

Draft

VIRGINIA BOARD OF PHARMACY MINUTES OF BOARD MEETING

April 29, 2002
Fifth Floor
Conference Room 2

Department of Health Professions
6606 West Broad Street
Richmond, Virginia 23230

CALL TO ORDER: The meeting of the Virginia Board of Pharmacy was called to order at 9:00 a.m.

PRESIDING: Michael C. Maloney

MEMBERS PRESENT: Sonny Currin
Adina C. Krum
Michael J. Ayotte
Mark A. Oley
John G. Selph
Jackson T. Ward
William S. Tiffany
Mark A. Szalwinski

STAFF PRESENT: Elizabeth Scott Russell, Executive Director
Cathy M. Reiniers-Day, Deputy Executive Director
Ralph A. Orr, Deputy Executive Director
Howard M. Casway, Assistant Attorney General
Elaine Yeatts, Senior Regulatory Analyst
Heather L. Womack, Administrative Assistant

QUORUM: With nine members of the Board present, a quorum was established.

Vernon Clement arrived at 9:30 a.m.

APPROVAL OF AGENDA: Mr. Maloney amended the agenda to move the executive director's report before the formal hearing for John Gilleland, and to add a request from CVS concerning storage issues. The agenda was approved as amended.

PUBLIC COMMENTS: No public comments were received at this time.

APPROVAL OF MINUTES: Mr. Maloney called for changes or corrections to the minutes of February 4, 2002. Hearing no changes, the minutes were approved as presented.

ADDRESS BY ROBERT Mr. Nebiker addressed the Board concerning some of his goals as the

**A. NEBIKER,
DIRECTOR,
DEPARTMENT OF
HEALTH
PROFESSIONS:**

director of the department. He advised the Board that the agency would be entering into a "performance contract" with the Governor to achieve these goals over the next four years. He solicited comments from the Board members on any matters of concern or interest. Mr. Nebiker also introduced Gail Jaspen, Chief Deputy Director of the department.

**INFORMATION
REQUIRED ON A
SCHEDULE II CHART
ORDER FOR LTCF
PATIENTS:**

The Board reviewed a request from NeighborCare Pharmacy as to whether the prescriber's information is required on a Schedule II chart order for a long-term care facility patient if the information is readily retrievable in an automated data system at the pharmacy. Regulation 18 VAC 110-20-430 exempts chart orders for inpatients in hospitals from having all required information for a prescription. Nursing home pharmacies want to use the same exemption. Mr. Ward moved to defer this matter to the regulation committee for review and the motion was seconded. After discussion, Mr. Ward moved, as a substitute motion, to deny the request. The Board voted against this motion. Mr. Szalwinski moved to approve the request provided the prescriber's information was readily retrievable in an automated system. The motion was carried by a 7 to 3 hand count vote.

The inquiry also contained a question as to whether or not the quantity needed to be included on the chart order. Mr. Ayotte moved, and the Board voted unanimously to direct the question of whether a prescriber needs to write a specific quantity on a chart order to Board staff for guidance based on current federal laws and regulations.

**INQUIRY FROM MARY
WASHINGTON
HOSPITAL RELATED
TO ELECTRONIC
SIGNATURES:**

The Board discussed the issue of what constitutes a valid electronic signature. The question appears to be whether a prescription that is entered into a data system with an electronic signature and printed out, rather than electronically transferred, is valid without a manual signature. Mr. Clement moved, and the Board voted unanimously to continue the matter until the June 5, 2002 meeting in order to give Board counsel time to review other applicable law related to electronic signatures and advise the Board.

**DISCUSSION OF
FLORIDA INITIATIVES:**

Ms. Russell and Mr. Ayotte addressed the Board regarding a recent presentation given by David Brushwood, law professor at the University of Florida School of Pharmacy concerning several initiatives of the Florida Board. These initiatives include a comprehensive pharmacy law review program that is used as a solution in some disciplinary cases, a comprehensive error prevention clinic for the prevention of dispensing errors, and a new requirement for all pharmacies to implement a continuous quality improvement program. Mr. Maloney appointed a committee of Mr. Currin, Mr. Selph, Mr. Ayotte, and Mr. Szalwinski to meet with representatives

of the three pharmacy schools to explore the development of a law review program. Mr. Ayotte also stated that he plans to attend Mr. Brushwood's law class and clinic to research these programs further.

**LEGISLATIVE
REPORT:**

Ms. Yeatts presented an update on legislation from the 2002 General Assembly session. She reminded the Board that four new laws will require emergency regulations to be promulgated.

**SET BOARD MEETING
DATE IN JUNE FOR
REGULATIONS:**

An extra meeting date of June 5, 2002 was set in order for the Board to adopt emergency regulations.

**REQUEST FROM VDH
CONCERNING
STORAGE AND
DISPENSING DURING A
TEMPORARY HEALTH
CLINIC:**

The Board discussed a request from the Virginia Department of Health (VDH) concerning an upcoming health care event for patients in an underserved area of Virginia where drugs will be stocked and dispensed from a "temporary mobile clinic". The VDH asked guidance from the Board regarding the licensing or permitting for the dispensing of the drugs for the clinic. The Board voted unanimously to grant a "special use" pharmacy permit upon receipt of an application and approval from the Board chair. The application fee and most requirements for a pharmacy permit will be waived. The permit will expire at the conclusion of the temporary clinic.

**GUIDANCE ON WHEN
A NEW PIC SHOULD BE
NAMED IN CASE OF
ABSENCE OF PIC:**

Ms. Russell requested guidance from the Board as to when, in the event of an absence, the pharmacist-in-charge should be changed. The inspection division needs guidance as to when to cite a pharmacist-in-charge for "not being in full or actual charge" of the pharmacy in event of an absence. Mr. Currin moved, and the Board voted unanimously to refer this matter to the regulation committee for a recommendation.

**EXECUTIVE
DIRECTOR'S REPORT:**

- **Cost Allocation
Formula**
- **Directive 5.6**
- **NABP Update**

Ms. Russell provided the Board with the agency's cost allocation formula prepared by Maximus.

The Board reviewed Directive 5.6 concerning travel authorization for the agency.

Ms. Russell reported on the upcoming NABP conference, May 18-22, 2002. Mr. Currin, Mr. Ayotte, Ms. Krum, and Ms. Russell will be attending. The group will be meeting with NABP meeting planners to invite NABP to hold the next open meeting (May 2005) in Virginia. Mr. Currin is the designated voting delegate for the Board and will also represent District II on the nominating committee.

**APPROVAL OF
DISCIPLINARY
ACTIONS:**

The Board reviewed the summary of disciplinary actions from January 2002 thru April 2002. Mr. Selph moved, and the Board voted unanimously to approve the summary of disciplinary actions as presented. (Attachment 1)

**REQUEST FROM CVS
CONCERNING
STORAGE OF
RECORDS:**

The Board discussed a request that was received from a CVS pharmacy concerning storage of records. Ms. Russell explained that the pharmacy did not have adequate storage space and was requesting the use of an on-site trailer to maintain records. The Board voted unanimously to continue this matter until the June 5, 2002 meeting to obtain more information from CVS.

**FORMAL HEARING:
John B. Gilleland, III
Lic. #0202-006039**

A hearing was held in the matter of John B. Gilleland, III, to discuss his petition for the reinstatement of his license that was mandatorily suspended on March 27, 2001, and allegations that he may have violated certain laws or regulations governing the practice of pharmacy in Virginia.

Mr. Gilleland appeared with counsel, Mark K. Tyndall. Emily Wingfield, Assistant Attorney General, prosecuted the case; with the assistance of Tammie D. Hall, Senior Adjudication Analyst. Mr. Ayotte stated that he had previously supervised Mr. Gilleland and requested that he be recused from participating in the hearing. Mr. Casway explained that should Mr. Ayotte not participate, seven affirmative votes would be necessary to reinstate Mr. Gilleland's license subsequent to his mandatory suspension. Neither Ms. Wingfield, Mr. Gilleland nor Mr. Tyndall objected to Mr. Ayotte being recused from the hearing.

John B. Gilleland, III testified on his own behalf.

Closed Session:

Mr. Currin moved, and the Board voted unanimously, to enter into closed session pursuant to Section 2.2-3711.A.15 of the Code of Virginia for the purpose of deliberation to reach a decision in the matter of John B. Gilleland, III. Additionally, he moved that Scotti Russell, Cathy Reiniers-Day and Howard Casway attend the closed session because their presence is deemed necessary and would aid the Board in its deliberations.

Reconvene:

Mr. Currin moved, and the Board voted unanimously, that only public business matters lawfully exempted from open meeting requirements and only such public business matters as were identified in the motion for closed session were heard, discussed or considered during the closed session.

Mr. Szalwinski moved, and the Board voted unanimously, to accept the findings of fact and conclusions of law as proposed by Ms. Wingfield.

Mr. Szalwinski moved, and the Board voted 7 to 2, to grant Mr. Gilleland's petition for the reinstatement of his license and that his license be placed on probation with terms and conditions. (Attachment 2)

ADJOURN:

With all business concluded, the meeting adjourned at 4:00 p.m.

Heather L. Womack, Administrative Assistant

Donna M. Lee, Administrative Assistant

Elizabeth Scott Russell
Executive Director

Michael C. Maloney, Chairman

Date

NAME	CITY	STATE	DOB	ENTRY DATE OF CONSENT ORDER/ORDER	VIOLATION	SANCTION
Adisu, Tamiru W.	Alexandria	VA	12/21/1961	March 14, 2002	dispensing & misbranding error; history with the State of Michigan Board of Pharmacy for failure to properly label three prescriptions with the name of the prescribed drug in addition to the generic equivalent	probation with terms and conditions
Boswell, Albert E., III	Chesterfield	VA	1/18/1964	February 13, 2002	as PIC, the automated data processing system did not always contain the correct initials of the dispensing pharmacist	no sanction
Boyko, Olena C.	Urbanna	VA	6/24/1943	March 7, 2002	continuing pharmacy education violations	\$200 monetary penalty & shall obtain additional c.p.e.
Chamberlain, Billy W.	Cedar Bluff	VA	5/11/1941	January 23, 2002	continuing pharmacy education violations	\$3,600 monetary penalty & shall obtain additional c.p.e.
Couk, Ann M.	Warrenton	VA	4/16/1951	January 23, 2002	continuing pharmacy education violations	accepted submitted additional c.p.e.; submit 15 c.p.e. hours for renewal of license for 2003 and 2004.
Dunlavey, Brenda L.	Ashland	VA	6/30/1949	January 23, 2002	continuing pharmacy education violations	no sanction due to mitigating circumstances
Endres, Russell G., III	Richmond	VA	7/1/1973	February 8, 2002	dispensing & misbranding error	shall obtain additional c.p.e.
Filipour, Fatemeh	Herndon	VA	5/22/1963	February 28, 2002	dispensing & misbranding error	shall obtain additional c.p.e.
Gregores, Peter J.	Madison Heights	VA	6/24/1947	January 23, 2002	continuing pharmacy education violations	no sanction due to mitigating circumstances
Hemingway, Suzanne M.	Glen Allen	VA	9/3/1959	March 1, 2002	dispensing error	shall obtain additional c.p.e.
Limen, Gladys Y.	Hyattsville	VA	1/24/1967	February 13, 2002	failure to comply with terms and conditions of May 3, 2001 Order	shall submit 15 c.p.e. hours for renewal of license for 2003
Maxwell, Robert	Virginia Beach	VA	1/19/1958	March 27, 2002	continuing pharmacy education violations	\$600 monetary penalty & shall obtain additional c.p.e.
May, Stephen L.	Fredericksburg	VA	7/30/1951	February 8, 2002	failure to submit remodeling application to the Board	\$250 monetary penalty
McClanahan, Lisa C.	Richmond	VA	9/19/1965	March 8, 2002	dispensing & misbranding error	shall obtain additional c.p.e.
Morgan, Shane A.	Abingdon	VA	11/13/1963	February 13, 2002	dispensing error	shall obtain additional c.p.e.

NAME	CITY	STATE	DOB	ENTRY DATE OF CONSENT ORDER/ORDER	VIOLATION	SANCTION
Palczynski, Christina M.	Richmond	VA	11/8/1974	February 13, 2002	dispensing & misbranding errors	shall obtain additional c.p.e.
Poole, James F.	Richmond	VA	5/13/1932	February 28, 2002	dispensing & misbranding error	shall obtain additional c.p.e.
Reeves, Susan C.	Fairfax Station	VA	9/7/1948	April 22, 2002	dispensing & misbranding error	shall obtain additional c.p.e.
Shapiro, Joseph S.	Charleston	SC	5/17/1937	April 18, 2002	dispensing & misbranding error	shall obtain additional c.p.e.
Stainback, Anthony T.	Virginia Beach	VA	5/17/1961	April 18, 2002	dispensing error	shall obtain additional c.p.e.
Towler, Joseph A.	Mechanicsville	VA	1/1/1938	April 25, 2002	dispensing & misbranding error	shall obtain additional c.p.e.
Towler, Michael T.	Dillwyn	VA	6/21/1947	April 23, 2002	dispensing error	shall obtain additional c.p.e.
Vu, Pauline P.	Centreville	VA	2/9/1962	January 23, 2002	dispensing & misbranding error	reprimand
Willis, Cynthia	Herndon	VA	2/28/1958	February 13, 2002	application for transfer of pharmaceutical licensure; voluntarily surrendered license in Louisiana for indefinite suspension; placed on probation due to unprofessional conduct, violating or attempting to violate pharmacy laws; and dispensing controlled substances without a valid prescription; modification removed all remaining periods of probation and/or suspension	permitted to sit for Drug Law Examination; upon licensure, issued a license with certain terms and conditions

John B. Gilleland, III
Formal Hearing
April 29, 2002

Findings of Fact:

1. John B. Gilleland, III, previously held license number 0202-006039 issued by the Board of Pharmacy to practice pharmacy in Virginia. Mr. Gilleland's license was mandatorily suspended by Order of the Department of Health Professions entered March 27, 2001, due to his felony conviction on or about March 22, 2001, in the United States District Court, Eastern District of Virginia, of one (1) felony count of maintaining a building for the purpose of distribution of cocaine.
2. By his own admission, from 1980 until December 2000, Mr. Gilleland used cocaine and reported a habit of about a gram per week. Further, by his own admission, Mr. Gilleland has abused alcohol.
3. On or about December 7, 2000, Mr. Gilleland entered into a Participation Contract with the Health Practitioners' Intervention Program, and a Recovery Monitoring Contract on March 6, 2001, as revised through April 29, 2002.
4. Burke Morton testified on behalf of Mr. Gilleland. He has known Mr. Gilleland since January 2001 and currently serves as his Alcoholics Anonymous sponsor. Mr. Morton testified that Mr. Gilleland is actively participating in the 12-step program.
5. Nancy Hickman, Case Manager, Virginia Monitoring, Inc., testified that Mr. Gilleland is in compliance with the terms of his recovery monitoring contract.
6. Patricia Pade, M.D., Medical Director, Virginia Monitoring, Inc., testified that Mr. Gilleland is compliant with the terms of his Recovery Monitoring Contract and that she has seen a "remarkable difference" in Mr. Gilleland and his commitment to his recovery since first meeting him eight or nine months ago.
7. Johnny Moore, peer monitor, testified on behalf of Mr. Gilleland and stated that as long as Mr. Gilleland complies with his Virginia Monitoring contract, he will be safe to practice pharmacy.
8. Scott Germaine, Pharmacist-In-Charge, CVS/pharmacy #1530, Richmond, Virginia, testified that he believed that Mr. Gilleland was "honest at heart" and that he would be comfortable re-hiring him, provided he stays in Virginia Monitoring.
9. Mr. Gilleland's brother, Jerry Gilleland, testified that Mr. Gilleland's relationship with his extended family has improved since his recovery.
10. Mr. Gilleland reported a sobriety date of December 7, 2000.
11. Mr. Gilleland testified that he remains on Federal probation and he is restricted from traveling outside the eastern part of Virginia, and that although he remains subject to urine drug screens, he has not been required to submit to a screen by his Federal probation officer since the summer of 2001.
12. Mr. Gilleland stated that during the period prior to the end of his use in August 2000, he was a "heavy user" of cocaine and used 2-3 times per week, using one-half to one gram of cocaine each time. Mr. Gilleland also stated that he consumed up to five (5) alcoholic beverages each day.

Conclusions of Law

The Board concluded that John B. Gilleland, III, had violated 54.1-3316(4) and (7) of the Code of Virginia (1950), as amended. Further, pursuant to § 54.1-2409 of the Code, Mr. Gilleland's application for reinstatement was properly before the Board, and the Board may order reinstatement of his license upon such terms and conditions as it deems appropriate by an affirmative vote of three-fourths of the members of the Board.

Order

The Board ordered that the license of John B. Gilleland, III, be REINSTATED and that he be placed on PROBATION subject to the following terms and conditions:

1. Mr. Gilleland shall comply with all terms and conditions for the period specified by the Health Practitioners' Intervention Program ("HPIP").
2. Any violation of the terms and conditions of the HPIP or any of the terms and conditions stated in this Order shall be reason for revoking the license of Mr. Gilleland, and an administrative proceeding shall be held to decide whether Mr. Gilleland's license shall be revoked. Mr. Gilleland shall be noticed to appear at an administrative hearing at such time as the Board is notified that:
 - a. He is not in compliance with the terms and conditions specified by the HPIP, or has been terminated from participation in the HPIP;

- b. He has successfully completed the above-referenced period of participation in the HPIP. Upon receipt of evidence of Mr. Gilleland's participation in and compliance with the HPIP, the Committee, at its discretion, may waive Mr. Gilleland's appearance before the Committee, relating to the HPIP contract only, and conduct an administrative review of this matter; or
 - c. Any violation of the other terms and conditions of this Order.
3. The HPIP shall report to the Board within ten (10) days, any positive drug screen or any violation of the Recovery Monitoring Contract.
 4. Mr. Gilleland shall not be pharmacist-in-charge for the first two (2) years of employment as a pharmacist.
 5. Mr. Gilleland shall provide written notification to the pharmacist-in-charge ("PIC") that his license is on probation and provide the PIC with a copy of this Order in its entirety. Within ten days of notifying the PIC of his probation, he shall forward to the HPIP a copy of the written notification he gave the PIC. Should Mr. Gilleland be the designated PIC, this information shall be given to the pharmacy owner/employer.