

FINAL

**NEW JERSEY STATE BOARD OF PHARMACY
MINUTES OF THE OPEN SESSION OF MAY 26, 2004**

I. CALL TO ORDER

The Open meeting of the New Jersey State Board of Pharmacy was called to order by Board President Edward McGinley in the Somerset Room, 6th Floor at 124 Halsey Street, Newark, New Jersey on May 26, 2004 at 9:06 a.m. All members were duly notified of the time and place and all pertinent materials had been provided.

II. SUNSHINE LAW ANNOUNCEMENT

Edward McGinley read a statement that newspapers and appropriate elected officials had been notified of the meeting according to the requirements of the Open Public Meetings Act N.J.S.A., Chapter 231, PL 1975, C. 10:4-18.

III. ROLL CALL

Edward McGinley, R.Ph. President
Anthony Alexander, R.Ph.
Pamela Allen, R.Ph.
Mona Doyle Public Member (Left at 3:45 p.m.)
Sophie Heymann Public Member
Ira Katz, R.Ph. (Left at 3:55 p.m.)
Robert Kowalski, R.Ph. (Left at 3:15 p.m.)
Richard Palombo, R.Ph

OTHERS IN ATTENDANCE:

Marianne Greenwald Deputy Attorney General
Joanne Boyer, R.Ph. Executive Director
Shonnette Messiah Principal Clerk Stenographer
Kiran Shamlall Assistant Clerk Stenographer

EXCUSED:

Edith Micale, R.Ph. Treasurer

IV. APPROVAL OF MINUTES

(1) DRAFT OF MAY 12, 2004 MINUTES

Sophie Heymann moved, seconded by Robert Kowalski to approve the draft minutes of May 12, 2004 as amended. The motion passed unanimously.

(2) FINAL OF APRIL 14, 2004 MINUTES

Robert Kowalski moved, seconded by Anthony Alexander to approve the minutes of April 14, 2004. The motion passed unanimously.

V. SECRETARY'S REPORT AND RECOMMENDATION FOR REGISTRATION BY RECIPROcity, EXAMINATION AND GRADE TRANSFER

Robert Kowalski moved, seconded by Sophie Heymann to approve the Secretary's Report and Recommendation for Registration By Reciprocity, Examination and Grade Transfer. The motion passed unanimously.

VI. CONTINUING EDUCATION REPORT

Sophie Heymann moved, seconded by Ira Katz to approve the Continuing Education Report. The motion passed unanimously.

VII. VIOLATIONS PAID FOR THE MONTH OF APRIL

N/A

VIII. OLD BUSINESS

(1) Cardinal Health-Off-site order review and entry of hospital medication orders

After the DAG researched other state regulations, she suggested that the Board offer Cardinal Health the opportunity to present a pilot program for approval prior to central fill regulations being adopted. When the central fill regulations are adopted the pilot program will fall within the regulations.

However, Cardinal Health will await finalization of the central fill/central processing regulations and will apply to the Board as an out-of-state pharmacy after July 14, 2004. In addition, they look forward to applying to the Board along with a New Jersey hospital pharmacy for approval to provide central processing services once the regulations are finalized.

(2) John Bradley – Regarding his CE obligation

This item was before the Board on 4/14/04. Mr. Bradley had not renewed his license for the 2001-2003 renewal period and had not maintained his CE credits. The Board directed to have Mr. Bradley submit an affidavit of employment and a listing of CE programs he has presented during the 2001-2003 renewal period.

Sophie Heymann moved, seconded by Ira Katz to grant the applicant six (6) credits for presenting two (2) courses consistent with the current regulations. The motion passed unanimously.

3) Burt Friedman, R.Ph. – Review of Judge Giordano's opinion, Exceptions by Paul Kenny, Exceptions by Angelo Cifaldi

Both Paul Kenny and Angelo Cifaldi each had a ten (10) minute time period to present oral arguments. However, they were given great latitude.

The Board found that there was a patently substantial departure from the accepted standard of care, such that Mr. Friedman has engaged in gross negligence, gross malpractice or gross incompetence which damaged or endangered the life, health, welfare and safety of Ms. Clavijo, which is in violation of N.J.S.A 45:1-21(c). In reaching this decision the Board considered the public expectations of a pharmacist and agreed the public deserves to have pharmacists conduct a thorough review of information that consumers cannot be expected to know and dispense accordingly in a professional and educated manner. The Board emphasized that when a pharmacist has no knowledge regarding a prescription medication, he or she has a professional duty to obtain product knowledge and ensure that all dispensed medication and directions are appropriate.

Sophie Heymann moved, seconded by Pamela Allen, to suspend Mr. Friedman's license to practice pharmacy for five

years, in which the first 3 will be active and the last two (2) will be stayed. Mr. Friedman will be fined \$10,000 in civil penalties and costs will be determined after written submissions by respondent's counsel. Mr. Friedman's suspension will become effective on July 1, 2004. Five (5) in favor, Two (2) opposed, and One (1) recusal of Robert Kowalski due to his son's affiliation in this case.

IX. NEW BUSINESS

(1) Daniel Lefkowitz, Ph.D., Research Scientist II, Dept. of Health & Senior Services – Requesting Board approval of placement of an asthma leaflet in pharmacies

The Board determined there are no regulations prohibiting the placement of asthma leaflets in pharmacies.

Sophie Heymann moved, seconded by Robert Kowalski to endorse the concept of making the public more aware of this issue. The Department of Health should also do a campaign for employers. One (1) opposed. The motion passed.

(2) Natalie G. Lontchar, Corporate Attorney, Eckerd – Requesting to keep current permit numbers upon sale of Eckerd to the Jean Coutu Group

Sophie Heymann moved, seconded by Richard Palombo to grant Eckerd's request to keep current permit numbers upon sale of Eckerd to the Jean Coutu Group. The motion passed. Robert Kowalski was recused due to his son's affiliation with Eckerd Drugs.

(3) CPMC Research Pharmacy – Notifying Board of additional protocols and also requesting approval to store drugs in storage space

Pamela Allen moved, seconded by Richard Palombo to approve the dispensing of medication consistent with the protocol. It will be unnecessary to submit every protocol from this point on, except if it involves a Controlled Dangerous Substance. The motion passed unanimously.

The Chair directed that CPMC Research Pharmacy must file a remodeling application.

(4) Medco Health – Requesting approval of automation

Pamela Allen moved, seconded by Anthony Alexander to approve the concept of an extension of automated process at their Willingboro facility pending inspection by enforcement. The motion passed unanimously. Richard Palombo was recused due to his employment with Medco Health.

(5) Kevin Beireis, R.Ph. – Requesting waiver of the didactic continuing education requirement

Sophie Heymann moved, seconded by Ira Katz to deny his request for a waiver of the didactic continuing education requirement and have the Executive Director suggest other alternatives. Five (5) in favor. One (1) opposed and Pamela Allen was recused due to Kevin Beireis affiliation with Monmouth Medical Center. The motion passed.

(6) Medco Resolves All Issues with 20 State Attorneys General and Reaches Separate Agreement with U.S. Attorney

This item has been treated as an FYI.

(7) Proposed new rules, Dept. of Banking and Insurance -- NJAC 11:4-55.2(c), Pharmacy Benefit cards

Ira Katz moved, seconded by Anthony Alexander to oppose the changes in the proposal in the repropoed new rules as it is confusing and can delay filling a prescription. The motion passed unanimously.

In addition the Board, would like to strike the wording "when required for proper claims adjudication" from items 1, 2, and 4 in section 11:4-55 2(c). of the repropoed new rules.

X. CONFERENCES

N/A

XI. COMMITTEE REPORTS

(1) Pharmacy Practice Act – Technicians Workgroup Anthony Alexander

Sophie Heymann moved, seconded by Mona Doyle to exclude cashiers and clerical help from the 2 to 1 ratio in the proposed technician regulations. The motion passed unanimously.

(2) Pharmacy Practice Act – Collaborative Practice Workgroup Pamela Allen

Pamela Allen has not received any additional comments from the Board members regarding this issue. She will be meeting with Deputy Director, Anthony Miragliotta in the near future regarding this issue.

(3) Pharmacy Practice Act – Immunization Workgroup Ira Katz

On 5/25/04, Edward McGinley, Anthony Miragliotta, Joanne Boyer and Marianne Sheehan met with the Executive Committee from the Board of Medical Examiners to present the draft proposal.

At the meeting, the draft regulations were reviewed and comments were received. It was determined that a BME Ad-Hoc committee will be formed to further work on the regulations with the immunization workgroup.

XII. ADJOURNMENT

At 10:15 a.m., Pamela Allen moved, seconded by Richard Palombo, to move into the Executive Session for advice of counsel. Refer to Item Exec.5E.2. The motion passed.

At 11:00 a.m., Pamela Allen moved, seconded by Mona Doyle to continue back into the Open Session to listen to the arguments by counsel. The motion passed.

At 11:35 a.m., Pamela Allen moved, seconded by Mona Doyle, to move back into the Executive Session for deliberation. The motion passed

At 2:21 p.m., Sophie Heymann moved, seconded Mona Doyle, to move back into the Open Session to inform counsel of the Board's decision considering counsels' presentation mitigating and of aggravating factors regarding disciplinary action. The motion passed.

At 3:00 p.m., Mona Doyle moved, seconded by Sophie Heymann, to move back into the Executive Session to deliberate regarding the penalty phase for Mr. Friedman. The motion passed.

At 3:27 p.m., Richard Palombo moved, seconded by Anthony Alexander, to move into the Open Session to inform counsel of the Board's decision as to disciplinary action. The motion passed.

At 4:00 p.m., Anthony Alexander moved, seconded by Richard Palombo, to adjourn the Open Session. The motion passed.