

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

Wednesday, January 14, 2004
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 9:00 a.m.
- PRESIDING:** Mark A. Szalwinski, Chairman
- MEMBERS PRESENT:** Michael J. Ayotte
John O. Beckner
Willie Brown
Carthan F. Currin, Jr.
Michelle R. Easton
Bobby Ison
Mark A. Oley
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
Betty Revere, Administrative Assistant
- QUORUM:** With nine members of the Board present, a quorum was established.
- APPROVAL OF AGENDA:** Mr. Beckner moved, and the revised agenda was approved to add the following topics: update on 2004 legislation, update/discussion on pharmacy technician registration, problem identified in hospitals with compounding law and the NABP annual meeting.
- PUBLIC COMMENTS:** No public comments were received.
- APPROVAL OF MINUTES:** Mr. Szalwinski called for changes or corrections to the minutes of November 25, 2003. Hearing no changes, the minutes were approved as presented.
- WELCOME:** Mr. Szalwinski welcomed Betty Revere as the newest member of the Board of Pharmacy staff.

PUBLIC HEARING:

The Board held a public hearing on proposed amendments to 18 VAC 110-20 et seq., Regulations Governing the Practice of Pharmacy. No comments were received at this time. Mr. Szalwinski stated that written comments could be submitted to the Board no later than February 27, 2004.

**UPDATE ON 2004
LEGISLATION**

Ms. Yeatts discussed with the Board the update on HB 358-Freedom of Information Act; posting of notice of rights and responsibilities by state public bodies. She explained that the bill requires that minutes be recorded by audio or audio/visual means during any closed meeting of a public body and would not be subject to mandatory public disclosure, but could be reviewed by a court on an appeal brought by a respondent in a disciplinary matter. The Board took no action in this matter.

Ms. Yeatts also discussed with the Board HB 190 that relates to purchasing drugs from Canadian businesses. Mr. Ayotte moved, and the Board voted unanimously, to oppose this bill and any bill that would regulate an illegal act.

Ms. Yeatts explained to the Board that HB 577 is a Department of Health Professions bill that grants all health regulatory boards the authority to delegate some informal fact-finding proceedings to an appropriately qualified agency subordinate pursuant to regulations adopted by the relevant board. The Board took no action in regard to this bill.

Ms. Russell informed the Board she had received a report that a bill is being introduced that would allow pharmacy technicians who volunteer at free clinics to be exempt from registration with the Board. She further explained that free programs have been offered to assist volunteers at free clinics with the cost of training, but that the Board does not have the authority to waive the registration fee. Mr. Beckner moved, and the Board voted unanimously, to oppose any bill that would exempt pharmacy technicians working in free clinics from having to register, but to support an amended bill that would waive fees for these persons.

**REQUEST FROM THE
TOWN OF SCOTTSVILLE
TO GRANT AN
EXCEPTION TO 54.1-3433**

Ms. Russell stated to the Board that the mayor of the Town of Scottsville requested an exception to 54.1-3433 because the name of a pharmacy, Bruce's Drug Store, is etched into stained glass windows on a building that has been an attraction and landmark to visitors for over 80 years. The pharmacy has relocated, and the mayor does not want to remove the word drug for aesthetic purposes.

Mr. Casway informed the Board that there is no provision in the law for the Board to waive or provide an exception to §54.1-3433.

Mr. Ayotte moved, and the Board voted 8 to 1, that the Town of Scottsville be advised that the Board is unable to grant a variance and that the word "drug" must be removed from the sign on the building.

**UPDATE/DISCUSSION ON
PHARMACY TECHNICIAN
REGISTRATION:**

Ms. Russell provided the Board with updated data pertaining to the number of technicians currently registered by the Board and the approximate number of technicians that have yet to be registered. She also stated that two mailings have been sent from the Board to the pharmacists-in-charge at both their address of record with the Board and to the pharmacy itself as a reminder of the technician registration deadline.

- **GUIDANCE FOR
DISCIPLINARY
ACTION WHEN
NOT REGISTERED
BY DEADLINE:**

Ms. Russell asked the Board for guidance as to how to proceed on disciplinary action when a technician is not registered by the deadline date. After discussion, Mr. Brown moved, and the Board voted unanimously, to initially docket a case under the pharmacist-in-charge for purposes of investigation, then present the case to an special conference committee for a determination as to how to proceed.

- **USE OF INTERNS
AS TECHNICIANS:**

Ms. Russell discussed the issue of pharmacy interns performing technician duties in pharmacies and asked for an interpretation from the Board as to whether or not interns would need to be registered as technicians if they were working as technicians and not for the purpose of gaining practical experience for pharmacist licensure.

Mr. Ayotte moved, and the Board voted unanimously, that a guidance document be provided to explain the utilization of pharmacy interns, to clarify the technician ratio, and to advise that interns do not need to be registered as technicians.

**PROBLEM IDENTIFIED IN
HOSPITALS WITH
COMPOUNDING LAW:**

Ms. Russell informed the Board of a problem in hospitals with the compounding law. Because hospital pharmacies compound IV admixtures pursuant to an order for an individual patient, to be used probably within 24 hours, they have never recorded lot numbers or expiration dates of the additives on the record. She further explained that the intent of recording the lot number is for recall purposes, which would not be an issue in a product consumed within 24 hours.

Mr. Ison moved, and the Board voted unanimously, to provide a guidance document to clarify the law that if compounding is being done pursuant to a hospital order for an individual patient, and the product will be used within 48 hours, it is not necessary to track the lot number and expiration dates of the ingredients.

**EXECUTIVE DIRECTOR'S
REPORT:**

- **NABP ANNUAL MEETING:**
- **APRIL BOARD MEETING:**

Ms. Russell informed the Board that the NABP annual meeting will be held in Chicago on April 24-27, and that this will be their centennial celebration. Mr. Szalwinski, Mr. Ayotte, Mr. Ison and Mr. Ross all indicated that they would like to attend the annual meeting.

The April 7, 2004 Board meeting date has been changed and will be held on April 13, 2004.

Mr. Ayotte moved, and the Board voted unanimously, to amend the agenda to add a possible summary suspension after the formal hearing.

FORMAL HEARING:

**KIRKLAND D. JEANE
Lic. #0202-013142**

A hearing was held in the matter of Kirkland D. Jeane to discuss his petition for reinstatement of his license that was mandatorily suspended on December 5, 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.

Kelly Hayes, Walgreens Pharmacy Manager; Michael Doyle, Walgreens Payroll and Schedule Department; Rusty Maney, Walgreens Pharmacy Supervisor for Western Virginia; and Susan Beasecker, DHP Compliance Case Manager, all testified on behalf of the Commonwealth.

Kirkland D. Jeane testified on his own 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 Kirkland D. Jeane. Additionally, he moved that Scotti Russell, Cathy Reiniers-Day and Howard Casway attend the

closed session because their presence 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. Ayotte moved, and the Board voted unanimously, to accept the Findings of Fact and Conclusions of Law as proposed by Mr. Schliessman.

Mr. Ayotte moved, and the Board voted unanimously, that Mr. Jeane's petition for reinstatement of his license be granted and that he be placed on indefinite probation with certain terms and conditions.

**CONSIDERATION OF
SUMMARY SUSPENSION:**

Mr. Szalwinski recused himself from participating in the possible summary suspension pertaining to Ryan W. Kelly; therefore, Mr. Oley presided as Chairman in this matter.

Mr. Schliessman presented a summary of the evidence in the matter of Ryan W. Kelly, Pharmacy Technician, for the Board to consider a summary suspension.

CLOSED SESSION:

Mr. Ayotte 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 on a case presented for summary suspension. Additionally, he moved that Scotti Russell, Cathy Reiniers-Day, Howard Casway, Donna Lee and Betty Revere attend the closed session because their presence would aid the Board in its deliberation.

RECONVENE:

Mr. Ayotte 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. Brown moved, and the Board voted unanimously, that according to the evidence presented, the practice as a pharmacy technician by Ryan W. Kelly poses a substantial danger to the public; and therefore, that the registration of Ryan W. Kelly to practice as a pharmacy technician be summarily suspended.

Mr. Ayotte moved, and the Board voted unanimously, that a Consent Order be offered to Mr. Kelly for the indefinite suspension of his registration in lieu of a hearing.

ADJOURN:

With all business concluded, the meeting adjourned at 3:10 p.m.

Donna M. Lee
Administrative Assistant

Elizabeth Scott Russell
Executive Director

Mark A. Szalwinski, Board Chair

Date

