

Report To

The Mississippi Legislature



**Follow-Up Review of the 1992 Investigative Review  
of the State Board of Pharmacy**

December 16, 1992

PEER conducted a follow-up of its February 3, 1992, review of the State Board of Pharmacy and determined that the board has made significant progress in correcting deficiencies cited in the initial report.

The Board of Pharmacy has established a uniform penalty policy and a functioning Investigations Review Committee to hear reports on ongoing and potential investigations, as required by Senate Bill 2335 (1992 session). The board has improved its internal custody, control, and reporting procedures for the staff's destruction of excess or unwanted controlled substances sent in by registrants. In an effort to improve the effectiveness of its compliance agents, the Board of Pharmacy has compiled a "how to" inspection/investigative manual and provided basic firearms training.

**The PEER Committee**

## **PEER: THE MISSISSIPPI LEGISLATURE'S OVERSIGHT AGENCY**

The Mississippi Legislature created the Joint Legislative Committee on Performance Evaluation and Expenditure Review (PEER Committee) by statute in 1973. A standing joint committee, the PEER Committee is composed of five members of the House of Representatives appointed by the Speaker and five members of the Senate appointed by the Lieutenant Governor. Appointments are made for four-year terms with one Senator and one Representative appointed from each of the U. S. Congressional Districts. Committee officers are elected by the membership with officers alternating annually between the two houses. All Committee actions by statute require a majority vote of three Representatives and three Senators voting in the affirmative.

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The Committee assigns top priority to written requests from individual legislators and legislative committees. The Committee also considers PEER staff proposals and written requests from state officials and others.

**Follow-Up Review of the 1992 Investigative Review  
of the State Board of Pharmacy**

**December 16, 1992**

**The PEER Committee  
Mississippi Legislature**

The Mississippi Legislature  
**Joint Committee on Performance Evaluation and Expenditure Review**  
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December 16, 1992

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HONORABLE TIM FORD, SPEAKER OF THE HOUSE  
MEMBERS OF THE MISSISSIPPI STATE LEGISLATURE

At its meeting of December 16, 1992, the PEER Committee authorized release of the report entitled **Follow-Up Review of the 1992 Investigative Review of the State Board of Pharmacy.**

A handwritten signature in cursive script that reads "Bill Canon".

Senator Bill Canon, Chairman

**This report does not recommend increased  
funding or additional staff.**

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## Follow-Up Review of the 1992 Investigative Review of the State Board of Pharmacy

December 16, 1992

### *Executive Summary*

#### **Introduction**

The purpose of this follow-up was to review the steps taken or planned by the Board of Pharmacy to correct the weaknesses noted in PEER's earlier report *Investigative Review of the State Board of Pharmacy* (February 3, 1992).

Subsequent to PEER's initial report, the Legislature amended the Mississippi Pharmacy Practice Act through Senate Bill 2335, which became effective upon Governor Kirk Fordice's signature on May 14, 1992. This follow-up also reviews steps taken by the Board of Pharmacy to implement provisions of Senate Bill 2335.

#### **Conclusions**

Despite a dispute regarding board membership and changes within agency management and staff, the Board of Pharmacy has taken positive steps to address both the PEER recommendations and Senate Bill 2335 provisions.

To date, the Board of Pharmacy has:

- established a functioning Investigations Review Committee, composed of two board members and two staff employees, to hear reports on ongoing and potential investigations. The committee effectively limits the Executive Director's authority to institute formal charges against a pharmacist unilaterally;
- developed a uniform penalty policy with minimum and maximum ranges of penalties for violation of sixty-six of the board's regulations;
- compiled a "how to" manual to ensure the uniform conduct of routine inspections and investigations;

- improved its internal custody, control, and reporting procedures for the staff's destruction of excess or unwanted controlled substances sent in by registrants;
- provided pre-presentation approval for all continuing education program requests since February 1992; and,
- provided formal firearms training to the board's three compliance agents.

Although the Board of Pharmacy has made significant progress in implementing PEER recommendations and SB 2335 provisions, the PEER Committee continues to have concerns regarding certain areas of the board's operation. For example, the role of the Investigations Review Committee has not been clearly defined relative to the staff's conduct of criminal investigations. Also, the breadth of the board's new penalty policy is such that it could result in inequitable imposition of penalties. The board also has not disseminated its new "how to" inspection/investigation procedures to compliance agents for their use. Although not required to do so by law, the Pharmacy Board continues to receive and destroy a significant amount of unwanted controlled substances. Finally, the board has not provided its compliance agents with basic law enforcement training, even though they have statutory authority to make arrests.

Given time, the Pharmacy Board should continue making progress in improving its operations as mandated by SB 2335 and recommended by PEER. During his brief tenure, the board's new Executive Director, Ben Rogers, has improved the agency's operations by streamlining administrative and recordkeeping procedures, obtaining additional equipment and supplies for compliance agents, and cooperating with other state and federal agencies to regulate the pharmacy profession more effectively. Pharmacy Board staff report to PEER that the board itself now acts in a diligent and responsible manner as it conducts each administrative hearing.



## Recommendations

1. The Pharmacy Board should immediately define the role of its Investigations Review Committee (IRC) relative to the conduct of criminal investigations by board compliance agents. The board should also institute procedural controls to ensure that the board's Executive Director does not have unilateral authority to declare investigations as criminal and circumvent the IRC's authority to review all potential and ongoing investigations.
2. The Pharmacy Board should immediately review and revise its uniform penalty policy to provide more definition and specificity for the ranges of penalties. The board should also review its penalty policy in approximately one year to determine whether further revisions should be made based on historical data of penalties imposed by the board.
3. The Pharmacy Board should require its Executive Director to compile on a regular basis an index of cases heard by the board and penalties imposed in such cases. In an effort to ensure equitable imposition of penalties, the board should utilize such an index, in conjunction with the uniform penalty policy, to determine penalties for all cases heard.
4. The Pharmacy Board should require its Executive Director to update the board's investigative unit procedures manual immediately to include the "how to" inspection/investigation steps recently developed by board staff. Once the investigative manual is revised, the Executive Director should ensure that each compliance agent is provided with a copy of the manual and trained periodically in its contents to ensure uniform conduct of inspections and investigations.
5. The Pharmacy Board should reevaluate its policy of receiving and destroying unwanted controlled substances on behalf of registrants. If the board deems that such a service should continue to be offered, it should investigate the feasibility of obtaining its own incinerator so that unwanted controlled substances could be destroyed immediately upon receipt in the board offices. The board should also seek legislative authority to establish a fee structure so the board staff could charge registrants for destruction services.
6. The Pharmacy Board should seek an official Attorney General's opinion interpreting MISS. CODE ANN. Section 73-21-79 which allows Pharmacy Board compliance agents to work part-time in a position which does not conflict with their board duties. In addition, the Pharmacy Board should review the contract of the compliance agent who current serves as a consulting pharmacist for an institutional pharmacy regulated by the board to ensure that there is no potential for a conflict of interest.
7. The Pharmacy Board should require its Executive Director to enroll the board's compliance agents immediately in a basic law enforcement training course, as required by Senate Bill 2335.

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# **Follow-Up Review of the 1992 Investigative Review of the State Board of Pharmacy**

## ***Introduction***

### **Authority**

At its meeting of July 22, 1992, the PEER Committee began a follow-up of its initial 1992 investigative review of the State Board of Pharmacy. The Committee conducted the follow-up review pursuant to MISS. CODE ANN. Section 5-3-57 (1972).

### **Purpose**

The purpose of the follow-up was to review the steps taken or planned by the Board of Pharmacy to correct the weaknesses noted in PEER's earlier report **Investigative Review of the State Board of Pharmacy** (February 3, 1992).

Another purpose of the follow-up was to review steps taken by the Board of Pharmacy to implement provisions of Senate Bill 2335, enacted during the 1992 legislative session, subsequent to PEER's initial 1992 report.

### **Methodology**

PEER's methodology consisted of interviews and analysis of information and documents supplied by the Board of Pharmacy staff. PEER verified the staff's information through on-site records reviews.

### **Overview**

Despite a dispute regarding board membership and changes within agency management and staff, the Board of Pharmacy has taken positive steps to address both the PEER recommendations and Senate Bill 2335 provisions.

To date, the Board of Pharmacy has:

- established a functioning Investigations Review Committee (IRC), composed of two board members and two staff employees, to hear reports on ongoing and potential investigations. The committee effectively limits the Executive Director's authority to institute formal charges against a pharmacist unilaterally ;

- developed a uniform penalty policy with minimum and maximum ranges of penalties for violation of sixty-six of the board's regulations;
- compiled a "how to" manual to ensure the uniform conduct of routine inspections and investigations;
- improved its internal custody, control, and reporting procedures for the staff's destruction of excess or unwanted controlled substances sent in by registrants;
- provided pre-presentation approval for all continuing education program requests since February 1992; and,
- provided formal firearms training to the board's three compliance agents.

Although the Board of Pharmacy has made significant progress in implementing PEER recommendations and SB 2335 provisions, the PEER Committee continues to have concerns regarding certain areas of the board's operation. For example, the role of the Investigations Review Committee has not been clearly defined relative to the staff's conduct of criminal investigations. Also, the breadth of the board's new penalty policy is such that it could result in inequitable imposition of penalties. The board also has not disseminated its new "how to" inspection/investigation procedures to compliance agents for their use. Although not required to do so by law, the Pharmacy Board continues to receive and destroy a significant amount of unwanted controlled substances. Finally, the board has not provided its compliance agents with basic law enforcement training, even though they have statutory authority to make arrests.

Given time, the Pharmacy Board should continue making progress in improving its operations as mandated by SB 2335 and recommended by PEER. During his brief tenure, the board's new Executive Director, Ben Rogers, has improved the agency's operations by streamlining administrative and recordkeeping procedures, obtaining additional equipment and supplies for compliance agents, and cooperating with other state and federal agencies to regulate the pharmacy profession more effectively. Pharmacy Board staff report to PEER that the board itself now acts in a diligent and responsible manner as it conducts each administrative hearing.

## ***Explanation of Events Concerning the Board of Pharmacy***

MISS. CODE ANN. Section 73-21-75 (1972) creates a seven-member state Board of Pharmacy, with each member appointed by the Governor for a five-year term. The Board of Pharmacy's primary duty is to enforce the provisions of the Mississippi Pharmacy Practice Act (MISS. CODE ANN. Section 73-21-71 et. seq.) through routine inspections/special investigations and board adjudicative hearings.

### **Passage of SB 2335**

During the 1992 session, the Legislature amended the Mississippi Pharmacy Practice Act through the enactment of Senate Bill 2335, which became effective upon Governor Kirk Fordice's signature on May 14, 1992. (See Exhibit 1, page 4, for a list of the major provisions of SB 2335.) Section 1 of SB 2335 amended MISS. CODE ANN. Section 73-21-75 to provide that "*any person appointed to the board shall be limited to one (1) full term of office during any fifteen-year period, including any member serving on the date of passage of this act.*" Prior to the passage of SB 2335, Section 73-21-75 simply limited Pharmacy Board members to two consecutive terms of office. At the time of SB 2335's passage, three Pharmacy Board members were serving their second consecutive terms: Jean Ratliff, representing the First Congressional District; William Skinner, representing the Fourth Congressional District; and Willis Henderson, representing at-large institutional pharmacies. Therefore, these members exceeded the one full term limitation imposed by SB 2335.

### **Governor's Appointment of New Pharmacy Board Members**

Subsequent to signing SB 2335, Governor Fordice appointed three new Pharmacy Board members to replace those which had, in effect, been removed by SB 2335's amendments to the Pharmacy Practice Act. On June 22, 1992, Governor Fordice appointed Leland McDivitt to represent the First Congressional District; Jackie Thompson to represent the Fourth Congressional District; and James Hartzog to represent at-large institutional pharmacies, for the unexpired terms of Ratliff, Skinner, and Henderson, respectively.

### **Attorney General's Interpretation of SB 2335**

On May 15, 1992, Jean Ratliff, one of the board members removed by SB 2335, requested an official Attorney General's opinion regarding the status of the three board members affected by SB 2335. On June 24, 1992, two days after the Governor's appointment of three new board members,

## Exhibit 1

### Major Provisions of Senate Bill 2335 As Signed by the Governor on May 14, 1992

<u>Amended Section</u>	<u>Amended Language</u>
MISS. CODE ANN. Section 73-21-75	Limits membership on the Pharmacy Board to one full term during any fifteen-year period and requires board members to be engaged full-time as pharmacists
MISS. CODE ANN. Section 73-21-77	Requires members of the board to take oaths of office
MISS. CODE ANN. Section 73-21-79	Pharmacist-investigators employed by the board may have other part-time employment, provided that they do not accept employment that would cause conflicts of interest in their pharmacist-investigator duties
MISS. CODE ANN. Section 73-21-97	Authorizes disciplinary action against offending pharmacists in lieu of license suspension or revocation
MISS. CODE ANN. Section 73-21-99	Creates the Investigations Review Committee and requires that the board's investigators make monthly status reports to the committee  Deletes the Executive Director's authority to issue board charges independently.
MISS. CODE ANN. Section 73-21-103	Provides that monetary penalties collected by the board from offending pharmacists be deposited into the State General Fund. Requires the board to establish a uniform penalty schedule for violations of board regulations and laws
MISS. CODE ANN. Section 45-6-3	Includes Pharmacy Board investigators and compliance agents within the scope of the definition of "law enforcement officer"

SOURCE: PEER analysis of Senate Bill 2335

the Attorney General issued an opinion which concluded that SB 2335 "continued" the Pharmacy Board as a reconstituted body. As a result, those board members who were sitting on the board at the time of passage of SB 2335 were allowed to continue serving the remainder of their respective terms. (See the Appendix, page 27, for the opinion.)

### **Disagreement Over Board Membership**

The Pharmacy Board conducted its first meeting subsequent to the passage of SB 2335 on July 16, 1992, at which the three members who had been removed by SB 2335 and the new members who had been appointed by Governor Fordice were present. The six board members in question disagreed as to who had legal authority to sit as board members during the meeting. After consulting with the board's legal counsel, the six members whose membership was in dispute agreed to end their involvement in the July meeting and allow the four members whose positions were not affected by SB 2335 to conduct the meeting. (The four members constituted a board majority and could conduct business.) The board also agreed for its legal counsel to request permission from the Attorney General to pursue an action for declaratory judgment to resolve the membership issue. (The board's legal counsel did not pursue the declaratory judgment.)

In late August, Willis Henderson, Jean Ratliff, and William Skinner resigned as Pharmacy Board members. Governor Fordice, on August 31, 1992, reappointed McDivitt, Thompson, and Hartzog to serve the remainder of the terms of the three board members who had resigned. The board's president, Claudette Waits, whose position on the board was not in dispute, also resigned on August 20.

### **Effect of Board Membership Dispute on Agency Operations**

The board members' disagreement as to who had legal authority to sit on the Pharmacy Board stymied operation of the board and agency, as illustrated below:

- The board's Executive Director, Harold Stringer, resigned on July 7, 1992, effective on August 31. At the board's request Stringer continued serving until the board's new Executive Director, Bennie Rogers, assumed his duties on November 1, 1992. The board's two clerical employees also terminated their employment with the board during the dispute.
- For the period May through August, 1992, the board did not conduct any administrative hearings, even though compliance agents were completing cases for presentation to the board.

- The board did not complete implementation of some PEER recommendations and SB 2335 requirements until after resolution of the board member dispute. To date, some actions have only partially been implemented due to the dispute.

## ***Details of Actions Taken on PEER Recommendations and SB 2335 Provisions Concerning the Pharmacy Board***

PEER's initial 1992 report **Investigative Review of the State Board of Pharmacy** contained ten recommendations for correcting operational weaknesses. Senate Bill 2335, passed by the Legislature subsequent to PEER's review, contained at least six major provisions which substantially amended the state's Pharmacy Practice Act.

The Board of Pharmacy (hereafter referred to as "Pharmacy Board") staff has taken positive steps to address PEER's ten recommendations and SB 2335's provisions. However, weaknesses continue to exist in the Pharmacy Board's implementation of certain recommendations, as detailed in the following sections. Exhibit 2, page 8, shows the initial 1992 PEER findings, recommendations, and subsequent actions taken by the Pharmacy Board.

### **Executive Director's Responsibility For Issuing Board Charges**

During its initial 1992 review, PEER determined that the Pharmacy Board, through custom and practice, made its Executive Director totally responsible for the issuance of official board charges. PEER recommended that the Legislature amend MISS. CODE ANN. Section 73-21-99 (1972) to require the board's Executive Director and compliance agents to provide inspection/investigation status reports during the board's monthly meetings. Such reports would limit the Executive Director's discretionary authority to decide which cases would result in formal charges and eventual presentation to the board. As illustrated in Exhibit 2, page 8, the Legislature, through SB 2335, deleted the Executive Director's authority to institute formal charges and created an Investigations Review Committee, composed of two board members, the Executive Director, and the board's counsel, to receive monthly status reports from the board's compliance agents regarding all ongoing investigations and any routine inspections which could give rise to a complaint.

Upon follow-up, PEER found that the Pharmacy Board has complied with SB 2335 by establishing an Investigations Review Committee (IRC), as illustrated in Exhibit 3, page 10. Currently, the board president appoints two other board members to serve on a rotating basis with the Executive Director and board counsel on the IRC. Pharmacy Board staff have utilized the IRC to make final decisions regarding formal hearings for completed investigations and to provide direction on incomplete investigations. Pharmacy Board minutes for July through November 1992 confirm that board members who served on the IRC routinely recused themselves when the board conducted formal hearings on investigations which they had considered as IRC members.



## Exhibit 2

### PEER February 1992 Report Findings, Recommendations, and Subsequent Actions Instituted by the State Board of Pharmacy

#### 1992 FINDING

The Pharmacy Board's practice of making its Executive Director totally responsible for the issuance of official board charges without written guidelines allows for inequitable enforcement of regulations.

The Pharmacy Board's discretionary authority and failure to review violation and fine patterns in determining penalties for noncompliant pharmacists can result in inequitable penalties.

The Pharmacy Board's failure to train compliance agents in inspection and investigative techniques results in a lack of uniform treatment of pharmacists under review.

The Pharmacy Board has lax controls over and no written policies for the staff's destruction of excess or unwanted narcotics in the board's custody.

#### RECOMMENDATIONS

The Legislature should amend MISS. CODE ANN. Section 73-21-99 (1972) to require the board's Executive Director and compliance agents to provide inspection/investigation status reports during the board's monthly meetings.

The Legislature should amend MISS. CODE ANN. Section 73-21-103 (1972) to require the Pharmacy Board to develop a uniform penalty policy which can be applied to violations of state laws and regulations.

The Pharmacy Board should officially adopt investigation standards to be utilized by compliance agents. In addition, the Executive Director should develop and implement a formal training program for compliance agents.

The Pharmacy Board should immediately develop internal custody, control and reporting procedures for the staff's destruction of excess or unwanted controlled substances. A controlled substances destruction report should be included on each month's agenda.

#### ACTION TAKEN

Pharmacy Board established the Investigations Review Committee, consisting of two board members and the Executive Director, to make final decisions regarding formal hearings for completed investigations and to provide direction on uncompleted investigations.

Pharmacy Board developed a uniform policy with minimum and maximum ranges for sixty-six board regulations. The board has consistently applied the penalty policy since its adoption.

Pharmacy Board developed thorough and complete "how to" procedures for conducting inspections. Executive Director is required to provide staff development/in-service training at least yearly for compliance agents.

Pharmacy Board has developed written internal custody, control and reporting procedures for the staff's destruction of excess or unwanted controlled substances. Prior month's destruction sheets made available to the board at monthly meetings.

#### STATUS OF AGENCY'S PROGRESS

The Investigations Review Committee is not made aware of criminal investigations until indictments have been obtained. The Executive Director handles these investigations in a confidential manner with local/state/federal officials.

The breadth of the board's uniform penalty policy could result in inequitable imposition of penalties. In at least one case, prior to the adoption of the penalty policy, the board varied from penalties imposed in the past by dropping the charges against a noncompliant pharmacist.

The success of new inspection procedures may be limited because the previous Executive Director had not made the agents aware of their existence and ensured their uniform use in all inspections.

The board continues to handle and destroy a significant amount of unwanted controlled substances. Although the board staff attempts to keep unwanted controlled substances for only ten days, some substances remain in the board's control for as long as thirty days.

SOURCE: PEER analysis of Pharmacy Board actions.

Exhibit 2 (Continued)

1992 FINDING

From September 1990 to May 1991, the Pharmacy Board violated its regulations by approving at least four continuing education programs after their presentation, thereby compromising the consumer protection provided to the public.

The board's former Executive Director, H. W. Holleman, violated MISS. CODE ANN. Section 73-21-79 (1972) by working as a consulting pharmacist in an institutional pharmacy regulated by the board.

The Pharmacy Board's appointment of its new Executive Director, Harold Stringer, violates MISS. CODE ANN. Section 73-21-79 (1972) because Stringer has an indirect interest in a pharmacy.

Pharmacy Board compliance agents carry firearms, for which they do not receive formal training.

RECOMMENDATIONS

The Pharmacy Board's regulations should continue to require prior approval of continuing education programs and the board should strictly adhere to the requirement with no exceptions.

No recommendation made

The board should reconsider its hiring of Harold Stringer as Executive Director. The board should ensure its Executive Director has no financial, employment, or other interest in pharmacies for which the board has regulatory authority.

The board should instruct its compliance agents to cease carrying firearms. If the board will not do this, MISS. CODE ANN. Section 45-6-3 (1972) should be amended to include Pharmacy Board compliance agents in the definition of law enforcement officers.

ACTION TAKEN

Pharmacy Board regulations continue to require the board's pre-approval of all continuing education programs.

Non-applicable

Pharmacy Board approved a conflict of interest policy, developed by Mr. Stringer, which requires the Executive Director to recuse himself from any matter involving a complaint against a family member or their employer.

The Legislature amended MISS. CODE ANN. Section 45-6-3 (1972) to require Pharmacy Board compliance agents to be trained officially as law enforcement officers.

STATUS OF AGENCY'S PROGRESS

For the period February 13, 1992, through November 19, 1992, the Pharmacy Board considered thirty-nine continuing education programs, all of which were approved prior to their presentation.

Non-applicable

Harold Stringer terminated his employment with the Pharmacy Board on November 30, 1992.

Compliance agents received firearms training from the Law Enforcement Officers' Training Academy in April 1992. Agents have not received basic law enforcement training.

### Exhibit 3

#### Board of Pharmacy Investigations Review Committee Membership July through November, 1992

July 16, 1992

Clarence Dubose, Board Member  
Bob Patrick, Board Member  
Harold Stringer, Executive Director

September 10, 1992

Clarence Dubose, Board Member  
Harold Stringer, Executive Director  
Jackie Thompson, Board Member  
Ingrid Williams, Board Counsel

October 8, 1992

Dan Lomax, Board Member  
Leland McDivitt, Board Member  
Roy Perkins, Board Counsel  
Harold Stringer, Executive Director

November 19, 1992

Dan Lomax, Board Member  
Leland McDivitt, Board Member  
Roy Perkins, Board Counsel  
Bennie Rogers, Executive Director

NOTE: The Investigations Review Committee, consisting of two board members (serving on a rotating basis), the Executive Director, and the board counsel, makes final decisions regarding formal hearings for completed investigations and provides direction on uncompleted investigations. Due to uncertainty of the Pharmacy Board's membership, the Investigations Review Committee did not meet during August 1992.

SOURCE: Pharmacy Board records

With the creation of the Investigations Review Committee, the Legislature's intent to limit the Pharmacy Board Executive Director's discretionary authority to institute formal charges against pharmacists has been accomplished. Pharmacy Board compliance agents told PEER that their investigative cases completed since July 1, 1992, were first heard by the IRC before a formal hearing notice was issued by the Executive Director. Neither of the board's two Executive Directors since July 1 has unilaterally instituted formal charges against a pharmacist.

Although the Pharmacy Board has fully complied with SB 2335 by creating the IRC, PEER continues to have concerns, as noted below.

- *The IRC's role relative to criminal investigations is not clear.* The goal of the board's current Executive Director is to handle those investigations with criminal prosecution potential as criminal investigations. Such investigations would be conducted in a confidential manner and would require the cooperation of Pharmacy Board compliance agents and local/state/federal law enforcement and prosecution officials. The Executive Director told PEER that the IRC would not have knowledge of criminal investigations until indictments had been obtained. While PEER has no indication that the board's current Executive Director has categorized investigations as criminal in an effort to circumvent the IRC's responsibilities, the potential for such exists.

PEER agrees that the Pharmacy Board staff should aggressively attempt to enforce compliance with state pharmacy laws and regulations with every administrative and prosecutorial means available. However, the Legislature, through SB 2335, intended for the Investigations Review Committee to be made aware of "*all on-going investigations and any routine inspections which may give rise to the filing of a complaint.*" As presently written, the language of SB 2335 does not give the Executive Director authority to withhold from the IRC information regarding any investigations, including those considered to be criminal. Incumbent with the Executive Director's responsibility to keep the IRC informed regarding all investigations is the IRC members' responsibility to keep all investigations confidential, including those considered to be criminal.

## Board of Pharmacy's Discretionary Authority For Developing Penalties

In its initial 1992 review, PEER found that the Pharmacy Board's discretionary authority and failure to review violation and fine patterns in determining penalties for noncompliant pharmacists could result in inequitable penalties. PEER recommended that the Legislature amend MISS. CODE ANN. Section 73-21-103 (1972) to require the Pharmacy Board to develop a uniform penalty policy to be applied to violations of state laws and regulations. PEER recommended that state law require the board to document specifically in its minutes unique violations for which the penalty policy should be deviated. In addition, PEER recommended that the board's Executive Director maintain a file of cases and penalties to serve as future reference for the board in determining penalties for similar cases. As illustrated in Exhibit 2, page 8, the Legislature, through the enactment of SB 2335, amended MISS. CODE ANN. Section 73-21-103 by requiring the board to develop and implement a uniform penalty policy, including a minimum and maximum penalty for any given violation of board regulations and laws governing the practice of pharmacy.

The Pharmacy Board has complied with SB 2335 by establishing a uniform penalty policy, which it unanimously adopted during its meeting of September 10, 1992. The board's policy contains penalty ranges for sixty-six possible violations of pharmacy regulations. Since the penalty policy has been in effect, the Pharmacy Board has conducted nine administrative hearings for alleged non-compliance with board regulations. (See Exhibit 4, page 13, for Pharmacy Board hearings conducted since September 10, 1992.) PEER concludes that all nine hearings resulted in penalties which complied with the board's uniform penalty policy.

Although the Pharmacy Board has complied with SB 2335 by establishing a uniform penalty policy, PEER continues to have concerns, as noted below.

- *The breadth of the board's uniform penalty policy could result in inequitable imposition of penalties.* The Pharmacy Board's uniform penalty policy is expressed in minimum and maximum ranges for sixty-six of the board's regulations. Penalties for forty-five (69%) of these sixty-six regulations range from reprimand or probation to complete revocation of a pharmacist's license. Given the breadth of the penalty ranges, the Pharmacy Board presently has wide latitude to impose penalties which could be inequitable or unfair. For example, in its 1992 report, PEER cited four cases in which the Pharmacy Board had imposed inconsistent charges for similar violations. By applying its current uniform penalty policy, the Pharmacy Board could impose exactly the same

**Exhibit 4**  
**Examples of Penalties Imposed by the Pharmacy**  
**Board Since September 10, 1992**

Board Charges

Board Penalties

**Richard G. King, Jr. (9/10/92)**

- Failure to keep complete and accurate records of the acquisition and disposition of all controlled substances
- Dispensing, selling, bartering, receiving or maintaining drugs which the pharmacist knows, or should know, have been stolen or diverted from the purpose for which they were distributed by a legitimate source

- Suspension of license for thirty days (with fifteen days held in abeyance)
- Probation for five years
- Be an active member of Mississippi Association of Recovering Pharmacists for the duration of the probation
- Submit for urine test within twenty-four hours upon request of Board of Pharmacy
- Obtain Board of Pharmacy's approval for place of employment

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**Joel H. McKinley (9/10/92)**

- Failure to keep complete and accurate records of the acquisition and disposition of all controlled substances

- Suspension of license for six months (with an appearance before the board before resuming employment)
- Probation for five years
- Remain under contract with Caduceus Club of Mississippi (a rehabilitation program for professionals) for the duration of the probation
- Submit for urine test within twenty-four hours upon request of Board of Pharmacy

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**Bobby M. Houston (9/10/92)**

- Misappropriation of prescription drug

- Probation for one year
- Certification of registration suspended for seven days

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**Kenneth V. King (10/8/92)**

- Dispensing of controlled substance without a valid prescription
- Failure to comply with lawful order of the Board
- Failure to keep records and to maintain inventory in accordance with federal law and board regulations

- Suspension of license and controlled substance registration for 180 days, with 165 days held in abeyance
- Probation for one year

SOURCE: Board of Pharmacy minutes. Date of board meeting appears beside defendant's name.

**Exhibit 4 (continued)**

Board Charges

Board Penalties

**James P. Bain (10/8/92)**

- Failure to keep complete and accurate records of the acquisition and disposition of all controlled substances

- Verbal reprimand
- Suggestion to improve internal security, use of drug screens for employees and cooperation with Board of Pharmacy investigators

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**Ralph Johnson (10/8/92)**

- Failure to comply with lawful order of the board

- Suspension of license for thirty days
- Probation for five years with participation in an organized support program during probation
- Submit for random urine and/or serum screens upon request of Board of Pharmacy
- Board of Pharmacy must approve employment
- Automatic revocation of license for any violations during probation

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**Joe McPhail (11/19/92)**

- Failure to keep complete and accurate records of the acquisition and disposition of all controlled substances

- Suspension of license for fifteen days with the entire period held in abeyance
- Probation for two years
- Order to maintain a perpetual inventory of all products containing carisoprodol during probation

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**Patrick L. Bryan (11/19/92)**

- Failure to keep complete and accurate records of the acquisition and disposition of all controlled substances
- Addiction or dependence on alcohol or other habit-forming drugs or the habitual use of narcotics
- Failure to keep records/ maintain inventory in accordance with federal law and board regulations

- Immediate revocation of license. May petition for reinstatement after twelve months and compliance with board-specified provisions.

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**John T. Dressler (11/19/92)**

- Misappropriation of prescription drug

- Suspension of license for three months with the entire period held in abeyance
- Probation for one year
- Order to maintain a perpetual inventory of all products containing carisoprodol during probation

inconsistent penalties that it previously imposed and be in compliance with the uniform penalty policy.

One Pharmacy Board member explained to PEER that the board's uniform penalty policy was designed to be broad so that the board could have the flexibility to impose appropriate penalties for various violations. The board member also stated that the policy was developed hurriedly and only after PEER announced its intentions to perform a follow-up of its 1992 investigative review. Reportedly, the Pharmacy Board plans to revise the uniform penalty policy in the future after sufficient time has passed for the board to establish a "track record" for various penalties imposed.

- *During its September meeting, the Pharmacy Board varied from prior penalty practices by dismissing charges against a reportedly noncompliant pharmacist.* The Investigations Review Committee, during its July 16, 1992, meeting, concluded that sufficient evidence existed to warrant referring an investigation involving R. Brent Smith, a licensed pharmacist, to the Pharmacy Board for an administrative hearing. The board's compliance agents had two sworn affidavits documenting Smith's sale of sample drugs to a customer. [The selling or bartering of a prescription drug sample violates Article V, subsection (G) (5) of the board's regulations.] After receiving testimony and reviewing available evidence, the Pharmacy Board concluded that sufficient evidence did not exist and dismissed the charges against Smith. This action was totally contrary to that taken by the Pharmacy Board on August 8, 1991, against Sammy Chow, a licensed pharmacist, who was charged with the selling or bartering of a prescription drug sample. In Chow's case, the board suspended his license for three months, made him pay a \$1,000 fine, and required him to achieve a passing score on a state pharmacy law test. The Pharmacy Board had no more evidence of Chow's violation than it did of Smith's violation. However, the board resolved each violation in a different manner. (See Exhibit 5, page 16.)

One explanation of the board's actions relative to R. Brent Smith is the fact that the members who heard the case were relatively new and had no collective knowledge of prior penalties imposed by the board. During its meeting of September 10, 1992, the Pharmacy Board instructed its Executive Director to maintain a file on penalties imposed by the board to assist the board in being consistent with penalties.



## Exhibit 5

### Comparison of Board Penalty Inequities

Pharmacist	Board Charges	Background of Charges	Board Penalties
Sammy Chow	Selling or bartering of prescription drug samples	<p>On May 3, 1991, a board compliance agent conducted a routine inspection of Chow's Westgate Drugs in Clarksdale, Mississippi. While conducting the inspection, the agent noted four empty "sample" drug packages in the pharmacy's trash container, which formerly contained eighty Premarin tablets. The pharmacist on duty stated that a local health care professional had traded the drug samples for other prescription medications. The pharmacist told the compliance agent that she had accepted the sample drugs and placed them in the pharmacy's regular stock. Chow stated that he was unaware of the incident and believed the transaction was an isolated incident which had not occurred in the past.</p> <p>ARTICLE V of the Pharmacy Board's regulations prevents the selling or bartering of prescription drug samples.</p>	<ul style="list-style-type: none"><li>• Suspension of Chow's pharmacist license for three months (with last two months held in abeyance)</li><li>• Payment of \$1,000 fine within thirty days of board action</li><li>• Achievement of passing score on a state pharmacy law test taken within thirty days of board action</li></ul>
R. Brent Smith	Selling or bartering of prescription drug samples	<p>On April 30, 1992, a customer ordered a refill of thirty Zantac tablets from Chaney's Pharmacy in Oxford, Mississippi. (R. Brent Smith is the permit holder for Chaney's Pharmacy.) After picking up the refill, the customer returned home without inspecting his medication. Prior to taking the medication that night, the customer discovered that the Chaney's pharmacist had provided him with tablets which had "SAMPLE" imprinted on one side. Smith explained to the Pharmacy Board that his personal physician had provided Zantac sample tablets to him for his personal use. He further stated that the samples had been placed in the pharmacy's regular stock and dispensed.</p> <p>ARTICLE V of the Pharmacy Board's regulations prevents the selling or bartering of prescription drug samples.</p>	Board dismissed charges.

SOURCE: Pharmacy Board files.

## **Lack of Investigative/Inspection Training for Compliance Agents**

During the 1992 review, PEER determined that the Pharmacy Board's failure to train compliance agents in inspection and investigative techniques resulted in a lack of uniform treatment of pharmacists under review. PEER recommended that the Pharmacy Board adopt compliance agent inspection/investigation standards, revise the agency's investigative unit manual, and develop and implement a formal training program for the board's compliance agents.

The Pharmacy Board has developed very thorough and complete "how to" procedures for conducting inspections of retail and institutional pharmacies. According to the board's former Executive Director, the board adopted the procedures during its April 9, 1992, meeting, although the board's official April minutes do not contain a reference to adoption of the procedures.

In addition, the Pharmacy Board has a policy requiring the Executive Director to provide staff development/in-service training at least yearly, or more often if necessary, for compliance agents to ensure uniform enforcement of board regulations. From October 11 through 14, 1992, all three compliance agents attended a training seminar in Huntsville, Alabama, sponsored by the National Association of Boards of Pharmacies. The compliance agents' personnel files contained documentation of the training, as recommended by PEER. The board's current Executive Director told PEER that he intends to locate and offer to the compliance agents as many training opportunities as possible, given the board's limited total budget of approximately \$375,000.

Although the Pharmacy Board has provided documented its inspection procedures and offered limited training to compliance agents, PEER continues to have a concern, as noted below.

- *Lack of agents' input into and adherence with the board's "how to" inspection manual.* The board's compliance agents told PEER that the most senior agent compiled the "how to" inspection manual with little input from the other agents. One compliance agent told PEER that he had never seen the new inspection procedures until being shown them by PEER. While the board's new inspection procedures have potential for ensuring more uniformity in the conduct of inspections, their success may be limited because the board has not made the agents aware of their existence and ensured their uniform use in all inspections.

## **Lax Controls Over Excess Controlled Substances in the Pharmacy Board's Custody**

During its initial 1992 review, PEER found that Pharmacy Board had lax controls over and no written policies for the staff's destruction of excess or unwanted narcotics in the board's custody. PEER recommended that the Pharmacy Board immediately develop internal custody, control, and reporting procedures for the staff's destruction of excess or unwanted controlled substances and report to the board monthly concerning controlled substances destroyed by board staff.

The Pharmacy Board has developed written internal custody, control, and reporting procedures for the staff's destruction of excess or unwanted controlled substances. At each month's board meeting, the Executive Director makes the prior month's destruction sheets available for the board members' inspection. Listed below are several improvements contained in the Pharmacy Board's new controlled substances destruction procedures.

- *Boxes of unwanted controlled substances sent to the Pharmacy Board offices by registrants are logged in and stored unopened in their original containers in a secured area. At the time of PEER's initial 1992 review, board staff opened such containers upon arrival and consolidated their contents into a larger container with little accountability of the contents.*
- *Prior to destruction of the unwanted controlled substances, two compliance agents or a compliance agent and the Executive Director open the sealed containers and compare their contents with the previously received written inventories. The individuals involved initial the log sheet to document the verification process. At the time of PEER's initial 1992 review, only one individual routinely opened containers containing unwanted controlled substances with no witnesses.*
- *Two compliance agents or a compliance agent and the Executive Director transport the containers to be destroyed to the Board of Animal Health incinerator for destruction. Pharmacy Board procedures require the Board of Animal Health employee handling the incineration to sign the Pharmacy Board's log sheet to acknowledge receipt and destruction of the unwanted controlled substances. At the time of PEER's initial 1992 review, only one individual routinely transported unwanted controlled substances to the Board of Animal Health. Also, Board of Animal Health employees were not required to acknowledge receipt of the drugs.*

Although the Pharmacy Board has improved its procedures for destroying unwanted controlled substances, PEER continues to have a concern, as noted below.

- *The Pharmacy Board continues to receive and destroy a significant amount of unwanted controlled substances.* State law does not require the Pharmacy Board to provide destruction services for unwanted controlled substances in the possession of registrants. Historically, the board has done this as a service to registrants.

In response to a PEER inquiry, a representative of the federal Drug Enforcement Administration stated that the Pharmacy Board should attempt to limit the amount of unwanted controlled substances maintained on its premises for eventual destruction. Due to the popularity of the board's controlled substances destruction services among registrants, the only method of controlling the amount of unwanted drugs maintained on premises is to destroy the items on a frequent basis. During the months of August through October 1992, Pharmacy Board staff received and destroyed 180 boxes containing thousands of dosage units of unwanted controlled substances, such as Dilaudid, topical cocaine, Demerol, and Morphine. Although the board staff attempts to keep unwanted controlled substances for only ten days, some of the unwanted controlled substances remained in the Pharmacy Board's control for as long as thirty days.

#### **Board of Pharmacy's Post-Approval of Continuing Education Programs**

During its initial 1992 review, PEER determined that the Pharmacy Board violated its regulations on at least four occasions by approving continuing education programs which had already been presented, thereby possibly compromising the consumer protection value of the programs. PEER recommended that the Pharmacy Board's regulations continue to require prior approval of continuing education programs, with strict adherence by the board.

The Pharmacy Board's regulations continue to require the board's pre-approval of all continuing education programs. For the period February 13, 1992, through November 19, 1992, the Pharmacy Board considered thirty-nine continuing education programs, all of which were approved prior to their presentation.

## Former Executive Director's Work as a Consulting Pharmacist

During 1991 field work for its initial 1992 review, PEER found that H. W. Holleman, the Pharmacy Board's former Executive Director, violated MISS. CODE ANN. Section 73-21-79 (1972) by working as a consulting pharmacist in an institutional pharmacy regulated by the board. Because Holleman had discontinued his part-time arrangement with Simpson General Hospital prior to the time of the review, PEER did not make a recommendation relative to this matter. Holleman retired as Executive Director effective December 31, 1991.

Upon follow-up, PEER determined that another potential conflict of interest exists, as detailed below.

- *One of the board's compliance agents has part-time employment as a consulting pharmacist for a nursing home regulated by the board.* Howard Grantham is employed by the Pharmacy Board as a compliance agent for northeast Mississippi. Grantham told PEER that he has recently obtained employment as a consulting pharmacist for a nursing home in Laurel, Mississippi, and works approximately two days each month. At the time of PEER's interview, the Pharmacy Board had not been made aware of or approved Grantham's part-time employment.

SB 2335 amended MISS. CODE ANN. 73-21-79 to state that *"any pharmacist-investigator employed by the board may have other part-time employment, provided that he shall not accept any employment that would cause a conflict of interest in his pharmacist-investigator duties."* On November 2, 1992, the board developed its own guidelines for supplementary employment of board compliance agents.

While Grantham's part-time employment may be deemed to be in compliance with Section 73-21-79, Grantham's general duties as a consulting pharmacist could conflict with his compliance agent duties, even though he is not directly responsible for inspecting the nursing home pharmacy at which he is employed part-time. While Grantham's employment could provide positive benefits to the nursing home by ensuring its full compliance with all board regulations, it could be detrimental to the Pharmacy Board if noncompliant conditions were ignored or camouflaged.

While PEER has no evidence that Grantham's part-time employment has impaired the Pharmacy Board's regulation of the nursing home pharmacy at which he is employed, the potential for such exists.

### **Harold Stringer's Appointment as Executive Director Violated State Law**

In 1992, PEER concluded that the Pharmacy Board's appointment of Harold Stringer as its new Executive Director violated MISS. CODE ANN. Section 73-21-79 (1972) because Stringer had an indirect interest in a pharmacy. PEER recommended that the Pharmacy Board reconsider the hiring of Harold Stringer as Executive Director in light of applicable state law. The Committee also recommended that the board ensure that its Executive Director has no financial, employment, or other interest in pharmacies for which the board has regulatory responsibilities.

Harold Stringer's appointment as Executive Director became effective on January 1, 1992. In an effort to assist Stringer in dealing with the pharmacy at which his wife was employed, the Pharmacy Board, on January 9, 1992, approved a conflict of interest policy statement developed by Stringer, as presented below.

*In the employment activities of the Executive Director, it shall be the policy of the Mississippi State Board of Pharmacy to avoid conflict of interest or any activity having the appearance of conflict of interest.*

*In the event the Executive Director has an immediate family member practicing pharmacy in the State of Mississippi, he/she shall be recused from any involvement in any activity resulting from a complaint against, or the investigation of, the family member or their employer.*

*The Agent involved in the investigation of such a case shall report directly to the President of the Board, thus bypassing the Executive Director.*

*In such a case, the President or his/her designee will perform those duties ordinarily performed by the Executive Director and details of the case will not be discussed with the Executive Director at any phase.*

*The person performing the duties of the Executive Director will make those decisions relative to the case which are normally made by the Executive Director.*

PEER has no evidence to indicate that Stringer's indirect interest in a pharmacy regulated by the board affected his daily decisions or actions.

Harold Stringer submitted his resignation as Executive Director on July 7, effective August 31, 1992. At the board's request, Stringer continued serving as Executive Director until the board could employ a new Executive Director. Stringer officially terminated his employment with the Pharmacy Board on November 30, 1992. The board's conflict of interest policy presently remains in effect for the current Executive Director, Ben Rogers; Mr. Rogers does not have any immediate family member employed as a pharmacist and does not have a financial interest in a pharmacy.

### **Lack of Firearms Training for Compliance Agents**

During its initial 1992 review, PEER determined that the Pharmacy Board's compliance agents carry board-issued firearms, for which they did not receive formal training. PEER recommended that either the Legislature include compliance agents within the statutory definition of "law enforcement officer" and require their formal training or that the board make arrangements for its compliance agents to receive applicable firearms training. As illustrated in Exhibit 1, page 4, the Legislature, through the enactment of SB 2335, amended MISS. CODE ANN. Section 45-6-3 (1972) to include Pharmacy Board compliance agents within the definition of "law enforcement officer," requiring that the agents be officially trained.

The Pharmacy Board's compliance agents received firearms training from the Mississippi Law Enforcement Officers' Training Academy in April 1992. The three compliance agents successfully completed a forty-hour basic firearms training course with firing scores ranging from 82% to 94%.

Although the Pharmacy Board has provided compliance agents with firearms training required by SB 2335, PEER continues to have a concern, as noted below.

- *Compliance agents have not received basic law enforcement training.* Although MISS. CODE ANN. Section 41-29-159 provides Pharmacy Board compliance agents (and other drug enforcement officers) with the authority to carry weapons, make arrests and enforce the state's controlled substances laws, the section does not require the agents to possess any specific law enforcement training. By amending MISS. CODE ANN. Section 45-6-3 to include Pharmacy Board compliance agents within the definition of "law enforcement officer," the Legislature made a policy decision that compliance agents should receive at least basic law enforcement training. All law enforcement officers included within Section 45-6-3 are required to meet

training standards established by the Mississippi Law Enforcement Minimum Training and Standards Board.

As of December 10, 1992, the Pharmacy Board had not enrolled its compliance agents in a basic law enforcement course provided by the Mississippi Law Enforcement Officers' Training Academy, for the following reasons.

- The Pharmacy Board Executive Director has concerns that a basic law enforcement training course would be too broad to meet the specialized training needs of compliance agents. The Executive Director told PEER that the board's counsel is researching state law to determine whether compliance agents could satisfy statutory training requirements by attending courses provided by the federal Drug Enforcement Administration. The Executive Director also noted that other drug enforcement officers included with Pharmacy Board compliance agents in MISS. CODE ANN. Section 41-29-159 (Board of Medical Licensure and Board of Dental Examiners investigators) are not required to receive basic law enforcement training.
- The Executive Director of the Mississippi Minimum Training and Standards Board was not aware that SB 2335 defined Pharmacy Board compliance agents as law enforcement officers. Therefore, the director had not contacted the Pharmacy Board to ensure its agents' adherence with state training requirements. (The Executive Director of the Mississippi Minimum Training and Standards Board told PEER that compliance agents would be required to undergo basic law enforcement training as long they were included in the definition contained in Section 45-6-3.)

PEER acknowledges that compliance agents have specialized training needs which should be addressed and fulfilled by the Pharmacy Board. However, as long as compliance agents (and other drug enforcement officers) have statutory authority to enforce state laws and regulations through intrusive methods, such as arrest, they should be trained at the same level as other law enforcement officers.



## *Recommendations*

1. The Pharmacy Board should immediately define the role of its Investigations Review Committee (IRC) relative to the conduct of criminal investigations by board compliance agents. The board should also institute procedural controls to ensure that the board's Executive Director does not have unilateral authority to declare investigations as criminal and circumvent the IRC's authority to review all potential and ongoing investigations.
2. The Pharmacy Board should immediately review and revise its uniform penalty policy to provide more definition and specificity for the ranges of penalties. The board should also review its penalty policy in approximately one year to determine whether further revisions should be made based on historical data of penalties imposed by the board.
3. The Pharmacy Board should require its Executive Director to compile on a regular basis an index of cases heard by the board and penalties imposed in such cases. In an effort to ensure equitable imposition of penalties, the board should utilize such an index, in conjunction with the uniform penalty policy, to determine penalties for all cases heard.
4. The Pharmacy Board should require its Executive Director to update the board's investigative unit procedures manual immediately to include the "how to" inspection/investigation steps recently developed by board staff. Once the investigative manual is revised, the Executive Director should ensure that each compliance agent is provided with a copy of the manual and trained periodically in its contents to ensure uniform conduct of inspections and investigations.
5. The Pharmacy Board should reevaluate its policy of receiving and destroying unwanted controlled substances on behalf of registrants. If the board deems that such a service should continue to be offered, it should investigate the feasibility of obtaining its own incinerator so that unwanted controlled substances could be destroyed immediately upon receipt in the board offices. The board should also seek legislative authority to establish a fee structure so the board staff could charge registrants for destruction services.
6. The Pharmacy Board should seek an official Attorney General's opinion interpreting MISS. CODE ANN. Section 73-21-79 which allows Pharmacy Board compliance agents to work part-time in a position which does not conflict with their board duties. In addition, the Pharmacy Board should review the contract of the compliance agent who current serves as a consulting pharmacist for an institutional pharmacy regulated by the board to ensure that there is no potential for a conflict of interest.

7. The Pharmacy Board should require its Executive Director to enroll the board's compliance agents immediately in a basic law enforcement training course, as required by Senate Bill 2335.

Appendix

Attorney General's Opinion Regarding Terms of  
Pharmacy Board Membership

STATE OF MISSISSIPPI



MIKE MOORE  
ATTORNEY GENERAL

OFFICE OF THE ATTORNEY GENERAL

OFFICIAL ATTORNEY GENERAL'S OPINION

June 24, 1992

Ms. Jean Ratliff  
Member, State Board of Pharmacy  
Post Office Box 190  
Belmont, Mississippi 38827

RE: STATE BOARD OF PHARMACY APPOINTMENTS

Dear Ms. Ratliff:

Attorney General Mike Moore has received your letter of request and has assigned it to me for research and reply. Your letter poses the following matter for consideration:

Section 73-21-75 (1) as amended by the 1992 session of the Mississippi Legislature states that "any person appointed to the Board shall be limited to one (1) full term of office during any fifteen year period, including any member serving on the date of passage of this act."

As a member of the Board of Pharmacy affected by this language, please issue an opinion as to whether this affects any sitting member before the end of their current term.

Section 73-21-75, as amended during the 1992 regular legislative session by SB 2335, effective May 14, 1992, states in pertinent part:

"(1) The State Board of Pharmacy created by former Section 73-21-9 is hereby continued and reconstituted . . . Any person appointed to the board shall be limited to one (1) full term of office during any fifteen-year period, including any member serving on the date of passage of this act. . ." (Emphasis added)

Ms. Jean Ratliff  
June 24, 1992  
Page 2

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In our opinion, it is clear from the language of the amendment that those board members who are sitting on the board at the time of passage of the act may continue to serve the remainder of their respective terms in office. As you note, Section 73-21-75(1) as amended limits service, even for those currently serving, to one (1) full term of office during any fifteen year period. As such, those board members sitting on the board on the date the act passed and who are serving a full term in office will not be eligible for reappointment to a subsequent term during the next fifteen year period.

Sincerely yours,

MIKE MOORE, ATTORNEY GENERAL

BY:

  
Samuel W. Keyes, Jr.  
Assistant Attorney General

SWK, Jr/ra

OFFICIAL OPINION

## *Agency Response*

December 22, 1992

John W. Turcotte, Executive Director  
PEER Committee  
P.O. Box 1204  
Jackson, MS 39215-1204

Dear Mr. Turcotte:

The Board and I would like to thank you, the Committee, and your staff for the honest and professional examination of this agency. This examination and its conclusions and recommendations have been the catalyst that have allowed the Board of Pharmacy and the pharmacists of this state to improve the operations of this agency.

The goals of this new Board and its staff are to protect the public of this state by insuring quality pharmaceutical care for all its citizens and to provide fair and equitable treatment of all those that appear before this body. With these goals in mind, we look upon the PEER findings as being factual and as a foundation upon which to build an exemplary agency.

As you are aware, we have had a very limited time to implement all of the recommended changes. The new Board was not seated until the September meeting. Their first task was that of hiring a new Executive Director. I began work as the new Executive Director on November 1st of this year. My first task was the replacement of the entire agency office staff. The previous Board was impotent for a period of approximately four months due to the passage of SB 2335 and the attendant controversy over the seating of the new Board members.

Over the last forty-five days this Board has addressed through public hearings and changes in the Pharmacy Board Regulations the OBRA '90 congressionally mandated requirements that pharmacists do a more thorough job of counseling patients concerning their medical history, drug interactions, food-drug interactions, treatment, duplications in therapy, and patient compliance. These are the most significant changes in the practice of pharmacy in my lifetime. This Board has also proposed changes in the Pharmacy Practice Act to the 1993 session of the Mississippi Legislature. As a self-funded agency, these changes are necessary for this agency to become more responsive to the needs of the public and to meet the increasing needs of the pharmacists of this state due to the massive changes now taking place in our practice. These changes will allow the agency staff to be more productive by providing the proper tools with which to do their jobs.

RESPONSE TO THE PEER RECOMMENDATIONS

(1). The Pharmacy Board investigators will route all investigations through the Investigations Review Committee. The IRC will decide which investigations will proceed criminally and which will proceed administratively. There are currently two cases which are being referred for criminal prosecution. Both of these have been before the IRC. The institution of criminal proceeding will not prohibit the Board from also proceeding with an administrative hearing. This will also be determined by the IRC. Please find enclosed a copy of General Policy Statement 93-4. This statement outlines the policies and procedures of the IRC. This will be presented for Board approval at the January meeting.

(2). At the February meeting the Pharmacy Board will further revise the uniform penalty policy adopted by the Board in September of this year on an emergency basis. The Board through its Executive Director has begun to, when warranted, further explain in its minutes the Board reasons for certain penalties.

In its imposition of penalties, the Board must consider numerous issues such as the depth and breath of the violations, the number of violations, whether they were willful acts or a result of improper record-keeping, the specific schedule of controlled substances missing, prior disciplinary action/s by the Board, criminal convictions, the potential for harm to the public, in the case of substance abuse or addiction, the quantity and type of controlled substances diverted, the willingness of the respondent to seek professional help, the availability of recovery monitoring capabilities, and certainly not least, the public interest. All of these conditions require judgement decisions by the Board. This Board takes its responsibilities very seriously.

(3). The Executive Director will maintain a log of all cases presented to the IRC. This log will list the disposition of all these cases, including the penalty imposed by the Board.

(4). As soon as possible the Executive Director will develop a new procedure manual for the investigative unit utilizing parts of the procedure developed by the previous Executive Director and staff. When developed, each Board Investigator will be trained in its contents to insure uniform conduct of investigations and inspections. This has a high priority within the Agency. A significant amount of time has been spent by the new Executive Director giving oral instruction of investigative procedures to be used by the investigators.

(5). It is the desire of this Board to provide a secure and accountable controlled substances destruction service for permit holders throughout the state. The potential of major diversion of controlled substances without this service is a very real possibility. The Board at its December meeting instructed the Executive Director to pursue the purchase of a permanent office for the Board of Pharmacy. Part of this request was also that the Director check the cost of obtaining its own EPA approved incinerator. This would allow the daily destruction of these returned drugs. Attached is a new Controlled Substances Disposal Tracking Form (Attachment B) that combines two separate forms used previously. This will provide a simplified and a more complete record of the disposition of these returned drugs.

(6). The Board's Executive Director will ask for an Attorney General's Opinion concerning the part-time employment of the Board's Investigators outside the Board. It is the opinion of this Board that General Policy Statement 92-3 adopted by the Board at its meeting in November eliminates any potential conflict of interest involving other employment by the Board Investigators.

(7). The Board's Investigators are currently being enrolled in the basic law enforcement training course in Harrison County, Ms beginning March 28, 1993. This was the earliest possible date due the earlier classes being filled at Rankin County, Lee County and Harrison County schools.

Given the time and the financial resources the Board will produce a model regulatory agency. Upon arrival I found a demoralized staff working often with no equipment to do the job or with antiquated equipment. There was no standardization of weapons, no useable copy machine (the machine would stop after only a few copies), only filing cabinets that were filled to capacity, an Executive Director's office with no filing cabinet, and three Investigators with only one desk between them. The computer equipment and the software are such that tasks on the computer require twice the amount of time that would normally be expected. There is no "multi-tasking" on any of these computers. One is dedicated to license renewals, one to bookkeeping, and the other is an old IBM Display Writer that uses eight inch floppy diskettes. This one is used as a word processor. There is currently an insufficient amount of money in the budget for training and the associated travel.


The Board Investigators are required to be licensed pharmacists. As such they are a very specialized investigative unit. Not only do they have to have knowledge of the practice of pharmacy and

drugs, but they also have to be trained in law enforcement. Their salaries are currently much below that of other pharmacists working for the state of Mississippi within the Mississippi Department of Health, even though their training and educational requirements are much greater. The Board has asked that the Personnel Board address this inequity through an emergency realignment.

The Board, as a self-funded agency, has approximately \$190,000.00 in an agency special surplus fund. The Board at its December meeting has directed the Executive Director to seek an emergency appropriation from the 1993 session of the Mississippi Legislature from this fund to provide immediate revenue to deal with these needs. The Board is also asking for a fee increase that will provide the Board with the ongoing financial stability to provide the kind of service to the pharmacists of this state that they deserve. It has been over 10 years since the Board has requested an increase in the personal license fees for licensure or renewal. Purchasing its own facility will be one important way that the Board can seek to control its long-term expenses. The Board is currently paying \$25,000.00 per year for its existing space. This money could be well spent toward the purchase of its own facility.

Thank you once again for your recommendations and the professionalism of your staff. If the Board or I may be of further assistance, please call.

Bennie M. Rogers, RPh.



Executive Director

Mississippi State Board of Pharmacy



## Attachment A

JANUARY 21, 1993

GENERAL POLICY STATEMENT 93-4

RE: DUTIES AND PROCEDURES OF INVESTIGATIONS REVIEW COMMITTEE

1. The IRC will be made up of the Board's Executive Director, the Board's legal counsel, and two rotating Board members. These Board members will serve for no more than a three month period at each appointment. No Board member may serve consecutive three month appointments. The Board President shall appoint the Board members to this committee at his discretion, limited only by the consecutive period provision of these rules.
2. The IRC will review and approve all cases investigated by the Board Investigators. The IRC at its discretion may direct the Investigators to begin an investigation, continue an investigation, determine that the evidence of the investigation warrants disciplinary action by the full Board and/or that a case be referred for criminal prosecution, or determine that there is insufficient evidence to support further investigation or action by the Board. The IRC will, if it deems the evidence warrants such action, direct that the Executive Director set a time and place for a disciplinary hearing and that he notify the respondent of such in accordance with the provisions of the Mississippi Code. The IRC may also direct that the Executive Director issue on its behalf a letter of reprimand when the IRC deems appropriate. In this letter may be the notice that further problems may result in a recommendation by the IRC that the registrant be brought before the full Board.
3. The IRC votes must be made with at least a quorum of three members present. Affirmative votes will be by a majority of those members present. Any vote that results in a tie will be the same as a nay vote.
4. The Executive Director will take and maintain all minutes of IRC meetings.
5. The IRC will when necessary meet on a monthly basis prior to or after the regular Board meetings.

6. The IRC may at its discretion approve the start of a new investigation. The Board Investigators will not reveal to the IRC the names or locations of possible respondents or defendants when requesting the authority to begin an investigation. Only the substance of any allegation, report, or information will be given to the Board Members sitting on the IRC for their determination that the probable cause for further investigation exists. The actual names and locations will be given to the Board Attorney and the Executive Director.

7. The Executive Director will keep a record of disposition of all cases presented to the IRC (including names and locations).

8. At the conclusion of an investigation, all pertinent information will be presented to the IRC for their determination of its disposition (IRC DISPOSITIVE ACTION). This will include full disclosure of the substance of the investigation including the names and locations of the possible respondents or defendants.

9. No IRC Board member may vote or discuss with any other person (including other Board members) any case in which he participated in an IRC DISPOSITIVE ACTION.

----- Robert Patrick	----- Dan Lomax	----- Clarence DuBose
----- David Clark	----- Mack McDivitt	----- Jackie Thompson
----- James Hartzog	----- Bennie M. Rogers, Executive Director	



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## PEER Staff

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### Director

John W. Turcotte  
Janet Moore, Administrative  
Assistant

### Administrative Division

Steve Miller, General Counsel  
and Controller

Betty Heggy  
Ann Hutcherson

### Planning and Support Division

Max Arinder, Chief  
Analyst

Sam Dawkins  
Patty Hassinger  
Larry Landrum  
Kathleen Sullivan  
Linda Triplett  
Ava Welborn

### Operations Division

James Barber, Chief  
Analyst

Aurora Baugh  
Ted Booth  
Barbara Hamilton  
Susan Harris  
Wayne Hegwood  
Kevin Humphreys  
Kelly Lockhart  
Helen McFall  
Joyce McCants  
Danny Miller  
Katherine Stark  
Larry Whiting

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