

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

November 8, 2001  
Fifth Floor  
Conference Room 2

Department of Health Professions  
6606 West Broad Street  
Richmond, Virginia 23230

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- CALL TO ORDER:** The meeting of the Virginia Board of Pharmacy was called to order at 9:12 a.m.
- PRESIDING:** Michael C. Maloney
- MEMBERS PRESENT:** Sonny Currin  
Adina C. Krum  
Michael J. Ayotte  
Mark A. Szalwinski  
Jackson T. Ward  
William S. Tiffany
- Vernon Clement joined the meeting at approximately 9:20 a.m.  
Mark A. Oley joined the meeting at approximately 9:25 a.m.
- MEMBERS ABSENT:** John G. Selph
- STAFF PRESENT:** Elizabeth Scott Russell, Executive Director  
Cathy M. Reiniers-Day, Deputy Executive Director  
Howard M. Casway, Assistant Attorney General  
Elaine Yeatts, Senior Regulatory Analyst  
Heather L. Womack, Administrative Assistant  
Donna M. Lee, Administrative Assistant
- QUORUM:** With seven members of the Board present at the call to order, a quorum was established.
- APPROVAL OF AGENDA:** The agenda was approved as presented.
- PUBLIC COMMENTS:** No public comments were received at this time.
- APPROVAL OF MINUTES:** Mr. Maloney called for changes or corrections to the minutes of August 1, 2001. Hearing no changes, the minutes were approved as presented.
- PUBLIC HEARING:** The Board held a public hearing to receive comment on proposed regulations concerning the innovative (pilot) pharmacy programs. No comments were

given during the hearing. Mr. Maloney announced that written comments on the pilot program regulations will be received until December 21, 2001. The transcript from the public hearing is attached. (Attachment 1)

**PUBLIC HEARING:**

The Board held a public hearing to receive comments prior to the adoption of proposed regulations to implement legislation concerning the registration of pharmacy technicians. The comments of persons that addressed the Board are contained in the attached transcript of the public hearing. (Attachment 1)

**DISCUSSION OF  
REGULATIONS FOR  
PHARMACY  
TECHNICIANS:**

The Board discussed the content of technician regulations in order to give guidance to the Regulation Committee for drafting. After much discussion and input from all members of the Board, the direction generally agreed upon was that the Regulation Committee would explore the development of an entry level competency examination by the Board, require initial training programs to teach to that examination, and then require some type of site specific training by pharmacies to further train technicians to work in a particular type of practice or site. No motions were made in this matter.

**WELCOME:**

Mr. Maloney welcomed Vernon A. Clement to the Board as the new citizen Board member.

**REQUEST FOR CE  
HOURS EARNED AT  
THE ASHP MID YEAR  
MEETINGS TO BE  
CARRIED INTO THE  
FOLLOWING YEAR:**

The Board considered a request for continuing education hours earned during the ASHP mid year meeting to be carried into the following year. Mr. Ward moved, and the Board voted unanimously to deny the request.

**ADDRESS BY JOHN  
HASTY**

John Hasty, Director of the Department of Health Professions addressed the Board to announce his retirement this upcoming January and to provide a summary of events and accomplishments during his tenure as Director.

**REQUEST FROM  
KAISER PERMANENTE  
SPRINGFIELD  
PHARMACY**

The Board reviewed a request for a waiver of regulation 18 VAC 110-20-240 (B) (1) from Kaiser Permanente Springfield Pharmacy, relating to chronological filing of hard copy prescriptions. Kaiser is seeking permission to file the original prescription orders in batches instead of in chronological order as required. This pharmacy has several teams processing prescriptions during a day. In the proposed system, each team's prescriptions for a day would be batched and filed by date. The prescriptions would not be chronologically filed within the batch and there may be consecutive numbers in different batches. Mr. Ward moved, and the Board voted unanimously to deny the request as this type of filing would not render prescriptions readily retrievable. An inspector or investigator may have to look through an entire day's prescriptions, in excess of 600 per day, in order to find a particular prescription.

**REQUEST FROM FACTS  
AND COMPARISONS  
CONCERNING  
INTERNET  
REFERENCES:**

The Board reviewed a request for the use of internet or intranet references at the November 8, 2001 meeting. The Board voted unanimously that 18 VAC 110-20-170 of its regulations which requires "a current dispensing information reference source" does not specify the format of the source and as such, a current reference source available through the internet or an intranet would meet the requirement.

**REQUEST FROM OLD  
DOMINION  
UNIVERSITY, STUDENT  
HEALTH SERVICES  
CONCERNING THE  
DISPENSING OF  
EMERGENCY  
CONTRACEPTION:**

The Board reviewed a request sent from Old Dominion University, Student Health Services regarding the dispensing of emergency contraception to the students by nurses. Ms. Russell reminded the Board that only a pharmacist or a physician selling controlled substances could dispense medication. Nurses may administer but do not have statutory authority to dispense. The concern of the ODU Student Health Services was that some pharmacies refuse to fill prescriptions for the emergency contraception, making it difficult for students to obtain appropriate treatment. Trish Bridgers, former Director of VCU Student Health Services stated to the Board that the most effective regimen is for the student to take the second dose within twelve hours after the first dose is administered. She stated that if the second dose had to be administered in the clinic, the student would normally miss the twelve-hour time frame, considering the hours of the clinic. Rebecca Snead, Executive Director of the Virginia Pharmacist Association stated that the General Assembly had considered a bill last year to allow expanded authority in dispensing emergency contraception which made it through both houses with different amendments which could not be agreed upon. The General Assembly will likely deal with this issue again this year. Ms. Krum moved and the Board voted unanimously to continue the issue until the next Board meeting in order to give the Board the opportunity to review additional information and any possible action initiated in the next General Assembly session.

**2002 BOARD MEETING  
CALENDAR:**

The Board set the meeting dates for the year 2002. They are set for the following:

- Monday, February 4, 2002 at 9:00 a.m.
- Thursday, May 9, 2002 at 1:00 a.m.
- Monday, August 19, 2002 at 9:00 a.m.
- Friday, October 4, 2002 at 9:00 a.m.

These dates are subject to change.

**EXECUTIVE  
DIRECTOR'S REPORT:**

Ms. Russell reported on the District II conference that she attended in Cooperstown, New York with members Michael Ayotte, William Tiffany, and Sonny Currin. Ms. Russell also stated that the next Pharmacy Congress meeting will be held November 28, 2001 to discuss the role of the pharmacy community in bioterrorism. Rebecca Snead from the Virginia Pharmacist Association reported on continuing education programs about bioterrorism

being offered by the Federal Pharmacist Association, the Virginia Academy of Family Physicians, and a new two hour internet based program. Ms. Russell stated that Mike Maloney will be attending the NABP Executive Officer's Conference in Monterey, California on November 10, 2001-November 13, 2001.

Ms. Russell stated that it is Virginia's turn in the rotation to host the District II conference in the Fall of 2003. Mike Ayotte and Sonny Currin have agreed to be the planning committee for this conference.

Ms. Russell announced Mr. Currin was appointed by District II as alternate for District II's representative to the nominating committee for the annual meeting in May.

**APPROVAL OF  
DISCIPLINARY  
ACTIONS:**

A summary of disciplinary actions was distributed to the Board for approval. Mr. Ayotte moved, and the Board voted unanimously to approve the list of disciplinary actions as presented. (Attachment 2)

**FORMAL HEARING:**

**Foster D. Farone  
Lic. #0202-010626**

A hearing was held in the matter of Foster D. Farone to discuss his petition for the reinstatement of his license that was mandatorily suspended on October 22, 2001, and allegations that he may have violated certain laws or regulations governing the practice of pharmacy in Virginia.

Emily O. Wingfield, Assistant Attorney General, prosecuted the case with the assistance of Tammie D. Hall, Senior Adjudication Analyst. Mr. Farone appeared in person and was not represented by counsel.

Foster D. Farone testified on his own behalf.

**Closed Session:**

Mr. Currin moved, and the Board voted unanimously, to enter into closed session pursuant to Section 2.2-3711.A.15 of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Foster D. Farone. Additionally, he moved that Scotti Russell, Cathy Reiniers-Day and Howard Casway attend the closed session because their presence is deemed necessary and would aid the Board in its deliberations.

**Reconvene:**

Mr. Currin 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 session were heard, discussed or considered during the closed session.

Mr. Ayotte moved, and the Board voted unanimously, to accept the findings of fact and conclusions of law as proposed by Ms. Wingfield.

Mr. Ayotte moved, and the Board voted unanimously, to grant Mr. Farone's petition for the reinstatement of his license and that his license be placed on indefinite probation with certain terms and conditions. (Attachment 3).

**ADJOURN:**

With all business concluded, the meeting adjourned at 1:10 p.m.

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Heather L. Womack, Administrative Assistant

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Donna M. Lee, Administrative Assistant

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Elizabeth Scott Russell  
Executive Director

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Michael C. Maloney, Chairman

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Date

Foster D. Farone  
Formal Hearing  
November 8, 2001

Findings of Fact:

1. Foster D. Farone holds license number 0202-010626 issued by the Board of Pharmacy to practice pharmacy in Virginia. Mr. Farone's license was mandatorily suspended by Order of the Department of Health Professions entered October 22, 2001, due to his felony conviction on or about August 31, 2001, by the Court of Common Pleas, Crawford County, Pennsylvania, of obtaining a controlled substance by fraud and misrepresentation.
2. By his own admission, in 1998, while employed with Eckerd Drugs, Mr. Farone diverted hydrocodone for his personal and unauthorized use. Said diversion occurred in several Eckerd pharmacies in five different counties in Pennsylvania and resulted in the above conviction.
3. On or about October 4, 2001, Mr. Farone's license to practice in the State of Ohio was summarily suspended due, in part, to the 1998 diversion and subsequent felony conviction.
4. On or about November 7, 2001, Mr. Farone's license to practice in the Commonwealth of Pennsylvania was automatically suspended based on his felony conviction.
5. On or about September 9, 1998, Mr. Farone entered into a Recovery Monitoring Contract with the Health Practitioners' Intervention Program ("HPIP"), acknowledging an impairment of opiate dependency. Nancy Hickman, Case Manager, Virginia Monitoring, Inc., testified that Mr. Farone is in compliance with the terms of his contract.
6. On or about April 1, 1998, Mr. Farone entered a Monitoring/Treatment Contract with S.A.R.P.H., the approved pharmacist peer assistance program for the Pennsylvania Board of Pharmacy. Michael Lenczynski, Executive Director of S.A.R.P.H., and Mr. Farone's monitor, testified that Mr. Farone is in compliance with the terms of his contract.
7. James Gavaghan, Pharmacy Development Manager for Rite Aid in Virginia, testified on behalf of Mr. Farone and stated that he would employ him as a pharmacist if his license were reinstated. Although he serves as his work site monitor, Mr. Gavaghan has not been provided with a copy of the HPIP Recovery Monitoring Contract. Further, he testified that he does not have daily contact with Mr. Farone.
8. James Thompson, Jr., Mr. Farone's Alcoholics Anonymous ("AA") sponsor, testified on behalf of Mr. Farone. He testified that Mr. Farone is "easy" and "rewarding" to work with and follows the 12-step program.
9. Johnny Moore, Virginia Pharmacists Assisting Pharmacists ("VaPAPP") Chairman, testified on behalf of Mr. Farone and supported Mr. Farone's reinstatement. He recommended that Mr. Farone have an on-site work site monitor.
10. Holly Farone, Mr. Farone's wife, testified on behalf of Mr. Farone. She stated that Mr. Farone has been positively transformed since addressing his chemical dependency.
11. Mr. Farone testified that he initially diverted hydrocodone in July 1997. By December 1997, he was using 70 tablets a day and, by March 1998, his use had escalated to 150 tablets per day. Further, he abused alcohol during this time. Mr. Farone reported a sobriety date of March 6, 1998. He testified that he attends four (4) to five (5) AA meetings a week, participates in Caduceus in Harrisonburg and that he would follow any recommendations made by Virginia Monitoring or the Board.



## Conclusions of Law:

Based upon the above Findings of Fact, the Board concluded that Foster D. Farone had violated § 54.1-3316(4), (7) and (9) of the Code of Virginia (1950), as amended. Further, pursuant to § 54.1-2409 of the Code, Mr. Farone's application for reinstatement was properly before the Board, and the Board may order reinstatement of his license upon such terms and conditions as it deems appropriate by an affirmative vote of three-fourths of the members of the Board.

## Order:

The Virginia Board of Pharmacy, effective upon entry of this Order, hereby ORDERED that the license of Foster D. Farone be REINSTATED and placed on PROBATION subject to the following terms and conditions:

1. The period of probation shall begin on the date that this Order is entered and shall end upon completion of three (3) years of employment as a pharmacist. At the end of the probationary period, the terms and conditions imposed by this Order upon the license of Foster D. Farone to practice pharmacy shall be removed without any further administrative proceedings by the Board unless there is any pending investigation or unresolved allegation of a violation of law or regulation affecting the practice of pharmacy or of a violation of a term or condition of this probation. In the event there is any pending investigation or unresolved allegation, the period of probation shall be continued indefinitely or until such time as the Board makes a determination in any such matter in accordance with the Administrative Process Act, § 2.2-4000 *et seq* of the Code of Virginia.
2. Mr. Farone shall enter into an Amended Recovery Monitoring Contract with HPIP, extending the length of his contract by one additional year and by adding the requirement that he obtain a work-site monitor who is located at his place of practice. He shall continue to comply with all terms and conditions of the HPIP contract, as well as the S.A.R.P.H. contract.
3. Mr. Farone shall not be Pharmacist-in-Charge during the probationary period.
4. Mr. Farone shall provide his direct supervisor, work-site monitor and the pharmacist-in-charge of each location that he works with a copy of this Order in its entirety, copies of all monitoring contracts and any amendments to his monitoring contracts.
5. Mr. Farone shall direct the HPIP to inform the Board immediately of any positive drug screens, any non-compliance with his Recovery Monitoring Contract, any modifications to said Contract or if the HPIP places him on probation.
6. Mr. Farone shall maintain a course of conduct commensurate with the requirements of Chapters 33 and 34, Title 54.1 of the Code of Virginia. Any violation of these terms of probation or of any law or regulation affecting the practice of pharmacy in the Commonwealth of Virginia, shall constitute grounds for the suspension or revocation of his license and an administrative proceeding shall be convened to determine whether such license shall be suspended or revoked.