



# COMMONWEALTH OF VIRGINIA

## Meeting of the Board of Pharmacy

Perimeter Center, 9960 Mayland Dr., Second Floor  
Richmond, Virginia 23230

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### Tentative Agenda of Meeting

*September 3, 2008*

9:00AM

<u>TOPIC</u>	<u>PAGE(S)</u>
<b>Call to Order:</b> David Kozera, Chairman	
• Welcome and Introductions	
• Reading of emergency evacuation script	
• Approval of Agenda	
• Approval of previous Board meeting minutes:	1-70
• June 4, 2008 Board Meeting	
• June 4, 2008 Formal Hearings-Panel	
• June 17, 2008 Ad Hoc Committee-Drug Donation	
• June 19, 2008 ICC-Robotic Pharmacy System	
• June 25, 2008 SCC	
• July 1, 2008 TCC	
• July 17, 2008 SCC	
• July 23, 2008 Ad Hoc Committee-Drug Donation	
• July 31, 2008 SCC	
• August 14, 2008 TCC	
<b>Call for public comment:</b> The Board will not receive comment on any regulation process for which a public comment period has closed or any pending disciplinary matters. The Board will receive comments on specific topics on this agenda at the time the matter is taken up by the Board.	
<b>DHP Report:</b> Sandra Whitley Ryals, Director	71-72
<b>Legislation:</b>	
• update on legislative proposals-Scotti Russell, Elaine Yeatts	
<b>Regulations:</b> Elaine Yeatts	
• Update on regulation processes	73
• Adopt emergency regulations on drug donation program	74-77
• Adopt exempt PPG regulations	78-86
• Adopt proposed regulations on unprofessional conduct	87-89
<b>Miscellaneous:</b>	
• Approval of changes to Guidance Document 110-25	90-91

**Reports:**

- Report on Board of Health Professions-Jennifer H. Edwards
- Executive Director's Report-Scotti Russell
  - award of Technician Examination Contract
  - report on disciplinary program-Cathy Reiniers-Day
  - report on licensing, inspections, website-Caroline Juran

**Consideration of consent orders (if any)**

**Formal Hearing:** Richard B. Lakes

92-93

**Adjourn**

**\*The Board will have a working lunch at approximately 12 noon.**

**Following lunch, a panel of the Board will convene for the purpose of conducting formal hearings.**

(DRAFT/UNAPPROVED)

**VIRGINIA BOARD OF PHARMACY  
MINUTES OF BOARD MEETING**

June 4, 2008  
Second Floor  
Conference Room 2

Perimeter Center  
9960 Mayland Drive, Suite 300  
Richmond, VA 23233-1463

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**CALL TO ORDER:** The meeting was called to order at 9:10AM.

**PRESIDING:** Bobby Ison, Chairman

**MEMBERS PRESENT:** Gill B. Abernathy  
John O. Beckner  
Willie Brown  
Jennifer H. Edwards  
David C. Kozera  
Leo H. Ross  
Michael E. Stredler  
Brandon K. Yi

**MEMBERS ABSENT:** Gerard Dabney

**STAFF PRESENT:** Elizabeth Scott Russell, Executive Director  
Cathy M. Reiniers-Day, Deputy Executive Director  
Caroline D. Juran, Deputy Executive Director  
Ralph Orr, Program Manager, Prescription Monitoring Program  
Howard M. Casway, Senior Assistant Attorney General  
Emily Wingfield, Chief Deputy Director, DHP  
Elaine J. Yeatts, Senior Regulatory Analyst, DHP  
Sharon Davenport, Administrative Assistant

**QUORUM:** With nine members present, a quorum was established.

**APPROVAL OF AGENDA:** With no changes to the agenda, the agenda was approved as presented.

**APPROVAL OF MINUTES:** The Board reviewed draft minutes for the March 12, 2008, Board Meeting; March 12, 2008, CQI Committee Meeting; March 18, 2008, Summary Suspension Telephone Conference Call; April 16, 2008, Summary Suspension Telephone Conference Call; May 1, 2008, Summary Suspension Telephone Conference Call; and May 13, 2008, Summary Suspension Telephone Conference Call. With no changes to the minutes, they were approved as presented.

**PUBLIC COMMENTS:** There were no public comments.

**ELECTIONS:** Dave Kozera was unanimously elected Chairman for the term July 1, 2008 through June 30, 2009 (nomination by Stredler, second by

Brown). Mickey Stredler was unanimously elected Vice-Chairman for the same term. (nomination by Yi, second by Ross).

REPORT:  
DHP Director, Sandra W. Ryals

Ms. Ryals reported to the Board that Virginia had been named one of the best governed states, ranked in the top 3 with an overall score of A- and the only state to receive a full A ranking in human resources.

She also reported that Governor Kaine has begun a new initiative related to one-stop shopping via a web portal for the formation of businesses.

Ms. Ryals gave the Board an update on the three measures for the DHP performs initiatives. She reported that the Board of Pharmacy had received a 98% approval rating in the customer satisfaction category and a 100% rating for issuing initial licenses within 30 days of receipt of a complete application. She reported that with respect to the patient care cases completed in 250 working day measure, the department has made significant progress, but still has work to do to meet this goal. She stated that a lot of work has been done and is ongoing to clean up the old case load, measures being implemented to prevent the reoccurrence of such a backlog, and efficiency measures taken to process new cases within the timeline. Neal Kauder, with Visual Research, is working with the department to use some of the same tools that were developed nationally, for use by the court system, to measure and report outcomes related to the processing of cases at DHP. Specifically, we will be looking at clearance rates, time to disposition, and age of active pending caseload. These measures will be able to be broken out by board as well as shown for the department as a whole. At a future meeting once these measures are in place, she will provide a demonstration for the Board.

Lastly, Ms. Ryals briefly described the department initiative to ultimately go paperless and the move to a new product to assist with this initiative called Documentum.

LEGISLATION UPDATE:

Ms. Yeatts explained the process for development of legislative proposals. She stated that the Board would be reviewing draft legislation today, and if it wanted to go forward with the proposals, it should pass a motion to pursue the legislative proposal. The proposals are then sent to interested parties for comment, and then to the Secretary's office for a recommendation. Ms. Yeatts stated that the proposal could become part of the Governor's legislative package; the Department could receive permission to seek a patron to put in a bill, or possibly not receive approval to proceed.

- Mandatory reporting

The Board reviewed a draft legislative proposal that had been

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developed and recommended by the CQI committee that will require reporting of certain known information to the Board of Pharmacy. Similar to current requirements for hospitals in §54.1-2400.6, the proposal would require pharmacy owners, pharmacist, pharmacy interns, and pharmacy technicians to report certain information, gained within their professional capacity, about a pharmacist, pharmacy intern, or pharmacy technician, to include possible impairment, incompetence, negligence, substance abuse or diversion, or unethical, fraudulent or other unprofessional conduct.

The Board requested that "employed by the pharmacy" be removed from subsection A1.

**Motion:**

**The Board voted unanimously to approve the draft legislative proposal as amended and forward it to the Director for inclusion in the agency's legislative submissions (motion by Beckner, second by Stredler; Attachment A).**

- CQI requirement

The Board reviewed a draft legislative proposal to require pharmacies to have a continuous quality improvement program in place to analyze dispensing errors and make process improvements based on the analysis to reduce the possibility of errors. The proposal was recommended by the CQI committee. The draft would also require that the Board promulgate regulations to further define the elements of such a program. The Board members requested that the draft be more descriptive of the purpose of a CQI program, and that the description clearly require some action by the pharmacy as a result of analyzing errors. It was also requested that the federal law citation for the Patient Safety Act of 2005 and subsequent regulations be included in the draft. Additionally, the Board wanted to require that the CQI program apply to non-resident pharmacies.

**Motion:**

**The Board voted unanimously to approve the draft legislative proposal with the amendments requested by the Board and forward it to the Director for inclusion in the agency's legislative submissions (motion by Abernathy, second by Brown; Attachment B).**

- Scheduling

Ms. Russell stated that a placeholder bill would be put in to address any final scheduling changes from DEA before the 2009 session. There are several drugs that are in the proposed stage of scheduling, but have not yet been made final.

**REGULATION UPDATE:**

- NOIRA Unprofessional

Ms. Yeatts stated that the NOIRA to allow the Board to propose

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rules defining unprofessional conduct has just been approved by the Governor's office for publication, and that the publication date will be June 9 with public comment until July 9. The Board can then adopt proposed regulations at the September meeting. Ms. Russell stated that staff would have draft regulations ready to be discussed and adopted at that meeting. She further reminded the Board that it had briefly discussed the content of the regulations at a previous meeting, and had requested staff bring draft regulations to this meeting, as there did not appear to be sentiment on the part of the Board to have the Regulation Committee meet for this purpose first. There was agreement by the Board members that the Regulation Committee did not need to meet.

- Proposed Regulations resulting from the periodic review

Ms. Yeatts stated that the proposed regulations and the package had been sent to the Department of Planning and Budget for its review, and that she and Ms. Russell had met with DPB representatives to go through the regulation changes and it is expected that DPB's analysis will be completed soon. She further explained the subsequent review process by the Secretary and Governor before we could publish the proposed changes for public comment.

- Fast-Track regulations related to nuclear pharmacies

In response to a request from the Virginia Department of Health that the Board of Pharmacy amend its rules related to nuclear pharmacy to conform to changes made in VDH rules, Ms. Yeatts, Ms. Juran and Ms. Russell met with Mike Welling, VDH representative, to discuss the requested changes. After some discussion with Mr. Welling, staff and Mr. Welling agreed upon suggested changes to better conform the Board of Pharmacy regulations with VDH regulations and requirements of the U. S. Nuclear Regulatory Commission. Several of the current regulations were outdated and in conflict. Requirements for nuclear pharmacists to certify credentials to the Board of Pharmacy are duplicative since VDH is already ensuring the proper qualifications before it licenses the facility to handle radioactive material. The board reviewed a draft of amendments to the current regulations that will satisfy VDH concerns and remove any duplication of effort in licensing. Ms. Yeatts stated that because all changes were not due to non-conformity with other law or regulation, it did not meet the criteria for an exempt change, but that the changes did meet the criteria for a fast-track process.

**Motion:**

**The Board voted unanimously to adopt the draft changes as presented and proceed with the fast-track process (motion by Abernathy, second by Beckner; Attachment C).**

- Exempt change to volunteer practice regulation

The Board reviewed a draft exempt amendment to 18VAC110-20-75 to conform Board regulations to new statutory provisions for

volunteer practice.

**Motion:**

**The Board voted to adopt the exempt amendment to the regulation (motion by Beckner, second by Kozera; Attachment D).**

- Emergency regulations to establish new renewal dates

The Board reviewed draft emergency amendments to both 110-20 and 110-50 to establish license expiration dates for all facilities as a result of legislation that takes effect July 1, in which the expiration dates are removed from statute. Currently, all licenses issued by the Board expire on December 31 annually. This has created excessive workload on staff during this time of year. The legislation was sought for the purpose of being able to more evenly distribute this workload. The proposed language would have pharmacy permits and non-resident pharmacy registrations expire on April 30 annually, and all other facility permits, licenses, or registrations expire on February 28 annually. This is a relatively even split of the numbers, still allows for the collection of all renewal fees in the next fiscal year, and provides a little additional time for non-resident pharmacies to meet new requirements of law to have a Virginia licensed PIC designated.

**Motion:**

**The Board voted unanimously to adopt the emergency regulations as presented (motion by Beckner, second by Yi; Attachment E).**

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- Request from the Virginia Department of Health concerning expedited family planning

The Virginia Department of Health (VDH) asked the Board of Pharmacy to review a protocol for expediting the initiation of contraception when a client comes to the clinic seeking contraception, but the clinic is not able to have a complete physical examination done on that day. VDH is requesting an interpretation from the Board of Pharmacy as to whether a new protocol for an "expedited" visit would satisfy the requirements of § 54.1-3303 related to a bona fide prescriber-patient relationship for the purpose of having contraception started at the time of that first visit. Jim Burns, MD, Deputy Commissioner for Public Health Programs and CIO was present for this discussion. Dr. Burns previously provided the Board with a copy of the protocol and associated form. Dr. Burns stated that under the protocol, if a client comes in seeking or needing contraception, but the clinician (prescriber, either a physician or nurse practitioner) is not able to perform a full physical examination that day, the nurse will measure height and weight of the patient, take their blood pressure, and obtain a history from the patient. The history includes all the items listed on the form. The clinician will then review the documentation of the nurse, and make a determination of the appropriateness for prescribing and dispensing contraception at that time. A follow-up appointment will be scheduled not later than three months from that date, and if contraception is dispensed, only the amount needed for the time until the follow-up visit will be dispensed, not to exceed a three-month supply. Clients will only be afforded this opportunity once. If they do not make the follow-up visit, further contraception will not be provided. In response to questions of the Board members, Dr. Burns provided the following additional information. The nurse conducting the preliminary examination and history will be an RN. The nurse does ask about history of blood clots. The clinician will personally do any dispensing and the protocol will be amended to include that information.

Motion:

**The Board voted unanimously that the expedited family planning protocol submitted by the Virginia Department of Health (VDH) for prescribing and dispensing prescription contraception is in the best interest of public health, and in conformity with §54.1-3301 and § 54.1-3303 of the Code of Virginia, satisfies the requirements for establishment of a bona fide prescriber-patient relationship, provided the following is assured:**

1. **The protocol is followed and this approval is limited to this particular situation;**
2. **The patient and prescriber are both on site at the time of prescribing;**
3. **The RN performs certain physical examination functions to include weight, height, and blood**

pressure, takes a history that includes history of blood clots, and documents findings;

4. The prescriber reviews the documentation by the RN and makes an assessment whether prescription contraception should be prescribed at that time;
5. The follow-up examination with the prescriber is scheduled as soon as possible and the quantity of contraception provided is limited to the time of the follow-up visit not to exceed 90 days; and
6. This protocol is only allowed once per patient.

(motion by Yi, second by Brown; Attachment F)

- Flavoring of Medications

Staff informed the Board that it received frequent calls asking if the addition of flavoring agents to prescription medications constituted "compounding", if the pharmacist would need permission from the prescriber to flavor, and if a pharmacist could flavor a prescription product dispensed by another pharmacy. There was discussion that while this most likely did meet the strict definition of compounding, it was fairly common practice and in most cases in the best interest of the patient by promoting compliance in taking the medication. There were no motions in this matter.

- Guidance Document 110-36, compliance with USP 797

Staff informed the Board that it had already received two requests for extensions from complying with the physical standards of USP 797, and asked how it wanted to handle such requests. Mr. Ison provided a brief summary of the changes to this chapter from the 2004 version, that were published in December 2007, and which took effect June 1, 2008. The current guidance document requires compliance by June 30, 2008. The Board has already given pharmacies a one-year extension to be in compliance, and it considers that pharmacies should have at least complied with the 2004 requirements, if not the 2007 which primarily relate to changes with respect to chemotherapy drug storage in the clean room. Discussion centered on reviewing requests for extensions on a case by case basis, or providing for a blanket one-time extension. It was determined that the blanket extension in the guidance document would be the best way to go, because it would be equitable, and also more efficient. Different deadlines were discussed, but it was considered that four months should be sufficient for any pharmacy to comply as they have been aware of this since at least 2004. It was also requested that the guidance document provide a statement continued non-compliance would be subject to disciplinary action by the Board. The Board discussed assessing a monetary penalty as probably the appropriate action for this violation, and questioned how much could be assessed. Mr. Casway advised that the Board could assess a monetary penalty not to exceed \$5000 per violation, but could impose less. There was

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discussion as to what constituted a single violation. The violation is the act of compounding a sterile preparation under conditions that do not meet standards, so conceivably each preparation prepared could constitute a separate violation.

**Motion:**

**The Board of Pharmacy voted unanimously to amend its guidance document to provide for a one-time extension on compliance with physical standards of USP 797 for all pharmacies until October 31, 2008. No further extensions will be allowed, and pharmacies not in compliance by this deadline may be imposed a monetary penalty not to exceed \$5000 per violation (motion by Edwards, second by Ross).**

- Insulin in Pyxis machines

The Board Chairman tabled this issue until such time as he is able to obtain additional information.

**REPORTS:**

- BHP Report  
Jennifer Edwards

Ms. Edwards provided a brief update on the Board of Health Professions. At the last meeting, VDH reported to BHP that Title VI of federal law requires any health care providers that receive any federal funds to provide appropriate language services to patients. Providers cannot pass on these costs to patients. VDH does offer services by interpreters by phone 24-7. It also has some routine documents translated on its website.

Additionally VDH is requesting assistance from DHP in promoting its message of hand washing as a deterrent to transmission of communicable diseases.

- Executive Director's Report  
Scotti Russell

- NABP Annual Meeting

Ms. Russell reported that she, Bobby Ison (voting delegate), Jennifer Edwards, Brandon Yi and Leo Ross attended the meeting held May 17-21 in Baltimore, Maryland. Ms. Edwards, Mr. Yi, and Mr. Ross were not compensated by the Department for their attendance. She reported the following NABP initiatives announced during this meeting:

- NABP has developed a list of websites not recommended for online drugs. The Board will link its website to it.
- The Task Force on Patient Safety issued its report, and has recommended language for CQI programs, and for forms for pharmacies to use to self-audit. This will be helpful to this board if we have legislation passed that needs to be implemented.

- The resolutions were passed as follows:
  1. NABP is to collaborate with stakeholders to develop statutory authority to establish a behind-the-counter class of drugs.
  2. NABP will encourage national standards for tall-man lettering for look-alike drugs.
  3. NABP will encourage uniform standards for pharmacy interns and work with AACP and ACPE to determine a uniform date within the pharmacy curriculum to begin internship registrations.
  4. NABP will establish a task force on uniform prescription labeling requirements.
  5. NABP will establish a task force to study the feasibility of standardizing education and training for pharmacy technicians.
  6. NABP will establish a task force to review medication collection and disposal programs.
  7. NABP will look at ways to inform constituents about the critical nature of abuse of prescription medications by teens and how pharmacists can assist with this effort.

Ms. Russell reported on the following educational sessions held at the meeting:

- Educational sessions:
  1. Program on Teen addiction of prescription and OTC drugs
  2. State and Federal Regulatory Update
    - Pharmacy Technician and Training Act of 2008-grant act-no money
    - E-Prescribing-for Medicaid published-DEA still has not published, NCPCP 8.1
    - Proposed Patient Safety Rule-protections with PSO, privileged and confidential
    - Online Pharmacy Consumer Protection Act
  3. Pedigree Update, speaker from the FBI and Elisa Bernstein from FDA on RFID, etc.
  4. Medicaid Fraud Tamper Resistant Pads
  5. How to Investigate an Internet Pharmacy-defense attorney-VA
  6. Compounding Update-USP

She stated that Virginia was mentioned as a model in two separate continuing education sessions. In one session, "How to Investigate An Internet Pharmacy", the speaker, a defense attorney, touted Virginia as being the only state that had a law (§ 54.1-3303) he would find difficult to defend a client against, in a case involving either prescribing or dispensing in an internet scheme. In a separate session, a representative from USP mentioned that Virginia is the only state that has laws and regulations that set standards for sterile compounding in physician offices.

Additionally, Virginia's prescription monitoring program has a very good reputation nationally. Representatives from three states approached her asking for information and contacts they could use in establishing programs for their states.

- Diane Langhorst

Ms. Russell informed the Board that Ms. Langhorst had not been able to make a Board meeting to receive her plaque since her decision not to seek reappointment to the Board last year. She stated that she had not wanted Ms. Langhorst to go without her plaque any longer so had mailed it to her. She read a card to the Board from Ms. Langhorst, thanking the Board for remembering her in this way, and thanking the Board members for their service to the public.

- Disciplinary Update  
Cathy Reiniers-Day

Ms. Reiniers-Day presented the Board's disciplinary caseload report as of June 3, 2008, and stated that there were 174 cases at the enforcement level, 172 cases at the probable cause level, 11 cases at the informal conference level, 4 cases at the formal hearing level and 8 cases at the APD level. She also provided a more detailed breakdown of the stages and the number of cases of each priority at that stage. Further, for cases at the probable cause level that are now 250+ days, 8 cases are priority B and 41 cases are priority C. Ms. Reiniers-Day reminded the Board that the days counted for the 250+ cases included all stages that the case has been in. Since the March Board Meeting, the Board has closed 70 cases.

- Licensing Update  
Caroline Juran

Ms. Juran reported that the Board issued 661 licenses since the Board meeting held in March. The majority of those licenses issued were for pharmacy interns and pharmacy technicians. Additionally, Ms. Juran reported that Board staff sent a letter in early May to the 541 non-resident pharmacies currently registered with the Board notifying them that the General Assembly passed a law, effective July 1, 2008, which may affect non-resident pharmacies. Specifically, the law will require each non-resident pharmacy to designate to the Board the name and license number of a Virginia licensed pharmacist in charge. This person will be responsible for ensuring compliance with Virginia laws. This requirement does not apply to non-resident pharmacies providing services as a pharmacy benefit manager. Also, the law will require certification by NABP as a Verified Internet Pharmacy Practice Site (VIPPS), or certification by a substantially similar program approved by the Board, if the non-resident pharmacy dispenses more than 50 percent of its total prescription volume pursuant to prescriptions received as a result of solicitation on the Internet, to include solicitation by e-mail. Last, Ms. Juran informed the Board that Ms. Russell was nominated by staff for the Governor's Career Achievement Award. This award is presented to one individual

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employed by the Commonwealth who has a record of consistent achievement over time that has significantly improved the efficiency and effectiveness of Commonwealth operations. As a result of her nomination, she was recently recognized by Ms. Ryals and agency staff at a DHP agency event and was congratulated on her many contributions and outstanding performance during the last 30 years of service with the Commonwealth.

- PMP Update  
Ralph Orr

Mr. Orr provided the Board with updated program statistics. The program continues to grow with registrations increasing monthly for both the PMP Data Center and the Online Pain Management Course. Mr. Orr gave highlights of presentations the program has participated in to include a one-day seminar in Norfolk that had an outstanding turnout of providers. He asked the Board to put a note on their calendar for early November 2008 for a Fall Conference to be held in northern Virginia. Mr. Orr reported that the program is very close to finalizing the procurement of software that will allow for 24/7 access to PMP information. It is expected that this enhancement to the system may be available in early fall, with a marketing campaign to be made prior to the implementation date to inform Virginia healthcare providers of this new feature. The enhancement to the program software will provide access to those pharmacies that are open 24 hours a day and on weekends when the PMP is not normally staffed to process requests. Another feature of the 24/7 access is that a response to the request should be received within a minute or less.

FORMAL HEARING

MEMBER ABSENT:

Mr. Beckner left the meeting at approximately noon and was not present for the hearing.

ROBERT A. DAVIS  
Pharmacist License #0202-205379

A formal hearing in the matter of Robert A. Davis was held to discuss his petition for reinstatement of his pharmacist license that was mandatorily suspended on November 10, 2004, and allegations that he may have violated certain laws or regulations governing the practice of pharmacy in Virginia.

James Schliessmann, Assistant Attorney General, prosecuted the case with the assistance of Mykl D. Egan, DHP Adjudication Specialist. Mr. Davis appeared and was not represented by counsel.

Patricia Sheehan, DHP Senior Investigator, testified on behalf of the Commonwealth.

Robert A. Davis testified on his own behalf.

Mr. Kozera and Mr. Ross stated that they work for CVS/pharmacy and didn't know Mr. Davis. Therefore, they could make a fair and impartial decision in this matter. There were no objections from Mr. Davis and the remaining board members.

Closed Meeting:

Mr. Kozera moved, and the Board voted unanimously, to enter into closed meeting pursuant to § 2.2-3711(A)(28) of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Robert A. Davis. Additionally, he moved that Cathy Reiniers-Day, Scotti Russell and Howard Casway attend the closed meeting because their presence was deemed necessary and would aid the Board in its deliberation

Reconvene:

Mr. Kozera moved, and the Board voted unanimously, that only public business matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

Decision:

**Mr. Yi moved, and the Board voted unanimously, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Schliessmann, amended by the Board and read by Mr. Casway (Attachment # 1).**

**Mr. Kozera moved, and the Board voted unanimously, that Mr. Davis' petition for reinstatement be granted and that his license be reinstated with terms and conditions (Attachment G).**

ADJOURN:

With all business concluded, the meeting adjourned at 2:25 p.m.

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Elizabeth Scott Russell  
Executive Director

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Bobby Ison, Board Chairman

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Date

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**Department of Health Professions  
2009 Session of the General Assembly**

**DHP-PHA-#enter proposal number**

A bill to enact § 54.1-3316.1 of the *Code of Virginia* to require reporting of known information relating to the practice of pharmacy to the Board.

Be it enacted by the General Assembly:

1. That § 54.1-3316.1 of the *Code of Virginia* is enacted as follows:

**§ 54.1-3316.1. Mandatory reporting**

*A. Every pharmacy owner, pharmacist, pharmacy intern, and pharmacy technician shall report to the Board of Pharmacy within 30 days the following information of which he may become aware in his professional capacity:*

*1. That a pharmacist, pharmacy intern, or pharmacy technician is in need of treatment or has been committed or admitted as a patient at a health care institution, for treatment of substance abuse or a psychiatric illness that may render that person a danger to himself or the public.*

*2. Any evidence that indicates a reasonable probability that a pharmacist, pharmacy intern, or pharmacy technician (i) is or may be professionally incompetent; (ii) has or may have engaged in intentional or negligent conduct that causes or is likely to cause injury to a patient or patients; (iii) is or may be mentally or physically unable to engage safely in the practice of his profession; (iv) has or may have engaged in unethical, fraudulent or unprofessional conduct as defined in §54.1-3316 and Board regulations; or (v) has or may have engaged in substance abuse or diversion of prescription drugs. Such evidence shall include, but is not limited to, denial or termination of employment, restrictions imposed on employment, or voluntary resignation in order to avoid investigation or termination.*

*B. No person shall be obligated to report any matter to the Board if the person has actual notice that the matter has already been reported to the Board.*

*C. Any person making a report required by this section, providing information pursuant to an investigation, or testifying in a judicial or administrative proceeding as a result of such report shall be immune from any civil liability resulting therefrom unless such person acted in bad faith or with malicious intent.*

**Department of Health Professions  
2009 Session of the General Assembly**

**DHP-PHA-#enter proposal number**

A bill to enact § 54.1-3434.03 and amend and reenact §54.1-3434.1 of the *Code of Virginia* to require pharmacies licensed in Virginia to have a program for continuous quality improvement for the purpose of reducing dispensing errors.

Be it enacted by the General Assembly:

**1. That § 54.1-3434.03 of the *Code of Virginia* is enacted and §54.1-3434.1 is amended and reenacted as follows:**

**§ 54.1-3434.03. *Continuous Quality Improvement Program***

*Every pharmacy shall have a program for continuous quality improvement. The Board of Pharmacy shall promulgate regulations to further define required elements of the program. Such program shall be deemed in compliance with this section if it (i) complies with Board regulations, (ii) provides for a systematic, ongoing process of analysis of dispensing errors and uses findings to formulate an appropriate response and develop or improve pharmacy systems and workflow processes designed to prevent or reduce future errors, and (iii) provides for voluntary reporting to a patient safety organization as defined by the United States Patient Safety and Quality Improvement Act of 2005 (Public Law 109-41, 42 USC 216, 299b-21 through 926, 42 USC 299b-21 through 299b-26).*

**§ 54.1-3434.1. *Nonresident pharmacies to register with Board.***

A. Any pharmacy located outside the Commonwealth that ships, mails, or delivers, in any manner, Schedule II through VI drugs or devices pursuant to a prescription into the Commonwealth shall be considered a nonresident pharmacy, shall be registered with the Board, shall designate a pharmacist in charge who is licensed as a pharmacist in Virginia and is responsible for the pharmacy's compliance with this chapter, and shall disclose to the Board all of the following:

1. The location, names, and titles of all principal corporate officers and the name and Virginia license number of the designated pharmacist in charge, if applicable. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist in charge.
2. That it maintains, at all times, a current unrestricted license, permit, certificate, or registration to conduct the pharmacy in compliance with the laws of the jurisdiction, within the United States or within another jurisdiction that may lawfully deliver prescription drugs directly or indirectly to consumers within the United States, in which it is a resident. The pharmacy shall also certify that it complies with all lawful directions and requests for information from the regulatory or licensing agency of the jurisdiction in which it is licensed as well as with all requests for information made by the Board pursuant to this section.
3. As a prerequisite to registering with the Board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the jurisdiction in which it is located. The inspection report shall be deemed current if the

inspection was conducted within the past five years. However, if the nonresident pharmacy has not been inspected by the regulatory or licensing agency of the jurisdiction in which it is licensed within the past five years, the Board may accept an inspection report or other documentation from another entity that is satisfactory to the Board or the Board may cause an inspection to be conducted by its duly authorized agent and may charge an inspection fee in an amount sufficient to cover the costs of the inspection.

4. For a nonresident pharmacy that dispenses more than 50 percent of its total prescription volume pursuant to an original prescription order received as a result of solicitation on the Internet, including the solicitation by electronic mail, that it is credentialed and has been inspected and that it has received certification from the National Association of Boards of Pharmacy that it is a Verified Internet Pharmacy Practice Site, or has received certification from a substantially similar program approved by the Board. The Board may, in its discretion, waive the requirements of this subdivision for a nonresident pharmacy that only does business within the Commonwealth in limited transactions.

5. That it maintains its records of prescription drugs or dangerous drugs or devices dispensed to patients in the Commonwealth so that the records are readily retrievable from the records of other drugs dispensed and provides a copy or report of such dispensing records to the Board, its authorized agents, or any agent designated by the Superintendent of the Department of State Police upon request within seven days of receipt of a request.

6. That its pharmacists do not knowingly fill or dispense a prescription for a patient in Virginia in violation of § 54.1-3303 and that it has informed its pharmacists that a pharmacist who dispenses a prescription that he knows or should have known was not written pursuant to a bona fide practitioner-patient relationship is guilty of unlawful distribution of a controlled substance in violation of § 18.2-248.

*7. That it maintains a continuous quality improvement program as required of resident pharmacies pursuant to §54.1-3434.03 of this chapter.*

The requirement that a nonresident pharmacy have a Virginia licensed pharmacist in charge shall not apply to a registered nonresident pharmacy that provides services as a pharmacy benefits administrator.

B. Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in the Commonwealth and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in the Commonwealth.

C. Pharmacies subject to this section shall comply with the reporting requirements of the Prescription Monitoring Program as set forth in § 54.1-2521.

D. The registration fee shall be the fee specified for pharmacies within Virginia.

E. A nonresident pharmacy shall only deliver controlled substances that are dispensed pursuant to a prescription, directly to the consumer or his designated agent, or directly to a pharmacy located in Virginia pursuant to regulations of the Board.

**2. That the Board shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.**

**3. That the Board may provide for a delayed implementation date in regulation.**

## Project 1359 - none

**BOARD OF PHARMACY**  
**Nuclear pharmacies**Part V  
Nuclear Pharmacies**18VAC110-20-220. General requirements for pharmacies providing radiopharmaceutical services.**

~~A. A permit to operate a pharmacy providing radiopharmaceutical services shall be issued only to a qualified nuclear pharmacist as defined in 18VAC110-20-230. In emergency situations, in the absence of the nuclear pharmacist, he may designate one or more other qualified pharmacists to have access to the licensed area. These individuals may obtain single doses of radiopharmaceuticals for the immediate emergency and shall document such withdrawals in the control system.~~

~~B. Pharmacies providing ordinary pharmacy services in addition to radiopharmaceutical services shall comply with all regulations applicable to pharmacies in general. Pharmacies providing only radiopharmaceutical services shall comply with all regulations related to physical standards, sanitary conditions and security.~~

~~C. Nuclear pharmacies shall have adequate space and equipment, commensurate with the scope of services required and provided and in compliance comply with standards and requirements of the Nuclear Regulatory Commission (NRC) and the Virginia Department of Health related to the staffing and operation of the facility.~~

~~D. B. Radiopharmaceuticals are to be dispensed only upon an order from a practitioner prescriber authorized to possess, use and administer radiopharmaceuticals.~~

~~1. Orders shall originate at an institution or healthcare facility licensed to receive and possess radiopharmaceuticals, and must contain all necessary information relative to the radiopharmaceutical, activity, time of calibration, and any special preparation or delivery instructions.~~

~~2. Orders for radiopharmaceuticals may be transmitted orally, by fax, or by electronic transmission by an authorized agent of the prescriber. If the fax or electronic transmission of the authorized agent is pursuant to an oral order from the prescriber, the transmitted document need not include the prescriber's signature, but must include the name of the agent.~~

~~E. C. The immediate outside container of a radioactive drug to be dispensed shall also be labeled in accordance with requirements of §54.1-3410.1 B of the Code of Virginia.~~

~~F. D. The immediate inner container shall be labeled with: (i) the standard radiation symbol; (ii) the words "Caution--Radioactive Material"; and (iii) the serial number assigned to the order.~~

~~G. The amount of radioactivity shall be determined by radiometric methods for each individual dose immediately prior to dispensing.~~

~~H. E. Nuclear pharmacies may redistribute approved radioactive drugs if the pharmacy does not process the radioactive drugs in any manner nor violate the product packaging.~~

**18VAC110-20-230. Qualification as a nuclear pharmacist. (Repealed)**

~~In order to practice as a nuclear pharmacist, a pharmacist shall possess the following qualifications:~~

~~1. Meet Nuclear Regulatory Commission (NRC) standards of training for medically used or radioactive by-product material.~~

~~2. Have received a minimum of 200 contact hours of didactic instruction in nuclear pharmacy.~~

- ~~3. Attain a minimum of 500 hours of clinical nuclear pharmacy training under the supervision of a qualified nuclear pharmacist in a nuclear pharmacy providing nuclear pharmacy services, or in a structured clinical nuclear pharmacy training program in an approved school of pharmacy.~~
- ~~4. Submit to the board an affidavit of experience and training meeting the requirements of subdivisions 1, 2 and 3 of this section; documentation of NRC approval as an authorized nuclear pharmacist; or documentation of certification as a nuclear pharmacist by the American Pharmaceutical Association Board of Pharmaceutical Specialties.~~

**Exempt Regulation  
House Bill 1222**

**BOARD OF PHARMACY  
Restricted volunteer license**

**18VAC110-20-75. Registration for voluntary practice by out-of-state licensees.**

Any pharmacist who seeks registration to practice on a voluntary basis pursuant to subdivision 12 of §54.1-3301 of the Code of Virginia under the auspices of a publicly supported, all volunteer, nonprofit organization ~~with no paid employees~~ that sponsors the provision of health care to populations of underserved people ~~throughout the world~~ shall:

1. File a complete application for registration on a form provided by the board at least ~~45~~ five business days prior to engaging in such practice;
2. Provide a complete list of each state in which he has held a pharmacist license and a copy of any current license;
3. Provide the name of the nonprofit organization and the dates and location of the voluntary provision of services;
4. Pay a registration fee of \$10; and
5. Provide a notarized statement from a representative of the nonprofit organization attesting to its compliance with the provisions of subdivision 12 of §54.1-3301 of the Code of Virginia.

## Emergency Regulation House Bill 1129

### BOARD OF PHARMACY Renewal dates

#### 18VAC110-20-20. Fees.

A. Unless otherwise provided, fees listed in this section shall not be refundable.

B. Unless otherwise provided, any fees for taking required examinations shall be paid directly to the examination service as specified by the board.

C. Initial application fees.

1. Pharmacist license	\$180
2. Pharmacy intern registration	\$15
3. Pharmacy technician registration	\$25
4. Pharmacy permit	\$270
5. Permitted physician licensed to dispense drugs	\$270
6. Medical equipment supplier permit	\$180
7. Humane society permit	\$20
8. Nonresident pharmacy	\$270
9. Controlled substances registrations <del>(Between November 2, 2005, and December 31, 2006, the application fee for a controlled substance registration shall be \$50)</del>	\$90
10. Robotic pharmacy system approval	\$150
11. Innovative program approval.	\$250

If the board determines that a technical consultant is required in order to make a decision on approval, any consultant fee, not to exceed the actual cost, shall also be paid by the applicant in addition to the application fee.

12. Approval of a pharmacy technician training program	\$150
13. Approval of a continuing education program	\$100

D. Annual renewal fees.

1. Pharmacist active license – <u>due December 31</u>	\$90
2. Pharmacist inactive license – <u>due December 31</u>	\$45
3. Pharmacy technician registration – <u>due December 31</u>	\$25
4. Pharmacy permit – <u>due April 30</u>	\$270
5. Physician permit to practice pharmacy – <u>due February 28</u>	\$270
6. Medical equipment supplier permit – <u>due February 28</u>	\$180
7. Humane society permit – <u>due February 28</u>	\$20

- |  |       |
|--|-------|
| 8. Nonresident pharmacy – <u>due April 30</u>  | \$270 |
| 9. Controlled substances registrations – <u>due February 28</u>  | \$90  |
| 10. Innovative program continued approval based on board order<br>not to exceed \$200 per approval period. |       |

E. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

- |  |      |
|--|------|
| 1. Pharmacist license                    | \$30 |
| 2. Pharmacist inactive license           | \$15 |
| 3. Pharmacy technician registration      | \$10 |
| 4. Pharmacy permit                       | \$90 |
| 5. Physician permit to practice pharmacy | \$90 |
| 6. Medical equipment supplier permit     | \$60 |
| 7. Humane society permit                 | \$5  |
| 8. Nonresident pharmacy                  | \$90 |
| 9. Controlled substances registrations   | \$30 |

F. Reinstatement fees. Any person or entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

- |  |       |
|--|-------|
| 1. Pharmacist license  | \$210 |
| 2. Pharmacist license after revocation or suspension               | \$500 |
| 3. Pharmacy technician registration                                | \$35  |
| 4. Pharmacy technician registration after revocation or suspension | \$125 |

5. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement but shall apply for a new permit or registration. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

- |  |       |
|--|-------|
| a. Pharmacy permit                       | \$240 |
| b. Physician permit to practice pharmacy | \$240 |
| c. Medical equipment supplier permit     | \$210 |
| d. Humane society permit                 | \$30  |
| e. Nonresident pharmacy                  | \$115 |
| f. Controlled substances registration    | \$180 |

G. Application for change or inspection fees for facilities or other entities.

- |                                   |      |
|-----------------------------------|------|
| 1. Change of pharmacist-in-charge | \$50 |
|-----------------------------------|------|

2. Change of ownership for any facility	\$50
3. Inspection for remodeling or change of location for any facility	150
4. Reinspection of any facility	\$150
5. Board-required inspection for a robotic pharmacy system	\$150
6. Board-required inspection of an innovative program location	\$150
7. Change of pharmacist responsible for an approved innovative program	\$25

## H. Miscellaneous fees.

1. Duplicate wall certificate	\$25
2. Returned check	\$35

~~I. For the annual renewal due on or before December 31, 2006, the following fees shall be imposed for a license, permit or registration:~~

<del>1. Pharmacist active license</del>	<del>\$50</del>
<del>2. Pharmacist inactive license</del>	<del>\$25</del>
<del>3. Pharmacy technician registration</del>	<del>\$15</del>
<del>4. Pharmacy permit</del>	<del>\$210</del>
<del>5. Physician permit to practice pharmacy</del>	<del>\$210</del>
<del>6. Medical equipment supplier permit</del>	<del>\$140</del>
<del>7. Humane society permit</del>	<del>\$20</del>
<del>8. Nonresident pharmacy</del>	<del>\$210</del>
<del>9. Controlled substances registrations</del>	<del>\$50</del>

**18VAC110-50-20. Fees.**

A. Unless otherwise provided, fees listed in this section shall not be refundable.

## B. Initial application fees.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

C. Annual renewal fees shall be due on February 28 of each year.

1. Nonrestricted manufacturer permit	\$270
2. Restricted manufacturer permit	\$180
3. Wholesale distributor license	\$270
4. Warehouser permit	\$270
5. Nonresident wholesale distributor	\$270
6. Controlled substances registration	\$90

D. Late fees. The following late fees shall be paid in addition to the current renewal fee to renew an expired license within one year of the expiration date. In addition, engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board.

1. Nonrestricted manufacturer permit	\$90
2. Restricted manufacturer permit	\$60
3. Wholesale distributor license	\$90
4. Warehouser permit	\$90
5. Nonresident wholesale distributor	\$90
6. Controlled substances registration	\$30

E. Reinstatement fees.

1. Any entity attempting to renew a license, permit, or registration more than one year after the expiration date shall submit an application for reinstatement with any required fees. Reinstatement is at the discretion of the board and, except for reinstatement following license revocation or suspension, may be granted by the executive director of the board upon completion of an application and payment of any required fees.

2. Engaging in activities requiring a license, permit, or registration after the expiration date of such license, permit, or registration shall be grounds for disciplinary action by the board. Facilities or entities that cease operation and wish to resume shall not be eligible for reinstatement, but shall apply for a new permit or registration.

3. Facilities or entities that failed to renew and continued to operate for more than one renewal cycle shall pay the current and all back renewal fees for the years in which they were operating plus the following reinstatement fees:

a. Nonrestricted manufacturer permit	\$240
b. Restricted manufacturer permit	\$210
c. Wholesale distributor license	\$240
d. Warehouser permit	\$240
e. Nonresident wholesale distributor	\$240
f. Controlled substances registration	\$180

F. Application for change or inspection fees.

1. Reinspection fee	\$150
2. Inspection fee for change of location, structural changes, or security system changes	\$150
3. Change of ownership fee	\$50
4. Change of responsible party	\$50

G. The fee for a returned check shall be \$35.

H. For the annual renewal due on or before December 31, 2006, the following fees shall be imposed for a license or permit:

1. Nonrestricted manufacturer permit	\$210
2. Restricted manufacturer permit	\$140
3. Wholesale distributor license	\$210

- |                                      |       |
|--------------------------------------|-------|
| 4. Warehouser permit                 | \$210 |
| 5. Nonresident wholesale distributor | \$210 |

**Family Planning Expedited Visit Protocol**  
**6/4/08**

Purpose: The goal of the family planning expedited visit is to improve pregnancy planning and prevent unintentional and unplanned pregnancy. The family planning expedited visit is an abbreviated family planning visit designed to remove client barriers for accessing contraceptive methods. The expedited visit process is designed for implementation in the clinical and non-traditional settings. These clinical settings may include but are not limited to: STI, Pregnancy Test, Immunization, Pediatric, Teen, WIC, Walk In, and mobile clinical settings. The expedited visit form will serve as the family planning encounter and should be entered as a visit into WebVISION.

Criteria for using the family planning expedited visit form

- A clinician (MD or NP) must be present at the site and is responsible for dispensing.
- The contraceptive method selected must be available for dispensing.
- The expedited visit form must be completed.
- The client must receive a scheduled appointment for a comprehensive family planning visit within 90 days of the expedited visit. The return visit will include a comprehensive history, physical assessment, evaluation of the birth control method, client centered counseling and the required educational components of family planning.
- Only three cycles may be dispensed.
- Only one expedited visit will be permitted per patient.

Steps for completing the VDH Family Planning Expedited Visit

- Have the client complete as much of the form as possible.
- The nurse must review the form with the client and obtain clarifying information.
- The nurse will sign and date the form.
- The clinician on site will be given the completed form for review.
- The clinician is not required to actually see or examine the client on site, but may elect to.
- Clinician will elect to prescribe or decline to prescribe a birth control method based on client information, clinical judgment and protocol(s). The quick start process should be utilized whenever possible. Signature of the clinician is required on the form.
- If a method is ordered the nurse will provide: 1) method specific counseling and education, 2) provide a back up contraceptive method to be used if appropriate, 3) provide information on emergency contraception.
- Initiate referrals as identified.
- Schedule the client for a return comprehensive family planning visit within 90 days of the expedited visit..
- Nurse will enter: "follow up required," the return appointment date, and sign and date the form.
- The completed form will be added to the patient's medical record.



Name: \_\_\_\_\_

Address: \_\_\_\_\_

DOB: \_\_\_\_\_ Age: \_\_\_\_\_

Race/Ethnicity (circle): W B Asian American Indian Alaska Native Pacific Islander Multiracial Hispanic Non-Hispanic Other

LMP: \_\_\_\_ / \_\_\_\_ / \_\_\_\_ ALLERGIES: \_\_\_\_\_

Using any kind of birth control? Yes No  
If yes, what? \_\_\_\_\_

Smoke? Yes No Drink alcohol? Yes No  
List Current Medications/dosage/start date (include OTC & Street Drugs)  
\_\_\_\_\_  
\_\_\_\_\_

Urine Pregnancy Test today: POSITIVE NEGATIVE N/A

Problems since LMP?  
Nausea Y N \_\_\_\_\_  
Vomiting Y N \_\_\_\_\_  
Bleeding Y N \_\_\_\_\_  
Cramping Y N \_\_\_\_\_  
Other Y N \_\_\_\_\_

Have you been to a medical provider since LMP? Yes No  
If yes, why? \_\_\_\_\_  
\_\_\_\_\_

OB History: G \_\_\_\_\_ P \_\_\_\_\_  
Date of last pregnancy: \_\_\_\_\_  
Pregnancy complications: \_\_\_\_\_  
Future pregnancy plans: \_\_\_\_\_

Contraceptive History:  
OCs Y N \_\_\_\_\_  
DEPO Y N \_\_\_\_\_  
OrthoEvra Y N \_\_\_\_\_  
IMPLANTS Y N \_\_\_\_\_  
IUDs Y N \_\_\_\_\_  
Condoms/foam Y N \_\_\_\_\_  
Other Y N \_\_\_\_\_

Comments:  
Referral (circle)? WIC DSS BabyCare FP Plan First  
Other: \_\_\_\_\_

QUICK START

BP: \_\_\_\_\_

WT: \_\_\_\_\_

Last Intercourse (date)? \_\_\_\_\_

If unprotected & 5 days or less, offer EC

Medical History:

Hypertension? Y N  
Heart disease? Y N  
Diabetes? Y N  
Blood clots? Y N  
Chest pain? Y N  
Breast CA? Y N  
Cervical CA? Y N  
Abnormal Pap Y N  
Migraine HA? Y N  
Seizures? Y N  
Liver disease? Y N  
Vag Bleeding? Y N  
Breast feeding? Y N  
Other: \_\_\_\_\_

Dispense: \_\_\_\_\_ X 1 pack

NuvaRing X 1 month

DMPA 104 SQ X 1

EC \_\_\_\_\_  
Other \_\_\_\_\_ X 1 month

Clinician: \_\_\_\_\_

MD, NP, CNM, PA

RN follow-up: \_\_\_\_\_

F/U annt: \_\_\_\_\_

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**VIRGINIA:**

**BEFORE THE BOARD OF PHARMACY**

**IN RE:           ROBERT A. DAVIS, PHARMACIST**  
**License No. 0202-205379**

**ORDER**

Pursuant to § 2.2-4020, § 2.2-4021, § 54.1-110, 54.1-2400(11) and § 54.1-2409 of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was held before the Board of Pharmacy ("Board") on June 4, 2008, in Henrico County, Virginia, to receive and act upon the application to reinstate the license of Robert A. Davis to practice as a pharmacist in the Commonwealth of Virginia. Said license was mandatorily suspended by an Order of the Department of Health Professions entered on November 10, 2004, pursuant to § 54.1-2409 of the Code, due to the suspension of Mr. Davis' license to practice pharmacy in the State of Texas. The case was prosecuted by James E. Schliessmann, Assistant Attorney General. Howard M. Casway, Senior Assistant Attorney General, was present as legal counsel for the Board. Mr. Davis was present and was not represented by counsel. The proceedings were recorded by a certified court reporter.

Upon consideration of the evidence presented, the Board adopted the following Findings of Fact and Conclusions of Law.

**FINDINGS OF FACT**

The Board finds that:

1. Robert A. Davis held license number 0202-205379 to practice pharmacy in the Commonwealth of Virginia. Said license was mandatorily suspended on November 10, 2004.
2. On August 4, 2004, Mr. Davis' license to practice pharmacy in the State of Texas was suspended for diverting controlled substances for his personal use and for use by his wife pursuant to fraudulent prescriptions purportedly authorized by several physicians.
3. Mr. Davis' license to practice pharmacy in Texas was reinstated on probation with terms on February 7, 2007, and documents and interviews provided to the Board indicate he

is in compliance with the Order. Records provided confirm that Mr. Davis entered into the Texas Pharmacy Recovery Network Program on June 29, 2004, and that he is compliant with the Program. Further, he attends Alcoholics Anonymous meetings three to four times a week and has had no positive urine drug screens. Since April 1, 2007, he has been employed as a pharmacist and is supervised and monitored by the pharmacist-in-charge at the pharmacy where he is currently employed. It is Mr. Davis' intention to relocate to Virginia and to seek employment with his current employer.

#### **CONCLUSIONS OF LAW**

Finding of Fact #2 constitutes a violation of § 54.1-3316(10) [*formerly § 54.1-3316(9)*] of the Code. The matter of Mr. Davis' application for reinstatement of his pharmacist's license is properly before the Board.

#### **ORDER**

WHEREFORE, on the basis of the foregoing Findings of Fact and Conclusions of Law, it is hereby ORDERED that the application to reinstate the license of Robert A. Davis be, and hereby is, GRANTED subject to the following terms and conditions:

1. Mr. Davis shall remain in compliance with the terms and conditions set forth in the Agreed Board Order of the Texas State Board of Pharmacy entered November 1, 2006.
2. Should Mr. Davis relocate to Virginia, he shall not practice until he has entered into the Health Practitioners Intervention Program ("HPIP"), pursuant to Chapter 25.1 of Title 54.1 of the Code of Virginia (1950), as amended, and 18 VAC 76-10-10, *et seq.*, of the Regulations Governing the Health Practitioners' Intervention Program and has provided the Board with documentation of entry into a HPIP Recovery Monitoring Contract ("RMC"). After entry into HPIP, Mr. Davis shall comply with all terms and conditions for the period specified in the RMC.
3. Any violation of the terms and conditions of HPIP or any of the terms and conditions stated in this Order shall be reason for revoking the license of Mr. Davis, and an administrative proceeding shall be held to decide whether his license shall be revoked. Mr.

Davis shall be noticed to appear at an administrative hearing at such time as the Board is notified that:

- a. Mr. Davis is not in compliance with the terms and conditions specified by the HPIP, or has been terminated from participation in HPIP, or
- b. Mr. Davis has successfully completed the above-referenced period of participation in HPIP. Upon receipt of evidence of Mr. Davis' participation in and compliance with HPIP, the Board, at its discretion, may waive his appearance before the Board, relating to the HPIP contract only, and conduct an administrative review of this matter, or
- c. Any violation of the other terms and conditions of the Order.

As provided by Rule 2A:2 of the Supreme Court of Virginia, Mr. Davis has thirty (30) days from the service date in which to appeal this decision by filing, in writing, a Notice of Appeal with Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 9960 Mayland Drive, Suite 300, Richmond, Virginia, 23233-1463. The service date shall be defined as the date Mr. Davis actually received this decision or the date it was mailed to him, whichever occurred first. In the event this decision is served upon him by mail, three (3) days are added to that period.

Pursuant to § 2.2-4023 and § 54.1-2400.2 of the Code of Virginia, the signed original of this Order shall remain in the custody of the Department of Health Professions as a public record and shall be made available for public release, inspection and copying upon request.

FOR THE BOARD:

Elizabeth Scott Russell  
Executive Director

ENTERED: June 19, 2008

**DRAFT/UNAPPROVED  
VIRGINIA BOARD OF PHARMACY  
MINUTES OF A PANEL OF THE BOARD**

Wednesday, June 4, 2008  
Second Floor  
Board Room 2

Department of Health Professions  
Perimeter Center  
9960 Mayland Drive  
Richmond, Virginia 23233

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Orders/Consent Orders referred to in these minutes are available upon request

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**CALL TO ORDER:** A meeting of a panel of the Board of Pharmacy ("Board") was called to order at 2:30 p.m.

**PRESIDING:** Bobby Ison, Chairman

**MEMBERS PRESENT:** Gill Abernathy  
Willie Brown  
Jennifer H. Edwards  
David C. Kozera  
Mickey Stradler  
Brandon K. Yi

**STAFF PRESENT:** Elizabeth Scott Russell, Executive Director  
Cathy M. Reiniers-Day, Deputy Executive Director  
Caroline D. Juran, Deputy Executive Director  
Elizabeth M. Revere, Disciplinary Program Specialist  
Howard Casway, Senior Assistant Attorney General

**QUORUM:** With seven members of the Board present, a quorum was established.

**JAMES Q. UNDERWOOD**  
**License Number 0202-006303** A formal hearing was held in the matter of James Q. Underwood following the summary suspension of his pharmacist license on March 28, 2008, and to discuss allegations that he may have violated certain laws and regulations governing the practice of pharmacy in Virginia.

William Clay Garrett, Assistant Attorney General, prosecuted the case with the assistance of Amanda E. Mitchell, DHP Adjudication Specialist.

Susan Beasecker, DHP Compliance Case Manager, and Donna Whitney, HPIP Outreach Program Manager and Case Manager, appeared and testified on behalf of the Commonwealth.

Mr. Underwood appeared with Lisa Lawrence, Esquire.

Mr. Underwood testified on his own behalf.

Closed Meeting:

Mr. Kozera moved, and the Panel voted 7-0, to convene a closed meeting pursuant to Section 2.2-3711(A)(28) of the Code of Virginia for the purpose to reach a decision in the matter of James Q. Underwood. Additionally, he moved that Scotti Russell and Howard Casway attend the closed meeting.

Reconvene:

Mr. Kozera moved, and the Panel voted 7-0, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

Decision:

Mr. Yi moved, and the Panel voted 7-0, to adopt the Findings of Fact and Conclusions of Law as proposed by Mr. Garrett and modified by the Panel and read by Mr. Casway (Attachment 1).

Mr. Kozera moved, and the Panel voted 7-0, that Mr. Underwood's license be continued on indefinite suspension.

**MELISSA T. MOORE**  
Registration # 0230-012153

A formal hearing was held in the matter of Melissa T. Moore following the summary suspension of her pharmacy technician registration on May 6, 2008, and to discuss allegations that she may have violated certain laws and regulations governing the practice of pharmacy technicians in Virginia.

Ms. Moore was not present at the hearing. The Panel proceeded in Ms. Moore's absence as the Notice of Formal Hearing dated May 6, 2008, was mailed to Ms. Moore's legal address of record, both regular and certified mail. Mr. Ison ruled that adequate notice was provided to Ms. Moore and the hearing proceeded in her absence.

James Schliessmann, Assistant Attorney General, prosecuted the case with the assistance of Mykl Egan, DHP Adjudication Specialist.

CLOSED MEETING:

Mr. Kozera moved, and the Panel voted 7-0, to convene a closed meeting pursuant to Section 2.2-3711(A)(28) of the

Code of Virginia for the purpose to reach a decision in the matter of Melissa T. Moore. Additionally, he moved that Scotti Russell, Cathy Reiniers-Day, and Howard Casway attend the closed meeting.

RECONVENE:

Mr. Kozera moved, and the Panel voted 7-0, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

DECISION:

Mr. Yi moved, and the Panel voted 7-0, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Schliessmann, and read by Mr. Casway. (Attachment #2)

Mr. Kozera moved, and the Panel voted 7-0, that Ms. Moore's pharmacy technician registration be revoked.

**SUSAN A. VIPPERMAN**  
Registration # 0230-003617

A formal hearing was held in the matter of Susan A. Vipperman following the summary suspension of her pharmacy technician registration on May 6, 2008, and to discuss allegations that she may have violated certain laws and regulations governing the practice of pharmacy technicians in Virginia.

Ms. Vipperman was not present at the hearing. The Panel proceeded in Ms. Vipperman's absence as the Notice of Formal Hearing dated May 6, 2008, was mailed to Ms. Vipperman's legal address of record, both regular and certified mail. Mr. Ison ruled that adequate notice was provided to Ms. Vipperman and the hearing proceeded in her absence.

Mr. Schliessmann prosecuted the case with the assistance of Amanda E. Mitchell, DHP Adjudication Specialist.

DECISION:

Mr. Yi moved, and the Panel voted 7-0, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Schliessman (Attachment 3).

Mr. Kozera moved, and the Panel voted 7-0, that Susan A. Vipperman's pharmacy technician registration be revoked.



Attachment 1  
Board of Pharmacy  
Formal Hearings - Panel  
June 4, 2008

James Q. Underwood

Findings of Fact:

- James Q. Underwood, III, was issued License No. 0202-006303 to practice as a pharmacist by the Board on July 28, 1981. Said license was summarily suspended pursuant to an Order of the Board entered on March 28, 2008.
- Pursuant to an Order of the Board entered November 6, 2006 ("Board's Order"), Mr. Underwood's license was reinstated on the condition that he enter into and comply with the terms and conditions of the Health Practitioners Intervention Program ("HPIP"). On November 20, 2006, he entered into a Participation Contract with HPIP. On December 19, 2006, he entered into a Recovery Monitoring Contract, including term #6 in which he agreed "to refrain from practice until approved to return to work in a health profession by HPIP staff." On March 6, 2008, Mr. Underwood was urgently dismissed from the program for non-compliance due to his employment as a pharmacist with CVS/pharmacy #7577 without authorization from HPIP. According to information provided by CVS Corporate offices, Mr. Underwood was employed with CVS/pharmacy from December 14, 2007, until terminated on March 6, 2008, initially in training and later, as a staff pharmacist, without on-site supervision.
- In an interview with the Board's compliance case manager on March 14, 2008, Mr. Underwood, when asked if HPIP gave him permission to work, stated that he had not been given permission to work by HPIP. He further indicated that he and his psychiatrist "decided it was time and this should have been done a long time ago."
- Mr. Underwood testified that he left repeated messages with his HPIP case manager regarding his prospective employment but never heard anything back from him and never attempted to contact any other HPIP staff. As a result, having heard nothing to the contrary from HPIP, Mr. Underwood, purportedly with his psychiatrist's concurrence, began employment with CVS/pharmacy on December 14, 2007. Mr. Underwood further testified that he left employment with CVS/pharmacy on March 7, 2008, based upon four patient complaints that were made to his supervisor over a two-month period.
- As reflected in his testimony, Mr. Underwood steadfastly maintained that he had acted appropriately in returning to work without approval from HPIP when, in fact, the terms of the HPIP contract and the Board Order were clear and unequivocal to the contrary.

Conclusions of Law:

The Board concludes that Finding of Fact #2 constitutes a violation of Term No. 1 of the Board's Order.

Sanction:

The Virginia Board of Pharmacy, effective upon entry of this Order, hereby ORDERS that the pharmacist license of James Q. Underwood, III, be CONTINUED on INDEFINITE SUSPENSION.

Attachment 2  
Board of Pharmacy  
Formal Hearings - Panel  
June 4, 2008

Melissa T. Moore

Findings of Fact:

- Melissa T. Moore holds registration number 0230-012153 issued by the Board to practice as a pharmacy technician in the Commonwealth of Virginia that shall expire on December 31, 2008. Said registration was summarily suspended on May 1, 2008.
- Based upon representations of James E. Schliessmann, Assistant Attorney General, and Commonwealth's Exhibit No. 3, the presiding officer ruled there was adequate notice and the panel of the Board proceeded with the hearing in Ms. Moore's absence.
- Pursuant to Mr. Moore's admission, during the course of her employment as a pharmacy technician at CVS/pharmacy #7593, Christiansburg, Virginia, between December 2007, and February 2008, she diverted between 3,500 and 4,000 dosage units of hydrocodone/APAP 10/650 (Schedule III). As a result, her employment was terminated and she was arrested and charged in the General District Court of Montgomery County, Virginia, with felony embezzlement.

Conclusions of Law:

- Finding of Fact #3 constitutes a violation of § 54.1-3316(9) of the Code.

Sanction:

- The registration of Melissa T. Moore be, and hereby is, REVOKED.

Attachment 3  
Board of Pharmacy  
Formal Hearings - Panel  
June 4, 2008

Susan A. Vipperman

Findings of Fact:

- Susan A. Vipperman was issued Registration Number 0230-003617 to practice as a pharmacy technician by the Board on February 13, 2004. Said registration was summarily suspended pursuant to an Order of the Board entered on May 6, 2008.
- Based upon the representations of James E. Schliessmann, Assistant Attorney General, and Commonwealth's Exhibits #1 and #3 i.e., the Notice of Formal Hearing and Statement of Particulars, and the Affidavit of Mailing, the presiding officer ruled that adequate notice was provided to Ms. Vipperman and the hearing proceeded in her absence.
- Between February 15, 2008 and March 20, 2008, by Ms. Vipperman's own admission, during the course of her employment as a pharmacy technician at CVS/pharmacy #5505, Abingdon, Virginia, she diverted oxycodone 15mg (Schedule II) from the pharmacy stock for her own personal and unauthorized use. Ms. Vipperman self-administered the diverted medication both during and following her shifts.

Conclusions of Law:

- The Board concludes that Finding of Fact #3 constitutes a violation of § 54.1-3316(4) and (9) of the Code.

Sanction:

- The registration of Susan A. Vipperman be and hereby is REVOKED.

DRAFT/UNAPPROVED  
**VIRGINIA BOARD OF PHARMACY**  
**MINUTES OF AD HOC COMMITTEE FOR DRUG DONATION PROGRAM**

June 17, 2008  
Second Floor  
Board Room 3

Perimeter Center  
9960 Mayland Drive, Suite 300  
Richmond, Virginia 23233

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- CALL TO ORDER:** A working meeting of an ad hoc committee of the Board of Pharmacy for the purpose of drafting emergency regulations to establish a prescription drug donation program as required by 2008 House Bill 85 was called to order at 10am.
- PRESIDING:** David C. Kozera, Committee Chair
- MEMBERS PRESENT:** John Beckner  
Jennifer H. Edwards  
Timothy S. Musselman  
Bill Hancock  
Keith Kittinger  
Rachel Cain
- MEMBERS ABSENT:** Brandon K. Yi
- STAFF PRESENT:** Elizabeth Scott Russell, Executive Director  
Caroline D. Juran, Deputy Executive Director  
Sandra Whitley Ryals, Deputy Director, DHP  
Howard M. Casway, Senior Assistant Attorney General  
Elaine J. Yeatts, Senior Regulatory Analyst  
Sammy Johnson, Deputy Director of Enforcement
- DISCUSSION:** The committee was comprised of several members of the Board of Pharmacy, a representative of the Department of Medical Assistance Services (DMAS), a representative from the Virginia Pharmacists Association, and two pharmacists who work for pharmacies providing services to long term care facilities. There were also interested parties present representing several groups including associations that represent the different long term care facilities and the Virginia Trial Lawyers Association. Steve Pearson representing the Virginia Trial Lawyers Association spoke about his concerns that the language in the statute providing immunity from liability to pharmaceutical manufacturers was too broad and may encourage manufacturers to try to use it to avoid complete product liability, when he considered that the intention of the language was to prevent any additional liability for manufacturers just by virtue of the fact that someone may receive a drug that had been previously dispensed through such a program. He plans to seek legislative clarification, but wanted the Board to also interpret the statute in this manner in its emergency regulations.

There were two other concerns discussed by the committee that may require legislation to fix. The first is that there is no immunity

from liability for persons participating in the program. Second, the language excepting drugs paid for by Medicaid and Medicare was left in the statute. For such a program to be successful, this needs to be removed. Rachel Cain, DMAS, will check with her agency and determine if there can be amendments to the statute to allow donation of drugs paid for by Medicaid or Medicare when there is no possibility of return of the drugs for credit to either of those payors. Once DHP receives a response from DMAS, staff will draft a legislative proposal to take care of these two issues.

The committee reviewed Maryland's laws and regulations for its program as well as Ohio's. Ohio does not permit donations by consumers if the donated drug has ever been in the possession of the consumer, essentially limiting donated drugs to institutional settings. It was generally decided that for such a program in Virginia to work and not put the person accepting donated drugs in a position of being in violation of federal law by accepting Schedule II-V controlled substances, that collection sites for donated drugs should be restricted to permitted pharmacies. The collecting pharmacy would need to register with the Board, but no fee would be assessed for this registration. The registration would enable the Board to be able to publish a list of collection locations. The collecting pharmacy could directly dispense donated drugs to patients of free clinics or other clinics serving the indigent, or could transfer the collected drugs to another pharmacy in a free clinic or serving a free clinic. There would be requirements for recordkeeping for accountability purposes, and requirements for separate storage within the prescription department to ensure security and proper use of these collected drugs. While such program will allow for consumers to donate drugs, it was recognized by the committee that such donations will be severely limited due to safety concerns about drug integrity. Any donated drug will still have to meet packaging requirements as set forth in the statute, and the pharmacist screening the drug for acceptability will need to determine whether the integrity can be ensured. Staff will draft proposed regulations for the committee to review at its next meeting mid-July.

**ADJOURN:**

The meeting was adjourned at approximately 2:30PM.

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Elizabeth Scott Russell  
Executive Director

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Dave Kozera, Chairman

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Date

DRAFT/UNAPPROVED

VIRGINIA BOARD OF PHARMACY  
MINUTES OF INFORMAL CONFERENCE COMMITTEE

June 19, 2008  
Second Floor  
Board Room 1

Department of Health Professions  
9960 Mayland Drive, Suite 300  
Richmond, Virginia 23233

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- CALL TO ORDER: A meeting of an informal conference committee of the Board of Pharmacy was called to order at 10:25am.
- PRESIDING: Bobby Ison, Committee Chairman
- MEMBERS PRESENT: John O. Beckner
- STAFF PRESENT: Elizabeth Scott Russell, Executive Director  
Caroline D. Juran, Deputy Executive Director
- Dana Anderson  
License # 0201-001251
- Mr. Anderson, Michael Nyame-Mireku, Dominic Conti, and Terry Farnsworth were present to discuss the application, received April 25, 2008, for approval of a robotic pharmacy system wherein a pharmacist would be required to check or verify accuracy of only a reduced percentage of drug dispensed by the robot at Virginia Hospital Center Arlington Pharmacy.
- Decision: After consideration of the application and statements concerning the robotic pharmacy system, Mr. Ison stated that the Committee approved the robotic pharmacy system for a period of three years from the date of implementation, contingent upon verifying references and receiving favorable responses, and contingent upon other terms and conditions. Mr. Ison stated that possible terms and conditions may include:
1. Virginia Hospital Center Arlington Pharmacy shall notify the Board of the implementation date of the program;
  2. Pharmacists shall verify accuracy of 100% of all data entered into the packaging and overwrapping robots and will be responsible for transferring drug from stock bottles into the pill box canister after verifying accuracy of selected drug; Pharmacy technicians may transfer drug into the phialbox used for overwrapping, but pharmacists shall verify the accuracy of all selected drugs; Pharmacists shall document the verification of drugs during the packaging and overwrapping process by recording their initials/name in the robotic pharmacy system, and such documentation shall be maintained in an accessible format for 3 years from the date of packaging/overwrapping; Packaging and labeling, including the appropriate beyond-use date, shall conform to Board of Pharmacy regulations and to current USP-NF standards;
  3. Pharmacists shall perform a daily check of drugs picked by the robot for 100% of all patients' bins for the initial 2 weeks from

implementation of said program; After two weeks of perfect accuracy while performing 100% check, the pharmacy may move to a 10% check in which pharmacists shall perform a daily random check of medications picked by the robot for 10% of all patients' bins and 10% of all first doses or cart updates. Documentation of this check shall include the pharmacist's initials for each medication checked and a description of all discrepancies found. If the robot picks an incorrect medication, the hospital shall immediately institute a 100% check of all patients' bins or doses and shall immediately report this problem to the Board. This 100% check procedure shall continue until the Board allows the pharmacy to return to a reduction in checking.

4. All records for the robot shall be maintained on the premises for at least three years. These records shall include, but are not limited to packaging logs, random patient check logs, and copies of the quality assurance reports sent to the Board. All records shall be available for review by the Board or its designated representative;

5. Quality assurance reports showing the accuracy of the robot shall be forwarded to the Board for the three-year time period by the last day of the months of March, June, September, and December. These reports shall include but are not limited to, a summary of all discrepancies found during that quarter plus a cumulative summary since approval of the application. The reports shall indicate the total number of doses picked by the robot which were checked in conducting the 10% patient bin check, 10% cart updates check, and 10% first dose check; and, the total number of doses dispensed by the robot during the same time period. The reports shall also include notification for any scheduled or unanticipated downtime with an explanation of the problem to include the time span of the downtime and the resolution. Unanticipated downtime shall be immediately reported to the Board. Additionally, the report shall include discrepancies on the packaging portion of the robotic system. After six months of operation under this order with no reports of the robot picking the wrong drug, Virginia Hospital Center Arlington Pharmacy may petition the board to consider reducing the 10% pharmacist check requirement;

6. Virginia Hospital Center Arlington Pharmacy shall be subject to one random, unannounced inspection by the Board or its designated representatives, within the three-year period. This inspection is independent from any routine inspection of your pharmacy. Virginia Hospital Center Arlington Pharmacy shall be solely responsible for the payment of an inspection fee of \$150.00, to be paid to the Board within thirty days from the date of the statement of monies owed that will be mailed following the inspection;

7. Any operational changes or modifications to the robot system shall be approved by the Board prior to initiation of the

modification;

8. Reports of significant robot errors or failure to comply with the terms and conditions of the waiver as set forth above shall constitute grounds for the rescission of the approval and an administrative proceeding shall be convened to determine whether the approval should be rescinded or modified.

ADJOURN:

With all business concluded, the meeting adjourned at approximately 1:15pm.

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Caroline D. Juran, Deputy Executive Director

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Bobby Ison, Chairman

Date

**DRAFT/UNAPPROVED  
VIRGINIA BOARD OF PHARMACY  
MINUTES OF SPECIAL CONFERENCE COMMITTEE**

Wednesday, June 25, 2008  
Second Floor  
Board Room 4

Department of Health Professions  
Perimeter Center  
9960 Mayland Drive, Suite 300  
Richmond, Virginia 23233

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**CALL TO ORDER:** A meeting of a Special Conference Committee of the Board of Pharmacy was called to order at 9:00 a.m.

**PRESIDING:** David C. Kozera, Committee Chairman

**MEMBERS PRESENT:** Brandon K. Yi

**STAFF PRESENT:** Cathy M. Reiniers-Day, Deputy Executive Director  
Mykl D. Egan, DHP Adjudication Specialist

**MANZEL FELZER**  
Registration # 0230-011874

Manzel Felzer appeared with Lisa Strucko and Martha Porter, pharmacists at Leesburg Pharmacy; to discuss allegations that he may have violated certain laws and regulations governing the practice of pharmacy technicians as stated in the May 28, 2008 Notice.

**Closed Meeting:** Mr. Yi moved, and the Committee voted 2-0 in favor of the motion, to convene a closed meeting pursuant to § 2.2-3711.A.28 of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Manzel Felzer. Additionally, he moved that Cathy Reiniers-Day and Mykl Egan attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Committee in its deliberations.

**Reconvene:** Mr. Yi moved, and the Committee voted 2-0 in favor of the motion, that only public business matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

**Decision:** After consideration of the evidence and statements concerning the allegations, Mr. Yi moved, and the Committee voted 2-0 in favor of the motion, that the Committee make the findings of fact, conclusions of law

and sanctions as stated in Attachment 1.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Mr. Felzer unless a written request to the Board for a formal hearing on the allegations made against him is received from Mr. Felzer within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

MARTHA PORTER  
License #0202-205070

Martha Porter appeared with Lisa Strucko, pharmacist and Manzel Felzer, pharmacy technician, at Leesburg Pharmacy; to discuss allegations that she may have violated certain laws and regulations governing the practice of pharmacy as stated in the May 28, 2008 Notice.

Closed Meeting:

Mr. Yi moved, and the Committee voted 2-0 in favor of the motion, to convene a closed meeting pursuant to § 2.2-3711.A.28 of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Martha Porter. Additionally, he moved that Cathy Reiniers-Day and Mykl Egan attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Committee in its deliberations.

Reconvene:

Mr. Yi moved, and the Committee voted 2-0 in favor of the motion, that only public business matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

Decision:

After consideration of the evidence and statements concerning the allegations, Mr. Yi moved, and the Committee voted 2-0 in favor of the motion, that the Committee make the findings of fact, conclusions of law and sanctions as stated in Attachment 2.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Ms. Porter unless a written request to the Board for a formal hearing on the allegations made against her is received

from Ms. Porter within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

JAREN OUTLAW  
Registration #0230-0048831

Ms. Outlaw was scheduled to appear at 9:00 a.m. to discuss allegations that she may have violated certain laws and regulations governing the practice of pharmacy technicians as stated in the May 28, 2008 Notice that was mailed to Ms. Outlaw's legal address of record, both regular and certified mail.

The Committee recommended that this case be heard at a formal hearing.

NELSON TIDWELL  
License #0202-007302

Nelson Tidwell appeared with William Dean, current Pharmacist-In-Charge at Rx Services and William Hancock, Omnicare Area Director; to discuss allegations that he may have violated certain laws and regulations governing the practice of pharmacy as stated in the May 28, 2008 Notice.

Closed Meeting:

Mr. Yi moved, and the Committee voted 2-0 in favor of the motion, to convene a closed meeting pursuant to § 2.2-3711.A.28 of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Nelson Tidwell. Additionally, he moved that Cathy Reiniers-Day and Mykl Egan attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Committee in its deliberations.

Reconvene:

Mr. Yi moved, and the Committee voted 2-0 in favor of the motion, that only public business matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

Decision:

After consideration of the evidence and statements concerning the allegations, Mr. Yi moved, and the Committee voted 2-0 in favor of the motion, that the Committee make the findings of fact, conclusions of law and sanctions as stated in Attachment 3.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Mr. Tidwell unless a written request to the Board for a formal hearing on the allegations made against him is received from Mr. Tidwell within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

ADJOURN:

With all business concluded, the meeting adjourned at 4:30 p.m.

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Cathy M. Reiniers-Day  
Deputy Executive Director

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David C. Kozera, Chair

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Date

Attachment 1  
Minutes - Board of Pharmacy  
Special Conference Committee  
June 25, 2008

Manzel Felzer

Findings of Fact and Conclusions of Law:

- Manzel Felzer holds registration number 0230-011874 issued by the Board to practice as a pharmacy technician in the Commonwealth of Virginia.
- During the course of Mr. Felzer's employment as a pharmacy technician at Leesburg Pharmacy, Leesburg, Virginia, he violated § 54.1-3316(7), § 54.1-3321(A)(4) and (5) and § 54.1-3462(1) of the Code in that on December 21, 2007, by his own admission, he compounded Rx #155421 for amlodipine 1.25 mg/ml suspension containing 0.68 grams of amlodipine powder rather than the required 0.068 grams of amlodipine powder. The prescription bottle was mislabeled as containing amlodipine 1.25 mg/ml.
- The veterinarian reported that, due to the cat consuming ten times the amount of the medication on three occasions, it "significantly contributed" to the death of the patient.

Sanction

- It is hereby ORDERED that Manzel Felzer be issued a REPRIMAND. Further, the Board ORDERS that Mr. Felzer will successfully complete six (6) hours of continuing pharmacy education in the subject of compounding.

Attachment 2  
Minutes - Board of Pharmacy  
Special Conference Committee  
June 25, 2008

Martha Porter

Findings of Fact and Conclusions of Law:

- Martha Porter holds license number 0202-205070 issued by the Board to practice pharmacy in the Commonwealth of Virginia.
- During the course of Ms. Porter's employment as a pharmacist at Leesburg Pharmacy, Leesburg, Virginia, she violated § 54.1-3316(7), § 54.1-3320(A)(1), and §54.1-3462(1) of the Code, and 18 VAC 110-20-270(C) of the Board of Pharmacy Regulations, in that on December 21, 2007, by her own admission, she dispensed Rx #155421 for amlodipine 1.25 mg/ml suspension containing 0.68 grams of amlodipine powder rather than the required 0.068 grams of amlodipine powder. The prescription bottle was mislabeled as containing amlodipine 1.25 mg/ml.
- The veterinarian reported that, due to the cat consuming ten times the amount of amlodipine on three occasions, it "significantly contributed" to the death of the patient.

Sanction

- It is hereby ORDERED that Martha Porter be issued a REPRIMAND. Further, the Board ORDERS that Ms. Porter shall successfully complete four (4) hours of continuing pharmacy education in the subject of compounding.

DRAFT

Attachment 3  
Minutes - Board of Pharmacy  
Special Conference Committee  
June 25, 2008

Nelson D. Tidwell

Findings of Fact and Conclusions of Law:

- Nelson D. Tidwell holds license number 0202-007302 issued by the Board to practice pharmacy in the Commonwealth of Virginia.
- During the course of Mr. Tidwell's employment as the pharmacist-in-charge of Rx Services, Williamson Drug Company, Inc., Abingdon, Virginia, he violated § 54.1-3316(6) and (7), § 54.1-3320, and § 54.1-3434 of the Code, in that between May and August, 2007, he allowed an individual who was not licensed as a pharmacist to perform the duties of a pharmacist.

Sanction:

It is hereby ORDERED that Nelson D. Tidwell be issued a REPRIMAND.

DRAFT

**DRAFT/UNAPPROVED  
VIRGINIA BOARD OF PHARMACY  
MINUTES OF TELEPHONE CONFERENCE CALL**

Tuesday, July 1, 2008

Department of Health Professions  
Perimeter Center  
9960 Mayland Drive, Suite 300  
Richmond, Virginia 23233-1463

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Orders/Consent Orders referred to in these minutes are available upon request

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**TIME & PURPOSE:** After an attempt to schedule a regular meeting failed, pursuant to § 54.1-2408.1 of the Code of Virginia, a telephone conference call of the Virginia Board of Pharmacy was held at 8:35 a.m., on July 1, 2008, to consider the summary suspension of the license of Mildred L. Smith to practice as a pharmacist.

**PRESIDING:** Dave Kozera, Chairman

**MEMBERS PRESENT:** John Beckner  
Willie Brown  
Bobby Ison  
Michael E. Stredler  
Brandon Yi

**STAFF PRESENT:** Elizabeth Scott Russell, Executive Director  
Cathy M. Reiniers-Day, Deputy Executive Director  
Elizabeth M. Revere, Administrative Assistant  
Howard Casway, Senior Assistant Attorney General  
James Schliessmann, Assistant Attorney General  
Amanda Mitchell, DHP Adjudication Specialist

**POLL OF MEMBERS:** The Board members were polled as to whether they could have attended a regular meeting at the office in a timely manner for the purpose of hearing evidence in a possible summary suspension case. The Board members stated that they would not have been able to attend.

With six members participating and four members unable to participate, it was established that a quorum could not have been convened in a regular meeting to consider these matters.

**MILDRED L. SMITH**  
License Number 0202-206361

Mr. Schliessmann presented a summary of the evidence in this case.

Decision:

Mr. Stredler moved, and the Board voted 6-0 in favor of the motion, that with the evidence presented, the practice as a pharmacist by Mildred L. Smith poses a substantial danger to the public; and therefore, that the license of Mildred L. Smith, to practice as a pharmacist be summarily suspended.

Mr. Beckner moved, and the Board voted 6-0 in favor of the motion, that a Consent Order be offered to Ms. Smith for the indefinite suspension of her license in lieu of a hearing.

ADJOURN:

With all business concluded, the conference call adjourned at 9:20a.m.

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Elizabeth M. Revere  
Discipline Program Specialist

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Cathy M. Reiniers-Day  
Deputy Executive Director

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Dave Kozera, Chairman

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Date