

**KENTUCKY BOARD OF PHARMACY**  
**23 Millcreek Park, Bldg. 2**  
**Frankfort, KY 40601-9230**  
**August 11, 2004 - 9:00 a.m.**

**AGENDA**

- I. CALL TO ORDER**
- II. APPEARANCES**
  - \*A. Michael E Samuels/ UK College of Medicine - 9:15
  - \*B. Samuel Williams - 9:45
- III. MINUTES**
  - \*A. June 20, 2004
- IV. INTERAGENCY**
  - A. Drug Control
- V. BOARD REPORTS**
  - A. Board President
    - 1. Retreat
  - B. Board Members
  - C. Board Executive Director
  - D. Board Staff
- VI. CURRENT/PENDING CASES**
  - A. OAG Case Updates - C. Lalonde-Mooney
  - B. KBP Case Updates
    - Case No. 94-1003
    - Case No. 02-063A
    - Case No. 03-100A
    - Case No. 03-0134
    - Case No. 03-0157A
    - Case No. 04-0025
    - Case No. 04-033B
    - Case No. 04-041B
    - Case No. 04-042A
    - Case No. 04-042B
    - Case No. 04-047A
    - Case No. 04-047B
    - Case No. 04-061
    - Case No. 04-062
    - Case No. 04-063
  - C. Case Review Committee
- VII. RECIPROCITY/RELICENSURE/INTERNSHIP**
- VIII. CORRESPONDENCE/COMMUNICATIONS**
  - \*A. Phil Losch
  - \*B. Executive Branch Ethics Commission/Jill LeMaster
  - \*C. Drug Control/Chris Miller
- IX. NABP**
- X. LEGISLATION/REGULATIONS**
- XI. CONTINUING EDUCATION**

A. Program Review

**XII. FINES**

A. Fines Report

**XIII. OLD BUSINESS**

**XIV. NEW BUSINESS**

\*Information enclosed with this agenda

\*\*Information previously provided

\*\*\*Old material with response

**MINUTES**  
**KENTUCKY BOARD OF PHARMACY**  
23 Millcreek Park  
Frankfort, Kentucky  
August 11, 2004

**CALL TO ORDER:** A regular meeting of the Kentucky Board of Pharmacy was held at the Board office, 23 Millcreek Park, in Frankfort, Kentucky. President Armstrong called the meeting to order at 9:10 a.m.

Members present: Tim Armstrong, Becky Cooper, Mark Edwards, Georgina Kindall Jones, Greg Naseman and Patricia Thornbury. Staff present: Jeffrey L. Osman, Interim Executive Director; Katie Busroe, and Philip Losch, Pharmacy and Drug Inspectors; Cheryl Lalonde-Mooney, Assistant Attorney General and Board Counsel; and Shannon Settles, Executive Secretary. Guests: Brian Fingerson, Pharmacist Recovery Network; Dave Sallengs, Drug Control; Shoshanna Goldfine, Drug Control; Ralph Bouvette, APSC; Jan Gould, Kentucky Retail Federation; Mike Mayes, KPhA; Brenda Bunning, KPhA; Joel Thornbury, KPhA; Kevin Lamping, Rite Aid; Todd Downing, CVS; Juanita Toole, Court Reporter, recorded the meeting.

**APPEARANCES:** **UK College of Medicine/Michael Samuels.** Dr. Samuels presented to the Board a proposal from the Foundation for a Healthy Kentucky for the establishment of a Kentucky Health Data Council. Kentucky Health Data Council will be for the purpose of improving the quality and content of state licensure board databases to be more broadly used by health services researchers, health professions educational programs and policy makers to address health services delivery, financing and health outcomes to benefit the citizens of Kentucky. After a brief discussion, Ms. Thornbury moved for the Board to participate in the preliminary stages of the Kentucky Health Data Council. Ms. Jones seconded and the motion passed unanimously.

**Samuel Williams.** Mr. Williams appeared before the Board to request reinstatement of his pharmacist intern card. After a brief discussion, Ms. Jones moved for reinstatement of Mr. Williams' intern card with the condition that he remains under contract with the Impaired Pharmacist Committee. Mr. Edwards seconded and the motion passed unanimously.

**MINUTES:** On motion by Ms. Jones seconded by Mr. Naseman and passed unanimously, the Minutes of June 20, 2004 were adopted.

**INTERAGENCY:** **Drug Control/Dave Sallengs.** Mr. Sallengs introduced himself to the Board and provided the Board with information on KASPER enhancement. Mr. Sallengs requested the Board to share data with Drug Control for the enhancement of KASPER. Ms. Thornbury moved to approve the request. Ms. Jones seconded and the motion passed unanimously.

**Mike Mayes/KPhA:** Mr. Mayes informed the Board that Joel Thornbury is in the process of working on the agenda for the retreat to be held November 12-14 in Bowling Green.

Mr. Mayes informed the Board of the dates for next years KPhA convention to be held June 23 – 26, 2005 at the Hyatt Regency in Lexington.

**Brian Fingerson.** Mr. Fingerson presented the Board with three cases: 90-02-13B, 99-07-77B, and 02-04-110B for review of their contracts with the Impaired Pharmacist Committee:

90-02-13B – After a brief discussion, Mr. Edwards moved to deny the request to appear before the Board on October 6, 2004. Ms. Thornbury seconded and the motion passed unanimously.

99-07-77B – After a brief discussion, Mr. Naseman moved to allow an appearance before the Impaired Pharmacist Committee on October 5, 2004 and an appearance before the Board on October 6, 2004 due to the fact the Agreed Order was not a standard order. Mr. Edwards seconded and the motion passed unanimously.

02-04-110B – Ms. Thornbury moved that the Order stay as is. Mr. Naseman seconded the motion, and it passed unanimously.

**BOARD REPORTS: President.** President Armstrong thanked Joe Carr and David Jaquith for their help with the June 2004 Board exams.

President Armstrong wished Maxine Snively well with her retirement.

Patricia Thornbury informed those present that Reginald Dillard, member of the Tennessee Board of Pharmacy, was elected as District III representative to NABP.

**BOARD STAFF:** Katie Busroe thanked the Board for allowing her to attend the University of Utah on Alcoholism and Other Drug Dependencies.

Phil Losch requested the Board's opinion on questionnaire based prescribing. After a brief discussion, Mr. Edwards moved that the Board's opinion is: The Kentucky Board of Medical Licensure has identified, through KRS 311.597(1)(e), that an electronic, on-line evaluation by questionnaire is inadequate for initial or follow-up evaluation, and Internet prescribing is unethical and unprofessional. The Kentucky Board of Pharmacy feels that a valid physician/patient/pharmacist relationship cannot be established based solely upon an on-line questionnaire evaluation. Therefore, the Kentucky Board of Pharmacy considers that knowingly dispensing prescriptions obtained from Internet prescribing, through questionnaire based evaluations to be unethical and unprofessional. Ms. Thornbury seconded and the motion passed. Ms. Jones and Mr. Naseman were opposed.

**CURRENT/PENDING CASES:** Mr. Edwards moved for acceptance and entry of the proposed Agreed Orders as written. Ms. Jones seconded and the motion passed unanimously. **Case No. 94-0103; Case No. 02-0063A; Case No. 03-0100A; Case No. 03-0134, Case No. 03-0157A; Case No. 04-0025; Case No. 04-0033B; Case No. 04-0041B; Case No. 04-0042A; Case No. 04-0042B; Case No. 04-0047A; Case No. 04-0047B; Case No. 04-0061; Case No. 04-0062; and Case No. 04-0063.**

**CASE REVIEW COMMITTEE:**

Mr. Edwards moved for acceptance of the Committee recommendation for the following case reports,

**Case No. 00-0046 Revisit.** Pharmacist allegedly failed to renew license in a timely manner and continued to practice pharmacy. Original case was presented at the April 18, 2000, Case Review Committee meeting. Case Review Committee recommended a 4 which was affirmed by the Kentucky Board of Pharmacy at the April 19, 2000, Board meeting. An Agreed Order was sent to pharmacist on May 24, 2000. Pharmacist never signed Agreed Order. Alleged violation of law: KRS 315.030. CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and the motion passed unanimously.

**Case No. 01-0122.** Out of state pharmacy permit holder allegedly committed multiple medication errors involving mislabeling, wrong strength, and wrong practitioner of record. The Board office received a written complaint on September 13, 2001, alleging that an out of state mail order pharmacy had committed several errors. A child's prescription for Singulair 5 mg chewable tablets was labeled with the father as the patient; a Neurontin prescription was requested to be refilled, and after approximately 4 telephone calls was never received; a prescription for Singulair 4 mg tablets was requested to be refilled and was not received until after a second telephone call repeating the request; 3 prescriptions were labeled with the wrong practitioner. Additionally, the Kentucky Board of Pharmacy did not issue an out of state pharmacy license to this pharmacy until September 25, 2001, 12 days after the complaint was received. Alleged violation of law: KRS 315.121 (2)(d). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and the motion passed unanimously.

**Case No. 01-0136A.** Pharmacy permit holder employed a pharmacist that allegedly acted in an unprofessional manner by failing to fill a prescription and verbally abusing a customer. The Board office received a written complaint on November 26, 2001. A patient left a prescription at a pharmacy to be filled, came back to the pharmacy 2 ½ hours later, and had to wait another 1 ½ hours, with no one in front of her, for the prescription. Two days later her physician telephoned in a refill authorization. The next day she telephoned the pharmacy and was informed that the prescription was not ready for pick-up. The following day she telephoned the pharmacy, and was again told the prescription was not ready for pick-up. She asked to speak to the pharmacist. The pharmacist told her to never call or come back to the pharmacy again. The patient asked to speak to someone else. The pharmacist responded he did not care if she spoke to the president, but to take her \*@#%^&\*!@# somewhere else and it would be in her best interest to never come back to this pharmacy. Alleged violation of law: KRS 315.121(2)(d). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and the motion passed unanimously.

**Case No. 01-0136B.** Pharmacist allegedly acted in an unprofessional manner by failing to fill a prescription and verbally abusing a customer. The Board office received a written complaint on November 26, 2001. A patient left a prescription at a pharmacy to be filled, came back to the pharmacy 2 ½ hours later, and had to wait another 1 ½ hours, with no one in front of her, for the prescription. Two days later her physician telephoned in a refill authorization. The next day she telephoned the pharmacy and was informed that the prescription was not ready for pick-up. The following day she telephoned the pharmacy, and was again told the prescription was not ready

for pick-up. She asked to speak to the pharmacist. The pharmacist told her to never call or come back to the pharmacy again. The patient asked to speak to someone else. The pharmacist responded he did not care if she spoke to the president, but to take her somewhere else and it would be in her best interest to never come back to this pharmacy. Alleged violation of law: KRS 315.121(2)(d). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and motion passed unanimously.

**Case No. 01-0141A Revisit.** Pharmacy permit holder allegedly failed to maintain proper security of controlled substances. From June 24, 1999, to June 30, 2001, the pharmacy permit holder lost, through theft committed by an employee's family member, approximately 5,351 dosage units of controlled substances, including approximately 5,021 units of various strengths of OxyContin. At the January 8, 2002, Case Review Committee meeting the Committee recommended a 4. At the January 9, 2002, Kentucky Board of Pharmacy meeting the Board affirmed this recommendation. On January 15, 2002, an Agreed Order was sent to the permit holder. Pharmacy permit holder never signed the Agreed Order. Case No. 01-0141B was resolved on March 6, 2002. Alleged violation of law: 201 KAR 2:100. CRC recommendation: case is dismissed. Ms. Jones seconded and motion passed unanimously.

**Case No. 02-0002A Revisit.** Pharmacy permit holder allegedly sold misbranded products as the result of medication errors. A patient presented two prescriptions to the pharmacist, Norvasc and hydrochlorothiazide. The pharmacist filled the prescriptions, labeling the Norvasc as hydrochlorothiazide and the hydrochlorothiazide as Norvasc. The patient was familiar with the medications and realized the mistake. At the March 5, 2002, Case Review Committee meeting, the Committee recommended a 4, which was affirmed by the Kentucky Board of Pharmacy at the March 6, 2002, Board meeting. On April 23, 2002, an Agreed Order was sent to the permit holder. Pharmacy permit holder never signed the Agreed Order. Case No. 02-0002B was resolved on June 10, 2002. Alleged violation of law: KRS 217.065(1). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 02-0007 Revisit.** Pharmacist was allegedly impaired. Case No. 02-0007 was combined with Case No. 02-0034. The Agreed Order of Restriction was signed April 10, 2002, using Case No. 02-0034. CRC recommendation: case is dismissed. Ms. Jones seconded and motion passed unanimously.

**Case No. 02-0009 Revisit.** Pharmacist allegedly violated previous Agreed Order. On April 4, 2002, an Agreed Order was sent to pharmacist. Pharmacist expired on April 29, 2002. CRC recommendation: case is dismissed. Ms. Jones seconded and motion passed unanimously.

**Case No. 02-0060 Revisit.** Pharmacy permit holder allegedly engaged in unprofessional conduct by creating prescriptions without first having received a prescription order from a licensed practitioner. The Board office received a written complaint on March 22, 2002. A pharmacist tried to transmit a telephoned authorization for a prescription to a third party payer. The prescription was rejected with the message "filled at another pharmacy." When the pharmacist checked with the other pharmacy, the situation was such that the pharmacy had

contacted the prescriber requesting an authorization, filled the prescription, transmitted the prescription to a third party payer, received payment from the third party payer, placed the prescription in a “quarantine area” so that it would not be dispensed, and was awaiting the authorization from the prescriber. Once the prescriber authorizes the prescription, it is moved from the quarantined area to the dispensing area. Case Review Committee recommended a 4 which was affirmed by the Kentucky Board of Pharmacy. On October 28, 2002, an Agreed Order was sent to the pharmacy permit holder. Pharmacy permit holder never signed the Agreed Order. Alleged violation of law: KRS 3153.121(2)(f). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 02-0137A Revisit.** Special limited medical gas pharmacy permit holder allegedly failed to renew permit in a timely manner and opened for business on an expired permit. The special limited medical gas permit expired June 30, 2002. The Board office received the renewal application August 14, 2002. The renewal application was returned due to incompleteness. The renewal application was received on August 19, 2002, and again sent back due to incompleteness. The corrected renewal application was received on August 23, 2002. At the December 3, 2002, Case Review Committee meeting, the Committee recommended a 4 which was affirmed by the Kentucky Board of Pharmacy at the December 4, 2002, Board meeting. On February 10, 2003, an Agreed Order was sent to the permit holder. Permit holder never signed the Agreed Order. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 02-0137B Revisit.** Consultant pharmacist of special limited medical gas permit holder allegedly failed to renew permit in a timely manner and opened for business on an expired permit. The special limited medical gas permit expired June 30, 2002. The Board office received the renewal application August 14, 2002. The renewal application was returned due to incompleteness. The renewal application was received on August 19, 2002, and again sent back due to incompleteness. The corrected renewal application was received on August 23, 2002. At the December 3, 2002, Case Review Committee meeting, the Committee recommended a 4 which was affirmed by the Kentucky Board of Pharmacy at the December 4, 2002, Board meeting. An Agreed Order was not sent to the pharmacist. Alleged violation of law: KRS 315.035. CRC recommendation: case is dismissed. Ms. Jones seconded and motion passed unanimously.

**Case No. 02-0139A Revisit.** Pharmacy permit holder allegedly sold a misbranded product as the result of a medication error. A prescription for Lamictal 200 mg was filled with labetalol 200 mg and labeled as Lamictal. The patient took the labetalol for approximately 2 weeks. At the December 3, 2002, Case Review Committee meeting, the Committee recommended a 4, which was affirmed by the Kentucky Board of Pharmacy at the December 4, 2002, Board meeting. An Agreed Order was sent to the pharmacy permit holder on February 10, 2003. Permit holder never signed the Agreed Order. Alleged violation of law: KRS 217.065. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 02-0152 Revisit.** Pharmacist allegedly had Indiana pharmacist's license indefinitely suspended. Pharmacist plead guilty to multiple counts of criminal violations for offenses involving drugs and controlled substances. On October 18, 2003, an Agreed Order was sent to pharmacist via certified mail. The pharmacist did not respond or sign the Agreed Order. The pharmacist did not renew Kentucky pharmacist's license for 2004. Alleged violation of law: KRS 315.121(1)(c). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 02-0164A Revisit.** Special limited medical gas permit holder allegedly dispensed medicinal oxygen to patients after the one year expiration of the prescription. The dispensed medicinal oxygen was done so without a valid prescription and consequently was sold as a misbranded product. During a routine inspection, the Pharmacy and Drug Inspector reviewed the 8 patient records that had been reviewed by the consultant pharmacist on his previous inspection. Of the 8, three patient records were not compliant. Medicinal oxygen had been dispensed to the patients past the one year expiration date of the prescription. At the December 3, 2002, Case Review Committee meeting, the Committee recommended a 4, which was affirmed by the Kentucky Board of Pharmacy at the December 4, 2002, Board meeting. On February 17, 2003, an Agreed Order was sent via certified mail to the permit holder. The Agreed Order was undeliverable and was hand delivered on April 8, 2003. The permit holder wrote a response but did not sign the Agreed Order. Alleged violation of law: 201 KAR 2:185 Section 2(1). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 02-0164B Revisit.** Consultant for special limited medical gas permit allegedly allowed medicinal oxygen to be dispensed to patients after the one year expiration of the prescription. The dispensed medicinal oxygen was done so without a valid prescription and consequently was sold as a misbranded product. During a routine inspection, the Pharmacy and Drug Inspector reviewed the 8 patient records that had been reviewed by the consultant pharmacist on his previous inspection. Of the 8, three patient records were not compliant. Medicinal oxygen had been dispensed to the patients past the one year expiration date of the prescription. At the December 3, 2002, Case Review Committee meeting, the Committee recommended a 4, which was affirmed by the Kentucky Board of Pharmacy at the December 4, 2002, Board meeting. On February 17, 2003, an Agreed Order was sent to the consultant pharmacist. The pharmacist did not sign the Agreed Order. Alleged violation of law: 201 KAR 2:185 Section 2(1). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 03-0028 Revisit.** Pharmacist allegedly self reported on 2003 Kentucky pharmacist's license renewal application that is his Florida pharmacist's license had been surrendered due to impairment. Kentucky Board of Pharmacy received notification from Florida Department of Health that action was brought against pharmacist for having in his possession legend drugs, including controlled substances, without a valid prescription or authorization. At the July 8, 2003, Case Review Committee meeting, the Committee recommended a 4 which was affirmed by the Kentucky Board of Pharmacy at the July 9, 2003, Board meeting. On October 18, 2003, an Agreed Order of Revocation was sent to the pharmacist via certified mail. The Agreed Order was returned to the Board office by the United States Post Office as "unclaimed." Pharmacist



did not renew Kentucky pharmacist's license for 2004. Alleged violation of law: KRS 315.121(1)(c). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 03-0043 Revisit.** Pharmacist allegedly violated previous Agreed Order. Pharmacist failed to satisfy pharmacy continuing education requirements for 2001 and was required to submit proof of completion by October 12, 2002. Pharmacist submitted proof of completion on January 31, 2003. Alleged violation of law: KRS 315.121(1)(i). CRC recommendation: issuance of Letter of Reprimand. Ms. Jones seconded and the motion passed unanimously.

**Case No. 03-0044 Revisit.** Special limited medical gas permit holder allegedly moved without properly notifying the Board office. On February 12, 2003, the Pharmacy and Drug Inspector went by the permitted location for the special limited medical gas permit holder. The site was vacant and there was a sign posted stating that the permit holder had moved down the street, giving the new address. At the April 15, 2003, Case Review Committee meeting, the Committee recommended a 4 which was affirmed by the Kentucky Board of Pharmacy at the April 16, 2003, Board meeting. On July 4, 2003, an Agreed Order was sent to the permit holder. Permit holder never signed the Agreed Order. Alleged violation of law: KRS 315.035(5). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0030A.** Pharmacy permit holder has been unethical and unprofessional by allegedly failing to exercise due diligence in filling prescriptions that originate from Internet prescribing. The Board office received a complaint from the Kentucky Board of Medical Licensure. A Kentucky licensed and Kentucky located pharmacy dispenses legend medications, no controlled substances, based on a prescription from a physician located in other states, Arizona and Florida. The physician bases the issuance of the prescription solely on a questionnaire completed on line by the patient. The stock consists mainly of tramadol and Fioricet. The pharmacy has been open 8 weeks and fills approximately 150 prescriptions per day. Alleged violations of law: KRS 315.121(2)(d) and KRS 315.121(2)(e) as it relates to KRS 311.597(1)(e). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0030B.** Pharmacist-in-charge allegedly engaged in unethical and unprofessional conduct by failing to exercise due diligence in filling prescriptions that originate from Internet prescribing. The Board office received a complaint from the Kentucky Board of Medical Licensure. A Kentucky licensed and Kentucky located pharmacy dispenses legend medications, no controlled substances, based on a prescription from a physician located in other states, Arizona and Florida. The physician bases the issuance of the prescription solely on a questionnaire completed on line by the patient. The stock consists mainly of tramadol and Fioricet. The pharmacy has been open 8 weeks and fills approximately 150 prescriptions per day. Alleged violations of law: KRS 315.121(2)(d) and KRS 315.121(2)(e) as it relates to KRS 311.597(1)(e). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0034A.** Pharmacy permit holder allegedly sold a misbranded product as the result

of the incorrect prescriber being designated on the label. The Board office received a written complaint from an Advanced Registered Nurse Practitioner (ARNP). The ARNP has written a prescription. The prescription was filled and labeled with a physician as the prescriber. The pharmacist had tried to bill the prescription to a third party payer, but the claim was rejected. The pharmacist received authorization from the physician to use him as the prescriber. Alleged violations of law: KRS 217.065(1) and 201 KAR 2:210 Section 1 (2)(e)5. CRC recommendation: case is dismissed. Ms. Jones seconded and motion passed unanimously.

**Case No. 04-0034B.** Pharmacist allegedly failed to maintain proper record keeping as the result of the incorrect prescriber being designated on the label. The Board office received a written complaint from an Advanced Registered Nurse Practitioner (ARNP). The ARNP has written a prescription. The prescription was filled and labeled with a physician as the prescriber. The pharmacist had tried to bill the prescription to a third party payer, but the claim was rejected. The pharmacist received authorization from the physician to use him as the prescriber. Alleged violation of law: 201 KAR 2:210 Section 1 (2)(e)5. CRC recommendation: case is dismissed. Ms. Jones seconded and motion passed unanimously.

**Case No. 04-0046A.** Pharmacy permit holder allegedly sold a misbranded product as the result of a medication error. Patient presented a prescription for Singulair 5 mg tablets. The prescription was filled with Singulair 10 mg tablets and labeled as Singulair 5 mg tablets. Alleged violation of law: KRS 214.065(1). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0046B.** Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. Patient presented a prescription for Singulair 5 mg tablets. The prescription was filled with Singulair 10 mg tablets and labeled as Singulair 5 mg tablets. Alleged violation of law: KRS 315.121(2)(d). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0049A.** Pharmacy permit holder allegedly engaged in unprofessional conduct by divulging confidential patient information. The Board office received a complaint that a pharmacy technician and pharmacist had discussed a patient's medication with him in a louder than normal tone and in front of other patients. Alleged violation of law: KRS 315.121(2)(b). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and motion passed unanimously.

**Case No. 04-0049B.** Pharmacist allegedly engaged in unprofessional conduct by divulging confidential patient information. The Board office received a complaint that a pharmacy technician and pharmacist had discussed a patient's medication with him in a louder than normal tone and in front of other patients. Alleged violation of law: KRS 315.121(2)(b). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and motion passed unanimously.

**Case No. 04-0052A.** Pharmacy permit holder allegedly sold misbranded drugs as the result of medication errors in the form of dispensing fewer dosage units than was prescribed and labeled on the vial. A complaint was registered with the Medicaid/Welfare Fraud and Abuse Hotline,

that this patient, on three occasions, had not received the entire quantity of medication prescribed. The medications involved were Skelaxin, Vioxx, and OxyContin. Alleged violation of law: KRS 217.065(1). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and motion passed unanimously.

**Case No. 04-0052B.** Pharmacist-in-charge allegedly failed to have quality assurance controls in place which resulted in medication errors in the form of dispensing fewer dosage units than was prescribed and labeled on the vial. A complaint was registered with the Medicaid/Welfare Fraud and Abuse Hotline, that this patient, on three occasions, had not received the entire quantity of medication prescribed. The medications involved were Skelaxin, Vioxx, and OxyContin. Alleged violation of law: KRS 315.121(2)(d) and 201 KAR 2:205 Section 1 (3)(a). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and motion passed unanimously.

**Case No. 04-0053A.** Pharmacy permit holder allegedly sold a misbranded product as the result of a medication error. A prescription was presented for Keppra 500 mg. The prescription was filled with Cipro 500 mg. The patient experienced seizure activity and was hospitalized for 3 days. Alleged violation of law: KRS 217.065(1). CRC recommendation: there is sufficient evidence developed and the investigator is directed to conduct further investigation. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0053B.** Pharmacist allegedly engaged in unprofessional conduct by committing a medication error. A prescription was presented for Keppra 500 mg. The prescription was filled with Cipro 500 mg. The patient experienced seizure activity and was hospitalized for 3 days. Alleged violation of law: KRS 315.121(2)(d). CRC recommendation: there is sufficient evidence developed and the investigator is directed to conduct further investigation. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0055A.** Pharmacy permit holder employed a pharmacist that allegedly engaged in unprofessional conduct by refusing to transfer a prescription at the request of the patient. A patient requested to have a controlled substance prescription transferred to another pharmacy and the pharmacist refused. Alleged violations of law: 201 KAR 2:201 Section 3 (2)(b) and KRS 315.121 (2)(d). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0055B.** Pharmacist allegedly engaged in unprofessional conduct by refusing to transfer a prescription at the request of the patient. A patient requested to have a controlled substance prescription transferred to another pharmacy and the pharmacist refused. Alleged violations of law: 201 KAR 2:201 Section 3 (2)(b) and KRS 315.121 (2)(d). CRC recommendation: There is insufficient evidence of a violation to warrant disciplinary action and the case is closed without prejudice. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0058A.** Pharmacy permit holder employed a pharmacist that allegedly engaged in

unprofessional conduct by having a policy in place refusing to accept a check for controlled substances prescriptions. As a result the patient went to another pharmacy to have the prescription filled. Alleged violation of law: KRS 315.121(2)(d). CRC recommendation: Case is dismissed. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0058B.** Pharmacist-in-charge allegedly engaged in unprofessional conduct by having a policy in place refusing to accept a check for controlled substances prescriptions. As a result the patient went to another pharmacy to have the prescription filled. Alleged violation of law: KRS 315.121(2)(d). CRC recommendation: Case is dismissed. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0066.** Wholesaler permit holder allegedly changed locations without proper notification to the Kentucky Board of Pharmacy. The Board office was notified that the wholesaler had changed locations within a building. The wholesaler did not apply to move nor was the new site inspected before moving. Alleged violations of law: KRS 315.036(1) and 201 KAR 2:050 Section (1)(13). CRC recommendation: issuance of Letter of Reprimand. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0067A.** Pharmacy permit holder allegedly engaged in unprofessional and unethical conduct by impeding the refill process of prescriptions for patients that have established a patient/pharmacist relationship. The pharmacist has unauthorized access to patient records. The pharmacy is located in a clinic setting. The pharmacist had a contractual relationship with the clinic to provide drug utilization reviews for all clinic patients. In an effort for the clinic to become more efficient, all refills were requested through the pharmacist, who faxed a refill request to the physician. If authorized, the pharmacist then notified the patient's pharmacy of choice of the refill information. Alleged violations of law: KRS 315.121(2)(d), KRS 315.121(2)(i), and 201 KAR 2:210 Section 1. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0067B.** Pharmacist allegedly engaged in unprofessional and unethical conduct by impeding the refill process of prescriptions for patients that have established a patient/pharmacist relationship. The pharmacist has unauthorized access to patient records. The pharmacy is located in a clinic setting. The pharmacist had a contractual relationship with the clinic to provide drug utilization reviews for all clinic patients. In an effort for the clinic to become more efficient, all refills were requested through the pharmacist, who faxed a refill request to the physician. If authorized, the pharmacist then notified the patient's pharmacy of choice of the refill information. Alleged violations of law: KRS 315.121(2)(d), KRS 315.121(2)(i), and 201 KAR 2:210 Section 1. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0068A.** Pharmacy permit holder employed a pharmacist that allegedly made an inappropriate generic substitution when the physician specifically wrote, "Brand medically necessary." A prescription was presented with 3 medications written as brand names and 1 written generically (prednisone) with the statement "Brand Medically Necessary" on the prescription. The 3 prescriptions written by brand name were dispensed as brand name and the prednisone was dispensed as the generic. Alleged violation of law: KRS 217.822. CRC recommendation: Case is

dismissed. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0068B.** Pharmacist allegedly made an inappropriate generic substitution when the physician specifically wrote, “Brand medically necessary.” A prescription was presented with 3 medications written as brand names and 1 written generically (prednisone) with the statement “Brand Medically Necessary” on the prescription. The 3 prescriptions written by brand name were dispensed as brand name and the prednisone was dispensed as the generic. Alleged violation of law: KRS 217.822. CRC recommendation: Case is dismissed. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0069A.** Pharmacy permit holder allegedly moved pharmacy without prior inspection by the Board. An application was submitted to the Board office on May 14, 2004. The Board office sent an acknowledgement letter on May 14, 2004, to the permit holder stating that the pharmacy must be inspected before relocating. The pharmacy relocated on June 13, 2004, without an inspection. Alleged violations of law: KRS 315.035(1) and KRS 315.035(5). CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0069B.** Pharmacist-in-charge allegedly moved pharmacy without prior inspection by the Board. An application was submitted to the Board office on May 14, 2004. The Board office sent an acknowledgement letter on May 14, 2004, to the permit holder stating that the pharmacy must be inspected before relocating. The pharmacy relocated on June 13, 2004, without an inspection. Alleged violations of law: KRS 315.035(1) and KRS 315.035(5). CRC recommendation: issuance of Letter of Reprimand. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070A.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070B.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070C.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070D.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070E.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070F.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070G.** Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate as a pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070H.** Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate as a pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070I.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070J.** Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate as a pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070K.** Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate as a pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070L.** Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate as a pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070M.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070N.** Special limited medical gas permit holder allegedly failed to renew permit in a

timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070P.** Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate as a pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070Q.** Pharmacy permit holder allegedly failed to renew permit in a timely manner and continued to operate as a pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070R.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0070S.** Special limited medical gas permit holder allegedly failed to renew permit in a timely manner and continued to operate as a special limited medical gas pharmacy. Alleged violation of law: KRS 315.035. CRC recommendation for Complaint with attempt to resolve through AO. Ms. Jones seconded and the motion passed unanimously.

**Case No. 04-0072.** Pharmacist voluntarily surrendered Kentucky pharmacist's license. CRC recommendation: there is sufficient evidence developed and the investigator is directed to conduct further investigation. Ms. Jones seconded and the motion passed unanimously.

**CORRESPONDENCE: Executive Branch Ethics Commission/Jill LeMaster.** The Board reviewed correspondence from Ms. LeMaster regarding Ethics Accountability for Board and Commission Members. After a brief discussion, Ms. Thornbury moved for Dr. Osman to respond to Ms. LeMaster that the Board already has protocol in place. Ms. Jones seconded and the motion passed unanimously.

**Mission Frankfort Pharmacy/Larry Hadley.** The Board reviewed correspondence from Mr. Hadley requesting waiver from the requirement that a pharmacy be open a minimum of ten hours a week. After a brief discussion, Mr. Edwards moved to approve the request. Ms. Jones seconded and the motion passed unanimously.

**Larry Hawkins.** The Board reviewed correspondence from Mr. Hawkins requesting approval to work for CVS in Frankfort and to work at a site of CVS' choosing for the purpose of training. Mr. Edwards moved to approve the request. Ms. Jones seconded and the motion passed unanimously.

**RX Discount/Richard Slone.** The Board reviewed correspondence from Mr. Slone stating that he had made a presentation to the Board in March 2002 concerning the use of an automatic dispensing system in a remote location. In March 2002, the Board moved to proceed with adopting an

administrative regulation with the Notice of Intent being filed to use this technology. At this time the installation of the technology at RX Discount is complete. Mr. Slone is requesting the Board's final approval and a permit to operate. After a brief discussion, Ms. Thornbury moved for Dr. Osman to notify Mr. Slone that the regulations will have to be changed and Mr. Slone is to provide the Board with a list of other states and their regulations in which this technology is being utilized. Ms. Jones seconded and the motion passed unanimously. Mr. Naseman moved to use this as a pilot program. The motion died due to lack of a second.

**CONTINUING EDUCATION:** Mr. Edwards moved to accept the continuing education programs 04-24 through 04-29 as recommended. Mr. Naseman seconded and the motion passed unanimously.

**NEW BUSINESS:** Ms. Thornbury moved for the Board members to be reimbursed for the full amount of expenses instead of the allowable amount state workers receive. The motion died due to lack of a second. Mr. Edwards moved to continue the current reimbursement rate. Ms. Cooper seconded and the motion passed.

Dr. Osman requested that he be allowed to step aside from the Interim Executive Director position on September 15<sup>th</sup>. After a brief discussion, Ms. Thornbury moved to allow Dr. Osman to step aside and Phil Losch step in as Interim Executive Director beginning September 1, 2004. Ms. Jones seconded and the motion passed unanimously.

Mr. Edwards moved to go into closed session pursuant to KRS 61.810(1)(f) to engage in discussion which might lead to the appointment of an employee. Ms. Jones seconded the motion that passed unanimously.

Ms. Thornbury moved to come out of closed session and into open session. Mr. Edwards seconded the motion that passed unanimously.

**ADJOURNMENT:** On motion by Mr. Edwards and seconded by Ms. Thornbury and passed unanimously, President Armstrong adjourned the meeting at 7:30 p.m. The next regularly scheduled Board meeting is scheduled to begin at 9:00 a.m. on October 6, 2004.

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Jeffrey L. Osman, Interim Executive Director

**MINUTES APPROVED September 12, 2004.**