



Louisiana Board of Pharmacy

5615 Corporate Blvd., Suite 8-E, Baton Rouge, LA 70808-2537

Telephone (225) 925-6496 ~ Facsimile (225) 925-6499

www.labp.com email: labp@labp.com

Minutes

Regular Meeting

Wednesday, November 19, 2003 at 1:00 p.m.

Louisiana Board of Pharmacy
5615 Corporate Blvd., Suite 8-E
Baton Rouge, Louisiana 70808

Administrative Hearing

Thursday, November 20, 2003 at 8:30 a.m.

Louisiana Board of Pharmacy
5615 Corporate Blvd., Suite 8-E
Baton Rouge, Louisiana 70808

Table of Contents

<u>Agenda Item No.</u>	<u>Description</u>	<u>Page No.</u>
<i>Thursday, November 20, 2003</i>		
1.	Call to Order	11
2.	Invocation	11
3.	Pledge of Allegiance	11
4.	Quorum Call	11
5.	Call for Additional Agenda Items	12
6.	Opportunity for Public Comment	12
7.	Report of General Counsel	12
8.	Report of Violations Committee	12
9.	Appearances	15
10.	Formal Hearings	17
11.	Report of Reinstatement Committee	18
12.	Report of Impairment Committee	19
13.	Report of Violations Committee (cont.)	21
14.	Adjourn	23

A regular meeting of the Louisiana Board of Pharmacy was held on Wednesday, November 19, 2003 in the Board office at 5615 Corporate Blvd., Suite 8-E, in Baton Rouge, Louisiana. The meeting was held pursuant to public notice, each member received notice, and notice was properly posted.

1. Call to Order

Mr. Carl Aron, President, called the meeting to order at 1:05 p.m.

2. Invocation

Mr. Aron called upon Mr. Clovis Burch, and he delivered the invocation.

3. Pledge of Allegiance

Following the invocation, Dr. Reuben Dixon led the group in the recitation of the Pledge of Allegiance.

4. Quorum Call

Mr. Aron called upon the Secretary, Dr. Reuben Dixon, to call the roll.

Members Present:

Mr. Joseph L. Adams
Dr. Lois R. Anderson
Mr. Carl W. Aron
Mr. Brian A. Bond
Mr. Clovis S. Burch
Mr. Wayne A. Camp
Mr. Theodore S. Carmichael
Mr. Salvatore J. D'Angelo
Dr. Reuben R. Dixon
Mr. Joseph V. Greco – *late arrival*
Ms. Jacqueline L. Hall
Mr. Larry J. Lantier, Jr.
Mr. Marty R. McKay
Mr. Fred H. Mills, Jr.
Mr. Richard J. Oubre
Mr. T. Morris Rabb

Members Absent:

Mr. Jeffrey M. Landry

Staff Present:

Mr. Malcolm J. Broussard, Executive Director
Mr. Carlos M. Finalet, III, General Counsel
Ms. Kathleen V. Gaudet, Chief Compliance Officer
Mr. Stephen L. Collins, Compliance Officer
Mr. Melvin J. Fontenot, Compliance Officer
Mr. Huey J. Savoie, Compliance Officer
Mr. Rayland M. Trisler, Compliance Officer

Guests:

Mr. Gary Cacciatore – Cardinal Health
Mr. Robert Graham – Cardinal Health
Dr. Susan Sirman – ULM College of Pharmacy

Dr. Dixon certified that a quorum of the Board was present.

5. Call for Additional Agenda Items

Mr. Aron asked if there were any additional agenda items, and none were offered.

At this point Mr. Aron requested authority from the Board to reorder the agenda as necessary for the purpose of adjusting the sequence of various reports. Dr. Anderson moved, and Mr. Bond seconded, to grant the President the authority to reorder the agenda as necessary. The motion was approved after a unanimous vote in the affirmative.

6. Consideration of Minutes

Mr. Aron reminded the Board members that they had received the draft minutes from the last meeting in their advance-meeting packet; he then requested any changes. Hearing no corrections, Mr. Oubre moved, and Dr. Dixon seconded,

Resolved, that the Minutes of the Board Meeting of August 20, 2003 and the Administrative Hearing of August 21, 2003, both held in Baton Rouge, Louisiana are hereby adopted, ratified, and approved in their entirety.

The motion was approved after a unanimous vote in the affirmative. Dr. Dixon reminded the members to sign the Minute Book.

7. Report on Action Items

Mr. Aron asked Mr. Broussard to report on the action items from the August 2003 Board meeting. Mr. Broussard reviewed the just-completed promulgation process for the Board's regulation revision project. He indicated that a copy of the final rule was inserted in the members' meeting packet. He also reviewed the status of the law book printing project.

8. Confirmation of Acts

At the request of Mr. Aron, Mr. Burch moved, and Mr. Mills seconded,

Resolved, that the actions taken and decisions made by the Board officers, Board committees, and Executive Director in the general conduct and transactions of Board business since August 21, 2003 are approved, adopted, and ratified by the entire Board.

The motion was approved after a unanimous vote in the affirmative.

9. Opportunity for Public Comment

Mr. Aron informed the Board and guests that Act 285 of the 2001 Louisiana Legislature required all public bodies to provide an opportunity for public comment at all meetings. He solicited general comments, but none were offered.

10. Election of Officers

Mr. Aron initiated the annual election of officers by indicating the process would be conducted in accordance with *Robert's Rules of Order* and the *Open Meetings Law*.

President – Mr. D'Angelo nominated Mr. Aron.

Hearing no further nominations, Mr. Aron closed the nominations. Mr. D'Angelo moved, and Mr. Rabb seconded, for approval by acclamation. The motion was approved after a unanimous vote in the affirmative.

First Vice President – Mr. Rabb nominated Mr. Burch.

Hearing no further nominations, Mr. Aron closed the nominations. Mr. D'Angelo moved, and Mr. McKay seconded, for approval by acclamation. The motion was approved after a unanimous vote in the affirmative.

Second Vice President – Mr. Oubre nominated Mr. Rabb.

Hearing no further nominations, Mr. Aron closed the nominations. Mr. Bond moved, and Dr. Dixon seconded, for approval by acclamation. The motion was approved after a unanimous vote in the affirmative.

Third Vice President – Mr. Lantier nominated Mr. Carmichael.

Hearing no further nominations, Mr. Aron closed the nominations. Mr. Burch moved, and Mr. Camp seconded, for approval by acclamation. The motion was approved after a unanimous vote in the affirmative.

Secretary – Mr. McKay nominated Dr. Dixon.

Hearing no further nominations, Mr. Aron closed the nominations. Mr. Burch moved, and Mr. Oubre seconded, for approval by acclamation. The motion was approved after a unanimous vote in the affirmative.

Mr. Aron offered his appreciation to the other members of the Executive Committee for their service during the prior year.

11. Committee Reports

A. Finance Committee

Mr. Aron called upon Mr. Carmichael for the committee report. Mr. Carmichael directed the members to the four documents in their meeting packet: (1) Statement of Assets, Liabilities, and Equity for the First Quarter of the current fiscal year, (2) Hancock Bank Statement for the First Quarter of the current fiscal year, (3) Budget Worksheet for next fiscal year, and (4) Proposed Budget for Fiscal Year 2004-2005. He reviewed the first two reports in the packet, and responded to various questions from the members. He indicated that the reports from the first quarter were informational only and required no action at that time. He then directed the members to the proposed budget for the next fiscal year. He presented the proposed budget, and responded to questions from the members; he also referred to them to the budget worksheet for additional detailed information. Mr. Carmichael then moved, and Mr. Burch seconded,

Resolved, that the Board approve and adopt the Proposed Budget

for Fiscal Year 2004-2005, as presented and recommended by the Finance Committee.

The motion was approved after a unanimous vote in the affirmative. Mr. Carmichael thanked the members of his committee for their work.

B. Examination/Technician Committee

Mr. Aron called upon Mr. Camp for the committee report. Mr. Camp presented information concerning the NAPLEX results from the second trimester of 2003, the MPJE results from the first six months of 2003, as well as information concerning PTCB and DSM results. Finally, he directed the members to the licensure activity report, showing new pharmacists and technicians credentialed since the last board meeting.

Mr. Camp deferred presentation of information concerning the potential re-introduction of a practical examination as part of the licensure process until the next board meeting. Mr. Camp thanked the members of his committee for their work since the last board meeting.

C. Reciprocity Committee

Mr. Aron called upon Mr. McKay for the committee report. He reported that the committee had approved five pharmacists since the last board meeting, and that they had interviewed seven candidates that morning. He then moved, and Mr. Oubre seconded,

Resolved, that the board approve
Kristie Anne Cooper Cousin,
Kruti Desai,
Carlanne Hicks Hickman,
Jeffery Michael King,
Tram Nguyen Phan,
Tri Minh Michael Tang, *and*
Mark Joseph Zilner

for pharmacist licensure by reciprocity.

The motion was approved after a unanimous vote in the affirmative. Mr. McKay thanked the members of his committee for their work that morning.

It was noted that Mr. Greco arrived at 1:50 p.m.

D. Regulation Revision Committee

Mr. Aron called upon Mr. D'Angelo for the committee report. Mr. D'Angelo reported that the committee had completed their preliminary drafting for the proposed revision to *Chapter 8 – Pharmacy Technicians*. He offered the current draft to the members, requested that they review and comment where appropriate, then be prepared to approve the proposal during their next meeting in February 2004.

Mr. D'Angelo reminded the members that the recently promulgated final rule would become effective on January 1, 2004. He indicated the committee recommended delayed enforcement for three particular rules: Section 513 relative to certified pharmacist preceptors, Section 705.C.1.a relative to

practical experience requirements for pharmacy interns, and Section 2307.A relative to qualifications for pharmacists-in-charge of out-of-state pharmacies. Mr. D'Angelo indicated he would defer the discussion on certified pharmacist preceptors until the report from the Tripartite Committee by Mr. Adams. Mr. D'Angelo moved, and Mr. McKay seconded,

Resolved, that the Board implement the requirements of Section 705.C.1.a with those interns entering their first professional year in the fall semester of 2003; and further, all applications for Louisiana pharmacist licensure received on or after January 1, 2007 shall comply with the requirements found in Section 705.C.1.a.

The motion was approved after a unanimous vote in the affirmative. Mr. D'Angelo then moved, and Mr. McKay seconded,

Resolved, that the Board implement the requirements of Section 2307.A with all original and renewal applications for out-of-state pharmacy permits effective on or after January 1, 2005.

The motion was approved after a unanimous vote in the affirmative. Mr. D'Angelo then presented Draft No. 2 of a proposal to amend LRS 37:1212 relative to the scope of practice. Following a brief discussion, Mr. D'Angelo moved, and Mr. McKay seconded,

Resolved, that the Board approve Draft No. 2 of a proposed revision to LRS 37:1212.

The motion was approved after a unanimous vote in the affirmative. Finally, Mr. D'Angelo thanked the members of his committee for their efforts.

At this point, Mr. Aron inquired of the members their sentiment concerning a mandatory CE requirement for a Louisiana law update during 2005. He reminded the members that if they wished to impose such a requirement during 2005, then they must approve that motion during the current meeting, in order to give staff sufficient time to notify all pharmacists of that requirement prior to the end of 2003. Following a lengthy discussion, the members were unable to arrive at a consensus.

At this point, Mr. Aron declared a brief recess. It was noted that the Board recessed at 3:25 p.m. and reconvened at 3:45 p.m. He resumed the posted agenda, in open session. Without objection from the members, Mr. Aron reordered the agenda so that the special presentation scheduled later could be given then, in order to give the presenters additional time to board their return flight later that day.

12. Special Presentation – Off-Site Prescription Order Entry

Mr. Aron introduced Mr. Cacciatore and Mr. Graham from Cardinal Health. They described a new service their company wished to offer pharmacists and pharmacies in Louisiana. Following a brief discussion afterwards, Mr. Aron directed the Regulation Revision Committee to review the concept of off-site prescription order entry and report back to the Board on any proposed revisions that might become necessary.

11. Committee Reports (cont.)

E. Reinstatement Committee

Mr. Aron called upon Mr. Rabb for the committee report, and he deferred the presentation of the committee recommendations on individual petitions until the Administrative Hearing, scheduled for the next day. He expressed appreciation to the members of his committee for their work that morning.

F. Violations Committee

Mr. Aron called upon Dr. Dixon for the committee report, and he deferred the presentation of individual cases until the Administrative Hearing, scheduled for the next day. He thanked the members of his committee for their work during the unusually long informal conference the prior month.

G. Impairment Committee

Mr. Aron called upon Mr. Burch for the committee report, and he deferred the presentation of individual petitions until the Administrative Hearing, scheduled for the next day. He thanked the members of his committee for their work on the previous day.

H. Tripartite Committee

Mr. Aron called upon Mr. Adams for the committee report. Mr. Adams reported on the committee's September 24 meeting; the members reached consensus concerning the proposed program. Mr. Adams moved, and Mr. McKay seconded,

Resolved, that the Board (1) approve the certified pharmacist preceptor training program as submitted by ULM and Xavier schools of pharmacy, and further, (2) to restrict the approved providers of the training program during calendar year 2004 to the ULM and Xavier schools of pharmacy, and further, (3) to notify all pharmacists that any affidavits for practical experience for either pharmacy interns or pharmacy technician candidates that are received in the Board office on or after January 1, 2005 shall be executed by certified pharmacist preceptors.

The motion was approved after a unanimous vote in the affirmative. Mr. Adams thanked the members of his committee for their work.

I. Legislative Committee

Mr. Aron indicated no report from the committee.

J. Executive Committee

Mr. Aron reported that his committee had not met since the last Board meeting, but would meet in a joint session with the compliance officers in December. The joint session will review all the changes in the new regulations and achieve consensus on interpretations as well as compliance methods.

13. Report of Chief Compliance Officer

Mr. Aron called upon Ms. Gaudet for her report. She directed the members to a copy of the statistical summary from the first quarter of the current fiscal year, as well as

a summary of all inspections completed during calendar year 2003. The report indicated that less than 1% of all permits remained to be inspected during 2003.

Mr. Aron complimented Ms. Gaudet and the other compliance officers on their improvement in the inspection rate of pharmacies.

14. Report of General Counsel

Mr. Aron called upon Mr. Finalet for his report. He distributed a report reviewing recent regulatory cases. He also reported on the three appeals that were being processed in the judicial arena; in addition, he also commented briefly on a current case involving an alleged Canadian storefront operation. The Board discussed different methods of educating consumers on the dangers of prescription drug importation. They reached a consensus to allow the Executive Committee to initiate those activities at the appropriate time.

15. Report of Executive Director

Mr. Aron called upon Mr. Broussard for his report. Mr. Broussard began his report with synopses of recent meetings.

He then reported the current census: 5,890 pharmacists, 1,099 interns, 3,882 technicians, 1,276 technician trainees, and 1,854 pharmacy permits.

The technician audit revealed a compliance rate of 82%. Several cases were referred to the Violations Committee for their consideration of the appropriate charges.

Mr. Broussard informed the members that all the necessary supplies and authorizations for the criminal history record check process were in place. He reported that he had selected January 1, 2004 as the start date for that new requirement, and that the new procedures would be required for all new applications for interns, technician candidates, technicians, and pharmacists.

He then reported on a series of challenges to the Board's information system hardware. None of the data were lost, and none of the data were compromised. However, the resolution of those challenges consumed almost the entire amount of funds budgeted to that activity for the current fiscal year. At Mr. Broussard's request, Mr. Adams moved, and Mr. McKay seconded,

Resolved, that the Board authorize additional information system network support services by Essential Solutions, LLC, at the stipulated rate, in an amount not to exceed a total of \$10,000 for Fiscal Year 2003-2004.

The motion was approved after a unanimous vote in the affirmative.

Mr. Broussard directed the members to a copy of the Legislative Auditor's report in their meeting packet. He informed the members that the auditor made no findings in his report.

Finally, Mr. Broussard presented a request for an exception. He reviewed the documents from the file of the intern who had completed degree requirements in 1995 but had not completed other licensure requirements. The applicant had requested an intern registration for the purpose of earning the remainder of the necessary practical experience. Following a brief discussion, the Board instructed Mr. Broussard to issue an intern registration to the applicant as soon as he received evidence of successful completion of the NAPLEX and MPJE examinations.

16. Announcements

Mr. Broussard reminded the Board members of several calendar notes, and alerted them to the calendar in their meeting packet.

17. Recess

Mr. Burch moved, and Mr. D'Angelo seconded, to recess. The motion was approved after a unanimous vote in the affirmative. With no further business before it, Mr. Aron placed the Board in recess at 6:05 p.m.

An Administrative Hearing was convened on Thursday, November 20, 2003 in the Board office, located at 5615 Corporate Blvd., Suite 8-E in Baton Rouge, Louisiana. The hearing was held pursuant to public notice, each member and respondent received notice, and notice was properly posted.

1. Call to Order

Mr. Aron called the meeting to order at 8:35 a.m.

2. Invocation

Mr. Aron called upon Mr. Bond, and he delivered the invocation.

3. Pledge of Allegiance

Following the invocation, Mr. Camp led the group in the recitation of the Pledge of Allegiance.

4. Quorum Call

Mr. Aron called upon Secretary Dixon, and he called the roll. After doing so, he informed Mr. Aron that Mr. Greco, Mr. Landry, Mr. Lantier, Mr. McKay, Mr. Mills, and Mr. Oubre were absent, but that all other members, constituting a quorum, were present.

5. Call for Additional Agenda Items

Mr. Aron asked if there were any additional agenda items. None were offered.

At this point, Mr. Aron requested authority from the Board to reorder the agenda as necessary for the purpose of adjusting the sequence of various witnesses and reports. Mr. Camp moved, and Mr. Bond seconded, to grant the President the authority to reorder the agenda as necessary with respect to witnesses and reports. The motion was approved after a unanimous vote in the affirmative.

6. Opportunity for Public Comment

Mr. Aron informed the Board and guests that Act 285 of the 2001 Louisiana Legislature required all public bodies to provide an opportunity for public comment at all meetings. He solicited comments from the guests in attendance, but none were offered.

7. Report of General Counsel

Mr. Aron called upon Mr. Finalet, who submitted a single file to the Board for its action.

Kenneth Ralph Foster (Pharmacist License No. 9938) Mr. D'Angelo moved, and Dr. Anderson seconded, to accept the voluntary surrender of the license. The motion was approved after a unanimous vote in the affirmative. The Board accepted the voluntary surrender of the license, resulting in an indefinite suspension, effective July 29, 2003.

It was noted that Mr. McKay and Mr. Oubre arrived at 8:40 a.m.

8. Report of Violations Committee – Consideration of Voluntary Consent Agreements

Mr. Aron called upon Dr. Dixon for the report. Dr. Dixon presented the following files to the Board for its action.

Kenneth Ralph Foster (Pharmacist License No. 9938) Dr. Dixon moved, and Mr. McKay seconded, to accept the Voluntary Consent Agreement.

Prior to the vote being taken, respondent's counsel indicated his advice to respondent to rescind his consent for the agreement. Mr. Aron explained to counsel that if respondent chose to rescind his consent agreement, the only option for the Board at that time would be to proceed to full administrative hearing at the next meeting. Counsel requested time to properly advise his client.

Without objection, Mr. Aron postponed the question until respondent and counsel were prepared to address the Board.

It was noted that Mr. Lantier arrived at 8:50 a.m. and Mr. Greco arrived at 8:55 a.m. Dr. Dixon then presented the following files for Board action.

White's Pharmacy (Pharmacy Permit No. 4242) Dr. Dixon moved, and Mr. McKay seconded, to accept the Voluntary Consent Agreement. The motion was approved after a unanimous vote in the affirmative. The Board issued a Letter of

Reprimand to the respondent, and further, assessed the respondent administrative and investigative costs. *Charges:*

- (1) LAC 46:LIII.2711.A – unprofessional conduct by use of improper advertising material alleging professional superiority in sterile compounding activities.

Pegasus Pharmacy (Pharmacy Permit No. 4917) Dr. Dixon moved, and Mr. Oubre seconded, to accept the Voluntary Consent Agreement. The motion was approved after a unanimous vote in the affirmative. The Board assessed the permit holder \$5,000 plus administrative and investigative costs. *Charges:*

- (1) LRS 37:1241.A.1 – has permitted anyone in his employ to practice pharmacy in violation of pharmacy laws or regulations.
- (2) LRS 37:1241.A.10 – has departed from or failed to conform to the minimal standards of acceptable and prevailing pharmacy practice, whether or not actual injury to a patient has occurred.
- (3) LRS 37:1241.A.15 – has evaded, or assisted another person in evading, any local, state, or federal laws or regulations pertaining to the practice of pharmacy.
- (4) LRS 37:1222.B – has failed to ensure accessibility to the pharmacy by the public.
- (5) LRS 37:1225 – has failed to properly label a container of prescription medication dispensed to a patient.
- (6) LAC 46:LIII.1113.4 – has failed to affix a proper label to the container for prescription medications dispensed to a patient.
- (7) LAC 46:LIII.1119 – has failed to indicate proper instructions for use on a container of prescription medications dispensed to a patient.
- (8) LAC 46:LIII.3507.G – has failed to indicate proper instructions for use for prescription medication dispensed to a patient.

Betsy Briones Delaune (Pharmacist License No. 16820) Dr. Dixon moved, and Mr. Oubre seconded, to accept the Voluntary Consent Agreement. The motion was approved after a unanimous vote in the affirmative. The Board assessed the respondent \$2,000 plus administrative costs. *Charges:*

- (1) LRS 37:1241.A.1 – has permitted anyone in his employ to practice pharmacy in violation of pharmacy laws or regulations.
- (2) LRS 37:1241.A.10 – has departed from or failed to conform to the minimal standards of acceptable and prevailing pharmacy practice, whether or not actual injury to a patient has occurred.
- (3) LRS 37:1241.A.15 – has evaded, or assisted another person in evading, any local, state, or federal laws or regulations pertaining to the practice of pharmacy.
- (4) LRS 37:1222.B – has failed to ensure accessibility to the pharmacy by the public.
- (5) LRS 37:1225 – has failed to properly label a container of prescription medication dispensed to a patient.
- (6) LAC 46:LIII.1113.4 – has failed to affix a proper label to the container for prescription medications dispensed to a patient.

- (7) LAC 46:LIII.1119 – has failed to indicate proper instructions for use on a container of prescription medications dispensed to a patient.
- (8) LAC 46:LIII.3507.G – has failed to indicate proper instructions for use for prescription medication dispensed to a patient.

Safescript Pharmacy (Pharmacy Permit No. 5224) Mr. McKay moved, and Mr. Lantier seconded, to accept the Voluntary Consent Agreement. The motion was approved after a unanimous vote in the affirmative. The Board ordered the transfer of current sanctions on Pegasus Pharmacy (Pharmacy Permit No. 4901) to Safescript Pharmacy upon the completion of the transfer of ownership from Pegasus to Safescript.

At this point, Mr. Aron recognized Mr. Foster and his counsel; they were prepared to resume deliberation. Hearing no objection, Mr. Aron returned to the earlier motion that had been postponed, and placed the matter before the members.

At the respondent's request, and with no objection from the members, the motion was amended to adjust the initiation of the period of suspension. The amended motion was approved after a unanimous vote in the affirmative. The Board suspended the license for six years, beginning July 29, 2003, and further assessed the respondent \$5,000 plus administrative and investigative costs. The Board conditioned any future application for reinstatement on (1) service of at least three years of active suspension, or until at least July 28, 2006, and (2) receipt of a favorable evaluation from a Board-approved addictionist. In addition, the Board ordered the respondent not to enter any prescription department in the state. *Charges:*

- (1) LRS 37:1241.A.1 – has practiced pharmacy in violation of pharmacy laws or regulations.
- (2) LRS 37:1241.A.5 – is habitually intemperate or is addicted to the use of alcohol or habit-forming drugs.
- (3) LRS 37:1241.A.10 – has departed from or failed to conform to the minimal standards of acceptable and prevailing pharmacy practice, whether or not actual injury to a patient has occurred.
- (4) LRS 37:1241.A.15 – has evaded, or assisted another person in evading, any local, state, or federal laws or regulations pertaining to the practice of pharmacy.
- (5) LRS 40:968.A.1 – unlawful possession, with intent to distribute, of a Schedule III controlled dangerous substance.
- (6) LRS 40:968.C – unlawful possession of a Schedule III controlled dangerous substance.
- (7) LRS 40:969.A.1 – unlawful possession, with intent to distribute, of a Schedule IV controlled dangerous substance.
- (8) LRS 40:969.C – unlawful possession of a Schedule IV controlled dangerous substance.
- (9) LRS 40:971.B.1.b – unlawful acquisition of controlled dangerous substances by fraud or forgery.

- (10) LRS 40:981.1 – unlawful distribution of controlled dangerous substances to student enrolled in any public or private educational institution.
- (11) LAC 46:LIII.1107.1 – failure to exercise proper authority as pharmacist-in-charge for operation of pharmacy in compliance with all laws and regulations pertaining to the practice of pharmacy.
- (12) LAC 46:LIII.3501 – unlawful dispensation of a prescription drug.
- (13) LAC 46:LIII.3529.A.1 – unlawful dispensation of controlled dangerous substances.
- (14) LAC 46:LIII.3529.E – assumption of responsibility for discrepancies in audits of controlled dangerous substances.

At this point, Mr. Aron declared a brief recess to prepare for the formal hearing. It was noted the Board recessed at 9:25 a.m. and reconvened at 9:35 a.m.

9. Appearances

Mr. Aron declared the Administrative Hearing in session, and then served as the Hearing Officer. Mr. Carlos M. Finalet, III served as General Counsel for the Board. Ms. Celia R. Cangelosi served as Prosecuting Attorney for the Board. Mr. E. Wade Shows served as Counsel to the Hearing Officer. Ms. Marlene Cashen was the Official Recorder. Due to prior knowledge, the members of the Violations Committee (Dr. Dixon, Mr. Burch, Mr. D'Angelo, Mr. Rabb, and Mr. Bond) were recused from the consideration of matters under their jurisdiction, and the remainder of the Board members present served as the jury, with Mr. Aron's reminder that any of them could recuse themselves from any particular matter where appropriate.

Mr. Aron directed the entry of the posted docket into these minutes, and waived the reading thereof. The posted docket is re-created here:

NOTICE IS HEREBY GIVEN that an Administrative Hearing has been ordered and called for 8:30 a.m. on Thursday, November 20, 2003, at the Board office, for the purpose to wit:

A G E N D A

- A. Call to Order
- B. Invocation
- C. Pledge of Allegiance
- D. Quorum Call
- E. Call for Additional Agenda Items
- F. Opportunity for Public Comment
- G. Report of General Counsel – For Acceptance of Voluntary Surrender

- 1-a. Pharmacist License No. 9938 – Kenneth Ralph Foster
- H. Report of Violations Committee – Consideration of Consent Agreements
Appearance Required
- 1-b. Pharmacist License No. 9938 – Kenneth Ralph Foster
- I. Formal Hearings
- 2. Pharmacist License No. 8584 – David Keith Chauvin, Sr.
+
- 3. Pharmacy Permit No. 2963 – Chau-Mart Pharmacy Eastside
+
- 4. Pharmacy Permit No. 4378 – Chau-Mart Pharmacy Westside
+
- 5. Pharmacy Permit No. 4718 – Chau-Mart Pharmacy Summerfield
- J. Report of Reinstatement Committee – Consideration of Recommendations
- 6. Pharmacist License No. 14562 – Norva Denise Williams
- 7. Pharmacist License No. 15210 – Stacey Nichelle Bernard
- 8. Pharmacist License No. 15706 – Russell Kenneth Roark
- K. Report of Impairment Committee – Consideration of Recommendations
- 9. Pharmacist License No. 16931 – Carolyn Annette Skerlong
- 10. Pharmacist License No. 15460 – Charles Steven Hundley
- 11. Pharmacist License No. 15266 – Stephen Brent Dearmon
- L. Report of Violations Committee – Consideration of Consent Agreements (continued)
Appearances Not Required
- 12. Pharmacy Permit No. 4719 – Encara, Inc.
- 13. Pharmacy Permit No. 4917 – Pegasus Pharmacy
+
- 14. Pharmacist License No. 16820 – Betsy Briones Delaune
- 15. Pharmacy Permit No. 4242 – White's Pharmacy
- 16. Pharmacy Permit No. 556 – Rite Aid Pharmacy No. 7238
- 17. Pharmacy Permit No. 3192 – EXCELth Family Health Center Pharmacy
- 18. Technician Trainee Permit No. 6525 – Ashley Devon Scott
[now Technician Certificate No. 5837]
- 19. Technician Certificate No. 3774 – Donald James Soileau
- 20. Pharmacy Permit No. (Unassigned) – Safescript Pharmacy
[assumption of terms on Pharmacy Permit No. 4901]

M. Adjourn

10. Formal Hearing

Mr. Aron declared his intent to abstain from the matters scheduled for the formal hearing, due to his prior knowledge of the cases on the docket. At Mr. Aron's request, Mr. Shows assumed the duty of Hearing Officer, and presided over the following matters.

**David Keith Chauvin, Sr. (Pharmacist License No. 8584)
Chau-Mart Eastside Pharmacy (Pharmacy Permit No. 2963)**

Ms. Cangelosi appeared for the Board, and the respondent appeared in his own behalf, without counsel. Ms. Cangelosi suggested a consolidation of the two cases. The respondent offered no objection, and Mr. Shows indicated the cases would be consolidated. Ms. Cangelosi moved to invoke the Rule of Sequestration, with the exception of Mr. Savoie. Mr. Shows explained the rule; there were no objections, and he ordered the witnesses to be sequestered. Ms. Cangelosi presented an opening statement and several witnesses.

Mr. Shows declared a brief recess between witnesses. It was noted the Board recessed at 10:35 a.m. and reconvened at 10:40 a.m.

Ms. Cangelosi resumed her presentation of witnesses and evidence. The respondent then presented witnesses and evidence. Both parties presented closing statements, then the matter was submitted to the Board for its deliberation. Mr. Adams moved, and Mr. Oubre seconded, to enter executive session for the purpose of deliberating proposed findings of fact and conclusions of law in both matters. The motion was approved after a unanimous roll call vote in the affirmative.

It was noted the Board entered executive session at 12:45 p.m. and reconvened at 1:35 p.m. Mr. Shows noted that the respondent had been instructed to return by 1:15 p.m. but was not present. He ordered a brief recess to see if the respondent could be located. Mr. Shows reconvened the hearing at 1:45 p.m., noticing that the respondent had still not appeared.

Mr. McKay moved, and Mr. Oubre seconded,

Resolved, that the Board accept the Findings of Fact and Conclusions of Law as proposed by the Prosecuting Attorney, and adopt them as their own, and further, that the Board revoke Pharmacist License No. 8584, and further, that the Board assess the respondent \$5,000 plus administrative and hearing costs, and further, conditioned any future application for reinstatement upon the payment of all assessments, as well as the absence of any pending legal or disciplinary matters against him.

The motion was approved after a unanimous roll call vote in the affirmative. Mr. Adams moved, and Mr. McKay seconded,

Resolved, that the Board accept the Findings of Fact and Conclusions of Law as proposed by the Prosecuting Attorney, and then adopt them as

their own, and further, that the Board revoke Pharmacy Permit No. 2963, and further, that the Board assess the permit holder \$5,000 plus administrative and hearing costs, and further, conditioned any future application for reinstatement upon the payment of all assessments, as well as the absence of any pending legal or disciplinary matters against the permit holder.

The motion was approved after a unanimous roll call vote in the affirmative.

Shortly after the previous motions were adopted, it was noted that the respondent entered the hearing room at 1:55 p.m. Mr. Shows chastised the respondent for his tardiness, then recounted the decisions the Board had made in open session. The respondent asked several questions, each of which were answered with suggestions he obtain counsel. Mr. Shows relinquished the chair to Mr. Aron. Mr. Aron called for the two remaining cases.

Chau-Mart Westside Pharmacy (Pharmacy Permit No. 4378) Dr. Dixon moved, and Mr. Adams seconded, to withdraw the proposed consent agreement, on the basis that the pharmacy was no longer in operation. The motion was approved after a unanimous vote in the affirmative. The Board withdrew the proposed consent agreement.

Chau-Mart Pharmacy Summerfield (Pharmacy Permit No. 4718) Dr. Dixon moved, and Mr. Camp seconded, to withdraw the proposed consent agreement, on the basis that the pharmacy was no longer in operation. The motion was approved after a unanimous vote in the affirmative. The Board withdrew the proposed consent agreement.

11. Report of Reinstatement Committee – Consideration of Recommendations

Mr. Aron called upon Mr. Rabb to present his committee's report. Mr. Rabb presented the following files for Board action:

Norva Denise Williams (Pharmacist License No. 14562) Mr. Rabb moved, and Mr. Oubre seconded, to condition the reinstatement of the license upon satisfaction of the following terms: (a) Respondent shall successfully complete the Multistate Pharmacy Jurisprudence Examination prior to November 20, 2004; (b) Respondent shall obtain 500 hours of updated practical experience prior to November 20, 2004; the experience shall be obtained under the authority of a Special Work Permit, the application for which must be signed by the Pharmacist -in-Charge of a board-approved pharmacy as well as the respondent. The practical experience shall be documented in the manner prescribed by the board office, shall be received in the board office prior to November 20, 2004, and shall be accompanied by a letter of competency from the supervising pharmacist; (c) Respondent shall acquire 45 hours of continuing education, and shall submit documentation of same to the board office prior to November 20, 2004; the continuing education submitted by the respondent prior to meeting with the committee shall not count toward that requirement; (d) Respondent shall obtain letters of good standing/status from any and every other jurisdiction in which she

is licensed as a pharmacist; further, such letters shall indicate whether the respondent has had any disciplinary action taken against her license in that jurisdiction; (e) Respondent agrees to pay assessment of administrative costs; AND FURTHER, reinstatement is to be automatic upon completion of all conditions and necessary processing by the board office. The motion was approved after a unanimous vote in the affirmative. The Board issued a conditional order for the reinstatement of the license.

Stacey Nichelle Bernard (Pharmacist License No. 15210) Mr. Rabb moved, and Mr. Camp seconded, to condition the reinstatement of the license upon satisfaction of the following terms: (a) Respondent shall acquire 15 hours of ACPE-accredited continuing education; the continuing education submitted by the respondent prior to meeting with the committee has satisfied this term; (b) Respondent shall obtain letters of good standing/status from any and every other jurisdiction in which she is licensed as a pharmacist; further, such letters shall indicate whether the respondent has had any disciplinary action taken against her license in that jurisdiction; (c) Respondent agrees to pay assessment of administrative costs; AND FURTHER, reinstatement is to be automatic upon completion of all conditions and necessary processing by the board office. The motion was approved after a unanimous vote in the affirmative. The Board issued a conditional order for the reinstatement of the license.

Russell Kenneth Roark (Pharmacist License No. 15706) Mr. Rabb moved, and Mr. Burch seconded, to condition the reinstatement of the license upon satisfaction of the following terms: (a) Respondent shall acquire 15 hours of ACPE-accredited continuing education; the continuing education submitted by the respondent prior to meeting with the committee has satisfied this term; (b) Respondent shall obtain letters of good standing/status from any and every other jurisdiction in which he is licensed as a pharmacist; further, such letters shall indicate whether the respondent has had any disciplinary action taken against his license in that jurisdiction; (c) Respondent agrees to pay assessment of administrative costs; AND FURTHER, reinstatement is to be automatic upon completion of all conditions and necessary processing by the board office. The motion was approved after a unanimous vote in the affirmative. The Board issued a conditional order for the reinstatement of the license.

Mr. Aron expressed his appreciation to Mr. Rabb and the members of his committee for their efforts.

12. Report of Impairment Committee – Consideration of Recommendations

Mr. Aron called upon Mr. Burch for his report; Mr. Burch presented the following files for Board action:

Carolyn Annette Skerlong (Pharmacist License No. 16931) Mr. Burch moved, and Dr. Anderson seconded, to accept the voluntary surrender of the license. The motion was approved after a unanimous vote in the affirmative. The Board

accepted the voluntary surrender, resulting in the indefinite suspension of the license, effective October 17, 2003.

Charles Steven Hundley (Pharmacist License No. 15460) Mr. Burch moved, and Mr. Camp seconded, to accept the voluntary surrender of the license. The motion was approved after a unanimous vote in the affirmative. The Board accepted the voluntary surrender, resulting in the indefinite suspension of the license, effective October 29, 2003.

Stephen Brent Dearmon (Pharmacist License No. 15266) Mr. Burch moved, and Mr. Bond seconded, to convert the indefinite suspension to a determinate suspension, specifically, to suspend the license for five years, stay the execution thereof, then place the license on probation for five years, beginning November 20, 2003 and ending on November 19, 2008, subject to the following terms of probation: (a) Respondent shall not violate any local, state, or federal pharmacy laws; (b) Respondent shall remain alcohol and drug free. Respondent is not to use any legend drug except as part of respondent's medical treatment when legally prescribed by a licensed practitioner who is aware of respondent's in-patient treatment and aftercare. Respondent is to notify the Board in writing of any prescribed drug prior to beginning treatment; (c) Respondent shall continue aftercare as prescribed by James S. Harrold, Jr., M.D., a Board-approved addictionist, pursuant to the evaluation report issued by Dr. Harrold on October 15, 2003. Respondent shall maintain monthly documentation of compliance with any aftercare program and provide same to the Board upon request. Respondent also is to attend official NA/AA meetings a minimum of one time a week and shall seek counseling as directed; (d) Respondent shall accept employment at Board-approved sites only. Respondent shall not be the only pharmacist on duty in the pharmacy at this place of employment at any time; i.e., respondent shall be under the direct and immediate supervision of another pharmacist while on duty at his place of employment; (e) Respondent shall inform prospective employers of impairment; (f) Respondent is prohibited from holding the position of pharmacist-in-charge; (g) Respondent shall submit to random urine, blood, and/or other drug screens upon request by the Board or agent of the Board on the same calendar day of such request and have results submitted to the Board office. Any and all fees incurred by respondent in connection with all treatments, drug and alcohol screens or reporting requirements contained in this agreement shall be borne by respondent. A missed screen, an adulterated or altered screen, or a screen submitted beyond the mandated period is considered a positive drug screen for the purposes of this probation; (h) Respondent shall and does by respondent's subscription hereto authorize any physician or any institution at which respondent undergoes treatment for any psychiatric or substance or alcohol abuse condition to provide the Board with copies of all medical records relating to respondent's history, examination, evaluation, diagnosis, treatment, and prognosis and to provide the Board written and verbal reports thereto. Respondent waives any legal privilege by the disclosure of such records; (i) The time period of probation under this consent order shall be extended for any period of time in which respondent is not

employed as a pharmacist routinely working at least twenty hours per week in the State of Louisiana. If respondent ceases to be employed as a pharmacist in this state, respondent shall notify the Board within ten calendar days in writing of the last date respondent has practiced or assisted in the practice of pharmacy in the State of Louisiana; (j) Failure to comply with the above stipulations, receipt of an unfavorable report, including any positive drug screen, or non-receipt of reports upon request by the Board or its agent may result in immediate and indefinite suspension of respondent's pharmacist license until a hearing can be had on the matter; (k) Respondent agrees to pay administrative costs of the proceeding. The motion was approved after a unanimous vote in the affirmative. The Board converted the indefinite suspension to a determinate suspension, then suspended the license for five years, stayed the execution thereof, then placed the license on probation for five years, beginning on November 20, 2003 and ending on November 19, 2008, subject to certain terms as identified in the order.

Mr. Aron expressed his appreciation to Mr. Burch and the members of his committee for their efforts.

13. Report of Violations Committee – Consideration of Voluntary Consent Agreements

Mr. Aron called upon Dr. Dixon for the remainder of his report, and Dr. Dixon presented the following files for Board action:

Encara, Inc. (Pharmacy Permit No. 4719) Dr. Dixon moved, and Mr. McKay seconded, to accept the Voluntary Consent Agreement. The motion was approved after a unanimous vote in the affirmative. The Board issued a Letter of Warning to the permit holder, then assessed the permit holder \$2,000 plus administrative and investigative costs. *Charges:*

- (1) LRS 37:1241.A.1 – has practiced pharmacy in violation of pharmacy laws or regulations.
- (2) LRS 37:1221.B – operated a pharmacy providing services to residents of the state without a proper permit to do so.
- (3) LRS 37:1232.A – failed to secure a permit to do business in the state.
- (4) LAC 46:LIII.1101.C.2 – failed to renew permit prior to the deadline.

Rite Aid Pharmacy No. 7238 (Pharmacy Permit No. 556) Dr. Dixon moved, and Mr. Camp seconded, to accept the Voluntary Consent Agreement. The motion was approved after a unanimous vote in the affirmative. The Board issued a Letter of Warning to the permit holder, and then assessed the permit holder administrative and investigative costs. *Charges:*

- (1) LRS 37:1241.A.1 – has practiced pharmacy in violation of pharmacy laws or regulations.
- (2) LRS 37:1241.A.16 – has divulged or revealed confidential information or personally identifiable information to a person other than as authorized by state or federal law or the rules of the board.
- (3) LRS 13:3715.B.1 – revelation of confidential information after receipt of motion to quash subpoena for release of said records.

EXCELth Family Health Center Pharmacy (Pharmacy Permit No. 3192) Dr. Dixon moved, and Mr. Oubre seconded, to accept the Voluntary Consent Agreement. The motion was approved after a unanimous vote in the affirmative. The Board issued a Letter of Warning to the permit holder, and then assessed the permit holder administrative and investigative costs. *Charges:*

- (1) LRS 37:1241.A.1 – has practiced pharmacy in violation of pharmacy laws or regulations.
- (2) LRS 37:1241.A.10 – has departed from or failed to conform to the minimal standards of acceptable and prevailing pharmacy practice, whether or not actual injury to a patient has occurred.
- (3) LRS 37:1241.A.15 – has evaded, or has assisted another person in evading, any local, state, or federal laws or regulations pertaining to the practice of pharmacy.
- (4) LAC 46:LIII.1107.I – failure of pharmacist-in-charge to maintain operation of pharmacy in compliance with all state and federal laws and regulations pertaining to the practice of pharmacy.

Ashley Devon Scott (Pharmacy Technician Trainee Permit No. 6525 & Pharmacy Technician Certificate No. 5837) Dr. Dixon moved, and Mr. McKay seconded, to accept the Voluntary Consent Agreement. The motion was approved after a unanimous vote in the affirmative. The Board issued a Letter of Warning to the respondent, and then assessed the respondent administrative costs. *Charges:*

- (1) LRS 37:1241.A.1 – has assisted in the practice of pharmacy in violation of pharmacy laws or regulations.
- (2) LRS 37:1241.A.12 – has engaged in the assistance of the practice of pharmacy without the proper permit to do so.
- (3) LRS 37:1201.C – unlawful engagement in the assistance of the practice of pharmacy.

Donald James Soileau (Pharmacy Technician Certificate No. 3774) Dr. Dixon moved, and Mr. McKay seconded, to accept the Voluntary Consent Agreement. The motion was approved after a unanimous vote in the affirmative. The Board revoked the certificate, and further, prohibited any future application for any credential to authorize the practice, or assistance in the practice of, pharmacy. *Charges:*

- (1) LRS 37:1241.A.15 – has evaded any local, state, or federal laws or regulations pertaining to the practice of pharmacy.
- (2) LRS 40:968.C – unlawful possession of a Schedule III controlled dangerous substance.
- (3) LRS 40:969.C – unlawful possession of a Schedule IV controlled dangerous substance.
- (4) LRS 40:971.B.1.b – unlawful acquisition of a controlled dangerous substance by misrepresentation, fraud, forgery, or deception.
- (5) LAC 46:LIII.3529.A.1.a – unlawful dispensation of a controlled dangerous substance.

Mr. Aron expressed his appreciation to Dr. Dixon and the members of his committee for their efforts.

14. Adjourn

Mr. Burch moved, and Mr. Oubre seconded, to adjourn. The motion was approved after a unanimous vote in the affirmative. With no further business before it, Mr. Aron adjourned the Board at 2:30 p.m.

Respectfully submitted,

Reuben R. Dixon, Pharm.D.
Secretary