOP Investigator reviewed the patient's pharmacy profile which showed no prescriptions have been filled at this pharmacy since November 2017. Allegations could not be substantiated.

No prior discipline.

Recommend: Dismiss

Dr. Dickenson made the motion to **dismiss** the complaint. Dr. McCall seconded the motion. The motion carried.

11.

Complaint alleged respondent pharmacy inappropriately filled controlled substance prescriptions from multiple prescribers for a patient without consulting CSMD website.

BOP Investigator reviewed the patient's pharmacy profile which showed no opioid prescriptions have been filled at this pharmacy since 9/28/18. Up until that time, all prescriptions were filled on time and after reviewing CSMD. The patient has received prescriptions to take one-half tablet of Alprazolam 1mg at bedtime if needed but not to take with Opioids. The patient received 12 tablets on the following dates: 2/9/19; 3/8/19; 4/8/19. BOP Investigator saw documentation that the prescriber was consulted before the initial filling of the prescription.

Allegations of inappropriate dispensing could not be substantiated.

No prior discipline.

Recommend: Dismiss

Dr. Rodgers made the motion to **dismiss** the complaint. Ms. Tittle seconded the motion. The motion carried.

12.

During a periodic inspection, BOP Investigator discovered the respondent technician started work on 11/11/18 but had not obtained registration as of 3/27/19. Registration was successfully completed 4/3/19.

No prior discipline.

Recommend: \$100 civil penalty for being unregistered past the 90 day probationary period.

Dr. Dickenson made the motion to **authorize a formal hearing** with a \$100.00 civil penalty to the pharmacy technician for unlicensed practice. Ms. Tittle seconded the motion. The motion carried.

13.

Respondent is PIC for Case 12 above.

No prior discipline.

Recommend: \$200 civil penalty. (\$100 per month X approx. 2 months beyond the 90 day period.)

Dr. Pryse made the motion to **authorize a formal hearing** with a \$200.00 civil penalty to the PIC for allowing the pharmacy technician to work pass the 90 day requirement without being registered. Dr. Wright seconded the motion. The motion carried.

14.

During a periodic inspection on 3/27/19, BOP Investigator discovered the pharmacy had air conditioning problems that started in June of 2018 but was repaired 7/5/18. The A/C unit failed again a few days later. Two portable units were used until the system was replaced on 4/2/19. During that time period, temperature logs were kept. However, while reviewing the temperature logs, BOP Investigator noted twenty-three times when the pharmacy temperature exceeded the maximum 77 degrees and four times exceeded 82 degrees. No medications were quarantined during the time period.

No prior discipline.

Recommend: Reprimand for failure to maintain proper temperature for drug storage.

Dr. Dickenson made the motion to issue a **Letter of Warning** for failure to maintain proper temperature for drug storage. Dr. Wright seconded the motion. The motion carried.

15.

Complaint alleged that the respondent technician created fake refunds on behalf of customers who received dispensed medication and still had their medications. The respondent kept the refunded amounts. Respondent's employment was terminated. BOP Investigator contacted the respondent who stated she regretted what she had done.

No prior discipline.

Recommend: Revoke technician registration

Dr. Rodgers made the motion to **authorize a formal hearing** for revocation. Ms. Tittle seconded the motion. The motion carried.

16.

Complaint alleged a lack of PIC at respondent pharmacy. BOP Investigator confirmed the former PIC left 4/17/19 and the new PIC started 5/6/19. The incoming PIC did conduct a controlled substance inventory on 5/6/19.

No prior discipline.

Recommend: \$50 civil penalty

Ms. Tittle made the motion to **authorize a formal hearing** with a \$50.00 civil penalty to the pharmacy. Dr. Rodgers seconded the motion. The motion carried.

17.

Complaint alleged misconduct by way of respondent pharmacist refusing to bill the patient's primary insurance and causing the patient to pay more than should have been required.

BOP Investigator obtained a response from the pharmacist who indicated he could not process the insurance without losing money so he gave the patient what he felt was the best price possible.

While conducting the investigation, BOP Investigator also performed a periodic inspection and the following deficiencies were found:

Record of drug transfers were not sent to DEA as required on DEA 222 form; an incorrect prescriber address was found on a prescription back label; a trend of early refills was found on two patients records; CSOS was not checked in properly as required by DEA; Biennial inventory was not performed and documented properly; an unregistered technician was on duty, however based upon statements, may have been within the ninety day probationary period.

Investigator educated on all issues and gave the pharmacist contact information for DEA.

No prior discipline.

Recommend: LOW for deficiencies and to get tech registered. LOI that insurance refusal may violate insurance contracts.

Dr. Pryse made the motion to issue a **Letter of Warning** to the pharmacist for the deficiencies and the unregistered technician and a **Letter of Instruction** concerning insurance refusal. Dr. Dickenson seconded the motion. The motion carried.

18.

Anonymous complaint alleged compounding of research only peptides and other products including GHRP2, GHRP6, Ipamorelin and CJC 1295.

Respondent pharmacy PIC indicated that these products are not compounded at the facility.

No prior discipline.

Recommend: For consistency, refer complaint to FDA.

Dr. McCall made the motion to **accept counsel's recommendation**. Dr. Pryse seconded the motion. After further discussion, Dr. Dickenson amended the motion to also refer the complaint to the out of state pharmacy. Dr. Pryse seconded the amended motion. The motion carried.

19.

Complaint alleged unprofessional treatment by the respondent pharmacy due to delays in delivering the patient's multiple sclerosis medication.

BOP Investigator confirmed with the pharmacy that delays did occur due to issues with the physician's order and also failures in processing and escalation procedures. It was noted that the employees involved in the process have been coached.

Unable to determine if prior discipline exists for the pharmacy.

Recommend: LOW regarding patient care priority

Ms. Tittle made the motion to issue a **Letter of Instruction** to the pharmacy regarding patient care. Dr. Pryse seconded the motion. The motion carried.

20.

BOP Investigator confirmed the respondent pharmacy did not have an acting PIC from 9/4/18 until 11/12/18 (a total of 68 days.) The required controlled substance inventory was not performed until 11/18/18.

Recommend: \$200 civil penalty. (\$50 per month X 2 for lack of PIC and \$50 per month X 2 for not performing CS inventory as required.)

No prior discipline.

Dr. Dickenson made the motion to **authorize a formal hearing** with \$200.00 civil penalty for lack of PIC and not performing the controlled substance inventory as required. Dr. Pryse seconded the motion. The motion carried.

21.

Complaint alleged patient safety and patient care were jeopardized by pharmacy workload and understaffing.

BOP Investigators interviewed employees and the pharmacy supervisor. All felt that staffing was adequate. The complaint could not be substantiated.

No prior discipline.

Recommend: Dismiss

Dr. Dickenson made the motion to **dismiss** the complaint. Dr. Pryse seconded the motion. The motion carried.

22.

Complaint alleged patient safety and patient care were jeopardized by pharmacy workload and understaffing.

BOP Investigators interviewed employees and the pharmacy supervisor. All felt that staffing was adequate. The complaint could not be substantiated.

No prior discipline.

Recommend: Dismiss

Dr. Dickenson made the motion to **dismiss** the complaint. Ms. Tittle seconded the motion. The motion carried.

23.

Complaint alleged patient safety and patient care were jeopardized by pharmacy workload and understaffing.

BOP Investigators interviewed employees and the pharmacy supervisor. All felt that staffing was adequate. The complaint could not be substantiated.

No prior discipline.

Recommend: Dismiss

Dr. Dickenson made the motion to **dismiss** the complaint. Dr. Rodgers seconded the motion. The motion carried.

24.

Respondent technician was recorded on video diverting a controlled substance and admitted diversion verbally to pharmacy management.

BOP Investigator attempted multiple times to contact the respondent, however there was no answer and no opportunity to leave a voice message.

No prior discipline.

Recommend: Revoke technician registration

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

25.

During a periodic inspection of a sterile compounding pharmacy, BOP Investigator discovered the pressure differential gauge monitoring the pressure between the buffer room to the ante room stopped working correctly 10/26/18. Sterile compounding ceased 2/18/19 when a remodel was started. There was no monitoring of airflow pressure between 10/26/18 and 2/18/19. Sterile compounding resumed 3/18/19 when the remodel was finished and new gauges had been installed. PIC stated that during the entire time, air pressure in the room was so strongly positive that it kept the swinging doors pushed out to a slightly open position. Investigator educated PIC about USP 797 specific requirements for monitoring gauges.

No prior discipline.

Recommend: LOW for USP 797 Pressure Differential Monitoring

Dr. Wright made the motion to issue a **Letter of Warning** to the pharmacy for USP 797 Pressure Differential Monitoring. Dr. Dickenson seconded the motion. The motion carried.

26.

Respondent is PIC for Case 25 above.

No prior discipline.

Recommend: LOW and review of USP 797 standards

Dr. Dickenson made the motion to issue a **Letter of Warning** to the PIC and review of USP 797 standards. Dr. Pryse seconded the motion. The motion carried.

27.

Pharmacy management notified BOP Investigator that respondent pharmacist admitted to diversion and was terminated. Respondent wishes to voluntarily surrender his pharmacist license.

Prior discipline:

March 29, 2007 – License suspended based upon Respondent’s admission to chemical dependency; license reinstated on September 9, 2008

Recommend: Accept voluntary surrender

Dr. Dickenson made the motion to **accept the voluntary surrender** of the pharmacist license. Dr. Pryse seconded the motion. The motion carried.

28.

Pharmacy management interviewed respondent technician who admitted to forging and filling prescriptions for Phentermine and Citalopram for over a year, using the name and DEA number of the complainant. Respondent’s employment was terminated. Respondent was arrested and is awaiting a court date.

No prior discipline.

Recommend: Revoke technician registration

Dr. Wright made the motion to **authorize a formal hearing** for revocation. Ms. Tittle seconded the motion. The motion carried.

29.

Respondent pharmacist admitted to diversion of controlled substances and was terminated. Respondent was prescribed medication by a family practitioner but respondent took more than prescribed and also took medication from the pharmacy without paying.

No prior discipline.

Recommend: Revoke

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

30.

While conducting a periodic inspection of a pharmacy that performs sterile compounding, several violations were noted that were a repeat of deficiencies noted on previous inspections. Education

had been provided during the prior inspection, however corrections were not made by staff. Because of the failure to correct the issues, BOP Investigators conducting the inspection asked the facility to halt all sterile production until remediation and re-training could occur. The facility complied with the request. Investigators have since conducted a follow-up inspection and the facility was allowed to resume sterile operations.

No prior discipline.

Recommend: Reprimand and costs

Dr. Pryse made the motion to **authorize a formal hearing** to reprimand the pharmacy license and to access costs. Dr. McCall seconded the motion. The motion carried.

31.

Respondent is PIC for Case 30 above.

No prior discipline.

Recommend: LOW

Dr. Dickenson made the motion to **authorize a formal hearing** to reprimand the PIC license for failure to comply. Dr. Pryse seconded the motion. The motion carried. Dr. Wright voted no.

32.

Anonymous complaint alleged misconduct by the respondent pharmacy for providing free prescriptions drugs to practitioners in exchange for patients being directed to use the respondent pharmacy.

BOP Investigator confirmed the pharmacy provides some compounded prescriptions to area practitioners at no cost. (Review by Investigator showed one Doctor, two APRN's, one LPN and one non-licensed person obtaining hormone replacement therapy and magnesium supplements at no charge.) PIC denied that there are any kickbacks or expectations that patients would be steered to the pharmacy. PIC agreed to discontinue providing medications at no charge.

Investigator also inquired about suspicious prescriptions found during the investigation. Many patients had the same last name as a particular prescriber, but a different first name. The pharmacy had not questioned the prescriptions. Investigator had the PIC contact the prescriber (a dentist) who told the PIC that the compounded product is used to pack open wounds in dental surgery. The prescriber complained that he does not know who will need the product and did not want to have every patient have to pick up the medication prior to the dental visit. PIC told the prescriber that from now on, patients would have to get their own individual prescriptions.

No prior discipline.

Recommend: LOW, refer complaint to BIV

Dr. Dickenson made the motion to issue a **Letter of Warning** and to refer the complaint to the Bureau of Investigation. Dr. McCall seconded the motion. The motion carried.

33.

Respondent is PIC for Case 32 above.

No prior discipline.

Recommend: LOW

Dr. Rodgers made the motion to issue a **Letter of Warning** to the PIC. Dr. Dickenson seconded the motion. The motion carried.

34.

Complainant sent vague allegations that the respondent pharmacist knew what type medications the complainant is prescribed and made his conditions worsen. BOP Investigator contacted the complainant who said the respondent took him off his medications and sent him home to have more strokes, heart attacks and depression. Complainant then said he has not had additional complications.

Respondent is a hospital staff pharmacist and has no recollection of the events. Investigator could not find evidence to substantiate any of the allegations.

No prior discipline.

Recommend: Dismiss

Dr. Dickenson made the motion to **accept counsel's recommendation**. Ms. Tittle seconded the motion. The motion carried.

35.

Complainant sent vague allegations that the respondent pharmacist knew what type medications the complainant is on and made his conditions worsen. BOP Investigator contacted the complainant who said the respondent took him off his medications and sent him home to have more strokes, heart attacks and depression. Complainant then said he has not had additional complications.

Respondent is a hospital staff pharmacist and has no recollection of the events. Investigator could not find evidence to substantiate any of the allegations.

No prior discipline.

Recommend: Dismiss

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

36.

Physician complainant alleged respondent pharmacy ignores explicit instructions to void old prescriptions when new prescriptions are ordered. It is also alleged that the pharmacy changes 30 days' supply with refills into a 90 days' supply without any communication to the prescriber.

BOP Investigators confirmed both allegations. The prescriber issues multiple prescriptions with refills. Patients can request refills via online or a phone app. The refilled prescriptions are sometimes dispensed before the patient presents a new prescription. It was also confirmed the prescriptions sometimes did not get voided even though the patient did not request a refill. Autofill also contributes to the confusion since the system will generate an autofill request approximately 6 days early. Even though the pharmacist may override autofill, after a certain time, the patient can sign up for autofill again.

PIC agreed to educate staff how to void previous prescriptions as requested and even though refills may be requested up to 6 days early and all efforts will be made to stop any refills from being dispensed before 30 days have elapsed. Additionally, all of the complainant's patients will be flagged in the computer system to help catch any fills before 30 days.

Converting multiple 30-days' supply prescriptions into a 90-days' supply is an internal metrics "push" whenever there is a sufficient quantity remaining on the prescription. Pharmacists are held accountable to meet a quota of 80% of Medicare or insurance prescriptions to be filled for 90 days' supply. Staff agreed to make a diligent effort not to exceed a 30-days' supply for the complainant's patients. The computer system can be marked "no" but will ask again at a later date. PIC will educate staff to intervene and reduce fills to 30-day quantities, supplemented with notes in the computer system, frequent verbal and written reminders and discussion of the new steps with all of the complainant's patients.

No prior discipline.

Recommend: LOI for strict conformity

Dr. Dickenson made the motion to **dismiss** the complaint. Dr. Rodgers seconded the motion. The motion carried.

37.

Complaint alleged the respondent pharmacy refilled a patient's alprazolam prescription two weeks early. The patient obtained a 30-days' supply on 2/5/19 and again on 2/20/19.

BOP Investigators found that the refill was requested by the patient electronically. Respondent pharmacy's computer system is not supposed to allow controlled substances to be auto-filled, however there is a known glitch that allows some controlled substances to process. Investigators were told the glitch also allows autofill on Gabapentin, Lyrica, and Ambien. The patient was cash paying so no insurance flags appeared. PIC stated any prescription can be stopped at final verification and believes early refills are stopped approximately 90% of the time. Investigators do not feel proper DUR occurred and prior fill dates were not reviewed at final verification prior to dispensing.

No prior discipline.

Recommend: LOW

Dr. Dickenson made the motion to issue a **Letter of Instruction** concerning the computer issues. Dr. Pryse seconded the motion. The motion carried.

38.

Complainant is an out of state medical office. Allegation is that the respondent pharmacy sent several prescription authorization requests to the clinic on behalf of a patient of the clinic. Requests were for diabetic supplies, and multiple topical medications. According to the complaint, the patient denied requesting the prescriptions and the clinic denied the authorizations. BOP Investigator contacted the clinic to get patient specific information to aid the investigation, however, a representative at the clinic stated the clinic had made a decision not to release the name of the patient.

BOP Investigator visited the pharmacy and obtained statements from the PIC. According to the PIC, the pharmacy is licensed in 30 states. Prescriptions are received electronically or by fax. Prescriptions are processed, checked and shipped from the pharmacy. There are policies and procedures for new patients. Any prescription requests to a clinic are initiated per patient inquiry in which they provide their doctor's information and medication inquiries. Examples of labels, prescription authorizations, and billing invoices were provided.

Investigator could not prove or disprove the allegations because the complainant refused to provide patient information to the Investigator.

No prior discipline.

Recommend: Dismiss

Dr. Dickenson made the motion to **accept counsel's recommendation**. Ms. Tittle seconded the motion. The motion carried.

39.

Anonymous complaint alleged misconduct at a long term care pharmacy for not following proper rules because they approve prescriptions and bill insurance before a signed prescription is on file at the pharmacy.

BOP Investigators could not identify any violations. All procedures were consistent with this type of practice.

No prior discipline.

Recommend: Dismiss

Dr. Wright made the motion to **accept counsel's recommendation**. Dr. Rodgers seconded the motion. The motion carried.

40.

Complainant is a prescriber that performed a self-lookup on CSMD and noticed a prescription authorized for 30 Lomotil plus 3 refills was filled and dispensed at the respondent pharmacy for 90 tablets with 1 refill of 30 remaining.

BOP Investigator reviewed pharmacy records. The verbal prescription was taken by a certified pharmacy technician, inputted, and filled by the same technician. When interviewed, the technician said she did not realize the medication is a controlled substance and management pushes the use of 90-days' supply when possible. The technician believed the software would not let more than 30-days' supply of an opioid to be dispensed, but it did. The verifying pharmacist failed to note the prescription was for an opioid or that it was a controlled substance and dispensed it as entered.

No prior discipline.

Recommend: LOW

Dr. Wright made the motion to issue a **Letter of Instruction** to the pharmacy. Dr. Dickenson seconded the motion. The motion carried.

41.

Respondent is the dispensing pharmacist for Case 40 above.

No prior discipline.

Recommend: LOW

Dr. Pryse made the motion to issue a **Letter of Instruction** to the dispensing pharmacist. Dr. Dickenson seconded the motion. The motion carried.

42.

Respondent is the filling technician for Case 40 above.

No prior discipline.

Recommend: LOW

Dr. Dickenson made the motion to issue a **Letter of Instruction** to the pharmacy. Dr. Pryse seconded the motion. The motion carried.

43.

Complaint alleged that respondent technician obtained and used the complainant's insurance information without permission. BOP Investigator discovered the issue pertains to the respondent's child. Respondent and the complainant's current husband have shared custody of the child and the respondent provides insurance for the child. The complainant has secondary insurance on the child. The respondent was informed by a clinic that the child does have secondary insurance and it was being billed. Violations of pharmacy laws or rules could not be identified.

No prior discipline.

Recommend: Dismiss

Dr. Pryse made the motion to **accept counsel's recommendation**. Ms. Tittle seconded the motion. The motion carried.

Waivers

1140-01-.01 (20) (a) thru (e), (21), (22) & (23)

Dr. Lametra Scott, Director of Pharmacy, Tennessee Department of Correction, appeared before the board to requesting that the Department of Correction be allowed to return and reuse drugs under the long-term rules. After discussion, Dr. Wright made the motion to allow correctional facilities to follow the long-term care rules for return and reuse drugs. Dr. Pryse seconded the motion. The motion carried.

Board rule 1140-02-.02 (7)

Dr. Christi Thornberry Henry, PIC for Clinical Solutions, is requesting modification of the pharmacist to tech ratio. Clinical Solutions Pharmacy current ratio is 4:1 and they would like to change it to 6:1. After discussion, Dr. McCall made the motion to approve the waiver request.

Any changes to the modification will need to be brought before the board. Dr. Rodgers seconded the motion. The motion carried

Board rule 1140-03-.03 (8)

Dr. Christopher Patterson, PIC for Tallent Drug Co., is requesting clarification of the repacking dispense medication. Dr. Patterson stated that he would not re-dispense the medication only repackaging it. After discussion, Dr. Pryse made the motion to authorize a pilot program for re-dispensing repackage medication. Ms. Tittle seconded the motion. The motion carried.

Board rule 1140-01-.04 (3) (b)

Dr. Dickenson made the motion to approve the request from **Gregory Todd Lamberth, D.Ph.** to waive the one hundred and sixty (160) internship hours but must successfully take and pass the MPJE. Cr. McCall seconded the motion. The motion carried

Dr. Pryse made the motion to approve the request from **Patrick Flanagan, Pharm.D.** to waive the one hundred and sixty (160) internship hours but must successfully take and pass the MPJE. Dr. Dickenson seconded the motion. The motion carried.

Appearance

Logan Kirby, RT

Mr. Kirby answered “yes” to the question that asked “Have you ever been 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 or suspended?” Mr. Kirby pled guilty to Resist Stop, Arrest, Search (no weapon), Possession of unlawful drug paraphernalia and probation violation on 9/30/2014. After discussion, Dr. Dickenson made the motion to approve Mr. Kirby’s application for registration as a pharmacy technician. Dr. Wright seconded the motion. The motion carried.

Consent Orders

Dr. Pryse made the motion to approve the fowling consent orders as presented. Dr. Dickenson seconded the motion. The motion carried.

VOLUNTARY SURRENDER (same as revocation)

Emily D. Anthony, RT
Shannon McGill, RT

REVOCATON

Melissa Lawson, RT

SUSPENSION

Coshona Gordon, RT

SUSPENSION OF MODIFIER

Tennessee Board of Pharmacy
Board Meeting
July 16, 2019

The Medicine Shoppe, lic #739

VIOLATED BOARD RULE 1140-03-.01 (1) (a)
Walgreens Pharmacy #3209
Del Mar Medical, Inc dba Pardues Pharmacy.
Donald W. Evans, D.Ph.
Gina Stafford Flomberg, D.Ph.

VIOLATED BOARD RULE 1140-03-.14 (1) & (2)
Walgreens Pharmacy #01015
Tennessee CVS Pharmacy, LLC #6429
Tennessee CVS Pharmacy, LLC #6421

VIOLATED T.C.A §53-10-104 (1)
Kristin Kizer, D.Ph.

VIOLATED §T.C.A. 53-10-106 (a) (1)
B & B Pharmacy, PLLC

REPRIMAND
Kevin J Evetts, D.Ph.
Mark F. Binkley, D.Ph.
Health and Wellness Compounding Pharmacy
Jeffrey Duren, D.Ph
Duren Pharmacy

VIOLATED BOARD RULE 1140-01-.09 (1)
Robert Sparks, RT

VIOLATED BOARD RULE 1140-02-.02 (5) (a) (b)
Tara B Sparks, RT

VIOLATED T.C.A. § 63-10-204 (35)
Ramesh Srinivasan, D.Ph.

PROBATION
Ram's Pharmacy #1

Director's Report

Dr. Dilliard asked the board for approval to attend MALTAGON scheduled for October 27-30, 2019 in Biloxi, MS. Dr. Dickenson made the motion to approve travel for Dr. Dilliard and any board member to attend MALTAGON on October 27-30, 2019 in Biloxi, MS. Dr. Pryse seconded the motion. The motion carried.

Tennessee Board of Pharmacy
Board Meeting
July 16, 2019

Dr. Dickenson made the motion to adjourn at 1:50 p.m. Dr. Pryse seconded the motion. The motion carried.

The minutes were approved and ratified as amended at the November 5-6, 2019 board meeting.