

APPROVED/12/7/06
VIRGINIA BOARD OF PHARMACY
MINUTES OF SPECIAL CONFERENCE COMMITTEE
INFORMAL CONFERENCE COMMITTEE

Tuesday, October 31, 2006
Fifth Floor
Conference Room 4

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

CALL TO ORDER: A meeting of a Special Conference Committee of the Board of Pharmacy was called to order at 9:00 a.m.

PRESIDING: Leo Ross, Committee Chairman

MEMBERS PRESENT: Bobby Ison

STAFF PRESENT: Cathy M. Reiniers-Day, Deputy Executive Director

ERICA L. BAILEY
Registration #0230-003600

Erica L. Bailey appeared with her attorney, Ronald A. Martin; to discuss allegations that she may have violated certain laws and regulations governing the practice of pharmacy technicians as stated in the June 16, 2006 Notice. Additionally, Summer Towery appeared.

Mykl Egan, Adjudication Specialist, was also present as staff for this conference.

Closed Meeting: Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, to convene a closed meeting 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 Erica L. Bailey. Additionally, he moved that Cathy Reiniers-Day and Mykl Egan attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Committee in its deliberations.

Reconvene: Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, 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 meeting were heard, discussed or considered during the closed meeting.

Decision: After consideration of the evidence and statements

concerning the allegations, Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, that the Committee make the findings of fact, conclusions of law and sanctions as stated in Attachment 1.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Ms. Bailey unless a written request to the Board for a formal hearing on the allegations made against her is received from Ms. Bailey within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

JAMES G. WALKER
License #0202-006788

James G. Walker appeared to discuss allegations that he may have violated certain laws and regulations governing the practice of pharmacy as stated in the October 4, 2006 Notice

Mykl Egan, Adjudication Specialist, was also present as staff for this conference.

Closed Meeting:

Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, to convene a closed meeting 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 James G. Walker. Additionally, he moved that Cathy Reiniers-Day and Mykl Egan attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Committee in its deliberations.

Reconvene:

Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

Decision:

After consideration of the evidence and statements concerning the allegations, Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, that the Committee make the findings of fact, conclusions of law

and sanctions as stated in Attachment 2.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Mr. Walker unless a written request to the Board for a formal hearing on the allegations made against him is received from Mr. Walker within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

CHRISTINA BUDDINGTON
Registration #0230-003600

Christina Buddington was scheduled to appear at 9:00 a.m., to discuss allegations that she may have violated certain laws and regulations governing the practice of pharmacy technicians as stated in the June 16, 2006 Notice. The Committee proceeded in Ms. Buddington's absence as the Notice dated June 16, 2006, was mailed to Ms. Buddington's legal address of record, both regular and certified mail, and the certified mail package was signed as received.

Mykl Egan, Adjudication Specialist, was also present as staff for this conference.

The Committee referred this case to a formal hearing.

CHARLES C. SMITH, III
License #0202-007044

Charles C. Smith, III, appeared to discuss allegations that he may have violated certain laws and regulations governing the practice of pharmacy as stated in the June 16, 2006 Notice.

Rachel E. Welch, Adjudication Specialist, was also present as staff for this conference.

Closed Meeting:

Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, to convene a closed meeting 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 Charles C. Smith, III. Additionally, he moved that Cathy Reiniers-Day and Rachel Welch attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Committee in its deliberations.

Reconvene:

Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

Decision:

After consideration of the evidence and statements concerning the allegations, Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, that the Committee make the findings of fact, conclusions of law and sanctions as stated in Attachment 3.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Mr. Smith unless a written request to the Board for a formal hearing on the allegations made against him is received from Mr. Smith within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

JAMES Q. UNDERWOOD
License #0202-006303

James Q. Underwood appeared to discuss his petition for reinstatement of his pharmacist license as stated in the July 31, 2006 Notice.

Rachel E. Welch, Adjudication Specialist, was also present as staff for this conference.

Closed Meeting:

Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, to convene a closed meeting 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 James Q. Underwood. Additionally, he moved that Cathy Reiniers-Day and Rachel Welch attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Committee in its deliberations.

Reconvene:

Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such

public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

Decision:

After consideration of the evidence and statements concerning the allegations, Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, that the Committee make the findings of fact, conclusions of law and sanctions as stated in Attachment 4.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Mr. Underwood unless a written request to the Board for a formal hearing on the allegations made against him is received from Mr. Underwood within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

KENNETH W. NEWMAN
License #0202-006902

Kenneth W. Newman appeared to discuss his compliance with the terms and conditions of his September 6, 2004 Order as stated in the July 31, 2006 Notice.

Rachel E. Welch, Adjudication Specialist, was also present as staff for this conference.

Closed Meeting:

Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, to convene a closed meeting 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 Kenneth W. Newman. Additionally, he moved that Cathy Reiniers-Day and Rachel Welch attend the closed meeting because their presence in the closed meeting was deemed necessary and their presence would aid the Committee in its deliberations.

Reconvene:

Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, that only public business matters lawfully exempted from open meeting requirements under the Virginia Freedom of Information Act and only such public business matters as were identified in the motion for closed meeting were heard, discussed or considered during the closed meeting.

Decision:

After consideration of the evidence and statements concerning the allegations, Mr. Ison moved, and the Committee voted 2-0 in favor of the motion, that the Committee make the findings of fact, conclusions of law and sanctions as stated in Attachment 5.

As provided by law, this decision shall become a final Order thirty days after service of such Order on Mr. Newman unless a written request to the Board for a formal hearing on the allegations made against him is received from Mr. Newman within such time. If service of the Order is made by mail, three additional days shall be added to that period. Upon such timely request for a formal hearing, the decision of this Special Conference Committee shall be vacated.

ADJOURN:

With all business concluded, the meeting adjourned at 5:30 p.m.

Cathy M. Reiniers-Day
Deputy Executive Director

Leo H. Ross, Chair

Date

Attachment 1
Minutes - Board of Pharmacy
Special Conference Committee
October 31, 2006

Erika L. Bailey

Findings of Fact and Conclusions of Law:

- Erika L. Bailey holds registration number 0230-003600 issued by the Board on February 13, 2004, to practice as a pharmacy technician in the Commonwealth of Virginia. Additionally, on January 10, 2006, Ms. Bailey was issued intern registration number 0203-011334.
- Ms. Bailey violated § 54.1-3322(6) and § 32.1-127.1:03(A)(3) of the Code in that, by her own admission, she obtained privileged patient information for her personal and unauthorized use. On or about September 21, 2005, she sent an e-mail to the patient containing this privileged information through a website that acts as an on-line directory for social networking.

Sanction

- Ms. Bailey shall obtain four (4) continuing pharmacy education hours on the subject of the Health Insurance Portability and Accountability Act ("HIPAA").

Attachment 2
Minutes – Board of Pharmacy
Special Conference Committee
October 31, 2006

James G. Walker

Findings of Fact and Conclusions of Law:

- James G. Walker holds license number 0202-006788 issued by the Board to practice pharmacy in the Commonwealth of Virginia.
- During the course of Mr. Walker's employment as pharmacist-in-charge of Walker Pharmacy Incorporated of Virginia, Chesapeake, Virginia ("Walker Pharmacy"), he violated § 54.1-3316(7) and § 54.1-3434 of the Code, and 18 VAC 110-20-180 of the Board of Pharmacy Regulations, in that an inspection on December 13, 2005, disclosed that the alarm system covering the area where several Schedule VI substances were stored was not active.
- Pursuant to an inspection on August 18, 2006, Walker Pharmacy was found to be in full compliance with the statutes and regulations of the Board of Pharmacy and another permit for its operation was issued on August 21, 2006.

Sanction:

- Mr. Walker shall pay a monetary penalty of Five Hundred Dollars (\$500.00).

Charles C. Smith, III

Findings of Fact and Conclusions of Law:

- Charles C. Smith, III, holds license number 0202-007044 issued by the Board to practice pharmacy in the Commonwealth of Virginia.
- During an inspection conducted on December 15, 2005, at Historic Smith’s Pharmacy, Newport News, Virginia, at which Mr. Smith was the pharmacist-in-charge, the following deficiencies were disclosed:
 - Mr. Smith violated § 54.1-3316(7), § 54.1-3321(A) and § 54.1-3434 of the Code in that he allowed a pharmacy employee to perform the duties of a pharmacy technician although the employee was not registered as a pharmacy technician by the Board or enrolled in an approved training program.
 - Mr. Smith violated § 54.1-3316(7) of the Code and 18 VAC 110-20-200(A) of the Board of Pharmacy Regulations (“Regulations”) in that prescriptions prepared for delivery were in an area that was not in a secure place and was accessible to the public.
 - Mr. Smith violated § 54.1-3316(7) of the Code and 18 VAC 110-20-180(4) of the Regulations in that a non-pharmacist had the access code to the prescription department’s security alarm system.

Sanction:

Mr. Smith is Reprimanded and shall not practice as a pharmacist-in-charge until such time as he passes the Virginia Drug Law Examination and provides documentation to the Board.

James Q. Underwood

Findings of Fact and Conclusions of Law:

- James Q. Underwood held license number 0202-006303 issued by the Board to practice pharmacy in the Commonwealth of Virginia. Said license was summarily suspended pursuant to an Order entered by the Board on August 13, 2004, and subsequently indefinitely suspended pursuant to a Consent Order entered by the Board on September 8, 2004.
- Mr. Underwood is in violation of § 54.1-3316(3) of the Code due to mental health issues and non-compliance with psychiatric treatment. Specifically, he has diagnoses of schizoaffective disorder, depressed type, and anxiety disorder. In approximately February 2006, his father notified his psychiatrist that he believed Mr. Underwood had stopped taking his prescribed Topamax (topiramate), a Schedule VI controlled substance, without consulting his psychiatrist. Further, Mr. Underwood stated to the Department of Health Professions' investigator on or about April 24, 2006, that he had not sought individual or group counseling, as recommended by his psychiatrist.

Sanction:

- The license of James Q. Underwood to practice pharmacy in the Commonwealth of Virginia shall be REINSTATED upon the receipt of documentation of Mr. Underwood's entry into a Recovery Monitoring Contract ("Contract") with the Health Practitioners Intervention Program ("HPIP), pursuant to Chapter 25.1 of Title 54.1 of the Code, and 18 VAC 76-10-10 et seq. of the regulations governing HPIP. After entry into the Contract with HPIP, Mr. Underwood shall comply with all terms and conditions for the period specified by the HPIP.
- Once reinstated, Mr. Underwood shall be responsible for HPIP forwarding any addendums or changes to said Contract to the Board within ten (10) days of signing.
- Once reinstated, any violation of the terms and conditions of the HPIP or any of the terms and conditions stated in this Order shall be reason for revoking the license of Mr. Underwood,

and an administrative proceeding shall be held to decide whether Mr. Underwood's license shall be revoked.

- Mr. Underwood shall be noticed to appear at an administrative hearing at such time as the Board is notified that:

- Once reinstated, he is not in compliance with the terms and conditions specified by the HPIP, or has been terminated from participation in the HPIP, or
- There is a pending investigation or unresolved allegation against Mr. Underwood involving a violation of law or regulation or any term or condition of this Order; or
- He has successfully completed the period of participation in HPIP. However, upon receipt of Mr. Underwood's participation in and compliance with HPIP, the Board, at its discretion, may waive his appearance before the Board and conduct an administrative review of the matter.

Kenneth W. Newman

Findings of Fact and Conclusions of Law:

- Kenneth W. Newman holds license number 0202-006902 issued by the Board to practice pharmacy in the Commonwealth of Virginia.
- Mr. Newman violated certain terms and conditions of an Order of the Board entered September 6, 2005. Specifically:
 - Term No. 1 of the Order required Mr. Newman to obtain four (4) hours of continuing pharmacy education in the area of prescription errors between September 6, 2005, and November 6, 2005. He was then to forward the original certificates of completion to the Board no later than December 6, 2005. Mr. Newman admitted to the Committee that he violated said Term in that original certificates he provided to the Board on or about December 2, 2005, indicated he did not obtain the required hours until November 22, 2005.
 - Term No. 2 of the Order required Mr. Newman, for purposes of a Board audit, to direct his pharmacist employer and/or district manager to forward to the Board a list of the pharmacy locations where he practiced pharmacy from September 6, 2005, to November 6, 2005. Mr. Newman admitted to the Committee that he violated said Term in that he did not direct his district manager to do so until on or about April 10, 2006, after having received two reminders from his compliance case manager.
 - Mr. Newman was assessed a monetary penalty of \$5,000.00, with \$2,500.00 to be stayed upon receipt of said amount within forty-five (45) days of the entry of the Order. Because he failed to pay this amount within the allotted timeframe, he was assessed additional fees, \$300.00 of which Mr. Newman admitted to the Committee was still delinquent as of May 25, 2006.

Sanction:

- Mr. Newman is CONTINUED on INDEFINITE PROBATION. Further Mr. Newman shall pay the Two Thousand Five Hundred Dollar (\$2500.00) amount previously stayed contingent upon Mr. Newman's compliance with certain terms and conditions set forth in the September 6, 2005, Board Order, within forty-five (45) days of the entry of this Order.

- Mr. Newman shall direct his pharmacist employer/district manager to supply to the Board a list of the pharmacies and the number of hours worked where Mr. Newman has practiced pharmacy in the sixty (60) days preceding the entry of this Order. Upon receipt of the list, the Board, on a quarterly basis, shall randomly audit Mr. Newman's practice and review the reports for performance and compliance with law and regulations. The Board shall notice Mr. Newman to appear before a Special Conference Committee ("Committee") should it determine there are performance or compliance issues.