

**MINUTES OF THE  
IDAHO STATE BOARD OF PHARMACY**

**February 6, 2009**

**SpringHill Suites  
Boise, Idaho**

This meeting of the board is held to conduct regular board business.

Chairman Dwayne Sheffler, RPh called the meeting to order at 8:00 a.m. In attendance were Kitty Gurnsey; Berk Fraser, RPh; Nicole Chopski, Pharm D; Holly Henggeler, Pharm D; Mark Johnston RPh, Executive Director; Mike McPeek, Deputy Attorney General; Melissa Moody, Deputy Attorney General, Jan Atkinson, Senior Compliance Officer; Lisa Culley, Compliance Officer; Fred Collings, Chief Investigator; and Ellen Mitchell.

Dr. Chopski motioned to accept the minutes from the December 17, 2008, Mr. Fraser seconded. Motion carried unanimously.

Mr. Johnston discussed the information provided by Kay Christensen, DAG regarding various motions and requirements for passing motions.

David Ripley, Idaho Chooses Life, addresses the Board with Counsel Chris Troupis regarding Conscience Clause and proposed legislation that would allow pharmacists to refuse to dispense medication based on religious beliefs. The Board's mission is to protect public safety not the rights of individual pharmacists. Mr. Ripley was directed to the state associations. Mr. Fraser recommended reviewing the language in the bill before the Board took a stance. Dr. Chopski asks Mr. Ripley to stay in contact with Mr. Johnston as this legislation develops. At this time the Board makes the decision to remain neutral on this legislation.

Larry Munkelt, Pharmacy Director for Saint Alphonsus RMC (SARMC) asks the Board to make Tech Check Tech rule permanent and presents results of the pilot program at SARMC. Mr. McPeek clarified the rule is now a permanent rule. Mr. Munkelt indicates 2 errors in 2000 prescriptions; the national average accuracy rate is 99.5%. Dr. Henggeler asks what errors occurred during the project; Mr. Munkelt indicated the errors were related to quantity and not drug selection. The Board determined that as of April 2, 2008 the executive director of the Board may approve additional pilot programs as authorized by this rule. The board members and Mr. Munkelt agreed to use this program's training and standards as the minimum requirements for any future applicants. Dr. Henggeler requests an update from SARMC in 6 months.

Dane Kaster, Student Pharmacist presentation on Board discipline history. Mr. Kaster expressed his appreciation for his rotation with the Board. He has enjoyed the legislature and the various projects he has been able to work on. In the disciplinary research he conducted he found consistency in routine violations, but a lack of consistency pertaining to non-routine violations. Ms Moody requested that Mr. Kaster's discipline record be updated and maintained by Board staff. Ms Moody explains the requirement for Board action to delegate the handling of routine

violations as determined by the Board to Board staff. The Board office will send the letter proposing a predetermined fine with an offer to settle without requiring an appearance before the Board. Dr. Chopski motioned to accept routine offenses as drafted excluding the technician ratio and signage violations related to hours of operation. Dr. Henggeler seconded. Following further discussion Dr. Henggeler amends the motion to accept routine offenses as drafted excluding only the technician ratio. Mr. Fraser seconded. (See attached list)

Mr. Sheffler addresses the violation for a technician's failure to identify themselves when answering the phone. Ms. Atkinson reiterates the procedure is to address the issue during inspection and is only a violation following repeated warnings. Mr. Fraser motioned to amend the violation to \$50 to the tech and \$100 to Pharmacist in Charge. Dr. Henggeler seconded. Ms. Gurnsey requests comment from the inspectors and following comments the motion passes unanimously.

Legislation and Rule review.

The Honorable Rep Sue Chew presented information on proposed legislation that would allow licensed registrants to donate previously dispensed unused medications to qualified centers and clinics for dispensing to patients. Rep Chew asked the Board for direction and clarification regarding existing board rules or statutes that conflict with this bill. The Board suggested corrections to the legislation to include pedigree and wholesale issues and recommends contacting Medicaid regarding issues related to donating medications from Medicaid patients.

Mr. Johnston introduces Lynette Berggren as the Board's new contract employee. Ms. Berggren is a Paralegal with many years of experience in pharmacy law compliance and was hired to reorganize and re-codify of the law book. Mr. Johnston indicates the Board has also contracted with Sam Hoagland for oversight on this project. The Board identifies priorities and agrees that rules and questions regarding controlled substances should be together, factual under factual and recordkeeping requirements should all be combined.

Mr. Johnston advises all rules have passed the Senate and are on to the House; the technician rule has substantial issues and requires additional clarification; Mr. Sheffler discussed the telepharmacy language as it pertains to providing DUR across state lines; Dr. Chopski has no issue with mirroring the Veterinary Board's legislation extending veterinary orders to one week; Board not interested in ISMP's proposal for a uniform prescription label which includes 31 label requirements for all states; conflicting reinstatement fees; Rules 291.b and 405 should read the same; requires a fee correction; Rule 156 "repackaged" versus "prepackaged".

Board directs staff to work on the following issues and Mr. Johnston requests issues be prioritized: Statute change to allow data sharing with other states and out of state practitioners; rules to address pharmacies not operating during posted hours; compounding rules; rules addressing faxed authorization to refill, rules creating a reapplication process once a pharmacy has been closed for a time; changes to allow a 90 day supply when #30 w/2 refills is authorized; immunization standards, inducements; mandatory transferring; pharmacist absence (from the box) policy; Rule 254.02; reference change.

Public requests and staff recommendations for rule changes: Rule 179, add delivery to a patient at their work site, change to 'the patient'; Rule 406.07 we no longer supply updates-delete; Request that Board inspect by appointment or use a self inspection checklist as in other states, Rule 447: refilling a prescription; language revision to allow another uniformly maintained record, Rules 254.02 and 152.01 should be revised so both read the same, Rules 157 and 181 address record retention-all record requirements should be the same, removal of Rule 188.01 language doesn't address employees accessing pharmacy when mercantile establishment is closed; Rule 180.02 requiring generic sign to be posted by pharmacy; Rule 154.01 lists manufacturing as acceptable within a pharmacy; but it is not, Rule 184 regarding inducements needs clarification or should be removed altogether; Rule 132, add "internet" to list of acceptable CE resources; Fred Collings advises that more controlled substances are being dispensed and recommends creating a controlled substance exam for practitioners; Rule 190: eliminate or revise; Rule 442.01; eliminate the required; signature of the patient on the hard copy, Rx Waste: educate agencies and public on a sensible solution regarding pharmaceutical take-back programs, change existing Code and Statutes, review practice of charging state agencies for licenses or registrations.

Ms. Moody presented the order regarding Donald Tapp, DDS. Mr. Fraser motioned to accept the order as written. Dr. Henggeler seconded. Motion carried.

Mr. Fraser recused himself in the matter of Stanly Gibson, R.Ph. Ms. Gurnsey motioned to fine Mr. Gibson \$750. Motion died for lack of second. After discussion Dr. Chopski motioned to fine Mr. Gibson \$750 and accept the order as written. Ms. Gurnsey seconded. Vote is tied. Mr. Sheffler calls a five-minute recess to allow Mr. Gibson and Ms. Moody time to negotiate.

Mr. Johnston presented his calendar.

The Idaho Institute for the History of Pharmacy is working to put together a traveling exhibit of the history of pharmacy in Idaho.

Mr. Gibson addresses the Board and agrees to a \$2000 fine. Dr. Henggeler motioned to accept the stipulation as agreed. Dr. Chopski seconded. Ensuing discussion reiterates the Board retains authority to lower the agreed upon fine. Motion carried. Dr. Chopski opposed.

Ms. Moody presented the order regarding Mitchell Moffat, MD that mirrors an order from DEA. Dr. Henggeler motions to accept the order. Mr. Fraser seconded. Motion carried.

In the matter of Michael Cheslock, R.Ph, Mr. Fraser motioned to accept the order as written. Dr. Henggeler seconded. Motion carried. Ms. Gurnsey opposed.

In the case of James Tanzini, R.Ph. the parties stipulated to the admission of the complaint, the affidavit of Lisa Cully, Inspector, and the order. Mr. McPeek asks the Complaint be marked as Exhibit A, Tab 1 as Exhibit B, Tab 2 as Exhibit C, Tab 3 as Exhibit D, Tab 4 as Exhibit E, Tab 5 as Exhibit F, Tab 6 as Exhibit G, Tab 7 as Exhibit H, Ms. Culley's affidavit is Exhibit I.

Following the testimony and evidence presented the Board agreed items 1 and 2 in the Findings of Fact and Conclusions of Law are accurate.

Dr. Henggeler motioned Mr. Tanzini did violate IC § 37-2720 by failing to separate CII prescriptions from CIII and CIV prescriptions. Mr. Fraser seconded. Motion carried.

Mr. Fraser motioned Mr. Tanzini did violate IC § 37-2720 by failing to keep hard copies of prescriptions. Dr. Henggeler seconded. Motion carried.

Mr. Fraser motioned Mr. Tanzini did violate IC § 37-2720 by failing to maintain a record of the number of units or volume of the product dispensed. Dr. Henggeler seconded. Motion carried.

Mr. Fraser motioned Mr. Tanzini did violate IC § 54-1704 by failing provide proper and safe storage of drugs on or about January 2008. Dr. Henggeler seconded. Motion carried.

Mr. Fraser motioned Mr. Tanzini did violate IDAPA 27.01.01.180.02 by improperly removing drugs from the pharmacy on or about January 2008. Dr. Henggeler seconded. Motion carried.

Dr. Henggeler motioned Mr. Tanzini did violate IDAPA 27.01.01.496.04 by failing to complete a controlled substance inventory for November 2007. Mr. Fraser seconded. Motion carried.

Ms. Gurnsey motioned to change the wording in paragraph 9 to read “Of the findings contained above in paragraphs 3-8 those factual findings were based upon Mr. Tanzini’s own verbal admission to the Board on February 6, 2009 of his wrongdoing and were based on evidence presented to the Board on February 6, 2009. Mr. Fraser seconded. Motion carried.

Mr. Fraser motions Mr. Tanzini shall not be allowed to be pharmacist in charge for 5 years from the date this order is signed. Dr. Henggeler seconded. Motion carried.

Mr. Tanzini chose not be present during the disciplinary portion of the hearing.

Dr. Henggeler motioned to fine Mr. Tanzini \$100 for items 3, 5 and 8. Ms. Gurnsey seconded. Motion carried. Mr. Fraser opposed.

Dr. Henggeler motioned to fine Mr. Tanzini \$500 for items 4, 6 and 7. Motion died for lack of a second.

Mr. Fraser motioned to fine Mr. Tanzini \$1000 for item 4. Dr. Henggeler seconded. Motion carried.

Mr. Fraser motions to fine Mr. Tanzini \$500 each for items 6 and 7. Dr. Henggeler seconded. Motion carried.

Mr. Fraser motioned to draft a clean order for signatures and paragraph 2 lines 1, 2 and three be stricken and replaced with the following 'Respondent shall pay \$100 each for violations B3, B5 and B8, Respondent shall pay \$1000 for violation B4, Respondent shall pay \$500 each for violations B6 and B7. Ms. Gurnsey seconded. Motion carried.

Mr. Fraser motioned to accept \$250 investigative costs as outlined in the order. Dr. Henggeler seconded. Motion carried.

Mr. Johnston presented the agency financial reports.

Mr. Fraser motioned to adjourn the meeting. Dr. Henggeler seconded. Motion carried.

Adjourned 5:40 pm