

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

September 15, 2004  
Fifth Floor  
Conference Room 2

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

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**CALL TO ORDER:** A meeting of the Board of Pharmacy was called to order at 9:15 a.m.

**PRESIDING:** Mark A. Oley, Acting Chairman

**MEMBERS PRESENT:** Gill B. Abernathy  
Toni Aust  
Michael J. Ayotte  
John O. Beckner  
Willie Brown  
Michelle R. Easton  
Bobby Ison  
Leo H. Ross

**MEMBERS ABSENT:** Kimberly A. Anderson

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

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

Ms. Reiniers-Day read the emergency evacuation procedure for Conference Room 2. Ms. Russell reminded everyone to turn off cell phones during the meeting.

**WELCOME:** Mr. Oley welcomed Gill Abernathy and Toni Aust as new Board members.

**APPROVAL OF AGENDA:** Mr. Beckner moved, and the Board voted unanimously to approve the amended agenda distributed prior to the meeting.

**PUBLIC COMMENTS:** No public comments were received at this time.

**APPROVAL OF MINUTES:**

Mr. Oley called for changes or corrections to the minutes of June 8, 2004. Hearing no changes, the Minutes were approved as presented.

Mr. Oley called for changes or corrections to the minutes of July 23, 2004 for the Regulation Committee. Hearing no changes, the Minutes were approved as presented.

Mr. Oley called for changes or corrections to the minutes of August 24, 2004 for the Regulation Committee. Hearing no changes, the Minutes were approved as presented.

**ELECTION OF NEW OFFICERS:**

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

**ADOPTION OF PROPOSED REGULATIONS OF DELEGATION TO AN AGENCY SUBORDINATE:**

The Board reviewed the draft proposed regulations of delegation to an agency subordinate which are identical to the emergency regulations that are now in effect, and that the proposed regulations would replace the emergency regulations. Ms. Yeatts stated that no comments were received during the comment period for the NOIRA.

Mr. Ison moved, and the Board voted unanimously, to adopt the draft proposed regulations of delegation to an agency subordinate (Attachment 1).

**GUIDANCE DOCUMENT ON PROCESS FOR DELEGATION TO AN AGENCY SUBORDINATE**

Ms. Yeatts also advised the Board that a guidance document would need to be adopted that will outline the processes to be used in implementing this new authority. She reviewed with the Board a draft flow chart and procedure on delegation of informal fact finding to an agency subordinate for possible adoption by the Board.

Mr. Ayotte moved, and the Board voted unanimously, to take the matter under further consideration and review, and to defer a vote on the guidance document until the December 10, 2004 Board meeting.

**ADOPTION OF PROPOSED REGULATIONS ON OUTSOURCING OF DATA ENTRY AND DUR BY HOSPITALS AND OTHER**

The Board reviewed the draft regulations on outsourcing of data entry and DUR by hospitals and other settings as prepared by the Regulation Committee. After discussion and suggested amendments, Mr. Ison moved, and the Board voted unanimously, to adopt the draft regulations as presented and amended by the Board (Attachment 2).

**SETTINGS:**

**REVISION OF BOARD  
BYLAWS:**

The Board reviewed proposed revisions to the Board's bylaws recommended by staff. Ms. Russell stated that the Board Bylaws had not been revised since 2001 and changes were needed to reflect the current procedures of the Board. Also, the election of officers at the first meeting after July 1 had not been working well due to delays in committee appointments. Proposed revisions would move elections back to the meeting just before July 1.

Mr. Beckner moved, and the Board voted unanimously, to adopt the Board Bylaws as amended by the Board. (Attachment 3).

**DISCUSSED POSSIBLE  
ADDITIONS TO THE  
GUIDANCE DOCUMENT  
ON COMPOUNDING:**

Ms. Russell stated that she has met with representatives from Virginia Oncology Associates who were seeking clarification of the compounding law, and they were present to address the Board. Ms. Russell informed the Board that there are proposed USP revisions for Chapters 795 and 797 which establish standards for compounding which will affect Virginia's law which references USP standards.

Maureen McGrath, Executive Director, Virginia Oncology Associates; and Nicky Dozier, Director of Drug Management, U.S. Oncology, Inc., both addressed the Board and referred to their letter dated August 12, 2004, that outlined several requests they would like the Board to consider so that they can continue to provide medical care to their patients as well as follow the laws and regulations of the Board.

Mr. Oley appointed an Ad Hoc Committee composed of Mr. Ross, Mr. Ison and Ms. Abernathy to review the compounding law and Guidance Document 110-34 for any possible changes that could provide the guidance requested by Virginia Oncology Associates and others, and make a recommendation to the Board at its next meeting on December 10, 2004.

**REVISION OF GUIDANCE  
DOCUMENT 110-16,  
RETURNING DRUGS TO  
STOCK FROM "WILL-  
CALL":**

The Board reviewed proposed revisions to Guidance Document 110-16 to conform to changes in USP standards in appropriate beyond-use dating. Mr. Ayotte moved, and the Board voted unanimously, to adopt Guidance Document 110-16 as amended (Attachment 4).

**REQUEST BY JOE  
LEMING, MD, TO  
CONSIDER MANDATORY  
REPORTING BY**

The Board reviewed the request by Dr. Leming that pharmacists be mandated to report felonious activities. Mr. Casway advised the Board that he did not believe the Board had the authority to mandate this by rule, that this would require a statute change. The

**PHARMACISTS OF  
ACTIVITIES WHICH  
WOULD CONSTITUTE A  
FELONY:**

Board requested Ms. Easton, the Board's representative to the Board of Health Professions, to present Dr. Leming's request at their next meeting to receive an opinion as it may relate to all health professions reporting felonious activities. The Board indicated during discussion that it could support mandatory reporting of specifically listed felonies related to the practice of pharmacy, such as a prescription forgery, but would probably not support general language that would require a pharmacist to make a determination of whether an act may constitute a felony. The Board would need to see the exact language of a legislative proposal to determine if it would support it.

**EXECUTIVE DIRECTOR'S  
REPORT:**

- **DISTRICT II  
MEETING:**

Ms. Russell informed the Board that the annual District II meeting will be held on October 21-23 in Chester, West Virginia. She advised any Board member that would like to attend, to let her know so that travel requests can be submitted for approval. Mr. Ross stated that he would like to attend.

- **NEW TRAVEL  
GUIDELINES:**

Ms. Russell explained that the travel guidelines are available on the state website. She also reminded the Board that the hotel expense for Richmond lodging should not exceed \$80.00.

- **BOARD MEMBER  
RESPONSIBILITIES  
– SUMMARY  
SUSPENSIONS:**

Ms. Russell reiterated to the Board that when they are contacted to possibly participate in a summary suspension telephone conference call, it is imperative that a response as to availability be communicated to the Board staff as soon as possible. She explained that a summary suspension telephone conference call is convened because the licensed individual may represent a substantial danger to the public if they continue to practice. For this reason these conference calls must be convened as quickly as possible. She also stated that once the telephone conference call is in progress, each Board member in attendance must remain present on the line during the entire conference call so that they can render an informed decision on all of the evidence presented.

**NEW BUSINESS:**

- **WORKFORCE  
SURVEY FOR  
RENEWAL  
PROCESS:**

Ms. Russell informed the Board that this year renewals can be processed online by licensees and that a survey can be attached for the licensees to complete. She distributed to the Board a copy of the survey that the Board of Nursing uses on their renewals for a sample of the type of questions that can be asked of a licensee. Ms. Russell requested that the Board members e-mail her by

September 23<sup>rd</sup> with any suggestions of questions they would like to put on the survey.

**NCOIL MODEL ACT ON  
PHARMACY PRICING**

Ms. Russell stated to the Board that she had a brief conversation with the Honorable Harvey Morgan, a member of the House of Delegates, and he informed her that the National Council of Insurance Legislators (NCOIL) are proposing model legislation which would require pharmacies to publish a list of prices for 150 commonly used drugs, the list to be determined by the Board of Pharmacy at least annually. Delegate Morgan is having a resolution drafted to oppose the adoption of the model act by NCOIL and would like input from the Board members as to reasons why this model act should be opposed. She asked the Board members to send her an e-mail by September 29<sup>th</sup> if they had any suggestions for language in the resolution.

- **SET CALENDAR  
FOR NEXT  
MEETING AND  
FOLLOWING  
YEAR:**

The following dates have been set for Board meetings:

- December 10, 2004
- March 1, 2005
- June 7, 2005
- September 13, 2005
- December 1, 2005

**FORMAL HEARING:**

**MARVIN W. SANDERS  
LIC. #0202-001364**

A hearing was held in the matter of Marvin W. Sanders to discuss his petition for reinstatement of his license that was mandatorily suspended on June 21, 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 Patricia L. Larimer, Senior Adjudication Analyst. Mr. Sanders appeared with counsel, David J. Toscano.

Marvin W. Sanders testified on his own behalf.

**Closed Session:**

Mr. Ross 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 Marvin W. Sanders. 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. Ross 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. Beckner moved, and the Board voted unanimously, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Schliessman and amended by the Board. (Attachment 5)

Mr. Beckner moved, and the Board voted unanimously, to deny Mr. Sanders' petition for reinstatement of his license and that the license of Mr. Sanders be continued on indefinite suspension. Upon completion of certain terms, he may petition the Board for reinstatement, and be heard by a Special Conference Committee. (Attachment 5)

**ADJOURN:**

With all business concluded, the meeting adjourned at 3:42 p.m.

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Donna M. Lee  
Administrative Assistant

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Elizabeth M. Revere  
Administrative Assistant

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Elizabeth S. Russell  
Executive Director

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Mark A. Oley, Chair

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Date

