

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

September 8, 2003
Fifth Floor
Conference Room 2

Department of Health Professions
6603 West Broad Street
Richmond, Virginia 23230

CALL TO ORDER: A meeting of the Board of Pharmacy was called to order at 9:25 a.m.

PRESIDING: Carthan F. (Sonny) Currin, Jr., Board Chairman

MEMBERS PRESENT: Michael J. Ayotte
John O. Beckner
Willie Brown
Michelle R. Easton
Bobby Ison
Mark A. Oley
Leo H. Ross
Mark Szalwinski

MEMBERS ABSENT: John Selph

STAFF PRESENT: Elizabeth Scott Russell, Executive Director
Cathy M. Reiniers-Day, Deputy Executive Director
Ralph A. Orr, Deputy Executive Director
Heather L. Womack, Administrative Assistant
Donna M. Lee, Administrative Assistant
Elaine J. Yeatts, Senior Regulatory Analyst
Howard M. Casway, Assistant Attorney General

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

APPROVAL OF AGENDA: Mr. Ayotte moved, and the Board voted unanimously to approve the agenda as presented.

PUBLIC COMMENTS: Mark Cruise, Executive Director for the Virginia Association of Free Clinics, addressed the Board concerning the problem with requiring registered technicians to be registered in free clinic pharmacies. He advised the Board that he may seek some form of legislative relief and stated that he wanted to work with the Board to resolve the issue.

APPROVAL OF MINUTES: Mr. Currin called for changes or corrections to the minutes of June 10, 2003. The minutes were approved as presented.

ELECTION OF NEW OFFICERS :

The Board held its annual election of officers. The Board elected Mark Szalwinski to the office of Chairman and Mark Oley to the office of Vice-Chairman effective immediately. Following the election, Mr. Szalwinski presided for the remainder of the meeting.

APPOINTMENT OF NEW COMMITTEES:

Mr. Szalwinski appointed the standing committees for the upcoming year. (attachment 1)

PETITION FOR RULE-MAKING:

The Board reviewed a petition for rule-making requested by Gregory Chase that will change the two-year limit for refills on a Schedule VI prescription to one year. The petition has been submitted for publication, the comment period ends in October and the petition will be placed on the agenda for consideration at the next full Board meeting that will now be held November 25, 2003. Mr. Szalwinski allowed public comments on the petition. Rebecca Snead, Executive Director for the Virginia Pharmacists Association, stated that this change would bring consistency with the policy of most third party payers and would eliminate confusion on the part of the public.

RECOMMENDATION FOR COMMENT TO ACPE ON TECHNICIAN TRAINING STANDARDS:

Ms. Russell addressed the Board concerning the recommendation for comment to ACPE on technician training standards. A subcommittee that consisted of Mr. Ayotte, Ms. Easton and Mr. Ross, drafted a response to be approved by the full Board. Mr. Ross suggested and the Board agreed that the words "intentional" and "unintentional" should be stricken from the draft. The Board also agreed that the comments should be reordered with the general comments first and responses to questions last. Mr. Ayotte moved, and the Board voted unanimously to approve the draft document as amended. (Attachment 2)

DISCUSSION OF THE USE OF CONFIDENTIAL CONSENT AGREEMENTS; GAIL JASPEN, CHIEF DEPUTY DIRECTOR FOR THE DEPARTMENT OF HEALTH PROFESSIONS:

Gail Jaspen, Chief Deputy Director for the Department of Health Professions, discussed with the Board the use of confidential consent agreements. Mr. Szalwinski appointed a committee of Mike Ayotte and himself to devise draft guidelines for the use of confidential consent agreements. Mr. Beckner moved, and the Board voted unanimously to have Mr. Szalwinski and Mr. Ayotte draft guidelines to present at the next meeting.

DRAFT GUIDANCE DOCUMENT CONCERNING MARY WASHINGTON'S REQUEST FOR OFF-SITE ENTRY:

Ms. Russell addressed the Board concerning the draft guidance document for Mary Washington's request for off-site order entry. Mr. Beckner moved, and the Board voted unanimously that Mary Washington will need to seek approval through a pilot program for their request.

**EXECUTIVE DIRECTORS
REPORT:**

- **UPDATE ON
HOSTING
DISTRICT II
MEETING:**

Ms. Russell discussed with the Board the upcoming NABP/AACP District II meeting being held in Richmond, Virginia, October 19-21. The Board directed that approval be requested for all members to attend since the Board is hosting the meeting.

- **UPDATE ON
PRESCRIPTION
MONITORING
PROGRAM:**

Ralph Orr addressed the Board on the upcoming prescription monitoring program. The regulations implementing the program will become effective on September 10, 2003 and the website should be available very soon.

NEW BUSINESS:

The December 6, 2003 full Board meeting has now been changed to November 25, 2003.

- **UPCOMING
MEETING DATES:**

The following dates have been set for meetings next year:

- January 14, 2004 at 9:00 a.m.
- April 7, 2004 at 9:00 a.m.
- June 8, 2004 at 9:00 a.m.
- September 15, 2004 at 9:00 a.m.

Dates and times are subject to change.

**ADDITIONAL PUBLIC
COMMENTS:**

Donna Anderson addressed the Board concerning working conditions in pharmacies. Ms. Anderson stated that her work hours were too long, she had too many prescriptions to fill, and not enough pharmacy technicians or other pharmacist help. She stated that she had not yet talked to her employer about these problems. The Chairman suggested it would be appropriate for her to communicate her concerns first to her employer to attempt some type of resolution.

CONSENT ORDER:

- **CLOSED SESSION:**

Mr. Oley moved, and the Board voted unanimously, to enter into closed session pursuant to Section 2.2-3711(A)(28) of the Code of Virginia for the purpose of deliberation to reach a decision regarding a Consent Order. Additionally, he moved that Cathy Reiniers-Day, Howard Casway, and Heather Womack attend the closed session because their presence is deemed necessary and will aid the Board in its deliberations.

- **RECONVENE:**

Mr. Oley 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. Oley moved, and the Board voted unanimously to approve the consent order for Terry Troy as presented.

FORMAL HEARINGS:

**ROBERT D. MCKENNEY
Lic. #0202-010726**

A hearing was held in the matter of Robert D. McKenney to discuss his petition for reinstatement of his license that was mandatorily suspended on February 19, 2003, 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 Tammie D. Hall, Senior Adjudication Analyst. Mr. McKenney appeared with counsel, Harrison Hubard, Jr.

Robert D. McKenney testified on his own behalf. Teresa McKenney, Mr. McKenney's wife, also testified on his behalf.

Closed Session:

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

Reconvene:

Mr. Oley 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. Oley moved, and the Board voted unanimously, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Schliessman and stipulated to by Mr. Hubard and amended by the Board.

Mr. Ross moved, and the Board voted unanimously, to deny Mr. McKenney's petition for reinstatement of his license.

Mr. Beckner moved, and the Board voted unanimously, that the license of Mr. McKenney be continued on indefinite suspension for a period of not less than one year from the date of entry of the Board's Order.

MARK H. RUSSELL
Lic. #0202-007825

A hearing was held in the matter of Mark H. Russell to discuss his petition for reinstatement of his license that was mandatorily suspended on July 29, 2002.

James Schliessmann, Assistant Attorney General, prosecuted the case with the assistance of Tammie D. Hall, Senior Adjudication Analyst. Mr. Russell appeared with counsel, William H. Purcell, III.

Mr. Ayotte stated that he and Mr. Russell's wife are employed by the same company. Mr. Szalwinski stated that he was acquainted with Mr. Russell because he had worked with him in the earlier part of Mr. Russell's career as a pharmacist. Mr. Ayotte and Mr. Szalwinski both stated that they would be able to make a fair and impartial decision. Neither Mr. Schliessmann nor Mr. Purcell objected to Mr. Ayotte and Mr. Szalwinski participating in the hearing.

Mark H. Russell testified on his own behalf. Additionally, Ron Clarke, VAPAPP Committee; Bruce Overton, AA Sponsor; Johnny Moore, VAPAPP Chairman; and Dayna Smith, Health Practitioners' Intervention Program Case Manager, all testified on behalf of Mr. Russell.

Closed Session:

Mr. Oley moved, and the Board voted unanimously, to enter into closed session pursuant to Section 2.2-3711(A)(28) of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of Mark H. Russell. 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 deliberation.

Reconvene:

Mr. Oley 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. Oley moved, and the Board voted unanimously, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Schliessmann.

Mr. Beckner moved, and the Board voted unanimously, that Mr. Russell's petition for reinstatement of his license be granted.

Mr. Ayotte moved, and the Board voted unanimously, that Mr. Russell's license be suspended, with said suspension stayed indefinitely subject to Mr. Russell's compliance with certain terms

and conditions.

ADJOURN:

With all business concluded, the meeting adjourned at 5:45 p.m.

Heather L. Womack
Administrative Assistant

Donna M. Lee
Administrative Assistant

Elizabeth Scott Russell
Executive Director

Mark A. Szalwinski, Board Chair

Date

