

**MEETING MINUTES
DEPARTMENT OF HEALTH
BOARD OF PHARMACY
FULL BOARD MEETING**

April 10-11, 2012

Wyndham Tampa Westshore
700 N Westshore Blvd
Tampa, FL 33609
(813) 288-3620

**PLEASE TURN OFF ALL CELL PHONES, PAGERS, AND BEEPERS DURING THE MEETING.
THANK YOU.**

Board Members:

Cynthia Griffin, PharmD, Chair, Jacksonville
Albert Garcia, BPharm, MHL, Vice-Chair, Miami
Michele Weizer, PharmD, Boca Raton
Gavin Meshad, Consumer Member, Sarasota
Jeffrey J. Mesaros, PharmD, Tampa
Lorena Risch, Consumer Member, Bradenton
DeAnn Mullins, BPharm, Lynn Haven
Debra B. Glass, BPharm, Tallahassee
Leo J. "Lee" Fallon, BPharm, PhD, The Villages

Board Staff:

Mark Whitten, Executive Director
Tammy Collins, Program Operations Administrator
Cara Waldrip, Regulatory Specialist II

Board Counsel:

Allison Dudley, Assistant Attorney General

Department of Health Staff:

John J. Truitt, Assistant General Counsel

Tuesday, April 10, 2012 – 1:00 p.m.

1:00 p.m. Call to Order by Cynthia Griffin, PharmD, Chair

The meeting was called to order by the Chair, Dr. Griffin. All Board members were present.

TAB 1

REPORTS

A. Chair's Report – Cynthia Griffin, PharmD, Chair

1. Report

Dr. Griffin shared that she and Mark Whitten will be representing the Board at the May 2012 Florida Pharmacy Association (FPA) Regulatory and Law Conference in Jacksonville. They will report on the conference at the June Board meeting.

B. Executive Director's Report – Mark Whitten

1. Re-Permitting

Mark Whitten reported on the re-permitting process for community pharmacies. So far approximately 900 pharmacies have been re-permitted. He is working closely with chains as they work through the process. He reports it is going smoothly and processors are still maintaining six days processing time on regular permits while keeping up with other board work.

2. Legislative Update

Mr. Whitten updated the Board on recent legislative changes.

3. Professional Resource Network (PRN) Donations

Mr. Whitten updated the Board on questions regarding PRN donations brought up at the February Board meeting. A link to the PRN website has been on the Board of Pharmacy website under associations and organizations, but it is now on a button on the home page. Mr. Whitten stated that he discussed and researched the possibility of board staff processing donations with application payments; after researching the issue he found that the Florida Pharmacy Association (FPA) has a donation system set up. Michael Jackson spoke on behalf of the FPA and shared that the FPA's sister organization Florida Pharmacy Foundation has a program in place to support PRN. He relayed that they have a process in place to raise and advocate support for PRN and the work they are doing. Mr. Whitten found that because there was already a donation process in place, he recommends supporting that process through direction from our website to the PRN program.

Albert Garcia asked if it would be feasible to use monies currently held by the Board of Pharmacy to donate to the PRN program. Mr. Garcia referenced the fact that in the past money has been swept from the Board of Pharmacy account and that if there are an excess of funds he would prefer to give it back to the profession. Mr. Whitten stated that a legislative budget request would need to be made in order to pursue that request. He relayed that he will speak with the budget section and will ask them about this request. He will report back at the next meeting.

4. Attendance at Meetings

Mr. Whitten reported on recent meetings he had attended. He recently attended the Drug Enforcement Administration conference where previous Board member Fritz Hayes spoke as well as where Dr. Weizer spoke. There were approximately 1700 in attendance for both days and they went over a variety of issues. He stated it was a privilege to be in attendance.

Additionally, Mr. Whitten was asked to participate in the accreditation process at the University of South Florida. He spent many days seeing the accreditation process and felt it was a very unique opportunity.

5. June 5-6, 2012 Board Meeting -
Change of Location Request

Mr. Whitten explained to the Board that due to location availability we needed to change the location of the June meeting from Boca Raton. He explained a suitable location was found in Deerfield Beach and requested the Board vote on the change of location.

Motion: by Dr. Fallon, seconded by Mr. Garcia, to move the June meeting location to Deerfield Beach. Motion carried.

6. Correspondence: Armor Correctional Health Services – *Addendum*

Mark Whitten introduced the request from Armor Correctional Health Services to receive a statement from the Board in writing regarding their compliance with Pharmacy Rules. Mr. Whitten asked the Board for discussion but feels the issue is explained explicitly in the Rules.

After discussion by various Board members, Allison Dudley stated that this type of inquiry may be better addressed through filing a Declaratory Statement or a Petition for a Variance or Waiver. She cautioned the Board on setting a precedent of responding in writing and getting into the business of giving legal advice on individual

situations. Mr. Whitten stated that he would re-engage with Armor Correctional Health Services and see what information he could find out.

C. Attorney General's Report

1. Rules Report

Allison Dudley updated the Board on the progress of recent Rule changes.

Mrs. Dudley relayed changes that needed to be made to various Pharmacy application questions associated with Rule 64B16-28.100.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to approve the changes. Motion carried.

Mrs. Dudley requested the Board address the following two questions: Do these changes have an adverse impact on small business and do these changes increase the regulatory cost by \$200,000 or more in the aggregate?

Motion: by Dr. Weizer, seconded by Dr. Fallon, that it will have no impact on small business nor does it increase the regulatory cost by \$200,000 or more. Motion carried.

Allison Dudley reviewed changes to the disciplinary guidelines.

Motion: by Dr. Fallon, seconded by Dr. Weizer, to approve the changes. Motion carried.

Mrs. Dudley requested the Board address the following two questions: Do these changes have an adverse impact on small business and do these changes increase the regulatory cost by \$200,000 or more in the aggregate?

Motion: by Dr. Weizer, seconded by Ms. Glass, that it will have no impact on small business nor does it increase the regulatory cost by \$200,000 or more. Motion carried.

2. Petition for Rulemaking of Florida Independent Pharmacy Network – Ed Bayo

Allison Dudley discussed Edwin Bayo's petition for rulemaking. The Board discussed changes to the proposed language including the removal of the word "separate" regarding pharmacy records as well as other grammatical issues.

Motion: by Mr. Garcia, seconded to Dr. Fallon to accept the amended language. Motion carried.

Allison Dudley requested the Board address the following two questions: Do these changes have an adverse impact on small business and do these changes increase the regulatory cost by \$200,000 or more? She relayed that she believes the regulatory costs would be minimal and not exceed \$200,000 but would need to prepare a statement after doing some analysis.

The Board tabled the motion until the next meeting to allow for time to perform analysis and present a statement on the estimated regulatory costs.

3. Hospital Pharmacy Compounding Practices – Marty Dix – *Addendum*

Mrs. Dudley re-introduced the correspondence received from Marty Dix regarding hospital compounding that was on the agenda of the last Board meeting. Mrs. Dudley relayed that she did not see anything that prevents the practice outline in the letter but felt they need a community pharmacy permit. Marty Dix responded that they do have a community pharmacy permit. After some discussion, Mrs. Dudley stated that as the Board attorney she felt this was an acceptable practice.

D. Prosecuting Attorney Report

1. Prosecution Services Report

John Truitt updated the Board on the case load for the Prosecution Services Unit. He reported that as of Thursday the case load is down to 312 from 391 cases during the last meeting which equates to a drop of 20%. He expects the June Board meeting and the two meetings following that to see Prosecution Services bringing a backlog of cases. He relayed that they plan for the 2008 and older cases to be gone by December and the 2009 cases should also be gone around that time.

Albert Garcia suggested we have investigators attend meetings to give context to some cases. After discussion, Mark Whitten stated he would set up a meeting with investigation services and the prosecution services unit to discuss the possibility.

Motion: by Dr. Weizer, seconded by Ms. Mullins, to continue prosecuting old cases. Motion carried.

E. Chief Investigative Services Report – Jeanne Clyne

Jeanne Clyne, Chief of the Investigation Services Unit, updated the Board on the progress of investigations. She reported that they are 94% completed with priority inspections. They plan to be 100% completed within the next 3 weeks. She also reported that they have completed 42% of all pharmacy inspections and are at 55% of dispensing practitioners. The goal is to visit 100% by the end of the fiscal year.

Jeanne Clyne updated the Board on the new rule 64B16-28.101 that completely changes the inspection process. She reported they are working with the Department to develop their database to allow for requesting and tracking inspections through the database system. Previously, there have been annual inspections based on the fiscal year; however, now inspections will be based on when the permit was issued. She stated that the database will automatically track for inspection requirements. She relayed that the envisioned result will be that after a permit is issued an inspection will occur within approximately 8 months. This will be followed by an inspection every year until there are 3 consecutive passed inspections. She also relayed they plan to figure out a system to find pharmacies that have been disciplined since this was a part of the new Rule as well.

F. Chief of the Bureau of Health Care Practitioner Regulation – Cassandra Pasley

Dr. Griffin recognized Cassandra Pasley, Bureau Chief of the Bureau of Healthcare Practitioner Regulation. Cassandra Pasley introduced herself to the Board and relayed the Department's efforts to getting all applications online. She states this is a critical step in the process because it greatly shortens processing time. She also relayed that the other important issue they are dealing with now is the electronic agenda software contract that expires in 2013. She relayed that they are in the process of looking at the software and other options to evaluate how it is serving its users. They hope to come up with a plan to improve the electronic agenda process.

Cassandra Pasley also stated that they are working on a communication plan to better communicate with licensees regarding rule and statute changes. They are looking into e-mail communication as well as working to improve the website. Regarding the agenda software, she states their goal is that by the end of the year to have a complete

picture of their analysis of the situation and plan for the future. She invites feedback regarding the electronic agenda software as well as any local members to participate in the meetings. Ms. Glass volunteered to participate in the electronic agenda meetings.

G. LearnSomething, Inc. Presentation

1. Jim McDowell and Dennis Thorp, Ph.D.

A presentation was made on behalf of LearnSomething, Inc. to request that the Board would consider their interactive online training as a substitute for live CE training.

After discussion, the Board made distinctions between live portions of continuing education and the limitations of an interactive web course. Dr. Griffin thanked the presenters for sharing all their information with them.

TAB 2 BUSINESS – Cynthia Griffin, PharmD, Chair

A. Ratification of Issued Licenses/Certificates & Staffing Ratios

1. Pharmacist (Licensure) (Client 2201) – 105
2. Pharmacist (Exam Eligibility) (Client 2201) – 103
3. Pharmacist Interns (Client 2202) – 79
4. Registered Pharmacy Technicians (Client 2208) – 894
5. Consultant Pharmacist (Client 2203) – 23
6. Nuclear Pharmacist (Client 2204) – 0
7. Pharmacies/Facilities (Client 2205) – 101
8. Registered Pharmacy Technician Ratios (2:1 or 3:1)- 191
9. Pharmacy Technician Training Program (Client 2209) - 22
10. CE Providers – 11
11. CE Courses - 49
12. CE Individual Requests – 4

Motion: by Dr. Weizer, seconded by Ms. Glass, to ratify the licenses, certificates, and staffing ratios. Motion carried.

B. Review and Approval of Minutes

1. February 7-8, 2012

Brian Kahan requested on behalf of Michael Halbert that the minutes be changed to reflect that PRN (the Professional Resource Network) advocated on his behalf. Brian Kahan stated that the approved Settlement Agreement for Michael Halbert resulted in his suspension being reported to the national databank when his suspension was stayed and he was put on probation because PRN had advocated on his behalf. Mark Whitten stated that he had verified this information.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to reflect this correction in the minutes. Motion carried.

Motion: by Dr. Fallon, seconded by Ms. Glass, to approve the minutes with the above change. Motion carried.

Public Comments:

Dr. Griffin opened the floor up to public comments:

Mike McQuone brought to the Board's attention that the Board website has differing information regarding acceptable hours for pharmacy technician CE renewal. Mark Whitten agreed that the information Mr. McQuone had pointed to was conflicting and would correct the information.

Brian Kahan thanked the Board staff for doing a wonderful job with the website and adding updates on Rule changes. He considers this information a good tool for practitioners and others. Mr. Kahan also wanted to comment on the pharmacy investigations and add that although from his experience prospective owners who apply to the Board of Pharmacy have a relatively smooth application process they are encountering a minimum of 12 weeks for initial processing from their DEA (Drug Enforcement Administration) application. He stated that at the present time he knows nearly 10 applications that are at 20 weeks or longer with the DEA. He hopes the Board will be sensitive to the fact that a person who applies for a Board of Pharmacy permit may or may not consult an attorney to find out additional information regarding signing a lease and the time it could take to receive their DEA registration.

Dr. Griffin echoed thanks to Mark Whitten and the Board staff for working on the website.

Edwin Bayo also echoed the comments regarding DEA processing times. He stated that he has two clients that gave up waiting, one after 8 months, the other after a year of trying to get a permit from the DEA.

Michael Jackson from the Florida Pharmacy Association (FPA) addressed the re-permitting process and asked how many pharmacies have gone through the process and how many have not. He asked if the FPA needed to assist in the process. Mark Whitten stated that there are approximately 800 that have been re-permitted. He stated that his office has done outreach through post-cards, letters, information on the Board website and reaching out to retail chains directly. He stated that all the major corporations say they are on target. He stated that they did need assistance in getting the word out, noting that some independent stores are not even aware of the re-permitting. He hopes that by the next Board meeting 99% of the re-permitting has been completed. The Board of Pharmacy will continue their outreach and even contact people directly by phone in their effort to assist everyone in the re-permitting process.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to adjourn the meeting at 2:46 p.m. Motion carried.

Wednesday, April 11, 2012 – 8:00 a.m.

8:00 a.m. Call To Order by Cynthia Griffin, PharmD, Chair

The meeting was called to order by the Chair, Dr. Griffin. All Board members were present.

TAB 3 DISCIPLINARY CASES – John Truitt, Assistant General Counsel

A. SETTLEMENT AGREEMENT– APPEARANCE REQUIRED CASES

A-1 Paul Wayne Franck, PS 17342, Ocala, FL
Case No. 2008-17152 – PCP Powers/Jones

Respondent violated:

Count One: Section 465.016(1)(e), F.S., by violating Sections 499.01(1) and 499.005(22), F.S., by failing to obtain a prescription drug wholesaler’s permit or a retail pharmacy drug wholesaler’s permit prior to engaging in wholesale distribution of prescription drugs.

Count Two: Section 465.016(1)(e), F.S., by violation of section 499.005(22)m by failing to obtain a permit prior to operation as a prescription drug repackager as required by section 499.01(1)(b).

Respondent shall be present. Respondent shall pay a fine in the amount of \$2,000 and costs in the amount of \$427.17. Respondent shall complete a 12 hour Laws and Rules CE course.

Respondent was present and sworn in by the court reporter. Respondent was represented by William Furlow.

Motion: by Weizer, seconded by Fallon, to accept the Settlement Agreement. Motion carried.

A-2 Francks Lab, Inc, PH 19761, Ocala, FL
Case No. 2008-16979, 2010-16555 – PCP Powers/Jones, Garcia/Weizer

(2008-16979) Respondent violated:

Count One: Section 465.016(1)(e), F.S., by violating Sections 499.01(1) and 499.005(22), F.S., by failing to obtain a prescription drug wholesaler’s permit or a retail pharmacy drug wholesaler’s permit prior to engaging in wholesale distribution of prescription drugs.

Count Two: Section 465.016(1)(e), F.S., by violation of section 499.005(22)m by failing to obtain a permit prior to operation as a prescription drug repackager as required by section 499.01(1)(b).

(2008-16979) Respondent shall be present. Respondent shall pay a fine in the amount of \$2,000 and costs in the amount of \$750.97.

Respondent was present and sworn in by the court reporter. Respondent was represented by William Furlow.

For the first Settlement Agreement:

Motion: by Ms. Mullins, seconded by Dr. Fallon, to dismiss the case. Motion carried with Dr. Griffin opposed.

(2010-16555) Respondent violated Section 456.072(1)(k), F.S., by failing to perform any statutory or legal obligation placed upon a licensee.

A-5 Jennifer Marie Fraticelli, PS 43392 Plantation, FL
Case No. 2010-11198 – PCP Weizer/Risch

Respondent violated 465.016(1)(r), F.S. by violating a rule of the board, by violating Rule 64B16-29.108(2)(g), by placing incorrect directions for use on the prescription label.

Respondent shall be present. Respondent shall pay a fine in the amount of \$250.00. Respondent shall pay costs in the amount of \$538.10. Respondent shall complete 8 hour prescription error CE.

Respondent was present and sworn in by the court reporter. Respondent was represented by Howard Hochman.

Motion: by Dr. Griffin, seconded by Mr. Garcia, to accept the Settlement Agreement. Motion carried.

A-6 Goodluck Pharmacy, Inc., PH 23223, Reddick, FL
Case No. 2010-22919 – PCP Weizer/Salem

Respondent violated 465.023(1)(g), Florida Statutes (2010), by the permittee, or any affiliated person, partner, officer, director, or agent of the permittee, including a person fingerprinted under s. 465.022(3), has been convicted of, or entered a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud.

Respondent shall be present. Respondent shall pay a fine in the amount of \$5,000.00. Respondent shall pay costs in the amount of \$854.74. Respondent shall be on probation for 2 years with inspections up to 3 times per year.

Respondent Mike Patel on behalf of Goodluck Pharmacy was present and sworn in by the court reporter. Respondent was represented by William Furlow.

Motion: by Mr. Garcia, seconded by Ms. Glass, to deny the Settlement Agreement. Motion carried.

Motion: by Mr. Garcia, seconded by Ms. Glass, to amend the Settlement agreement maintaining all requirements except for the following changes to paragraph 4: to extend the probation period to 4 years, during which there will be quarterly inspections of the pharmacy at the expense of the pharmacy to be reported to the compliance officer. Additionally, the agreement will require that the pharmacy owner or the PDM is required to complete a 12 hour Laws and Rules CE course within 12 months. Motion carried.

Mike Patel accepted the counteroffer.

A-7 Michael Alan Donato, PS 31230, Melbourne, FL – *Addendum*
Case No. 2012-02328 – PCP Waived

Respondent violated 456.072(1)(c), Florida Statutes (2011), by being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

Respondent shall be present. Respondent shall pay a fine in the amount of \$2,000.00. Respondent shall pay costs in the amount of \$699.80. Respondent shall be evaluated by PRN and comply with all treatment requirements imposed by PRN contract. Respondent shall be suspended for 1 year – with the option to be retroactively credited for all time during which he has withdrawn from practice pursuant to his PRN contract. If PRN advocates on his behalf that he is safe to practice – up to 4 months of such suspension may be stayed within the discretion of the Board. Otherwise, at any time after 8 months of said suspension, Respondent may petition Board for

reinstatement. Respondent shall be on probation for 2 years during which time he may not serve as PDM, may be employed at no more than 2 pharmacies, and his workplace may be inspected up to 4 times per year.

Respondent was present and sworn in by the court reporter. Respondent was represented by Edwin Bayo. Dr. Rivenbark was present on behalf of PRN and sworn in by the court reporter.

After discussion from Board members as well as the Respondent and Respondent's attorney, the following is decided:

Motion: by Mr. Garcia, seconded by Dr. Weizer, to reject the Settlement Agreement. Motion carried.

Motion: by Ms. Glass, seconded by Mr. Garcia, to postpone the Settlement Agreement to the next meeting to allow for the Prosecution Services Unit to discuss recommended changes made by the Board with the Respondent. Motion carried with Dr. Mesaros and Ms. Risch opposed.

Garcia recommends counsel takes it back and brings back to board at future date.

Edwin Bayo requests the case be heard on the June 5th meeting day instead of June 6th due to previously scheduled events for Mr. Donato.

B. DETERMINATION OF WAIVER

DOW-1 Marisel Benavides, RPT 12870, Miami, FL
Case No. 2010-04053 – PCP Jones/Wilson

Respondent violated Section 456.072(1)(II), F.S., by being convicted of, or entering a plea of guilty or nolo contendere to, any misdemeanor or felony, regardless of adjudication, a crime in any jurisdiction which relates to health care fraud.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to accept the investigative report into evidence for the purposes of imposing a penalty. Motion carried.

Motion: by Dr. Weizer, seconded by Ms. Glass, to find that Respondent was properly served and has waived her right to an informal hearing. Motion carried.

Motion: by Dr. Weizer, seconded by Dr. Fallon to that you adopt the findings of fact as set forth in the Administrative Complaint. Motion carried.

Motion: by Dr. Weizer, seconded by Ms. Glass, to adopt the conclusions of law set forth in the Administrative Complaint and find that this constitutes a violation of the Pharmacy Practice Act. Motion carried.

Recommended penalty: Revocation.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to accept recommendations of the Department of revocation. Motion carried.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to assess costs in the amount of \$1,109.13 to be paid within 30 days. Motion carried.

DOW-2 Michelle Lee Yuhas, RPT 13497, Venice, FL
Case No. 2010-12080 – PCP Jones/Wilson

Respondent violated section 456.072(1)(c), Florida Statutes (2010), being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice, a licensee's profession.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to accept the investigative report into evidence for the purposes of imposing a penalty. Motion carried.

Motion: by Dr. Weizer, seconded by Ms. Glass, to find that Respondent was properly served and has requested an informal hearing. Motion carried

Motion: by Dr. Weizer, seconded by Dr. Fallon to adopt the findings of fact as set forth in the Administrative Complaint. Motion carried.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to adopt the conclusions of law as set forth in the Administrative Complaint and that find that this constitutes a violation of the Pharmacy Practice Act. Motion carried.

Recommended penalty: revocation and costs

Motion: by Dr. Weizer, seconded by Dr. Fallon, to accept the Departments recommendation of revocation. Motion carried.

Motion: by Dr. Weizer, seconded by Ms. Glass, to assess costs in the amount of \$2,450.98 to be paid within 30 days. Motion carried.

DOW-3 Stanley S. Dyen, PS 13959, Del Ray Beach, FL – *Withdrawn*
Case No. 2008-06365 – PCP Jones/Wilson

Withdrawn from Agenda.

DOW-4 Jose Armando Zarranz, PU 5782, Plantation, FL
Case No. 2011-01662 – PCP Garcia/Weizer

Respondent violated section 465.016(1)(n), F.S., violating an order of the board or department previously entered in a disciplinary hearing.

Motion: by Ms. Glass, seconded by Dr. Fallon, to accept the investigative report into evidence for the purposes of imposing a penalty. Motion carried.

Motion: by Ms. Glass, seconded by Dr. Fallon, to find that Respondent was properly served and has requested an informal hearing. Motion carried

Motion: by Ms. Glass, seconded by Dr. Fallon, to adopt the findings of fact as set forth in the Administrative Complaint. Motion carried.

Motion: by Ms. Glass, seconded by Dr. Fallon to adopt the conclusions of law as set forth in the Administrative Complaint and that find that this constitutes a violation of the Pharmacy Practice Act. Motion carried.

Recommended penalty: \$2,500 fine and suspension until compliant with terms of previous final order

Motion: by Dr. Fallon, seconded by Ms. Glass, to accept the recommendations of the Department. Motion carried.

Motion: by Dr. Fallon, seconded by Ms. Glass, to assess costs in the amount of \$1,094.24 to be paid within 30 days. Motion carried.

DOW-5 Jacqueline Nicole Grimes, RPT 6380, Jacksonville, FL
Case No. 2011-10630 – PCP Salem/Griffin

Respondent violated:

Count 1: Section 456.072(1)(x), Florida Statutes (2010), by failing to report to the board, or department, in writing within 30 days after the licensee had been convicted of or found guilty or, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.

Count 2: Section 465.016(1)(e), Florida Statutes (2010), by violating Chapter 499; 21 U.S.C. ss. 301-392, known as the Federal Food, Drug, and Cosmetic Act; 21 U.S.C. ss. 821 et seq., known as the Comprehensive Drug Abuse Prevention and Control Act; or chapter 893, Florida Statutes.

Motion: by Dr. Weizer, seconded by Ms. Glass, to accept the investigative report into evidence for the purposes of imposing a penalty. Motion carried.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to find that Respondent was properly served and has waived the right to a formal hearing. Motion carried.

Motion: by Dr. Weizer, seconded by Ms. Glass, to adopt the findings of fact as set forth in the Administrative Complaint. Motion carried.

Motion: by Dr. Weizer, seconded by Ms. Glass, to adopt the conclusions of law as set forth in the Administrative Complaint and find that this constitutes a violation of the Pharmacy Practice Act. Motion carried.

Recommended penalty: Revocation.

Motion: by Dr. Weizer, seconded by Ms. Glass, to accept the recommendations of the Department of revocation. Motion carried.

Motion: by Dr. Weizer, seconded by Ms. Glass, to assess costs in the amount of \$886.26 to be paid within 30 days. Motion carried.

C. VOLUNTARY RELINQUISHMENTS

VR's voted on at one time: VR-1, 2, 3, 4, 5 and 7 (PCP waived)

Motion: by Garcia, seconded by Weizer, to accept the above-listed Voluntary Relinquishments. Motion carried.

VR-1 24 Hour Community Pharmacy, Inc., PH 23694, Miami, FL
Case No. 2011-19802 – PCP Waived

Respondent was not present, nor represented by counsel.

Respondent violated: Section 465.016(1)(e)(i)(j)(r), Florida Statutes (2010); Section 465.023(1)(c), Florida Statutes (2010); Section 456.072(1)(a)(k)(m)(dd), Florida Statutes (2010)

See: motion at beginning of the Voluntary Relinquishments section.

VR-2 Daniel P. Sweet, PU 3196 Deerfield Beach, FL
Case No. 2011-11058, 2011-11059 – PCP Waived

Respondent was not present, nor represented by counsel.

Respondent violated: Section 465.016(1)(e)(i)(r)(s), Florida Statutes (2011); Section 456.072(1)(b), Florida Statutes (2011); Section 893.04(2)(f), Florida Statutes (2011)

See: motion at beginning of the Voluntary Relinquishments section.

VR-3 Branch Enterprises, Inc., PH 18244, Miami, FL
Case No. 2010-06459, 2009-07395, 2011-11796 – PCP Jones/Wilson

Respondent was not present, nor represented by counsel.

Respondent violated: Section 465.023(1)(c), FS 2010; through a violation of Section 456.072(1)(kk), FS 2010, by being terminated from the Florida Medicaid program.

See: motion at beginning of the Voluntary Relinquishments section.

VR-4 Gulf Coast Medical Pharmacy, PH 20076, Ft. Myers, FL
Case No. 2011-17385 – PCP Waived

Respondent was not present, nor represented by counsel.

Respondent violated: Section 456.072(1)(o)(p) and 465.016(1)(c)(e)(i)(r)(s)

See: motion at beginning of the Voluntary Relinquishments section.

VR-5 Gulf Coast Infusion Center, Inc., PH 18922, Ft. Myers, FL
Case No. 2012-01394 – PCP Waived

Respondent was not present, nor represented by counsel.

See: motion at beginning of the Voluntary Relinquishments section.

VR-6 Jeff Green, RPT 498, Ft. Myers, FL
Case No. 2011-17384 – PCP Waived

The Department pulled VR-6 from the agenda per respondent's request.

VR-7 Neha V. Patel, PS 39749, Lakeland, FL
Case No. 2012-02527 – PCP Waived

Respondent was not present, nor represented by counsel.

Respondent violated: Section 465.016(1)(d)3, Florida Statutes (2011); Section 465.016(1)(m), Florida Statutes (2011)

See: motion at beginning of the Voluntary Relinquishments section.

VR-8 Michael Paul Randolph, PS 47243, Brandon, FL
Case No. 2011-16970 – PCP Risch/Fallon

Respondent was not present, nor represented by counsel.

Motion: by Mr. Garcia, seconded by Dr. Weizer, to accept the Voluntary Relinquishment. Motion carried.

VR-9 Ardavon Moayer, RPT 17524, Lake Mary, FL
Case No. 2011-17638 – PCP Garcia/Glass

Respondent was not present, nor represented by counsel.

Respondent violated: Section 465.016(1)(e), FS 2011, by violating 21 U.S.C. 846, US Code

Motion: by Dr. Weizer, seconded by Ms. Mullins, to accept the Voluntary Relinquishment. Motion carried.

D. BOARD ACTION BY HEARING NOT INVOLVING DISPUTED ISSUES OF MATERIAL FACT

I-1 Joseph T. Brown, PS 26675, Lake Worth, FL - *Addendum*
Case No. 2011-08871 – PCP Salem/Weizer

Withdrawn from Agenda.

I-2 Alpha Pharmacy & Discount, Inc., PH 25105, Miami, FL – *Withdrawn*
Case No. 2011-04265– PCP Weizer/Risch

Withdrawn from Agenda.

I-3 Naresh Kumar Jain, PS 43067, Brampton, ON, Canada
Case No. 2010-07094 – PCP Weizer/Risch

Respondent violated:

Ct I: Section 465.016(1)(r), Florida Statutes (2010), violating any provision of this chapter or chapter 456, through a violation of Section 456.072(1)(c), Florida Statutes (2010), by being convicted or found guilty of, or entering a plea of guilty or nolo contendere to, regardless of adjudication, a crime in any jurisdiction which relates to the practice of, or the ability to practice pharmacy.

Ct II: Section 456.072(1)(x), Florida Statutes (2010), by failing to report to the board, or the department if there is no board, in writing within 30 days after the licensee has been convicted or found guilty of, or entered a plea of nolo contendere to, regardless of adjudication, a crime in any jurisdiction.

Motion: by Dr. Griffin, seconded by Mr. Meshad, to accept the investigative report into evidence for the purposes of imposing penalty. Motion carried.

Motion: by Mr. Garcia, seconded by Mr. Meshad, to make a finding that the Respondent was properly served and has requested an informal hearing. Motion carried.

Motion: by Mr. Garcia, seconded by Mr. Meshad, to adopt the findings of fact as set forth in the Administrative Complaint. Motion carried.

Motion: by Garcia, seconded by Meshad, to adopt the conclusions of law as set forth in the Administrative Complaint and that find that this constitutes a violation of the Pharmacy Practice Act. Motion carried.

Departments Recommendation: Revocation.

Motion: by Mr. Garcia, seconded by Dr. Griffin, to accept the recommendations of the Department of revocation. Motion carried.

Motion: by Ms. Glass, seconded by Mr. Garcia, to assess costs in the amount of \$493.54 to be paid within 30 days. Motion carried.

I-4 Melanie J. Hickey, PS 13051, Lakeland, FL – *Withdrawn*
Case No. 2011-01673 – PCP Garcia/Weizer

Withdrawn from Agenda.

I-5 Haroun T. El-Nil, PS 32583, West Palm Beach, FL
Case No. 2010-09225 – PCP Risch/Fallon

Respondent was present and sworn in by the court reporter. Respondent was not represented by counsel.

Respondent violated:

Ct I: Section 465.016(1)(r), Florida Statutes (2007-2009), through a violation of Rule 64B16-27.831(3), Florida Administrative Code, which provides that when any of the criteria in Rule 64B16-27.831(2), Florida Administrative Code, is met, the pharmacist shall require that the person to whom the medication is dispensed provide picture identification and the pharmacist should photocopy such picture identification for the pharmacist's records. If a photocopier is not available, the pharmacist should document on the back of the prescription complete descriptive information from the picture identification. The pharmacist shall also verify the prescription with the prescriber.

Ct II: Section 465.016(1)(e), Florida Statutes (2009), by failing to meet the requirements of Section 893.04(1)(e)6, Florida Statutes (2009), which provides that affixed to the original container in which a controlled substance is delivered upon a prescription or authorized refill thereof, as hereinafter provided, there shall be a label bearing the directions for the use of the controlled substance prescribed in the prescription.

Motion: by Dr. Weizer, seconded by Ms. Glass, to accept the investigative report into evidence for the purposes of imposing penalty. Motion carried.

Motion: by Dr. Weizer, seconded by Ms. Glass, to make a finding that the Respondent was properly served and has requested an informal hearing. Motion carried.

Motion: by Dr. Weizer, seconded by Ms. Glass, to adopt the findings of fact as set forth in the Administrative Complaint. Motion carried.

Haroun T. El-Nil addressed the Board members with documentation he provided as a hand-out to them. After discussion between respondent and Board counsel, Allison Dudley, and the Prosecuting Attorney, John Truitt, it was determined that based on dispute from respondent I-5, I-6, and I-7 need to go to administrative hearings.

I-6 Lantana Pharmacy, Inc. PH 23129, Lantana, FL
Case No. 2011-14115 – PCP Risch/Fallon

Respondent violated

Count I: Section 465.023(1)(c), Florida Statutes (2011), through a violation of Rule 64B16-28.1081, Florida Administrative Code, which provides that any person who receives a community pharmacy permit pursuant to Section 465.018, F.S., and commences to operate such an establishment shall keep the prescription department of the establishment open for a minimum of forty (40) hours per week and a minimum of five (5) days per week.

Based on dispute by respondent, case will be referred to administrative hearing.

I-7 Haroun T El-Nil, PS 32583, West Palm Beach, FL
Case No. 2011-14146 – PCP Risch/Fallon

Respondent violated **Count I:** Section 465.016(1)(r), Florida Statutes (2011), through a violation of Rule 64B16-28.1081, Florida Administrative Code, which provides that any person who receives a community pharmacy permit pursuant to Section 465.018, F.S., and commences to operate such an establishment shall keep the prescription department of the establishment open for a minimum of forty (40) hours per week and a minimum of five (5) days per week.

Based on dispute by respondent, case will be referred to administrative hearing.

TAB 4 **APPLICATIONS REQUIRING BOARD REVIEW – DeAnn Mullins, BPharm**

A. Exam Candidates

1. Brad Ernest Campbell, File 40943, Land O Lakes, FL

Respondent was not present, nor represented by counsel. Dr. Rivenbark present on behalf of PRN.

Motion: by Dr. Weizer, seconded by Ms. Mullins, to require applicant’s appearance at the next Board meeting and suggest that applicant have a PRN evaluation before his appearance before the Board. Motion carried.

B. Endorsement Candidates

1. Donald O’Such, File 41200, Stuart, FL

Respondent was present and sworn in by court reporter. Respondent was not represented by counsel.

Motion: by Ms. Mullins, seconded by Dr. Weizer, to approve the application. Motion carried.

Dr. Mesaros asked what can be done to clarify the language in this rule regarding work history. Allison Dudley and Mark Whitten discussed the possibility of putting together a list of guidelines for Board staff to use when processing such applications. Mrs. Dudley suggested putting it on the next Board agenda as a discussion item to go through potential guidelines.

2. Charles Peckerman, File 41015, Medford, OR – *Addendum*

Respondent was not present, nor represented by counsel.

Motion: by Ms. Mullins, seconded by Dr. Weizer, to deny the application. Motion carried.

C. Pharmacy Permit Candidates

1. I Care Pharmacy, LLC, File 18937, Palm Harbor, FL

Respondent was not present, nor represented by counsel.

Motion: by Ms. Mullins, seconded by Dr. Weizer, to approve with the conditions that there will be 2 inspections within the first year at the pharmacy's expense and the PDM shall take a 12 hour Laws and Rules course within 12 months. This 12 hour Laws and Rules course may count toward his/her required CE hours. Motion carried.

D. Pharmacy Intern Applicant

1. Daryl Willmore, File 17249, Ada, OH

Respondent was not present, nor represented by counsel.

Motion: by Ms. Mullins, seconded by Dr. Fallon, to accept with conditions that he be on probation for the duration of Ohio's probation and that he remain in compliance with other Board probationary terms. At such time that probation ends in Ohio, documentation will be sent to the Board office, to be approved by the Board Chair, for his probation to be lifted. Motion carried.

E. Request for Continuing Education Approval

1. Sareh Seyedkazemi, PS 42850, Plantation, FL

Respondent was not present, nor represented by counsel.

Motion: by Ms. Mullins, seconded by Dr. Weizer, to approve the request for CE approval with the future guidance that she request approval in advance regardless of her certainty that she will be able to attend. Motion carried.

2. Konstantinos Andrianopoulos, PS 17851 – *Addendum*

Respondent was not present, nor represented by counsel.

Motion: by Ms. Mullins, seconded by Dr. Weizer, to approve the request for 2 hours medication error CE approval. Motion carried.

TAB 5 LICENSURE ISSUES

A. Petition for Reinstatement

1. Steven Martin, PS 25271, Petaluma, CA – *Addendum*
Withdrawn from Agenda.

2. David Richard Fish, PS 15079, Coral Gables, FL – *Addendum*

Respondent was present and sworn in by the court reporter. Respondent was not represented by counsel. Dr. Rivenbark was present on behalf of PRN.

Mr. Garcia recused himself based on knowing Mr. Fish.

After discussion between Mr. Fish, Board Counsel, and Board members, Mr. Fish was advised that an evaluation by an approved PRN provider that supports he is safe to practice pharmacy is needed. Mr. Fish was advised that

because of his multiple requests for reinstatement without the support of PRN, in the future he would only be put back on the agenda if a PRN evaluation is provided to the Board office that advocates on his behalf.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to deny the request for reinstatement. Motion carried.

B. Termination of Probation

1. Susan Marie Macdonald, PS 34348, Clearwater, FL – *Addendum*
Withdrawn from Agenda.

2. Izell Ricardo Adams, PS 21238, Leesburg, FL – *Addendum*

Respondent was present and sworn in by the court reporter. Respondent was not represented by counsel. Dr. Rivenbark was present on behalf of PRN.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to terminate his probation as of today. Motion carried.

Allison Dudley brought up a Rule issue accidentally left off from previous discussion. Regarding Rule 64B16-27.420 there is an issue with the use of the word “compounding.” After discussion among Board members and the Board attorney, the Board decides to replace the word “compounding” with the word “mixing.”

Motion: by Dr. Mesaros, seconded by Dr. Weizer, to go forward with rulemaking with this change. Motion carried.

Mrs. Dudley requested the Board address the following two questions: Do these changes have an adverse impact on small business and do these changes increase the regulatory cost by \$200,000 or more?

Motion: by Dr. Weizer, seconded by Ms. Glass, that it has no impact on small business and not increase the regulatory cost by \$200,000 in the aggregate. Motion carried.

Public Comments:

Cynthia Griffin opens the floor up to public comments:

Dr. Weizer inquired about a process with the tripartite committee and approved providers. She asked if approved providers have to get general continuing education programs pre-approved. Dr. Weizer expressed that while on the committee they were trying to decrease the amount of things the tripartite committee had to approve and is concerned that if the approval process takes a significant time or takes longer than the expected time frame that pharmacists should not be penalized who attend these programs. Mr. Whitten stated that he and the Board Chair are in the process of working on those issues with tripartite and as to her specific question he will research and update the Board at the next meeting.

Mr. Garcia discussed discipline against permits and permittees. If an owner doesn't have standard operating procedures in place then we should look at that permit for consequences of that. Additionally, he discussed looking at negligence of an individual and negligence of the pharmacy owner to evaluate if discipline should follow one or both.

Michael Jackson from the Florida Pharmacy Association commented on the complexity of endorsement candidates and how the Board office and Board members interpret the active practice of the profession. He suggested that one possible solution would be to have an applicant in that situation provide a letter from their state's Board of Pharmacy stating they are operating in the practice of pharmacy.

Brian Kahan shared with the Board that he has been asked by a number of pharmacists for the Board to clarify the difference between the NABP (National Association of Boards of Pharmacy) CPE (continuing pharmacy education) program and the CE Broker continuing education. Is there reporting between these entities? Mr. Kahan requested clarification of this on the Board website. Mark Whitten responded that currently CE Broker is the approved provider and that CE Broker does not communicate with NABP's CE software.

Bob Parado brought up the language of Rule 64B16-26.2032 citing issues with the interpretation of item (6)(e) where it states that "no pharmacist may be responsible for the supervision of more than one intern at any one time." Mr. Parado stated that this caused a lot of confusion with colleges and what that meant for interns. He states that taking that sentence out would eliminate confusion and he asserts that it would have no cost to small business and no added regulatory cost. He suggests letting the pharmacists and the college preceptors work out their own situations.

Ms. Mullins requested a brief presentation in the future to provide an overview of trending of licensure statistics. She referenced the numbers that are ratified at each Board meeting but states trending would be enlightening and helpful to look at. Mark Whitten stated that internally they are trending these numbers and would be happy to present this information to the Board.

Mark Whitten relayed that as an update from last meeting he contacted DDC (Drugs, Devices, and Cosmetics) regarding any relevant updates they may have. He reported that they did not at this time have anything to report; however, he will keep in touch and bring any new information to the Board as it comes up.

Motion: by Dr. Weizer, seconded by Dr. Fallon, to adjourn the meeting at 12:27pm. Motion carried.