

**NEW JERSEY STATE BOARD OF PHARMACY
MINUTES OF THE OPEN SESSION FOR
JULY 11, 2007**

I. CALL TO ORDER

The Open Meeting of the New Jersey Board of Pharmacy was called to order by Board President Edward McGinley, R.Ph. in the Somerset Room, 6th Floor at 124 Halsey Street, Newark, New Jersey on July 11, 2007 at 9:01 a.m. All members were duly notified of the time and place and all pertinent materials were provided to the members.

II. SUNSHINE LAW ANNOUNCEMENT

Mr. Edward McGinley, President read a statement to the effect that the newspapers and appropriate elected officials had been notified of the meeting according to the requirement of the Open Meetings Act N.J.S.A., Chapter 231, PL 1975,/C. 10:4-8.

III. ROLL CALL

Edward McGinley, R.Ph. President
Thomas Bender, R.Ph. Vice-President
Pamela Allen, R.Ph.
Jennifer DeVenio Government Member (arrived at (9:08 am)
Peter Halecky, R.Ph.
Margherita Lafragola, R.Ph. (Arrived at 9:10am)
Richard Palombo, R.Ph.
Marc Sturgill, PharmD

OTHERS IN ATTENDANCE

Joanne Boyer, R.Ph. Executive Director
Marianne Greenwald DAG
Timothy Carter Clerk

EXCUSED

Axel Miranda Public Member

IV. UPDATE BY EXECUTIVE DIRECTOR

Ms. Joanne Boyer, R.Ph., Executive Director, reported the following:

- a) Forty-nine (49) pharmacists were licensed during the month of June, 2007; twenty-three (23) by reciprocity and twenty-six (26) by examination/score transfer
- b) Violations in the amount of \$31,375 were collected by the Board

V. CONTINUING EDUCATION REPORT

N/A

VI. OLD BUSINESS

- 1) Ronald Sorr ? Regarding Notice of Motion for Stay of Decision of the Board of Pharmacy Pursuant to to NJAC

1:1 ?18.6(F) and R 2:9 -7 Richard Palombo was recused due to his recommendation of the Attorney General?s expert witness in this case.

Elvy Paiva moved, seconded by Jennifer DeVenio to move this matter into Executive Session for deliberation and advice of counsel. The motion passed unanimously.

At 11:42 a.m. Peter Halecky made the motion, seconded by Jennifer DeVenio, to move out of Executive Session and into Open Session.

The Board, having reviewed the submissions of the respondent and the Attorney General, has determined to deny the motion to Stay the Final Decision pending Mr. Sorr?s appeal to the Appellate Division.

The Board notes the cases cited by Respondent as comparable, are, in fact, not comparable. Respondent compares a case of illicit drug distribution by a licensee in Virginia for which the Virginia Board suspended the license to practice pharmacy of licensee indefinitely where the egregious conduct occurred. The New Jersey Board learned of the conviction two years after the action by the Virginia Board. The pharmacist was licensed in New Jersey as well and had already been reinstated in the state in which the conduct occurred. No hearing occurred in New Jersey and no costs were incurred by this Board.

As to the one case that on its face appears to be comparable to the matter before this Board IMO Bert Friedman, respondent should be mindful that the egregious conduct involved one patient and one medication error. There too, Respondent turned a blind eye as to what the standard of practice mandated, and as such, the Board ordered a similar suspension, costs and civil penalty. The Board never considered the dispensing to cause the death of the patient because such proofs were never before the ALJ or this Board.

Ms. Elvy Paiva made the motion, seconded by Mr. Peter Halecky. The motion passed unanimously.

At 11:45 a.m. Ms. Margherita Lafragola made the motion, seconded by Mr. Peter Halecky, to go back into Executive Session.

VII. NEW BUSINESS

1) Use of the term "Apothecary" by Natural Foods General Store, Apothecary & Deli, Toms River, NJ

Ms. Pamela Allen, made the motion, seconded by Mr. Peter Halecky for the Board of Pharmacy to send Natural Foods General Store, Apothecary & Deli, Toms River NJ a copy of N.J.S.A. 45: 14-71 pertaining to the use of the word "apothecary" and to instruct the store that they are to cease and desist in using the term "apothecary" in any form. The motion passed unanimously.

2) Wedgewood Pharmacy, Swedesboro, NJ ? Pharmacy Technician Training Program

Mr. Thomas Bender made the motion, seconded by Mr. Marc Sturgill, to accept Ms. Boyer?s recommendation to approve the Wedgewood Pharmacy program as submitted. The motion passed unanimously.

3) FDA News Release regarding computerized medication box FYI

This FDA News Release was provided as informational to the Board.

4) Jay Stuman, R.Ph., Manager, Baxter Pharmacy Affairs, McGaw Park, IL ? Regarding request for special permit

Mr. Jay Stuman, R.Ph., Manager, Baxter Pharmacy Affairs, McGaw Park, IL (hereafter, "Baxter") and J. Andrew Harrison, Sr. Manager, Global Regulatory, Baxter Pharmacy Affairs appeared before the Board to request an administrative review and issuance of a special pharmaceutical permit providing a regulatory framework for the limited operation of renal dialysis product supply business. The Board interviewed Mr. Stuman, Mr. Harrison and pharmacy consultant Frank Breve at length fielding questions pertaining to operations, staffing, and service to

consumers.

Ms. Marianne Greenwald, DAG, requested that the Board be provided with a comprehensive list of all other states in which Baxter has obtained a limited service agreement/permit or has been exempted from obtaining a permit and to what authority (statutory or regulatory) it was relied upon. Mr. Stuman agreed to this request.

At 10:04 a.m., Peter Helecky moved, seconded by Marc Sturgill, to go into Executive Session. The motion passed unanimously.

At 10:36 a.m., Peter Halecky moved, seconded by Richard Palombo to go into Open Session for the purpose of deliberation regarding Baxter's request for a specialized permit. The motion passed unanimously.

The Board noted that Baxter Pharmacy's current operations in New Jersey do not provide for a "100 % product check" by a pharmacist. Moreover, the Board expressed "profound concerns" as to Baxter's lack of operational controls, no pharmacist available for "real time checks", and care for the patient/consumer in view of the lack of prospective review of patients/consumers profiles.

More specifically, the Board listed the following special concerns: a) there is no check of patient's profile by a licensed pharmacist; c) there is no check of order entry or a DUR by a licensed pharmacist prior to dispensing; d) there is no final check of by a licensed pharmacist prior to dispensing; and therefore Baxter's operations in New Jersey are not in compliance with the Board of Pharmacy statutes and regulations of the state.

The motion was made by Peter Halecky, seconded by Jennifer DeVenio, to grant Baxter ninety (90) days to comply with New Jersey statutes and regulations pursuant to N.J.A.C. 13:39 7.19(e) "Patient Profile Record System".

The motion passed unanimously.

Further, Baxter's request for a special pharmaceutical permit is denied until Baxter is in compliance with New Jersey statutes and regulations. The Board will reconsider Baxter's request for a special pharmacy permit following Baxter's compliance with New Jersey statutes and regulations.

5) Oxana Tsyndra ? Requesting waiver to begin internship prior to obtaining FPGEC

The Board cited N.J.A.C. 13:39-8.41 in reference to Ms. Tsyndra's request.

Thomas Bender moved, seconded by Elvy Paiva, to deny Ms. Tsyndra's request due to lack of sufficient cause. The motion passed unanimously.

6) Gitendra Bommareddy ? Requesting a waiver of TSE

Elvy Paiva made the motion, seconded by Marc Sturgill, to deny Ms. Bommareddy's request for a waiver of the TSE requirement for lack of sufficient cause. The motion passed unanimously.

7) Maryam Javdan ? Requesting approval for score transfer

Mr. Richard Palombo abstained due to his affiliation with NABP.

The Board determined to grant Ms. Javdan's request to accept her NAPLEX score because of the unique circumstances involved. Ms. Javdan passed the NAPLEX exam on November 15, 2006. The Board determined that it appears that Ms. Javdan has suffered a hardship because she was unaware of the change of law in New York which requires a licensee to be either a US citizen or have permanent resident status and which became effective after her application process in New York had begun. New Jersey normally accepts transfer of NAPLEX scores within a one year time frame. Ms. Javdan must complete law exam by November 15, 2007.

Elvy Paiva made the motion, seconded by Pamela Allen. The motion passed unanimously.

8) Somesh Choudhury ? Requesting a waiver of TSE and TOEFL

The Board determined to deny Mr. Choudhury his request for waiver of the TSE and TOEFL requirements for lack of sufficient cause.

Marc Sturgill made the motion, seconded by Margherita Lafragola. The motion passed unanimously.

9) Criminal History Background Check Reports

The Board determined that any background reports coming to the attention of the Executive Director of the Board of Pharmacy as a result of routine Criminal History Background Checks shall be brought to the attention of the Board if the reports pertain to incidents which occurred within ten (10) years of the receipt of the report.

Moreover, the Board determined that the Executive Director shall have the discretion to bring any other Criminal History Background Checks to the attention of the Board based upon the review by the Executive Director including but not limited to any and all reports which concern repeated offenses, fraud, CDS violations, or activity so egregious as to impact the subject's ability to practice pharmacy.

Peter Halecky made the motion, seconded by Richard Palombo. The motion passed unanimously.

VIII. MITIGATION/ HEARING REQUESTS

1) Martha Azer, RPIC, Pathmark Pharmacy, Kearny, NJ

Edward McGinley was recused from this item due to his affiliation with Pathmark.

The Board determined to mitigate N.J.A.C. 8:65-7.5(a) and 7.8(a) from \$500.00 to a warning. The motion was made by Peter Halecky, seconded by Richard Palombo. The motion was passed by a vote of 8-1.

2) Andrea Scafetta, RPIC, Target Pharmacy, Deptford, NJ

The Board determined to mitigate the \$250 fine imposed for the inability to locate the inventory of CDS schedule III, IV and V.

The motion was made by Richard Palombo, seconded by Jennifer DeVenio. The motion was passed unanimously.

3) Muhammad J. Asghar, RPIC, Ahmar Pharmacy, Jersey City, NJ

The Board determined to deny the request for mitigation.

The motion was made by Elvy Paiva, seconded by Marc Sturgill. The motion passed unanimously.

4) Samantha Brooks, RPIC, CVS Pharmacy, Upper Montclair, NJ

The Board determined to deny the request for mitigation of the \$500.00 fine imposed pursuant to N.J.S.A. 45:14-80(d) and N.J.A.C.13:39-6.6(d).

Margherita Lafragola made the motion, seconded by Jennifer DeVenio, to deny the request for mitigation. The motion passed unanimously.

5) Thy M. Tran, RPIC, Target Pharmacy, Union, NJ

The Board determined to mitigate the \$500 fine imposed pursuant to N.J.A.C. 13: 39-6.2, N.J.S.A. 45:14 - 74 and N.J.S.A. 45:14 - 69.

Ms. Jennifer DeVenio made the motion, seconded by Mr. Richard Palombo. The motion was passed unanimously.

6) Shabbirahmed H. Shilwala, RPIC, Star Pharmacy, Edison, NJ

The Board determined to deny the request for mitigation.

Margherita Lafragola made the motion, seconded by Elvy Paiva. The motion passed unanimously.

7) Maryam Taha, RPIC, Eckerd Drugs, Cinnaminson, NJ

Ms. Margherita Lafragola was recused due to her affiliation with Rite-Aid/Ekerd Drugs.

The Board determined to mitigate the fine of \$350.00 pursuant to N.J.A.C. 8.65-1.5.(e) to a Warning. The Board determined to deny the request for mitigation of fines pursuant to N.J.A.C. 13: 39-7.18 and N.J.A.C. 13:39 6.2(f) 7.

Pamela Allen made the motion, seconded by Thomas Bender. The motion passed unanimously.

8) Christine Horton, RPIC, CVS, Stanhope, NJ

The Board determined to deny the request for mitigation.

The motion was made by Thomas Bender, seconded by Marc Sturgill. The motion was passed unanimously.

9) Adeshina Bamigbade, RPIC, Daily Need Pharmacy, Newark, NJ This item was on the 4/11/07 at which MAG was to review prior actions regarding this pharmacy

The Board has considered Mr. Bamigbade's Certification of Corrective Action and In Support of the Annexed Affidavit for Dismissal of Charges and has determined to deny the request for mitigation

Marc Sturgill made the motion, seconded by Elvy Paiva. The motion was passed unanimously.

IX. COMMITTEE REPORTS

N/A

X. APPROVAL OF MINUTES

1) June 27, 2007 This item has been rescheduled to the 7/25/07 Board Meeting

XI. ADJOURNMENT

At 11:19 a.m. Ms. Elvy Paiva made the motion, seconded by Ms. Margherita LaFragola, to adjourn to adjourn the Opening Session of July 11, 2007 and to move into Executive Session for the review of 7 (seven) items of Old Business, ten (10) items of New Business, two (2) Investigative Inquires, the Secretary's Report and Recommendation on Retail and Institutional Permits, the Secretary's Report and Recommendation on Inspection Reports and the Secretary's Special Inspection Report. The motion passed unanimously.

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