

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

Wednesday, September 27, 2006
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 9:10 a.m.

PRESIDING: John O. Beckner, Chairman

MEMBERS PRESENT: Gill B. Abernathy
Willie Brown
Jennifer H. Edwards
Bobby Ison
David C. Kozera
Diane Langhorst
Leo H. Ross
Michael E. Stredler
Brandon K. Yi

STAFF PRESENT: Elizabeth Scott Russell, Executive Director
Cathy M. Reiniers-Day, Deputy Executive Director
Elaine J. Yeatts, Senior Regulatory Analyst
Howard M. Casway, Senior Assistant Attorney General
Ralph Orr, Program Manager, Prescription Monitoring Program
Tiffany N. Mallory, Administrative Assistant

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

WELCOME: Mr. Beckner welcomed Jennifer H. Edwards and Brandon K. Yi as new Board members.

Mr. Beckner congratulated Willie Brown, Bobby Ison, and Michael E. Stredler for their reappointments as Board members.

Mr. Beckner welcomed Sandra D. Ryals, who will be replacing Robert A. Nebiker, as the Director of the Department of Health Professions, effective Monday, October 2, 2006. Ms. Ryals is currently the Chief Deputy Director for the Department of Health Professions. Ms. Ryals followed Mr. Beckner's welcome with a brief history of her credentials.

Mr. Beckner acknowledged Robert A. Nebiker's 20 years of service at the Department of Health Professions and over thirty years of dedication to public service. Mr. Nebiker recently announced his retirement that will be effective October 1, 2006. Mr. Ross moved and the Board voted unanimously to recognize Mr. Nebiker's accomplishments and dedicated service to the Department of Health Professions.

Ms. Reiniers-Day reviewed the emergency evacuation procedure.

APPROVAL OF AGENDA:

Mr. Beckner called for changes or corrections to the agenda. Hearing no changes the agenda was approved as presented.

APPROVAL OF MINUTES:

Mr. Beckner called for changes or corrections to the June 5, 2006, minutes. Hearing no changes, the minutes were approved as presented.

PUBLIC COMMENT:

Becky Snead, Executive Director for the Virginia Pharmacist Association (VPhA), discussed the history of Virginia pharmacists serving as officers and presidents of different national associations and her support of a Virginia pharmacist becoming president of the National Association of Boards of Pharmacy (NABP).

Ms. Snead also expressed concern about an issue outlined in the September issue of the *Pharmacist Letter*, concerning generic substitution. She stated that there is confusion by pharmacists related to whether a generic product is therapeutically equivalent and can be substituted. Some pharmacy computer systems have generic substitutes listed which are not A-rated products in the Orange Book. This leads to unlawful substitution by pharmacists who do not realize the products are not equivalent. Ms. Snead wanted the Board's support to provide additional educational tools to make pharmacists aware that their pharmacy systems may not be leading them to substituting non-A-rated products, and to educate pharmacy chains and software vendors of this issue. Ms. Russell informed Ms. Snead that the Board is in the process of looking into the matter and would consider putting something in the November newsletter addressing the issue. Ms. Russell stated that she would seek permission from the Pharmacist's Letter editor to publish the list of problem drugs in the next newsletter.

**LEGISLATIVE
PROPOSALS:**

Ms. Yeatts provided the Board with two draft legislative proposals that the Department is putting forward for the 2007 session of the General Assembly. The Board had approved the proposal to revise its authority to take disciplinary action, in concept, but had not seen the final version. The bill is currently under review in the Secretary's office, and it is not certain whether the bill will be included in the Governor's legislative package.

Ms. Yeatts also provided a handout of a draft legislative proposal to update the drugs schedules in the Drug Control Act. The DEA has added embutramide to schedule III in federal regulation. This proposal would cause Virginia law to conform to federal regulation. Embutramide is used by veterinarians for euthanasia. Ms. Russell stated that the staff monitors the *Federal Register* and that so far, there have been no other scheduling changes, but if there are more before the General Assembly session, they will be added to this bill.

**UPDATE ON REGULATION
PROCESSES:**

Ms. Yeatts presented the Board with an overview of all ongoing regulations in process.

**AMENDMENT TO
18VAC110-20-20; FEE
REDUCTIONS:**

Ms. Russell explained that the Board has a one million dollar revenue surplus, which exceeds the 10% allowance and, it is recommended that the Board adopt a reduction for one year of renewal fees due on or before December 31, 2006. She stated that a permanent reduction is not recommended as the Board's expenditures are now exceeding revenue currently being collected, and will eventually completely reduce the current surplus. Ms. Russell commented that the Board will need to adopt the fee reduction today since the renewal cycle begins at the end of October. Ms. Yeatts explained that the fee reduction is an exempt action under the Administrative Process Act. If the Board adopts the proposed amendment to 18VAC110-20-20, then it would be effective within thirty days of publication. There was some discussion as to whether the Board could retain the surplus in the event additional funds were needed to handle some crisis like pandemic flu or whether the Board could use the surplus to hire additional personnel to provide for added services. Ms. Russell advised that the law does not allow any board to maintain more than 10% surplus revenue over expenditure. She also stated that just because the Board had some surplus revenue, does not give the Board the authority to spend it. All expenditures by an agency have to be appropriated by the General Assembly, and that full-time personnel were also approved by the General Assembly. Mr. Ross asked Ms. Russell what time frame it took for the Board to arrive at the one million dollar surplus. Ms. Yeatts and Ms. Russell explained that the surplus began accumulating from the last fee increase several years ago, but that the pharmacy technician registration most likely attributed to the surplus. Ms. Russell reiterated that current expenditures were exceeding revenue, and technician disciplinary cases were beginning to cause an increase in enforcement costs, so it is expected that this surplus will not last long and at some point in the future, the Board may actually be in the position of having to raise fees again. The principal behind adjusting fees at least every biennium, and also behind reducing primarily renewal fees, is to return any excessive surplus funds to those persons who actually paid funds into the surplus.

Mr. Ross moved, and the Board voted unanimously, to adopt the exempt regulation for a one-time fee reduction as proposed by staff.

**AMENDMENT TO
18VAC110-20-720: EXEMPT
ACTION FOR NAME
CHANGE OF THE
DEPARTMENT OF
FORENSIC SCIENCE:**

Ms. Russell commented that the Department of Forensic Science at one time was a division within the Department of Criminal Justice Services. However, now they are a separate agency and have requested that the Board of Pharmacy change their name in 18VAC110-20-720 of the regulations. Mr. Stredler moved and the Board voted unanimously to adopt the exempt regulation for the

name change of the Department of Forensic Science as presented.

**NOIRA FOR PPG
AMENDMENTS:**

Ms. Yeatts presented a Notice of Intended Regulatory Action (NOIRA) for the public participation guidelines regulations. Staff from various boards reviewed the regulations in order to update and clarify existing regulations. Ms Russell informed the Board that there was a change in terminology to include notification by e-mail rather than mail. She explained that this method would be less costly, more efficient, and more consistent with the times. Ms. Abernathy moved and the Board voted unanimously to adopt the draft NOIRA to amend the public participation guidelines regulations.

**ADOPTION OF PROPOSED
REGULATIONS FOR
IMPLEMENTATION OF A
PEDIGREE SYSTEM:**

Ms. Russell provided a copy of the proposed draft regulations for implementation of a pedigree system and proceeded to give some background information to the Board. An ad hoc committee was appointed by the Board in 2005 to draft regulations to implement legislation by the General Assembly, requiring the Board to establish a tracking system for drugs that are susceptible to counterfeiting. The Board had several meetings that included many interested parties including wholesalers, third party distribution channels, manufacturers, and others. The committee's work was halted when it became clear that the original legislation included no mechanism for exempting the "normal distribution channels" from having to also provide a pedigree. It was agreed by all interested parties that the counterfeiting issues did not arise from distributions that went from manufacturer to a primary wholesale distributor to a retail outlet, but that counterfeiting was introduced into the system as part of the secondary wholesale market. Interested parties returned to the 2006 General Assembly and were successful in obtaining changes that defined the normal distribution channel and exempted such distributions from having to provide a pedigree. Following the legislative change, the ad hoc committee of the Board met again and continued its work developing draft regulations which are before the Board today for adoption as proposed regulations. Mr. Stredler inquired if pharmacies who receive drugs from these wholesale distributors need to request a copy of the pedigree agreement. Ms. Russell stated that the pharmacy will not be held responsible for ensuring that the wholesaler has implemented a pedigree system. Discussion included clarity of the language. After further discussion, Ms. Edwards moved and the Board voted unanimously to amend 18VAC110-50-160(A) to read: "A pedigree shall be required for the distribution of all prescription drugs in Schedules II through VI, except that a pedigree is not required for those prescription drugs that do not leave the normal distribution channel, or those that include one or more of the following additional distributions or variations to the normal distribution channel:". Mr. Stredler moved and the Board voted unanimously to amend 18VAC110-50-170(A) to read: "For distributions of prescription drugs that require a pedigree in accordance with

§ 54.1.3307 of the Code of Virginia and section 18VAC110-50-160 of these regulations, the pedigree shall list all distributions starting with the sale by a manufacturer through acquisitions and sale by any wholesale distributor until final sale to a pharmacy or other person authorized to administer or dispense the prescription drug.” Mr. Kozera moved and the Board voted unanimously to amend 18VAC110-50-170(B) to read: “A wholesale distributor shall provide an authenticated pedigree when required for prescription drugs that are sold or returned to another wholesale distributor before or at the time the drug is shipped to such wholesale distributor.” and 18VAC110-50-170(C)(7) renumbered to 18VAC110-50-170(C)(5). Mr. Ison moved and the Board voted unanimously to amend 18VAC110-50-170(D) to read: “The requirement for pedigree shall be effective beginning (one year from the effective date of the final regulation).” Mr. Ross moved and the Board voted unanimously to adopt the regulations for implementing a pedigree system with the above amendments.

**KEN SCHAFERMEYER,
EXCPT NATIONAL
CERTIFICATION EXAM
FOR PHARMACY
TECHNICIANS:**

Ken Schafermeyer, Director of Education for The Institute for the Certification of Pharmacy Technicians (ICPT), requested that the Board approve the ExCPT National certification exam for pharmacy technicians as another approved Board examination. Mr. Schafermeyer provided a presentation and responded to Board member questions. Mr. Schafermeyer did not have documentation with him to demonstrate that this examination conformed to standards required in regulation. Mr. Beckner suggested that the Board refer Mr. Schafermeyer and the ExCPT exam to the examination committee to review and bring a recommendation to the Board for a subsequent Board meeting. Mr. Ison moved and the Board voted unanimously to refer the ExCPT national certification exam for pharmacy technicians to the examination committee to meet and report to the Board.

**REPORT ON THE BOARD
OF HEALTH
PROFESSIONS:**

Ms. Russell provided a handout summarizing the most recent meeting of the Board of Health Professions. Sandra W. Ryals, Chief Deputy Director, presented the minutes from the September 19, 2006, Board of Health Professions meeting. Ms. Russell informed the Board that a member has not been appointed by the Secretary of the Commonwealth to represent the Board of Pharmacy at the BHP meetings and requested that if anyone was interested in volunteering to be appointed, please do so. Ms. Russell explained that either a pharmacist or citizen Board member could be appointed to represent the Board and that the Board of Health Professions meets quarterly. Ms. Edwards volunteered for appointment.

**EXECUTIVE DIRECTOR'S
REPORT:**

Ms. Russell announced that the retreat will have to be moved to the March 2007 Board meeting. Ms. Russell, in conjunction with Betty Jolly, Assistant Director for Policy Education, was supposed to have visited some hotels back in August. However, Ms. Jolly has been working with the Governor's office and they were unable

to visit the hotels.

Ms. Russell announced that Cathy Reiniers-Day and Willie Brown are planning to attend the Citizen Advocacy Center conference that will be held in Williamsburg in October.

Ms. Russell, Mr. Ross, Ms. Edwards, and Mr. Yi are planning to attend the NABP District II meeting in Baltimore, Maryland from October 12-14, 2006.

Ms. Russell announced that the NABP Fall Education Meetings will be held in Savannah, Georgia from November 3-4, 2006. She asked that Board members let her know if interested in attending.

Ms. Russell informed the Board that invitations were sent to all Board members for Mr. Nebiker's retirement party that will be held on October 13, 2006. She advised that if anyone was planning to attend, to send his or her response along with the fee to Ms. Yeatts immediately.

Ms. Reiniers-Day gave a report regarding the Board's disciplinary caseload and stated that there were currently 260 cases being investigated by the Enforcement Division; 54 cases with the Board; three at the formal hearing level; 19 at the informal conference level; and 42 were with the Administrative Proceedings Division. The Compliance Division has 220 cases that consist of those persons being monitored under terms of an order, as well as ones involving possible non-compliance with terms of an order.

Ms. Russell reviewed the number of licenses issued since January 1, 2006. The Board issued 373 pharmacist licenses and over 1100 pharmacy technician registrations. The Board also issued 200 controlled substance registrations with most of those being community services boards and correctional institutions. The inspectors have conducted 1200 inspections this year, resulting in 2200 deficiencies. Ms. Russell provided an update on Toni Aust, who resigned from the Board of Pharmacy earlier this year to become an inspector with the Department of Health Professions. Ms. Aust is almost through with her training and has begun to conduct unsupervised inspections at community pharmacies.

Ms. Russell announced that the first e-newsletter was published in May and the second in August of this year with the next one due to be published in November. Ms. Russell asked for any suggestions for topics to be included in the upcoming newsletter. Ms. Yeatts congratulated the Board for being the only Board to attempt to publish more than one newsletter during the course of one year.

Ms. Russell informed the Board that information regarding online renewal and a request for current e-mail addresses will be included

on the 2006 renewal notices. The Board currently has approximately 60% of pharmacist e-mail addresses in the database. However, over 90% renew online. The new regulations governing wholesale distributors, warehouse and manufacturers have been posted on the pharmacy website. Ms. Russell further commented that the power point presentation given by staff at the VPhA annual meeting has also been posted on the website.

Ms. Russell gave a report on pilot programs. The Board recently approved a pilot program for Nuckolls Drug. Nuckolls Drug wants to establish a pharmacy in Fries, VA, but at this time, does not have the volume to start a pharmacy. Therefore, Nuckolls is requesting approval of a pilot program in that they want to open an alternate delivery site in Fries that would be staffed by pharmacy technicians who will receive prescriptions, fax them to Nuckolls, and then take the original prescriptions to Nuckolls twice a day, where a pharmacist will check filled prescriptions against the original prescriptions before releasing them to be delivered to Fries for pick-up by the patient. A pharmacist at Nuckolls can provide face to face counseling via a webcam for those patients who request or need counseling. Ms. Russell stated that in about six months, Nuckolls hopes to have enough volume to convert the alternate delivery site in Fries to a pharmacy. Ms. Abernathy requested that at the next Board meeting, the Board be provided with a list of all current pilot programs.

Mr. Orr reviewed the progress of the Prescription Monitoring Program. As of September 26, 2006, the Program contains over 5.3 million prescription records compared to only 1.3 million records on January 1, 2006. The requests received since July 1, 2006, has been greater than requests made for all of 2005. Mr. Orr commented that the program is encouraging the use of their web-based DataCenter for requests rather than using faxes. In the last month, the Program has seen a greater movement towards using the DataCenter with prescribers and pharmacists making the largest number of requests for data. The number of pharmacists using the DataCenter from June 30, 2006, to September 26, 2006, increased from 34 to 116. The number of prescribers using the DataCenter increased from 165 to 250.

Mr. Orr explained the waiver and exemption process for the Program, stating that, of the 2384 dispensers, 442 have received waivers or exemptions for reporting. Further, if a dispenser does not dispense any Schedules II, III, or IV drugs during a reporting period, that dispenser must still submit a "zero" report to the Program unless the dispenser has a waiver.

Mr. Orr discussed the issue of non-reporting by some dispensers. He explained that at least two letters have gone out to the non-reporting dispensers requesting the reports, and, in some cases, requests have been sent via facsimile transmission and telephone.

As of September 25, 2006, 60 in-state pharmacies were on the non-reporting list and that six of those pharmacies had not reported for four or more months. Also, 50 physician dispensers were on the list and 16 have not reported for four months or more. There are 143 non-resident pharmacies on the list with 71 not reporting for four periods or more. Without everyone reporting as required, prescribers and pharmacists using the Program could base their treatment and dispensing decisions on the incomplete information. The Board then discussed possible actions that could be taken to ensure reporting compliance. Mr. Stredler moved and the Board voted unanimously that the first letter be sent and, if no response or an inadequate response, a certified letter would then be mailed. Should the dispenser still not respond or give an inadequate response, the matter will be referred for disciplinary action to include, but not be limited to, the offering of a pre-hearing consent order requiring the immediate submission of the required data and a \$1000 fine for each unreported period.

NEW BUSINESS:

BOARD CALENDAR:

The Board selected its 2007 meeting dates as follows:
Wednesday and Thursday, March 28-29, 2007 (in conjunction with the Board retreat)
Tuesday, June 12, 2007
Wednesday, September 12, 2007
Wednesday, December 12, 2007

**COMMITTEE
APPOINTMENTS:**

Mr. Beckner provided the Board with a list of the committee appointments for the year 2006-2007 (Attachment #1).

**CONSENT ORDER
PRESENTATION:**

Closed Meeting:

Mr. Ison moved, and the Board voted unanimously, to enter into closed session pursuant to § 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 Scotti Russell, Cathy Reiniers-Day, Tiffany Mallory and Howard Casway attend the closed meeting.

Reconvene:

Mr. Ison 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 meeting.

Mr. Ison moved, and the Board voted unanimously, to accept the consent order signed by Patricia Craig.

FORMAL HEARING:

MARTIN ETTINGER,
Pharmacist
License Number 0202-005303

A hearing was held in the matter of Martin Ettinger to discuss his petition for reinstatement of his license that was mandatorily suspended on October 19, 1998, and allegations that he may have violated certain laws or regulations governing the practice of pharmacy in Virginia.

Quorum:

With nine Board Members in attendance, a quorum was established.

Wayne Halbleib, Assistant Attorney General, prosecuted the case with the assistance of Rachel E. Welch, DHP Adjudication Specialist. Mr. Ettinger appeared and was not represented by counsel.

Vicky Fox, DHP Senior Investigator; and Bruce F. Hubbard, Certified Fraud Examiner, TriCenturion; testified on behalf of the Commonwealth.

Martin Ettinger testified on his own behalf.

Closed Meeting:

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

Reconvene:

Mr. Ison 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.

Decision:

Ms. Abernathy moved, and the Board voted unanimously, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Garrett, amended by the Board and read by Mr. Casway (Attachment # 2).

Mr. Kozera moved, and the Board voted unanimously that Mr. Ettinger's request for reinstatement be denied and that the license of Mr. Ettinger be continued on indefinite suspension for a period of not less than two years.

ADJOURN:

With all business concluded, the meeting adjourned at 3:40 p.m.

Elizabeth Scott Russell
Executive Director

John O. Beckner, Board Chair

Date

(FINAL/APPROVED 01/31/2007)

**VIRGINIA BOARD OF PHARMACY
STANDING COMMITTEES
2006-2007**

REGULATION	EXAMINATION	ITEM REVIEW COMMITTEE	PILOT PROGRAM IFCS	SPECIAL CONFERENCE
John Beckner, Chair Dave Kozera Willie Brown Gill Abernathy Mickey Stredler Alternates: Citizen: Diane Langhorst Licensee: Leo Ross	Jennifer Edwards Brandon Yi Gill Abernathy Mickey Stredler Scotti Russell	Nan Dunaway Jennifer Edwards Vicki Gwaltney Garrison Caroline Juran Sammy Johnson Scotti Russell	Bobby Ison, Chair John Beckner Alternates: Any pharmacist board member	Alternate between: Bobby Ison Dave Kozera Leo Ross John Beckner Alternates: Any board member

VIRGINIA:

BEFORE THE BOARD OF PHARMACY

IN RE: MARTIN ETTINGER, PHARMACIST
License No.: 0202-005303

ORDER

Pursuant to § 2.2-4020, § 2.2-4021, § 54.1-110, § 54.1-2400(11), and § 54.1-2409 of the Code of Virginia (1950), as amended ("Code"), a formal administrative hearing was held before the Board of Pharmacy ("Board") on September 27, 2006, in Henrico County, Virginia, to receive and act upon the application for reinstatement of the license of Martin Ettinger to practice pharmacy in the Commonwealth that was mandatorily suspended by the Department of Health Professions on October 19, 1998, pursuant to § 54.1-2409 of the Code. The case was prosecuted by Wayne T. Halbleib, Assistant Attorney General. Howard M. Casway, Senior Assistant Attorney General, was present as legal counsel for the Board. Mr. Ettinger was present and was not represented by counsel. The proceedings were recorded by a certified court reporter.

Upon consideration of the evidence presented, the Board adopted the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. Martin Ettinger previously held License Number 0202-005303 issued by the Board to practice as a pharmacist in the Commonwealth of Virginia.
2. On October 23, 1980, pursuant to a Consent Order, the Board revoked Mr. Ettinger's license to practice pharmacy in the Commonwealth of Virginia. The revocation was based on Mr. Ettinger's admissions to diverting Dilaudid and Quaaludes (Schedule II controlled substances);

altering prescriptions for Percodan (Schedule II) and Quaaludes; and forging a prescription for Quaaludes, all for the purpose of resale.

3. Mr. Ettinger's license was mandatorily suspended by Order of the Department of Health Professions entered October 19, 1998, pursuant to § 54.1-2409 of the Code, due to his convictions entered on or about July 30, 1998, by the Circuit Court of Rockingham County, Virginia, of one count of Medical Assistance Fraud, in violation of § 32.1-314 of the Code, two counts of Obtaining Money by False Pretenses, in violation of § 18.2-178 of the Code, and one count of Aiding and Abetting in Obtaining a Drug by Fraud, in violation of § 18.2-258.1 and § 18.2-18 of the Code. On or about September 24, 1998, Mr. Ettinger was sentenced to twenty (20) years incarceration with seventeen (17) years suspended, and, upon release from imprisonment, supervised probation for a term of six (6) months. As a special condition of probation, Mr. Ettinger was prohibited from employment within the health care industry. In addition, Mr. Ettinger was ordered to pay restitution in the amount of \$90,602.88.

4. On or about September 6, 2001, the Circuit Court of Rockingham County ("Court") entered an Order which found that Mr. Ettinger was in violation of the terms and conditions of his supervised probation because he had not paid the court-ordered restitution in full within ninety (90) days of the beginning of his probationary period. The Court revoked five (5) years of the previously suspended sentence of seventeen (17) years. The Court set aside execution of the five (5) year sentence and recommitted Mr. Ettinger to supervised probation under the same terms and conditions as set forth in the Court's Sentencing Order of September 25, 1998, and noted "which terms and conditions are imposed herein, by reference, including the payment of all court costs," with the special condition that Mr. Ettinger pay \$50 per week toward restitution.

5. By Mr. Ettinger's own admission, during the course of his employment as the pharmacist-in-charge at The Medicine Shoppe, Harrisonburg, Virginia, he submitted false claims to insurance companies, to include Blue Cross and Virginia Medicaid, using patient billing information over the course of a period of approximately one year. These actions were the subjects of the aforementioned felony convictions in Finding of Fact No. 3.

6. Mr. Ettinger failed to provide clear and convincing evidence that he is competent to resume the practice of pharmacy.

CONCLUSIONS OF LAW

The Board concludes that:

1. Finding of Fact #5 constitutes a violation of § 54.1-3315(1) and § 54.1-3316(2), (5), (7), and (9) of the Code.

2. Pursuant to § 54.1-2409 of the Code, Mr. Ettinger's application for reinstatement is properly before the Board. The Board may deny Mr. Ettinger's application pursuant to § 54.1-3316 of the Code or 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 present pursuant to § 54.1-2409 of the Code.

ORDER

WHEREFORE, the Virginia Board of Pharmacy, effective upon entry of this Order, hereby ORDERS that the application for reinstatement of Martin Ettinger's license to practice pharmacy in the Commonwealth of Virginia be DENIED due to a failure to obtain the affirmative vote for reinstatement of three-fourths of the members of the Board at the hearing. The Board further

ORDERS that the license of Mr. Ettinger be CONTINUED on INDEFINITE SUSPENSION for a period of not less than two years. Mr. Ettinger may petition the Board after not less than two years from the date of entry of this Order for reinstatement of his license to practice pharmacy, at which time an informal conference will be convened to receive evidence satisfactory to the Board that Mr. Ettinger is able to resume the safe and competent practice of pharmacy.

In the event that Mr. Ettinger seeks reinstatement of his license, he shall be responsible for any fees that may be required for the reinstatement and renewal of his license prior to issuance of his license to resume practice.

As provided by Rule 2A:2 of the Supreme Court of Virginia, Mr. Ettinger has thirty (30) days from the service date in which to appeal this decision by filing, in writing, a Notice of Appeal with Elizabeth Scott Russell, Executive Director, Board of Pharmacy, 6603 West Broad Street, Fifth Floor, Richmond, Virginia, 23230-1717. The service date shall be defined as the date Mr. Ettinger actually received this decision or the date it was mailed to him, whichever occurred first. In the event this decision is served upon him by mail, three (3) days are added to that period.

Pursuant to § 2.2-4023 of the Code, the signed original of this Order shall remain in the custody of the Department of Health Professions as public record and shall be made available for public inspection or copying on request.

FOR THE BOARD

Elizabeth Scott Russell
Executive Director

Entered: October 11, 2006

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing Order was mailed to Martin Ettinger at 9633 Majestic Way, Boynton Beach, Florida 33437, on this 11th day of October, 2006.

Cathy M. Reiniers-Day
Deputy Executive Director