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ALABAMA STATE BOARD OF PHARMACY

BOARD MEETING

Monday, August 22, 2016

10:17 a.m.

LOCATION: Alabama State Board of Pharmacy
111 Village Street
Hoover, Alabama 35242

REPORTER: Sheri G. Connelly, RPR

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ATTENDEES

BOARD MEMBERS:

- Tim Martin, President
- Buddy Bunch, Vice President
- David Darby, Treasurer
- Donna Yeatman, Member
- Ralph E. Sorrell, Member

ALSO PRESENT:

- Susan Alverson, Ph.D., Executive Secretary
- Cristal Anderson, Director of Compliance
- Edward R. Braden, Chief Drug Inspector
- Mark Delk, Drug Inspector
- Glenn Wells, Drug Inspector
- Scott Daniel, Drug Inspector
- Todd Brooks, Drug Inspector
- Peyton Zarzour, Drug Inspector
- Mark Hebert, Drug Inspector
- Rhonda Coker, Licensing Manager
- Terry Lawrence, Information Systems
- Tracy Davis
- Louise Jones

- 1 Nancy James
- 2 Rod Harbin, Junior
- 3 Chuck Beams
- 4 Rhonda Coker

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8 DR. MARTIN: Thank you for being here.
9 Welcome to the August meeting of the Alabama
10 Board of Pharmacy. All members are present and
11 our first order of business will be to establish
12 a quorum and since all members are present, we
13 do have a quorum and I will ask for a motion to
14 adopt the agenda as presented.

15 MR. DARBY: I move we adopt the agenda
16 as presented.

17 DR. MARTIN: Is there a second?

18 MS. YEATMAN: Second.

19 DR. MARTIN: All those in favor?

20 MR. SORRELL: Aye.

21 MR. DARBY: Aye.

22 MS. YEATMAN: Aye.

23 MR. BUNCH: Aye.

1 DR. MARTIN: The agenda is adopted.
2 Now we will take this time for individuals in
3 the audience to introduce themselves, so if
4 you'll -- we'll start over here with Mr. Daniel
5 and proceed back and forth and if you would,
6 stand up and address the court reporter, tell
7 her your name and who you represent.

8 MR. DANIEL: Scott Daniel, Alabama
9 State Board of Pharmacy.

10 MS. DAVIS: Tracy Davis, Alabama
11 Pharmacy Association.

12 MS. JONES: Louise Jones, Alabama
13 Pharmacy Association.

14 MS. JAMES: Nancy James, PharMerica
15 Pharmacy.

16 MR. HARBIN: Rod Harbin, Junior,
17 Wellness Pharmacy.

18 MR. BEAMS: Chuck Beams, director of
19 pharmacy, East Alabama Medical Center.

20 MS. COKER: Rhonda Coker, Board of
21 Pharmacy.

22 MR. HEBERT: Mark Hebert, Board of
23 Pharmacy.

1 MR. BROOKS: Todd Brooks, Board of
2 Pharmacy.

3 MR. DELK: Mark Delk, Board of
4 Pharmacy.

5 MR. WELLS: Glenn Wells, Board of
6 Pharmacy.

7 DR. MARTIN: Thank you very much. I
8 see that the next item for action will be two
9 presentations we have today and we'll take them
10 in the order as they appear on the agenda.
11 First is PharMerica. Please join us here at the
12 front table.

13 DR. MARTIN: Terry, will you state
14 your name for the record if you plan to stay?

15 MR. LAWRENCE: I'm just going to get
16 this set up.

17 DR. MARTIN: Okay, that's fine.

18 MR. LAWRENCE: Terry Lawrence, Alabama
19 Board of Pharmacy.

20 DR. MARTIN: Good morning. You can
21 stand or sit, whatever you're most comfortable
22 doing, and the floor is yours when you're ready.

23 MS. JAMES: Is it ready?

1 MR. LAWRENCE: Just one second. Just
2 a minute.

3 MS. JAMES: I'm Nancy James. I
4 work -- I'm the pharmacy director at the
5 PharMerica location down in Daphne. PharMerica
6 also has a location here in Birmingham. We're
7 in the long-term care business. We are closed
8 door. We only operate -- we only service
9 long-term care assisted living facilities.

10 We would like to install in the State
11 of Alabama in skilled nursing facilities an
12 electronic emergency drug dispensing unit. It
13 only dispenses single unit doses of medication.
14 We're using it in the surrounding states:
15 Georgia, Arkansas, Tennessee, Florida. I'm
16 familiar really with the one that we use in the
17 Panhandle of Florida.

18 The patient -- it's highly integrated
19 with our dispensing system, so the patient has
20 to be loaded in my dispensing system at the
21 pharmacy before the nurse can access a
22 furosemide or a lisinopril or an Ambien or
23 anything else in that machine to dispense to the

1 patient. So it gives us much more security than
2 the tackle box or the drawer or whatever that
3 they're currently using for emergency drug kits.
4 We would like to have the Board's blessing to
5 use this or to offer this as an availability in
6 the State of Alabama in skilled nursing
7 facilities.

8 I have a brief PowerPoint. I have
9 printed it off. It's in the folders in there
10 that I've given to you. We also have in place a
11 policy and procedure manual that's developed in
12 house for the pharmacy, as well as for the
13 nursing facility, that covers all the steps it
14 can take.

15 DR. MARTIN: You're probably already
16 familiar with the recent rule change the Board
17 made to 680-X-2-.18, section (6), I believe it
18 is, on use of automated drug cabinets in skilled
19 nursing facilities.

20 MS. JAMES: I was familiar with that
21 but I understood that I needed to get your
22 specific approval for our equipment.

23 DR. MARTIN: So you are what we would

1 call the managing pharmacy?

2 MS. JAMES: Yes, sir.

3 DR. MARTIN: Okay. And the equipment
4 that you plan to use is not your equipment but
5 somebody else's equipment that you plan to bring
6 in?

7 MS. JAMES: Well, actually PharMerica
8 owns the equipment.

9 DR. MARTIN: And does PharMerica also
10 own the facilities where they'll be installed?

11 MS. JAMES: No, no, they're skilled
12 nursing facilities.

13 DR. MARTIN: Okay.

14 MS. JAMES: We do not own -- we will
15 lease the equipment to --

16 DR. MARTIN: Okay.

17 MS. JAMES: -- the facility.

18 DR. MARTIN: So you work for the
19 company that makes the equipment?

20 MS. JAMES: No, we don't make it. I
21 think they -- I work for PharMerica.

22 MR. WARD: It's the pharmacy that
23 wants to dispense drugs with this emergency

1 kit.

2 MS. JAMES: It's my inventory --

3 DR. MARTIN: Okay.

4 MS. JAMES: -- that I'm going to put
5 in this machine that belongs to my pharmacy
6 that's going to sit in their nursing home
7 instead of the plastic tackle boxes which
8 currently housed my inventory at the facility.

9 DR. MARTIN: So who's the manufacturer
10 of the equipment?

11 MS. JAMES: Actually I think
12 AmerisourceBergen manufactured it.

13 DR. MARTIN: Okay. So you're
14 asking -- you're coming before the Board today
15 now that that rule has been changed and you're
16 ready to use this equipment in your facility and
17 I believe you're right, that in the -- in the
18 rule it did say that when a -- when a managing
19 pharmacy desired to place that type equipment in
20 a site, they had to at least inform the Board
21 and you've chosen to do the presentation
22 instead.

23 MS. JAMES: Yeah, I just wasn't

1 comfortable with letting you find out through
2 the grapevine that I had done that.

3 DR. MARTIN: We appreciate you doing
4 that. I think you're ready to go.

5 MS. JAMES: Oh, okay. Thank you.
6 This is obviously the cabinet on the left. It's
7 approximately 24 inches wide, so it doesn't take
8 up a lot of space. The upper part, which is
9 totally -- you can't see, that's where the
10 controlled substances are housed so the nurses
11 never see those. The drawers on the bottom
12 dispensed through the -- operate with the people
13 in the terminal, those drawers prop open so
14 obviously they see those medications, the
15 noncontrolleds.

16 The top, if they manage to get a
17 controlled substance out by passing all the
18 other requirements, they have a prescription
19 that we've seen at the pharmacy and we've given
20 them an authorization code to release a dose of
21 alprazolam or Norco whatever it is the patient
22 has a prescription for, she can release that
23 medication once she enters those credentials but

1 she never sees it. It just drops through that
2 little dark space that you see there. She
3 doesn't actually see that. Okay.

4 MR. WARD: Nancy.

5 MS. JAMES: Sir?

6 MR. WARD: Raise the mike up a little
7 bit --

8 MS. JAMES: Oh, I'm sorry.

9 MR. WARD: -- so we can hear you
10 better.

11 MS. JAMES: Like I said, we are using
12 this primarily to replace our emergency drug
13 kits and to allow for residents/patients who
14 come into the nursing home after hours.
15 Different locations across the state, people do
16 come 24/7 and there is a need for medication
17 with more than what we can house in a tackle
18 box, and the more than what we can get -- before
19 we could get it delivered from our pharmacy. So
20 this allows -- it will actually hold up to 350
21 different medications. I don't think anywhere
22 in our existence across the country have we
23 actually used that many but it is possible.

1 MR. WARD: Can I ask you a stupid
2 question? Does it catch up with the patient
3 that quick? Like if I'm admitted at 2:00 in the
4 morning, how does the pharmacy know that that's
5 a patient to authorize that medicine?

6 MS. JAMES: Good question. If you're
7 admitted at 2:00 a.m., the nurse will have to
8 enter you, the patient's, demographics into the
9 system and say Mr. Ward came in at 2:00 a.m.
10 This is his doctor. These are his allergies.
11 This is his medical history. Whereas during the
12 normal business hours, they would either
13 electronically or fax that information to me at
14 the pharmacy. When we enter it into our
15 dispensing system, it's realtime back to that
16 machine and she can go in there and she sees
17 Mr. Ward is supposed to take lisinopril at
18 bedtime, so I need to give him a dose. If that
19 information is not there, then she has to
20 manually enter it and it syncs up with mine once
21 we --

22 MR. WARD: How does she know at 2:00
23 in the morning what kind of drugs are in there?

1 It says first does first dose inside here. How
2 does --

3 MS. JAMES: How does she know the
4 inventory of the machine?

5 MR. WARD: No, how does she know that
6 patient needs these meds?

7 MS. JAMES: Well, when the patient
8 arrives at the facility from -- the 2:00 a.m.
9 deliveries 99 percent of the time come from the
10 hospital and they come with orders.

11 MR. WARD: All right, okay.

12 MS. JAMES: But it is integrated with
13 my dispensing system in realtime. I can look in
14 and see that Nurse Susie took out one dose at
15 this such a time for that resident.

16 It's not a very good picture but that
17 is actually the top of the machine where the
18 controlled substances are stored and these work
19 like the old timey vending machines, there's
20 like a spring in there and the true
21 manufacturer's unit dose of medication and the
22 spring holds a single dose and then when the
23 nurse goes through the steps to release it, the

1 spring rolls and it drops down. She never sees
2 any of that. The dose just appears.

3 MS. YEATMAN: And I assume these are
4 being loaded by technicians?

5 MS. JAMES: Well, that's what I need
6 you guys to tell me, please, what -- the machine
7 I'm most familiar with that I work with in the
8 Panhandle of Florida, Florida allows either
9 pharmacy personnel or registered licensed
10 nursing personnel to load it. So I'm licensed
11 in Florida, but my facility there, they weren't
12 comfortable loading it -- the D.O.N. was not,
13 even though she's very qualified. So I would go
14 over personally and it's not bad to go to Fort
15 Walton Beach and load the machine. And she saw
16 me, she would watch me, and it was easy enough,
17 I trained her to do it but she still doesn't
18 load the controlled substances. The consultant
19 pharmacist, who's there monthly, loads the
20 controlleds.

21 MS. YEATMAN: Is there some type of
22 NDC scan --

23 MS. JAMES: Oh, yes, uh-huh.

1 MS. YEATMAN: -- to insure that what's
2 being loaded is proper?

3 MS. JAMES: Oh, yes, uh-huh, yes. She
4 puts in what she needs and the right patient and
5 the medication appears and before she can
6 complete the process, she has to scan it.
7 There's a -- where it says biometric fingerprint
8 scan, there's like a scanner also. She has to
9 scan the bar code off of that dose.

10 MS. YEATMAN: And what about for
11 loading it?

12 MS. JAMES: Both way, coming and
13 going. And I didn't mention, I should have in
14 the beginning, when we add a user to it, there
15 are various credentials that the pharmacy
16 controls who can get in and at what level.
17 There are pages and pages of things that I could
18 check that you can do this, you can do that, or
19 you can't do this and you can't do that but
20 there is a key like you will have your initial
21 login and then you have to identify your thumbs
22 and your forefingers too.

23 And we can limit that -- it's a web-

1 based program but the software is obviously
2 encrypted and it has to be loaded on a
3 PharMerica computer, so they can't or I can't go
4 to my home computer or the nurse couldn't go to
5 her home computer and pull it up and access it.

6 DR. ALVERSON: May I ask if a patient
7 does come in at 2:00 and you need a controlled
8 drug and that takes a code from the pharmacy,
9 how does that happen?

10 MS. JAMES: And that does happen. We
11 have a 24-hour support line obviously and in
12 fact, the nurses are instructed normal business
13 operations, if you needed something -- anything
14 from the pharmacy after hours, you call. Our
15 same phone number, it rolls to the after-hours
16 location. Ours happens to be a PharMerica
17 pharmacy that's in Phoenix, that they're
18 licensed in Alabama. They have Alabama
19 technicians and pharmacists on site. And they
20 can access my dispensing system and they can see
21 that yes, this patient is, in fact, at your
22 facility and serviced by this pharmacy. And
23 you're telling me you've just got him in and he

1 needs a dose of Norco, do you have a
2 prescription? Well, yes, I faxed it and they
3 can pull up the faxes and verify -- either call
4 the physician and get an emergency use for it --
5 they go through all the steps to get emergency
6 approval or a verbal prescription from the
7 physician or if it's faxed from a hospice, you
8 can take that. Then they -- that pharmacist
9 gives the nurse the credentials she needs to
10 drop the dose.

11 DR. MARTIN: So did you say Phoenix?

12 MS. JAMES: Phoenix.

13 DR. MARTIN: So your site in Phoenix
14 has a pharmacy services permit with the Board?

15 MS. JAMES: Yes, sir, as well as
16 licensed pharmacists.

17 DR. MARTIN: Supervising pharmacist,
18 good.

19 MR. SORRELL: What does your
20 consultant pharmacy, how do they interact the
21 business unit, if at all?

22 MS. JAMES: If at all --

23 MR. SORRELL: And just remind me how

1 often does a consultant visit a nursing home?

2 MS. JAMES: At least once every 30
3 days. When he or she is in the facility, in
4 addition to their normal business that they
5 would take care, once this machine is in place,
6 they will audit this.

7 MR. SORRELL: That's what I want to
8 know. That sounds perfect.

9 MS. JAMES: They have full -- they
10 have the same access to this that I do and they
11 can audit and they can check for expirations.
12 They can report the expiration dates, missed
13 doses, all sorts of things.

14 MR. SORRELL: That's a double --
15 double checks and balances that I think is very
16 important for patient care.

17 MS. JAMES: Uh-huh. And that's just
18 the flow of information and it all has to tie
19 back to the pharmacy. If we don't have the
20 right information, then they can't access it and
21 I had an instance a few months ago from a
22 location in Florida where the nurse
23 inadvertently, she was -- the patient came in in

1 the middle of the night in pain from the
2 hospital and they supposedly didn't medicate
3 before transport and I'm sure was in pain
4 following surgery.

5 The family was with them. It was 2:00
6 a.m. I'm hurting. I need a dose. I need a
7 dose and she tried to get into the machine but
8 the patient wasn't loaded yet, so instead of
9 loading the patient because the family is in her
10 face and the man is screaming and what have you,
11 she's going to dispense the hydrocodone to the
12 facility, Sunshine Health Care facility because
13 they're in there as an account because we do
14 bill things to them. Well, it won't -- that
15 won't happen. It wouldn't let her. That
16 patient can't have narcotics or any other drugs.
17 There are lots of security features where she
18 could have taken it out of the tackle box and we
19 would have found out about it the next day.

20 MR. WARD: On page three of your
21 handout --

22 MS. JAMES: Yes, sir.

23 MR. WARD: -- under diversion

1 control.

2 MS. JAMES: Uh-huh.

3 MR. WARD: If the pharmacy will
4 monitor the use and inventory of the cabinet,
5 then inform your administrator or D.O.N.
6 immediately upon finding an issue. How -- how
7 does that work? How do you monitor and make
8 sure that there's not an issue?

9 MS. JAMES: Okay. I have access to
10 everything that takes place in that machine from
11 my pharmacy, from my computer system. I can run
12 reports. I get automatic notifications. Every
13 time a dose of med is used, if the cabinet is
14 gone into, even if it was a mistake and oh, I
15 don't need this, they close the door back and
16 take nothing, I get a little -- not an email but
17 an electronic notification that the nurse with
18 these credentials accessed this machine but
19 nothing was bar coded out or these drugs were
20 bar coded out.

21 Can I answer any other questions?

22 DR. MARTIN: Do you have any other
23 slides? Is that your last slide?

1 MS. JAMES: All of the policy and
2 procedure manual I emailed to Mitzi.

3 DR. MARTIN: Got that. And I think I
4 saw another document in your folder here that's
5 not in the Dropbox.

6 MS. JAMES: It's just an informational
7 system printout that we give to the facilities
8 to help them with the setup procedures.

9 DR. MARTIN: Tell us just a little bit
10 about how the products are delivered from the
11 wholesaler, where they're delivered to, and who
12 handles them and pieces like that.

13 MS. JAMES: Well, anything that goes
14 in that machine has to come from my pharmacy.

15 DR. MARTIN: Okay.

16 MS. JAMES: Period.

17 DR. MARTIN: So no deliveries from the
18 wholesaler to the skilled nursing facility?

19 MS. JAMES: Absolutely not, absolutely
20 not, never. It comes from me.

21 DR. MARTIN: Board members, what other
22 questions do you have?

23 MR. SORRELL: Do you unit dose these

1 products? Are they -- do you unit dose them
2 yourselves?

3 MS. JAMES: Well, all controlled
4 substances are manufacturer's unit dosed. The
5 machine won't work with anything else. We try
6 to buy everything available unit dose for the
7 bottom part of the machine. If it is not
8 available, we have a packaging system that will
9 give the lot and expiration of each unit on the
10 back of it -- on the back of the foil of each
11 unit but I prefer not to do that.

12 MR. WARD: Do you have one of these in
13 each nursing home or more than one?

14 MS. JAMES: I am not aware of any
15 facility elsewhere having more than one. I
16 guess if it was big enough, you know, logically
17 they might want more than one but I don't think
18 that would be cost effective.

19 MR. DARBY: How many drugs -- how many
20 drugs will be in the cabinet? How many
21 different SKUs?

22 MS. JAMES: It will hold up to 350.
23 I'm not aware of more than maybe 100. That

1 would be a stretch. That's including some OTCs
2 and things too.

3 MR. SORRELL: If you have to
4 prepackage your own medications, I'm sure you
5 put the lot and expiration date --

6 MS. JAMES: On every unit.

7 MR. SORRELL: How about bar code?

8 MS. JAMES: Yes, yes, they have to be
9 able to scan it.

10 MR. SORRELL: That is something. I
11 just wondered if you were able to prepack with a
12 bar code.

13 MS. JAMES: Yes, we have a software
14 package that prints the back of the foil. It's
15 similar to like a bingo card but the back side,
16 instead of being solid foil, each unit has a
17 little bar code and lot expiration as well as
18 the name of the medication.

19 DR. MARTIN: Let's see, you did
20 include downtime procedures as well.

21 MS. JAMES: We have that.

22 DR. MARTIN: Any questions?

23 MR. BUNCH: I'm good.

1 MS. YEATMAN: I'm good.

2 DR. MARTIN: So --

3 MR. DARBY: I make a motion we approve
4 PharMerica's plan to use an automated dispensing
5 system.

6 DR. MARTIN: Okay. So we have a
7 motion to approve the use of PharMerica's plan
8 to use this RxNow system in their facilities and
9 is there a second?

10 MS. YEATMAN: Second.

11 DR. MARTIN: Further discussion?

12 I would just say, Nancy, be sure
13 you're familiar with that section (6) of that
14 rule I was just stating because that's -- just
15 lays it out exactly step by step.

16 MS. JAMES: I would like to get your
17 input on who's okay to refill the prescriptions.
18 Is that up to me?

19 DR. MARTIN: Yes.

20 MR. WARD: The rule says a pharmacist,
21 a technician, or a nurse.

22 MS. JAMES: Okay.

23 MR. WARD: That's who.

1 DR. MARTIN: I'll give you the
2 exact --

3 MR. WARD: Or someone else approved by
4 the Board.

5 MS. JAMES: It would never go outside
6 of those three anyway.

7 DR. MARTIN: "Restocking of the
8 automated dispensing system shall be limited to
9 a licensed pharmacist or a registered pharmacy
10 technician of the managing pharmacy, a licensed
11 nurse of the facility, or other licensed health
12 care personnel approved by the Board of
13 Pharmacy."

14 MS. JAMES: Okay.

15 DR. MARTIN: Does that help?

16 MS. JAMES: Thank you.

17 DR. MARTIN: So any other discussion?
18 Are you ready for the vote?

19 MS. YEATMAN: Ready.

20 DR. MARTIN: All those in favor of the
21 motion as stated, please say aye.

22 MR. SORRELL: Aye.

23 MR. DARBY: Aye.

1 MS. YEATMAN: Aye.

2 MR. BUNCH: Aye.

3 DR. MARTIN: Any opposed, same sign.

4 (No response.)

5 DR. MARTIN: Motion passes. Thank you
6 very much.

7 MS. JAMES: Thank you.

8 DR. MARTIN: And you'll need to let us
9 know your installation date.

10 MS. JAMES: I will.

11 DR. MARTIN: Mr. Beams, give us just a
12 minute to get our electronic material together
13 here.

14 MR. BEAMS: Are you ready?

15 DR. MARTIN: It's all yours.

16 MR. BEAMS: All right. I'm going to
17 sit if y'all don't mind. All right. Good
18 morning.

19 DR. MARTIN: Good morning.

20 MR. BEAMS: Thank you for giving me
21 some time this morning. I enjoyed the drive up
22 280 the most and you can put that on record.

23 My name is Chuck Beams. I'm the

1 director of pharmacy services for East Alabama
2 Medical Center and I am here today to request
3 some things for our new system. In September
4 2013, East Alabama Medical Center entered into
5 an agreement with Lanier Health Systems in
6 Valley, Alabama, and formed EAMC-Lanier, which
7 is now managed by East Alabama Medical Center.
8 It's been a long journey over the past three
9 years but we now are ready to streamline our
10 system and all be together in one EMR.

11 EAMC has been on Cerner for almost 20
12 years. In October, EAMC-Lanier will follow
13 suit. This integration will be huge for our
14 new, growing system and will allow us to provide
15 high quality safe care for much of East Alabama.

16 The next bullet points just kind of
17 describe kind of where we are as a system. Our
18 common is now under common organization and
19 control. We use the same or will be using the
20 same EMR, which is Cerner, starting October 1.
21 We'll be on one drug formulary in October. We
22 have consolidated our policy and procedures over
23 the last couple of years and many of our doctors

1 practice in both locations. Our ER physicians
2 are seeing patients in both locations now and
3 many of our physicians in Opelika do travel
4 though to Lanier. Just as an aside, Lanier is
5 about 24 miles to the east of Opelika right on
6 the -- actually the hospital sits on the
7 Chattahoochee River. It's actually a very
8 pretty location, so it's just -- it's pretty
9 close to Opelika.

10 Currently East Alabama Medical Center
11 Lanier operates from 9:00 a.m. to 6:00 p.m.
12 eastern standard time Monday through Friday and
13 8:00 to 4:00 Saturday and Sunday. Being closed
14 at night presents a challenge for a small
15 hospital with a 24-hour emergency room. For
16 these reasons, I am requesting Board approval
17 for remote order processing for after hours and
18 for work balancing.

19 The remote processing and work
20 balancing will allow the overnight pharmacists
21 at the Opelika campus to assist with order
22 verification needs at Lanier campus. This will
23 allow for a much smoother start for the incoming

1 day shift pharmacists at Lanier, so that is what
2 I wanted to request.

3 DR. MARTIN: Questions for Mr. Beams?

4 (No response.)

5 DR. MARTIN: The process for -- if
6 it's approved, the process would be that for the
7 first year, the statistics around the hospitals
8 would be submitted on a monthly basis and if all
9 of those statistics look right and flow and it
10 looks like there's no intent to reduce the
11 number of personnel as a result of the
12 technology, then the reporting will drop to
13 quarterly after that.

14 MR. BEAMS: We -- and we do not have
15 any plans for that. I'll just give you that.
16 We actually have -- like we were doing -- we
17 were doing ob/gyn services at Lanier and
18 Opelika. We pulled those services to Opelika so
19 there's been a couple of things like the cath
20 lab, we pulled it down to Opelika but on a
21 positive note, we were able to take those empty
22 wards that we had and we actually just got a CON
23 for an acute care rehab facility there so

1 there's going to be -- one of those wards will
2 be filled with that and then we're also very
3 close to requesting for a substance abuse
4 program for that facility. It's very nicely,
5 you know, kind of away and there's a big need
6 there in Lee County and surrounding areas. So
7 we have a plan to kind of replace those things
8 we pulled out, so we're really projecting that
9 the patient volume is going to grow there. So
10 yes, we can definitely do that.

11 DR. MARTIN: And you'll get some
12 correspondence from the Board and they'll give
13 you the format to put that in and things like
14 that.

15 MR. BEAMS: Okay, sure.

16 DR. MARTIN: And at some point in the
17 future, you know, the Board might reconsider if
18 that's still a need. I know when we started
19 this years ago, that was a requirement that
20 every facility is granted permission --
21 institutional facility that is granted
22 permission to perform remote processing after
23 hours or for work balancing. We're trying to

1 streamline the process -- even the approval
2 process that may make it a little bit easier
3 since this is pretty much a mature technology at
4 this point.

5 Questions for Mr. Beams?

6 MR. WARD: Mr. Beams, I'll have you
7 know talking about 280 that I had a case in
8 Auburn about 15 years ago and I had a --
9 received a speeding ticket in every jurisdiction
10 from Hoover to Opelika, every one.

11 MR. DARBY: On the same day?

12 MR. WARD: Well, as a matter of fact,
13 I tried to -- I got -- in this other case I've
14 got now, I've got two and I mentioned Judge
15 Walker's name and I got out of both of them.

16 MR. BEAMS: I can assure you,
17 Mr. Ward, that there were policemen prominently
18 located in all those locations this morning.

19 MR. WARD: Well, that's just a word to
20 the wise at great height.

21 MR. BEAMS: I would suggest the Waze
22 app if you haven't seen that.

23 MR. DARBY: What's that?

1 DR. ALVERSON: Waze.

2 MR. BEAMS: Waze, W-A-Z-E.

3 MR. WARD: That's cheating.

4 DR. ALVERSON: I'll show it to you.

5 DR. MARTIN: Do we have any other
6 pertinent conversations?

7 MR. DARBY: That might be the most
8 pertinent thing I hear today. Somebody that
9 just made it from Andalusia up here in 2 hours
10 and 15 minutes, we need all the help we can
11 get.

12 DR. MARTIN: So I believe a motion
13 would be in order.

14 MR. SORRELL: I'd like to move that we
15 accept East Alabama Medical Center's proposal
16 for remote order entry.

17 DR. MARTIN: Is there a second?

18 MS. YEATMAN: Second.

19 DR. MARTIN: Any further discussion?

20 (No response.)

21 DR. MARTIN: All those in favor of
22 approving the motion as stated, please say aye.

23 MS. YEATMAN: Aye.

1 MR. DARBY: Aye.

2 MR. BUNCH: Aye.

3 DR. MARTIN: Any opposed, by the same
4 sign.

5 (No response.)

6 DR. MARTIN: Motion passes. Thank
7 you, Chuck.

8 Mr. Darby, I believe next is the
9 treasurer's report.

10 MR. DARBY: All right. We are 5/6 of
11 the way through our fiscal year and we're
12 slightly behind on revenue and that can be
13 mostly attributed to our budget -- we had
14 budgeted for more reciprocating pharmacists and
15 we're a little bit under on it. Our expenses
16 are pretty close to be on track. They're
17 slightly ahead and that's due to the new
18 software system that's probably been well worth
19 the money we spent on it.

20 So if you have any specific questions,
21 I'll be happy to try to answer those.

22 DR. MARTIN: Any questions for
23 Mr. Darby?

1 (No response.)

2 DR. MARTIN: Since this deals with
3 money, we'll make a motion to approve the
4 treasurer's report if you're pleased with it.

5 MS. YEATMAN: I move that we accept
6 the treasurer's report as presented.

7 DR. MARTIN: Is there a second?

8 MR. SORRELL: Second.

9 MR. BUNCH: Second.

10 DR. MARTIN: I don't believe that
11 allows discussion if I remember right. And all
12 those in favor, please say aye.

13 MR. BUNCH: Aye.

14 MS. YEATMAN: Aye.

15 MR. SORRELL: Aye.

16 DR. MARTIN: Any opposed, same sign.

17 (No response.)

18 DR. MARTIN: Hearing none, the report
19 from the treasurer is received as submitted.

20 Board of Pharmacy Wellness Committee
21 report, will that be you, Susan?

22 DR. ALVERSON: It will be me. This is
23 from Dr. Garver. I'm thinking he may have

1 transmitted -- well, this was for July.

2 There are presently 150 people in our
3 screening program with signed contracts and
4 orders. This includes individuals in a
5 diagnostic monitoring contract but does not
6 include the following: Three pharmacists in
7 inpatient, three techs in treatment, one tech
8 going for an evaluation, and one student in
9 treatment.

10 The total number of pharmacy
11 professionals identified and worked with in 2016
12 is 27: 13 pharmacists, eight techs, and two
13 students. The total number of health
14 professionals identified this time in 2015 was
15 15. Of all these individuals who are in
16 treatment or evaluation or undecided, they are
17 presently out of the work force and without
18 license and about seven others who are working
19 their way through halfway house, Time Out for
20 Recovery, or who are in the process of being
21 investigated or scheduled for hearings and
22 include those who can't make up their minds.
23 There are 74 individuals in facility-driven

1 aftercare.

2 The completed work portion of the
3 monthly report is as follows: We have met
4 personally with all licensees returning to work
5 to sign contracts and explain how monitoring
6 works. All returning licensees have been placed
7 in a caduceus, either pharmacy or health
8 professional.

9 Thank you for letting me serve
10 recovering professionals.

11 DR. MARTIN: Do you have any questions
12 for Susan in relation to the Wellness report?

13 (No response.)

14 DR. MARTIN: Thank you, Susan.
15 Inspector's report, Mr. Braden.

16 MR. BRADEN: Yes, Mr. President and
17 members of the Board, as you see in the Dropbox,
18 the inspections completed for the month of July
19 and complaints that were received and then
20 complaints that were turned in and then a couple
21 of activities that we did at the bottom.

22 DR. MARTIN: Do you have any questions
23 for Mr. Braden from his report?

1 (No response.)

2 DR. MARTIN: Will you be having some
3 material for us in executive session?

4 MR. BRADEN: Yes, sir, we will.
5 Well -- yes, sir, we will.

6 DR. MARTIN: Thank you, Mr. Braden.
7 Susan, secretary's report.

8 DR. ALVERSON: First, I've spoken with
9 Logan Gray multiple times this month and he has
10 made arrangements for us to be in Montgomery on
11 August 25 to sit through other people's sunset
12 reviews. I can give you a list of who's
13 appearing at that time. So it will be in the
14 morning on the eighth floor. At 9:00 are
15 geologists, 9:30 is nursing, 10:00 is
16 veterinarians, 10:30 optometry, 11:00 interior
17 design, and 11:30 behavior analysis. Those
18 would be the ones we would see that day.

19 The Medical Board will not have sunset
20 until September 21, which will be at 4:00 p.m.
21 We are scheduled for sunset September 22 and the
22 schedule that day will be 9:00 a.m., the hearing
23 aide board, at 9:30 interpreters, 10 o'clock

1 will be the Dental Board, 10:30 will be
2 Pharmacy, so we will be the last one of that
3 morning and the Committee has a business meeting
4 at 11 o'clock that day. Anybody is welcome to
5 attend with us. If you're interested, we'd be
6 more than happy to have you there.

7 MS. JONES: Can I ask what that date
8 was again, I'm sorry, what y'all's is?

9 DR. ALVERSON: Ours is the 22nd.

10 MS. JONES: Thank you.

11 DR. ALVERSON: But we're going down
12 August 25 just to learn the process.

13 DR. MARTIN: Okay. Any questions
14 about sunset for Susan?

15 (No response.)

16 DR. ALVERSON: All right. We're
17 continuing to do wrap-up on District III.
18 There's still bills that have to be monitored.
19 When we're -- have approved all of them, those
20 will go to North Carolina to the office that
21 handles District III and the bills will be paid
22 from -- from that office, all right.

23 I'd like to thank everybody from our

1 office that worked to help make that program
2 successful. We had some very nice comments
3 about the site, about the food, about the
4 programs, and people said they were surprised
5 that the evening of Pharm in a Barn turned out
6 to be as nice as it did, but we all enjoyed it.

7 I'd like to remind you that Maltagon
8 will be in October, I believe October 8 through
9 the 12th, in Austin, Texas, and I would ask you
10 on behalf of Rhonda, if you are making plans to
11 travel to Maltagon, the earlier she gets that,
12 the easier it is for her and she doesn't have to
13 call Montgomery at the last minute and --

14 MR. DARBY: What's the hotel in
15 Austin?

16 DR. ALVERSON: I didn't -- I did not
17 get that hotel but --

18 MR. BRADEN: It's the Renaissance.

19 MR. DARBY: Renaissance.

20 DR. ALVERSON: I tried to pull up
21 Maltagon's website this morning, but no luck, so
22 thank you.

23 Our office has completed reworking all

1 applications that we have, which has been quite
2 a chore because that's every single group that
3 we license. The intern/extern applications were
4 put into the system about two weeks ago and both
5 Samford and Auburn students are using that form
6 and it's going very smoothly right now. So they
7 can register online, upload their citizenship
8 document, their birth certificate, their photos.
9 So everything is uploaded as they fill out that
10 form and so for right now, we are not recreating
11 a paper document for intern/externs because we
12 have everything electronically. I'm not saying
13 that's for everything. I'm saying for intern/
14 externs right now, and the way we built it, that
15 will be the same initial record on which we will
16 build the pharmacist license and permission to
17 take boards in the future rather than creating
18 separate files, so this will be your permanent
19 record and it will change over time but it will
20 be that one record.

21 DR. MARTIN: Is the pharmacist renewal
22 app up? Is it -- is it ready to go?

23 DR. ALVERSON: It is ready to go. We

1 are going to test it this week. It's done.

2 DR. MARTIN: How soon can a pharmacist
3 renew?

4 DR. ALVERSON: We're planning on
5 September 1.

6 DR. MARTIN: September 1.

7 DR. ALVERSON: Right. All right.

8 MR. BUNCH: Do you know on the
9 pharmacists how many folks have sent in their
10 citizenship?

11 DR. ALVERSON: I think we're well at
12 60 percent right now. I'd ask Rhonda or Terry
13 if they know for sure. Is that a good estimate?

14 MS. COKER: Yeah, that's a good
15 estimate.

16 DR. ALVERSON: All right. So they're
17 going to be trying out the new form with my
18 license. If you pull my license, you'll find I
19 have all kinds of criminal charges. I've moved
20 all over the country. Anything that needs to be
21 tested is on my license, so please don't ever
22 pull it up and think it's true.

23 Pharmacy license will also be released

1 the same time pharmacist's licenses will be
2 loaded, all right. We are most likely not going
3 to open up manufacturer/wholesaler licenses
4 until maybe a week or two later. We have a
5 draft of a letter that will go out to those
6 businesses that we have to approve one last time
7 and then they will go to the printer and also be
8 mailed out.

9 With your -- since you approved it, we
10 will do all licensing and be finished by
11 December 31; however, because there is a lot of
12 uploading to be done with manufacturers and
13 wholesalers, things that they've never been
14 asked for before, we're going to allow them to
15 do some of that extra uploading through
16 February. We will have everything we need to
17 provide a license by December 31.

18 As you well know, the Board met or
19 members of the Board met with the Auburn
20 incoming class on Friday, August 12, and this
21 past Thursday, Lynn and I went to Samford to
22 meet with the incoming class to explain how to
23 use the new application. In case you don't

1 know, the pharmacy school at Samford has moved.
2 They've taken over what used to be the building
3 for Southern Living. They've integrated all
4 health degrees into that one building, so
5 nursing, public health, and I believe there's
6 one other degree program that is also housed in
7 that building so -- but they're fully moved in.
8 The science component with all the labs and
9 offices for science faculty are in a second
10 building but there's a walkway to get between
11 the two. So if you have to go to a Samford
12 meeting, don't go to the building -- that place
13 you used to go to.

14 DR. MARTIN: Now, I think the dean is
15 planning to extend an invitation to the Board to
16 make a visit in the near future as soon as
17 things settle.

18 DR. ALVERSON: Yes, I actually -- we
19 saw him in the hall and he said exactly that,
20 he'd like to extend an invitation to the Board
21 to come through the building, all right, and I
22 assume that we would want to do that at a time
23 the Board is in town, not make a special trip,

1 but we have yet to make that happen, right.

2 Just so you know, we met with the
3 staff and some of the inspectors from the
4 Medical Board about two weeks ago just to talk
5 about compounding pharmacy, the physician
6 involvement we're seeing in that. So they're up
7 to date on what we're seeing. We've also
8 explained to them that we're seeing a lot more
9 physician compounding in their office.

10 We explained that 797 and 795 may not
11 have been passed by the Medical Board but
12 they're still federal law and if a case ever
13 went to court, that most certainly would be
14 brought up that you have to live by those same
15 rules.

16 So the Medical Board invited us at any
17 time that there are issues that we see in
18 offices that they'd be glad to go and ask if we
19 would please accompany them so we could
20 interpret those regulations for them. We talked
21 a little bit about telemedicine and they said
22 they're waiting to see what's going to happen in
23 Texas and to that point, they have withdrawn any

1 regulations they had about telemedicine and so
2 right now, they've taken no stance on it or have
3 no written or documented recommendations on
4 that.

5 We explained we really wanted to work
6 with them and be on the same page and --

7 MR. BUNCH: Didn't they give their
8 blessings to one of the groups at one time?

9 DR. ALVERSON: Yes, and we discussed
10 that. They gave their blessing to the UAB
11 program and we explained that we didn't think
12 our Board would ever be able to give its
13 blessing to the program where there was no
14 communication other than someone sending in an
15 online application.

16 MR. BUNCH: Have they rescinded that
17 though?

18 DR. ALVERSON: No.

19 MR. WARD: Well, I'm getting -- I'm
20 getting questions from pharmacists throughout
21 the country about our position.

22 DR. ALVERSON: We are -- we are too
23 because it's going on -- the programs, insurance

1 companies within the state are using
2 telemedicine.

3 MR. WARD: I don't think we can have a
4 blanket rule in that respect.

5 DR. ALVERSON: I agree and that's why
6 I suggested recently that we need to bring that
7 up and decide something so we can tell
8 pharmacists.

9 MR. WARD: Well, in the meantime, what
10 do we -- I know Ralph called me with one. He
11 gave the right answer. I've gotten an email or
12 two that have been sent. It seems to me the --
13 can't the analysis be the same would be for any.

14 DR. ALVERSON: I didn't quite --

15 MR. WARD: Couldn't the analysis of
16 whether or not to honor it be the same analysis
17 that pharmacists use every single day, whether
18 it's -- whether it's valid or not.

19 DR. MARTIN: I think practically
20 that's what we're seeing is do the pharmacists
21 have good reason to know that there is not a
22 bona fide relationship between the patient and
23 the prescriber, then the pharmacist does not

1 process that and absent that information they --
2 they can fill it.

3 DR. ALVERSON: That becomes defining
4 what's a bona fide, which is the problem the
5 Medical Board is having.

6 MR. WARD: That's the basis of the --
7 that's the basis of the antitrust law lawsuit
8 going on.

9 DR. ALVERSON: Correct.

10 MR. WARD: We don't want to have a
11 blanket rule that says -- or any blanket that
12 says because it's a -- there hasn't been a
13 actual in-person visit, it automatically means
14 that the prescription can't be filled. That's a
15 dangerous position to take.

16 DR. MARTIN: Yeah, and I don't think
17 that's our position.

18 MR. WARD: Well, I don't think we can
19 do that --

20 DR. MARTIN: Nor should it be.

21 MS. YEATMAN: I agree.

22 DR. MARTIN: So we're waiting for BME
23 to do their process and we would like for ours

1 then, if possible, to support whatever they put
2 in place. Hopefully, because of this new
3 dialogue that's been established with BME, that
4 there will be some communication back and forth
5 before they even go forward with their
6 proposal.

7 MR. WARD: And that lawsuit --

8 MS. YEATMAN: But BME doesn't have a
9 position. That's the problem.

10 MR. WARD: And that lawsuit could go
11 on for years, so.

12 MS. YEATMAN: If we wait on them, it
13 will be forever.

14 MR. WARD: I think right now the
15 position should be that it's up to the
16 pharmacist using his discretion.

17 DR. MARTIN: That's the answer.

18 MR. BUNCH: Is there something that
19 the legislature can decide?

20 MR. WARD: Yeah, it sure is.

21 MR. BUNCH: And that may be -- that
22 may be where it ends up.

23 DR. MARTIN: Well, it could be that on

1 September 21 when they go to sunset that that
2 particular topic then will come up.

3 MR. BUNCH: That's what I thought.
4 That may be it -- whether we like the answer or
5 not, that may be the best way to resolve it is
6 to let the legislature decide and get everybody
7 on the same page.

8 MR. WARD: Or we can do it by rule --
9 send a rule in to be looked at by the
10 Legislative Reference Service.

11 DR. MARTIN: We just don't know what
12 that rule would say right now.

13 MR. WARD: Well, it could say what the
14 Medical Board's rule used to say.

15 DR. MARTIN: In the meantime.

16 MR. WARD: The Medical Board rule used
17 to say it had to establish a valid relationship
18 between patient and doctor. There had to be an
19 initial personal visit. That was their rule and
20 apparently they've gone back on that because
21 they're -- they have concerns like they should
22 have about the meaning of the North Carolina
23 dental case.

1 DR. MARTIN: Right.

2 MR. WARD: So I think the Board's
3 position should be if asked that it's like
4 pharmacists do every day all day long is to
5 determine whether a relationship exists and
6 right now, there's no hard-and-fast rule. It's
7 just up to the pharmacist. I don't know how
8 else we can -- what else we can do at this
9 point.

10 MR. BUNCH: I guess all you can do,
11 you tell the pharmacists out there that they
12 can't fill a telemedicine prescription so if
13 they think it is a telemedicine prescription,
14 they can't fill it. If they don't know, they
15 don't know.

16 DR. MARTIN: Right.

17 MR. WARD: So that's it.

18 MR. HEBERT: Hey, Jim, excuse me. I
19 got a call this morning and they're starting to
20 see a lot of them in Mobile and to my knowledge,
21 I just thought UAB was the only one that could
22 do that right now. I told him don't fill it
23 until we, you know, hear from the Medical Board

1 because there is no patient-doctor relationship
2 if they just talk over the phone.

3 DR. MARTIN: Where did the
4 prescription originate, do you know, Mark?

5 MR. HEBERT: No, sir, I don't. I can
6 call him and ask him but that's why the
7 pharmacist called me because it was
8 telemedicine.

9 MR. WARD: The Board's position should
10 not be that just because there is not -- unless
11 double negative -- should not be that just
12 because there's not an initial personal
13 go-into-the-office visit does not automatically
14 mean that there is not a valid relationship
15 between a patient and a doctor. It's a judgment
16 that each pharmacist must make.

17 MR. BUNCH: Say that again.

18 MR. DARBY: You can have a
19 relationship without having an in-person
20 visit.

21 MR. WARD: My understanding of the --
22 again, this is my understanding. I haven't
23 looked at it but in reading some articles, my

1 understanding that the -- there are companies
2 now who are offering medicine to patients
3 without having to visit with a doctor at all. I
4 think we had a guy who came here and talked to
5 us about that. A lot of states used to say that
6 if it was not, the Medical Board said -- would
7 say that there's not a valid relationship
8 between patient and doctor unless there was an
9 initial personal examination.

10 In light of the recent cases, I think
11 that's an unwise position to take, which is the
12 reason why the Medical Board has withdrawn that
13 rule until -- so until there's some clarity,
14 either by law -- either by legislation or by
15 what happens in this Texas case or any other
16 court case, I don't think that the Alabama
17 Pharmacy Board's position should be that a
18 pharmacist should not fill a prescription just
19 because the patient and doctor relationship is
20 not based upon a personal interview.

21 MR. BUNCH: So when you say that -- so
22 when you say that, then the pharmacist can fill
23 that prescription that Mark talked about.

1 MR. WARD: Right.

2 MS. YEATMAN: Well, I think if it --

3 MR. WARD: If it otherwise --

4 MS. YEATMAN: There is a -- there is a
5 distinction between the different ways that
6 telemedicine is practiced.

7 MR. WARD: For example.

8 MS. YEATMAN: If they're just filling
9 out a questionnaire via the Internet and have no
10 communication with a medical professional, in my
11 opinion, that is not any type of relationship.

12 MR. WARD: Well, it might not be.

13 MS. YEATMAN: If they're able to
14 Skype, send information back and forth, and in
15 some way interact with a practitioner that
16 doesn't require face to face, in my mind, that
17 could establish a relationship with a physician.
18 But filling out a questionnaire saying I need a
19 blue pill is not a relationship.

20 MR. WARD: Well, and it depends, I
21 think, on the drugs. It depends on if the
22 patient is in Maine and the physician is in
23 Washington State, that might be one you might

1 want to wonder about. Unfortunately, the
2 pharmacist is going to do the same thing they do
3 every single day and that is try to figure it
4 out.

5 DR. ALVERSON: If the physician is in
6 another state, according to the Medical Board,
7 before they can prescribe, they want them to be
8 licensed in the state.

9 MS. YEATMAN: And how are they
10 policing that?

11 DR. ALVERSON: I don't know because
12 right now you could fill a prescription from a
13 physician in another state.

14 MS. YEATMAN: Right.

15 DR. MARTIN: Really they're in the
16 same situation that pharmacy is in but pharmacy
17 has an advantage in that we have a reciprocity
18 program but as I understand physicians do not
19 have a reciprocity program.

20 DR. ALVERSON: I don't know.

21 MR. SORRELL: Well, physicians have
22 nighttime physicians in Australia who are
23 reading x-rays and we've got --

1 MR. WARD: Reciprocity wouldn't really
2 mean -- it's just -- I just want it to be clear
3 out of my mouth that there should not be a
4 blanket ban on not filling a prescription if
5 there has not been a face-to-face initial visit
6 with a patient and doctor.

7 MR. BUNCH: That's the big question
8 that we get. I'm assuming what you're saying is
9 like Mark, you just had that question down
10 there. Of course, you advised them not to --
11 not to fill it.

12 MR. HEBERT: I'll call him back and --

13 MS. YEATMAN: We need to verify
14 because one of the programs that I played with
15 to see how it worked did not have any
16 interaction with a physician and that in my mind
17 is unacceptable and would not be a relationship.
18 Louise, do you have a question?

19 MS. JONES: I do. Can I ask a quick
20 question?

21 DR. MARTIN: Yes.

22 MS. JONES: So the way APA has advised
23 when we receive questions and in presentations

1 to our membership has been that -- and forgive
2 me because I don't have it right here, it's
3 think it's .33 -- 680-X-2-.33 is the Internet
4 pharmacy rule but don't hold me to that number
5 and don't hold me to this language specifically
6 but it says something along the lines of if it's
7 as a result -- if the prescription is as a
8 result of an Internet questionnaire, and it
9 lists several things, or if the pharmacist knows
10 or should have known that it's the result of a
11 prescription being written when there was no
12 valid patient-prescriber relationship, they're
13 not to fill it.

14 MS. YEATMAN: Right.

15 DR. MARTIN: Give us that citation on
16 that one more time.

17 MS. JONES: I think it's
18 680-X-2-.33.

19 MR. DARBY: It is.

20 MS. JONES: But I'm pulling up by
21 memory.

22 MR. DARBY: You've got a good memory.

23 MS. JONES: I think wrote that when I

1 was up here, so that's why.

2 MR. DARBY: James got credit -- James
3 Ward got credit for it.

4 MS. JONES: So what we have advised
5 people is basically that, is that if it's as a
6 result -- because when all of this came out with
7 the UAB pilot project that was -- and it was my
8 understanding that was a pilot project that they
9 did for, like, two years, which that should be
10 coming up or should have been but I guess
11 they've just kind of extended it and may be
12 adding others, but the Board of Medical
13 Examiners said you can write them but the Board
14 of Pharmacy says our rules don't allow
15 pharmacists to fill them.

16 MR. DARBY: Right.

17 MS. JONES: So what we told members
18 who contacted us -- pharmacists who contacted us
19 was that if you know it's as a result of this
20 UAB program or anything else like that that's an
21 Internet questionnaire and meets this criteria
22 that says it's not a valid patient-prescriber
23 relationship, you can't fill it. If you don't

1 know and you shouldn't have known and the
2 patient didn't tell you, they just gave you a
3 prescription and you filled it, then you should
4 be fine but if you know or should know, the
5 rule says that you -- you shouldn't fill it and
6 that's where we've kind of left it is in the
7 pharmacist's professional judgment and that
8 they're to follow that. Is that -- has that
9 changed at all?

10 MR. WARD: Yes.

11 MS. JONES: Okay.

12 MR. WARD: This was written before the
13 North Carolina case and you just can't -- you've
14 got to apply a different approach to it in my
15 view. You just can't automatically say that
16 something is not valid that's based on a
17 questionnaire. I just --

18 MR. BUNCH: Even if our rule says --

19 MR. WARD: Yes. We're going to have
20 to look at this. I'm glad --

21 MS. YEATMAN: And I don't mean to
22 challenge you but the way that reads to me is if
23 it's an Internet questionnaire, which does not

1 establish a relationship between a physician and
2 a patient.

3 DR. MARTIN: Unless there was a
4 preexisting relationship.

5 MR. WARD: It doesn't say that. It
6 says, "A pharmacist shall not dispense a
7 prescription drug if a pharmacist has knowledge
8 or reasonably should have known that the order
9 for such drug was issued on the basis of an
10 Internet-based questionnaire, an Internet-based
11 consultation, or a telephonic consultation."

12 DR. MARTIN: Yeah, all -- keep
13 reading.

14 MS. YEATMAN: Or telephonic
15 conversation.

16 MR. WARD: "All without a valid,
17 preexisting patient-practitioner relationship."

18 DR. MARTIN: That last little piece.

19 MS. YEATMAN: See your reading is that
20 could establish the relationship depending on --

21 MR. WARD: This was -- that -- what
22 this rule said -- what this rule -- what this
23 rule says is if there was a valid -- if there

1 was an initial -- if circumstances for this rule
2 was such that if there was first a valid
3 relationship, that is the patient went to see
4 the doctor, after that, then these other things
5 were okay.

6 MR. BUNCH: But that doesn't happen.

7 DR. MARTIN: That's what this says.

8 MR. WARD: But that was before --

9 MS. JONES: But it doesn't say they
10 have to have seen the doctor. It just says that
11 there was a valid patient practitioner, which is
12 the point you were making a while ago is what
13 determines that is still to be determined.

14 MR. WARD: Well, at the time -- at the
15 time this rule was written, the Medical Board's
16 rule said there had to be an initial face-to-
17 face visit, so that's what a valid relationship
18 is. So that would mean once that was
19 established, you could call your doctor on the
20 phone and say, here are my symptoms and he could
21 call in a prescription and you didn't have to go
22 see him.

23 MR. BUNCH: Right.

1 MR. WARD: Which happens every single
2 day a thousand times because there was an
3 initial relationship. But the law is changing
4 and I'm afraid that until it's sorted out to say
5 that you have to have a face-to-face visit to
6 establish a valid relationship between a patient
7 and doctor is not a good thing to have in here.
8 You just can't say anymore blanket -- have a
9 blanket statement and then go first see the
10 doctor visit -- the prescription is not good
11 because you don't have a valid relationship.
12 That's the point.

13 MR. BUNCH: So what do you think our
14 stance should be when we get these calls from
15 other pharmacists to advise them -- no matter
16 what the circumstance that it's okay for them to
17 fill that prescription in Alabama?

18 MR. WARD: It's okay to fill it if
19 they think and they're satisfied that it's
20 valid --

21 MR. BUNCH: Well, okay.

22 MR. WARD: Well --

23 MR. DARBY: You've got to use your

1 judgment.

2 DR. MARTIN: Well, we're not going to
3 solve it --

4 MR. BUNCH: But we can't have a --

5 MR. WARD: You just can't -- valid --
6 validity equals having to have a face-to-face
7 visit is no longer a proper equation.

8 MR. BUNCH: I got you. So they don't
9 have to have a face-to-face?

10 MR. WARD: No, I don't think so based
11 on what --

12 MR. BUNCH: So anything is valid
13 basically?

14 DR. MARTIN: So if the pharmacist, and
15 I think Jim is right, if the pharmacist is
16 presented with a prescription, whether it's
17 telemedicine prescription or not telemedicine
18 prescription, if the pharmacist believes that
19 that relationship does not exist --

20 MR. WARD: Yeah.

21 DR. MARTIN: -- a relationship does
22 not exist between the prescriber and the
23 patient, then it should not be filled.

1 MR. WARD: Turn that -- off for a
2 minute, please.

3

4 (Whereupon, a discussion was held off
5 the record.)

6

7 DR. MARTIN: So for some of you in
8 attendance, you may not be familiar with what's
9 going on with Texas that Teladoc presented a
10 request to Texas. Texas denied. Teladoc sued.
11 I think it's now in district court if I'm not
12 mistaken.

13 MR. WARD: The same thing is going on
14 with legal services, veterinarian services,
15 veterinarian prescriptions. It's not limited
16 just to this area.

17 MR. DARBY: Texas also has
18 telepharmacy where you had pharmacies with no
19 pharmacists in them.

20 DR. MARTIN: Right.

21 MR. WARD: If you ever ask why it
22 became a hostile pharmacy, today is the day to
23 remember why. You don't have to worry about

1 stuff like this.

2 MR. DARBY: We do.

3 DR. MARTIN: We have other stuff to
4 worry about.

5 Susan, would you like to continue your
6 report?

7 DR. ALVERSON: Yes, but I was going to
8 make a comment as we move forward with this, I
9 think we also have to remember the huge problem
10 we have with Internet prescriptions and the
11 amount of drugs that are filled deviously
12 because it's strictly Internet and there is no
13 relationship, period. And I forgot to say that
14 when we spoke with the Medical Board, they do
15 not want to see telemedicine used for controlled
16 drugs at all.

17 MR. WARD: And there is -- there is --
18 there's the -- the federal Controlled Substance
19 Act was amended several years ago. I think it's
20 called the Ryan Haight Act that sets a whole
21 different standard now for -- for controlleds,
22 okay. The analysis is different. It's a
23 federal law that talks about that. I can get

1 that for you if you want to advise everybody to
2 that. There you have -- there the law tells you
3 what is a valid relationship and I believe it
4 requires a face to face. Have you got the
5 pharmacy manual there?

6 MR. DARBY: Yeah.

7 MR. WARD: Look that up.

8 MR. DARBY: Yeah, page 29.

9 DR. MARTIN: Okay. We're going to
10 move ahead. Obviously it's a big topic. We're
11 in that uncomfortable zone between, you know,
12 where we need to be and that will become more
13 clear as we go forward.

14 MR. WARD: Yeah, yeah, thank you God
15 for giving me a good memory -- Ryan Haight --
16 Ryan Haight Online Pharmacy Consumer Protection
17 Act of 2008. I think it requires a face to
18 face -- you have to register -- yes, hah-hah.
19 One of the primary ways which the Ryan Haight
20 Act combats the use of the Internet to
21 facilitate illegal sales is by mandating, with
22 limited exceptions, that dispensing by means of
23 the Internet be predicated on a valid

1 prescription involving at least one in-person
2 medical evaluation, so just like I said, as to
3 the controlled drugs, you can refuse them all
4 day long unless they had an in-person meeting.
5 As to legend, it's a different story and Buddy,
6 what you just said ten minutes ago is right. We
7 need the same thing for legend drugs.

8 DR. MARTIN: Okay. Any further
9 discussion at this time with telemedicine?
10 Obviously we'll be discussing that a lot in the
11 future.

12 MR. WARD: Thank you, Eddie.

13 DR. MARTIN: Susan.

14 DR. ALVERSON: Just to say we met with
15 APCI to discuss telemedicine. We also had a
16 very productive meeting with Blue Cross Blue
17 Shield and Prime Therapeutics to talk about
18 fraud in pharmacy. We talked about as we move
19 forward with new legislation that we would
20 appreciate Blue Cross Blue Shield supporting the
21 legislation that we bring forward and they're
22 talking about new programs to help curtail
23 narcotic -- narcotic prescriptions but we didn't

1 get into what that was but we agreed we would
2 meet again and would discuss that.

3 That's the end of my report.

4 DR. MARTIN: Any questions for Susan?

5 MR. DARBY: I'd like to commend you
6 and the staff for y'all's work at NABP District
7 III. I thought it went very well.

8 DR. ALVERSON: Oh, thank you very
9 much.

10 DR. MARTIN: Yes. In fact, can we --
11 can we kind of formalize that a bit? All of
12 those in favor of recognizing Susan and the
13 staff for the tremendous job, please say aye.

14 MR. DARBY: Aye.

15 MR. BUNCH: Aye.

16 MS. YEATMAN: Aye.

17 MR. SORRELL: Aye.

18 DR. MARTIN: Thank you very much.

19 MR. BUNCH: I think the other states
20 want you to do it for them, maybe yearly.

21 DR. ALVERSON: Do we need to do it
22 every year? The thought I had all the way
23 driving home was, I'll never have to do that

1 again.

2 MR. WARD: Awesome one. Will you tell
3 them about the second half of our meeting with
4 the attorney general about compounding? Not
5 about the first part, that's an ongoing case.

6 DR. ALVERSON: Right.

7 MR. WARD: About the -- what you and
8 Eddie described as you are seeing in relation to
9 compounding pharmacies without -- you aren't
10 naming any names. You aren't saying anybody,
11 just what you see and ask them for anything they
12 might add.

13 DR. ALVERSON: I'd like to ask Eddie
14 to chime in. We met with the assistant attorney
15 general and three of their investigators and we
16 talked about the extent of fraud that we see
17 with some compounding pharmacies. We definitely
18 made the point that there is a role for
19 compounding pharmacies, we support it. We're
20 not making a blanket statement but that we had
21 seen businesses, often out-of-state business
22 interests that set up mechanisms to defraud
23 insurance companies, to take advantage of

1 patients, that are grossly overcharging, that in
2 our opinion were providing drugs often that were
3 of limited value or that the value could not be
4 sustained.

5 We talked about some situations we had
6 become aware of where even private businesses
7 being taken advantage of by programs that they
8 think are legitimate and will be helpful for
9 their employees and we've discovered that's not
10 the case. They're schemes to make use and take
11 advantage of their employees. So Eddie, what
12 would you like to add?

13 MR. BRADEN: That was pretty much the
14 gist of the conversation we had.

15 DR. ALVERSON: So I don't think they
16 realize the extent of fraud, the amount of money
17 that's passing -- that's being taken away from
18 patients, from insurance companies. The fact
19 that it's going out of state is a very minor
20 point. The fact that patients are not being
21 served well is our major point.

22 DR. MARTIN: I'd like to back up for a
23 moment if you don't mind through the discussion

1 we were having about manufacturers, wholesalers,
2 and distributors renewal apps coming out a
3 couple of weeks after the pharmacy license. Do
4 we intend to capture at that point virtuals,
5 3PLs, and 503Bs?

6 DR. ALVERSON: All of those.

7 DR. MARTIN: So they'll say I am --
8 even though it will be under manufacturer/
9 wholesaler/distributor, they'll say, I want to
10 be a virtual, I want to be a 3PL, I want to be a
11 503B.

12 DR. ALVERSON: Yes, every category
13 will have to be identified.

14 DR. MARTIN: Thank you.

15 DR. ALVERSON: Now, I have to say we
16 are having some knock-down-drag-out fights with
17 companies that want to say, I don't have to be
18 licensed in your state, so that's kind of a
19 daily experience and it's been a challenge for
20 the licensing staff but.

21 DR. MARTIN: Thank you. I thought you
22 had probably done that.

23 Was that all you had, Susan?

1 DR. ALVERSON: Yes.

2 DR. MARTIN: Thank you for a good
3 report.

4 Mr. Ward, do you have anything for the
5 business session today?

6 MR. WARD: No, but I have a number of
7 cases to talk to you about in executive session.
8 Oh, I also want to say this: I don't know how
9 long I've been doing this, 35 years, but the
10 last three or four years we've had the most
11 complicated cases we have ever had both in scope
12 and issues and I just wanted to say about Eddie
13 and his guys, they're really doing a real good
14 job. There's no more of just going into a
15 pharmacy, oh, you're short 100 pills here, 500
16 here. It's a lot more involved and they've had
17 to learn a lot to and they're really doing a
18 good job on it, so I just want to say that. You
19 all see the end product most of the time but
20 it's a lot of -- these guys do a lot of work
21 beforehand to get it -- I'm pretty demanding, so
22 they always smile, at least to my face, when I
23 ask them to do all of this stuff.

1 DR. MARTIN: Thank you, Mr. Ward. I
2 think we skipped minutes. We're going to back
3 up and see if we're ready to approve some
4 minutes. I believe we even have some that had
5 somehow slipped through the process of being
6 approved back in 2015 and Mr. Darby, are you --
7 do you have a list of those?

8 MR. DARBY: I do. We need to -- I
9 make a motion we approve the interview minutes
10 from April of 2015.

11 DR. MARTIN: There is a motion to
12 approve those minutes from 2015. Is there a
13 second?

14 MR. SORRELL: Second.

15 DR. MARTIN: All those in favor, say
16 aye.

17 MR. BUNCH: Aye.

18 MS. YEATMAN: Aye.

19 MR. SORRELL: Aye.

20 DR. MARTIN: Any opposed?

21 (No response.)

22 DR. MARTIN: The minutes are approved.

23 MR. DARBY: I make a motion we approve

1 the interview minutes for the May 2016
2 meeting.

3 DR. MARTIN: We have a motion. Is
4 there a second?

5 MS. YEATMAN: Second.

6 DR. MARTIN: All those in favor, say
7 aye.

8 MR. BUNCH: Aye.

9 MS. YEATMAN: Aye.

10 MR. DARBY: Aye.

11 MR. SORRELL: Aye.

12 DR. MARTIN: Any opposed?

13 (No response.)

14 DR. MARTIN: The minutes are
15 approved.

16 MR. DARBY: I make a motion we approve
17 the interview minutes from July 20, 2016.

18 MS. YEATMAN: Second.

19 DR. MARTIN: There is a motion and a
20 second. All those in favor?

21 MR. SORRELL: Aye.

22 MS. YEATMAN: Aye.

23 MR. DARBY: Aye.

1 DR. MARTIN: Any opposed?

2 (No response.)

3 DR. MARTIN: Passes.

4 MR. DARBY: I make a motion we approve
5 the business meeting minutes from July 20,
6 2016.

7 MS. YEATMAN: Second.

8 DR. MARTIN: Motion and a second to
9 approve the July 20, 2016, Board meeting
10 minutes. All those in favor, say aye.

11 MR. SORRELL: Aye.

12 MR. DARBY: Aye.

13 MS. YEATMAN: Aye.

14 MR. BUNCH: Aye.

15 DR. MARTIN: Any opposed?

16 (No response.)

17 DR. MARTIN: The minutes are approved.
18 Do we have the interview minutes for
19 that same date?

20 MR. DARBY: I make a motion that we
21 approve the interview minutes from July 20,
22 2016.

23 MS. YEATMAN: Second.

1 DR. MARTIN: There's a motion and a
2 second. All those in favor, say aye.

3 MR. DARBY: Aye.

4 MS. YEATMAN: Aye.

5 MR. BUNCH: Aye.

6 DR. MARTIN: Any opposed?

7 (No response.)

8 DR. MARTIN: Those minutes are
9 approved. Thank you very much. I think that
10 means we're caught up on minutes at this point.
11 Do we have any old business today?

12 (No response.)

13 DR. MARTIN: Hearing none, do we have
14 any new business? I see two items and I believe
15 there's actually a third one that we'll add.
16 The first is the proposal to amend 680-X-2-.20.
17 Apparently there was a typographical error and
18 I'll read this for the record and then we'll
19 entertain a motion.

20 What was stated in that nuclear
21 pharmacy rule referred to 34-23-1(11) and those
22 are drug manufacturers. That is incorrect. It
23 should have referred to 34-23-1(5), which deals

1 with drugs and I believe since this is a
2 typographical error or an error not involving
3 actual content, we can approve it in this
4 manner; is that correct, Mr. Ward?

5 MR. WARD: You just have to make a
6 motion -- you just have an amended rule to
7 correct what the law terms as a scrivener's
8 error, a typographical error.

9 DR. MARTIN: So do we have a motion to
10 correct this scrivener's error?

11 MR. BUNCH: I make a motion that we
12 correct the scrivener's error.

13 DR. MARTIN: Is there a second?

14 MS. YEATMAN: Second.

15 DR. MARTIN: Any discussion?

16 (No response.)

17 DR. MARTIN: All those in favor, say
18 aye.

19 MR. BUNCH: Aye.

20 MR. DARBY: Aye.

21 MS. YEATMAN: Aye.

22 MR. SORRELL: Aye.

23 DR. MARTIN: Any opposed, same sign?

1 (No response.)

2 DR. MARTIN: The motion passes.

3 We've already talked about
4 telemedicine. It does appear on the agenda as a
5 new business and I'm assuming we've pretty much
6 talked that out unless you have additional
7 topics that you'd like to bring up at this time,
8 this will be the time to do that.

9 Hearing none, I'd like to add one
10 third piece of new business. It's come to our
11 attention that we do need to indefinitely
12 suspend the Board's contract with Dan McConaghy
13 until further notice and we will -- we need to
14 entertain a motion to that effect.

15 MS. YEATMAN: I move that we
16 indefinitely suspend the contract with Dan
17 McConaghy until further notice.

18 DR. MARTIN: Is there a second?

19 MR. DARBY: I second it.

20 DR. MARTIN: Is there any discussion?

21 (No response.)

22 DR. MARTIN: All those in favor, say
23 aye.

1 MR. BUNCH: Aye.

2 MR. DARBY: Aye.

3 MS. YEATMAN: Aye.

4 DR. MARTIN: Any opposed, same sign.

5 (No response.)

6 DR. MARTIN: The motion passes.

7 MR. WARD: I would -- there shouldn't
8 be any negative --

9 MR. DARBY: Right. I was going to
10 say --

11 MR. WARD: -- inference. There
12 shouldn't be any negative or adverse inference
13 drawn from that at all. That's -- I don't want
14 anybody leaving here thinking that's being done
15 for reason of bad or wrong at all.

16 MR. DARBY: Dan has done an excellent
17 job in everything he's been asked to do.

18 MR. WARD: Yeah, so I want to make
19 sure that's clear.

20 DR. MARTIN: Thank you for those
21 clarifications and those are right on target.

22 Okay. Do we have any additional new
23 business?

1 (No response.)

2 DR. MARTIN: No additional new
3 business.

4 Okay. At this time I'll entertain a
5 motion for the Board to go into executive
6 session. That will be for the purpose of
7 discussing qualifications and competency of
8 those regulated by this Board. The executive
9 session will begin at 11:50 and will end at
10 12:15. For your information, when the Board
11 returns to its public meeting, we will only vote
12 on matters discussed during executive session
13 and then we will adjourn. Mr. Ward.

14 MR. WARD: As an attorney licensed to
15 practice law in the State of Alabama, I certify
16 that one of the purposes for going into the
17 executive session is to discuss the resolution
18 of settlement of pending cases before the
19 Board.

20 DR. MARTIN: Thank you very much.
21 We'll be in executive session.

22 MR. WARD: No, you have to second
23 it.

1 DR. MARTIN: I'm sorry. I'm sorry. I
2 got a little ahead of myself there. We do need
3 a voice --

4 MR. DARBY: I will second the motion.

5 DR. MARTIN: We have a motion. We
6 have a second. We need a voice vote to go
7 into -- voice vote by individual for the record
8 to go into executive session. Mr. Sorrell?

9 MR. SORRELL: Yes.

10 DR. MARTIN: Mr. Darby?

11 MR. DARBY: Yes.

12 DR. MARTIN: Ms. Yeatman?

13 MS. YEATMAN: Yes.

14 DR. MARTIN: Mr. Bunch?

15 MR. BUNCH: Yes.

16 DR. MARTIN: I vote yes. We are in
17 executive session.

18

19 (Whereupon, a recess was taken for
20 executive session from 11:35 a.m. to
21 12:29 p.m.)

22

23 DR. MARTIN: This is the Alabama State

1 Board of Pharmacy coming out of executive
2 session. We had no business in the executive
3 session, therefore, we will entertain a motion
4 to adjourn.

5 MR. DARBY: I make a motion to
6 adjourn.

7 DR. MARTIN: Is there a second?

8 MR. BUNCH: Second.

9 DR. MARTIN: All those in favor?

10 MR. SORRELL: Aye.

11 MR. BUNCH: Aye.

12 MS. YEATMAN: Aye.

13 DR. MARTIN: Approved. We are
14 adjourned.

15

16 (Whereupon, the meeting was adjourned

17 at 12:30 p.m.)

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CERTIFICATE

STATE OF ALABAMA

SHELBY COUNTY

I, Sheri G. Connelly, RPR, Certified Court Reporter, hereby certify that the above and foregoing meeting was taken down by me in stenotype and the questions, answers, and statements thereto were transcribed by means of computer-aided transcription and that the foregoing represents a true and correct transcript of the said meeting.

I further certify that I am neither of counsel, nor of kin to the parties to the action, nor am I in anywise interested in the result of said cause.

/s/ Sheri G. Connelly

G. CONNELLY, RPR

ACCR No. 439, Expires 9/30/2016

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