

MINUTES OF THE
IDAHO STATE BOARD OF PHARMACY

June 19, 2009

Doubletree Club Hotel
475 W. Parkcenter Blvd
Boise, ID 83706

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

Chairman Dwayne Sheffler, RPh called the meeting to order at 8:07a.m. In attendance were Berk Fraser, RPh; Nicole Chopski, Pharm D; Holly Henggeler, Pharm D; Mark Johnston, RPh, Executive Director; Mike McPeck, Deputy Attorney General; Jan Atkinson, Senior Compliance Officer; Mike Brown, Compliance Officer; Lisa Culley, Compliance Officer; Regina Knittel, Compliance Officer; Fred Collings, Chief Investigator; Dustie Reyna.

Dr. Chopski motioned to accept the minutes from the April 8, 2009 meeting, Dr. Henggeler seconded the motion. After discussion, Dr. Chopski amended her motion to include spelling corrections. Motion carried unanimously.

Mr. Johnston explained that a quorum existed, even though Ms. Gurnsey was absent, leaving three voting members. In the case of a recusal, a 2-0 vote would carry and a 1-1 tie would be broken by the Chair's vote.

Mr. Johnston explained the conditions of Dana Blackburn's rejected pharmacy technician application, due to a felony conviction for a drug related crime, as Ms. Blackburn was not in attendance. On December 17, 2008 the Board denied Ms. Blackburn's request for registration. Subsequently, Ms. Blackburn contacted Southworth Associates and obtained a substance abuse assessment, resulting in a diagnosis of poly-substance dependence remission. Additionally, Ms. Blackburn reported that her felony could not be expunged and it would be cost prohibitive to pursue a reduction to a misdemeanor. Dr. Henggeler reviewed previous history and charges, and expressed her opinion that the request be denied again. No further action was taken.

Sabrina Allen, Pharm D, from Terry Reilly Health Services, appeared to request a rule change to allow the return of prescriptions to the Nampa pharmacy location from the Boise free clinic location. Such return is allowed in accordance with the provisions of Rule 156. However, Dr. Allen's request was to apply a tamper proof seal to prescription vials, avoiding the required unit-dose packaging. After discussion, the Board denied the request for rule promulgation. Mr. Sheffler pointed out that a discussion on Board issued waivers would ensue later in the meeting, and if a waiver rule were promulgated, the

Board would consider a waiver request for this issue. However, until a rule is promulgated, which would be no sooner than 2011, Rule 156 would have to be followed.

Cindy Lee, RN, CHPN, CHPCA, appearing with Jonathon Krutz, CEO of the Idaho End-of-Life Coalition, appeared to request reconsideration of statements that appeared in the March 2009 Newsletter: "In home hospice nurses are not located within a health care facility and are generally not considered the practitioner's agent." Ms. Lee presented several cases where she believed the hospice nurse was the agent of the prescribing practitioner. Mr. Johnston clarified that the Board of Medicine and the Board of Pharmacy did not have definitions of the term agent, and Mr. Johnston felt the definition of agent should reside in the Board of Medicine's rules. Additionally, Mr. Johnston thought that a change to statute 54-1733(1)(d) may solve the issue without the need to define the term agent: changes two instances of the word "in" to the word "of". Dr. Chopski commented on the discussion and requested that Mr. Johnston clarify the definition of agent with the Board of Medicine. Mr. Sheffler commented that the prescriptions that he filled for hospice patients are well documented. Dr. Henggeler clarified that confusion over hospice nurses acting as the practitioner's agents existed mainly on weekends and nights. The Board requested that Mr. Johnston work with Mr. Krutz, and potentially the Board of Medicine, to clarify in the next newsletter.

Emily Alexander with Envision Telepharmacy, appeared to request approval of her future application as a telepharmacy across state lines, as statute changes pertaining to telepharmacy across state lines went into effect on July 1, 2009. Mr. Sheffler questioned what Ms. Alexander wanted to do in our state. She replied that she wanted to "provide after-hour services for small rural hospitals and remote order entry. The institutional pharmacy is located in Idaho and the pharmacist is remotely supervising the institution's pharmacy technician." It was determined that if the remote pharmacist is located within Idaho, that the existing telepharmacy rules regulate this practice, even though the company is located out of state. The Board was not supportive of remote supervision of technicians in an institutional setting at that time. Mr. Sheffler stated that no action could be taken until July 1, 2009, when we have an active statute. Mr. Johnston replied that we have to promulgate rules for telepharmacy across state lines, create an application and determine registration fees; these matters would be discussed later in this meeting.

Mr. Johnston, with assistance from contracted paralegal, Lynette Berggren and contracted attorney, Samuel Hoagland, presented on preliminary language for the first chapter of the "new rules". This was an initial step in approving language, which was not expected to be promulgated as rule until 2011. Mr. Johnston reported that draft language for rules 27.01.01.000 through 27.01.01.009 were written with assistance from the Department of Administration. Dr. Chopski questioned the numbering sequence and whether the definition of "offense" fit the use of the word everywhere in the rules. Ms. Berggren stated that Rule 000 to 009 of every Chapter would include this same language. Dr. Chopski requested MST be added to the office hours. Dr. Henggler requested that "closed holidays" be added to the office hours. Mr. Johnston discussed draft language and the advantages of Board subcommittees. The Board agreed that current Rule 155 should extend to both initial inspections and annual inspections. Mr. Johnston requested

guidance in enforcing existing Rule 467; what violations are considered minor and not reportable for the purposes of criminal prosecution? Mr. Johnston also presented preliminary language to address the “duties of a prosecuting attorney” in current Rule 467. The legislation and rule review presentation was tabled until later in the meeting.

Katie Johnson, Pharm D, MA, of For Your Success RX Consulting Services, presented on the services their company provides in accessing pharmacists and/or pharmacies after medication errors occur. Dr. Henggeler suggested creating a link to Ms. Johnson’s services on our website.

After this, legislation and rule review was reengaged. Ms. Berggren presented waiver language from other states and reported that future draft language documents would be “redlined”. The board agreed via unanimous consent with draft language 007.06 as a simplified version of waivers. Dr. Chopski motioned to accept draft language to change existing Rule 467. Dr. Henggeler seconded the motion. After discussion, Dr. Chopski amended the motion to be inclusive of Ms. Berggren’s updated language. Mr. Fraser seconded the motion. Motion carried unanimously. Legislation and rule review was tabled until later in the meeting.

Mr. Fraser motioned for executive session, according to statute 67-2345 (f), after lunch. Dr. Henggeler seconded the motion. Motion carried unanimously.

Mr. Sheffler asked for public comment. No public comment was received. Mr. Sheffler announced that public comment would be taken in the afternoon session as well.

Recessed for lunch at 12:30 p.m.

Executive session commenced at 12:55pm and ended at 1:27pm.

Melissa Moody, Deputy Attorney General, presented the Donald Gillming, RPh, stipulation. Mr. Gillming appeared via telecommunication. Mr. Fraser motioned to accept the stipulation as written. Dr. Chopski seconded the motion. Motion carried unanimously.

Ms. Moody presented the Jackoline Livingston, Pharmacy Technician, stipulation. Ms. Livingston appeared via telecommunication. Mr. Fraser motioned to accept the stipulation as written. Dr. Henggler seconded the motion. Motion carried unanimously.

Ms. Moody presented the William Madsen, RPh, stipulation. Mr. Madsen appeared via telecommunication. Dr. Henggeler motioned to accept the stipulation as written. Mr. Fraser seconded the motion. Motion carried unanimously.

Ms. Moody presented an order of revocation for Sara Bell, Pharmacy Technician. Mr. Fraser recused himself due to involvement in the case and employment with Fred Meyer. Mr. Collings was sworn in, stating Ms. Bell admitted to diversion of drugs. Dr. Chopski motioned to accept the order as written. Dr. Henggeler seconded the motion. After

discussion, Dr. Chopski amended the motion to include corrected drug names and spellings. Dr. Henggeler seconded the motion. Motion carried unanimously.

The agenda item, Stephanie Wold, Pharmacy technician, was vacated.

Ms. Moody presented a complaint and proposed order for Dennis Beach, R.Ph., who appeared in person with legal counsel, Samuel Hoagland. Mr. Fraser recused himself. Mr. Hoagland requested amendments to the proposed order, including drug testing by hair, so long as Mr. Beach is not working in a pharmacy, and a decrease in the time of suspension. Dr. Chopski motioned to accept the order with exception of the date 2008 changed to 2009. Dr. Henggeler seconded the motion. Motion carried unanimously.

Ms. Moody presented an order revoking the controlled substance registration of Dr. David Dortsch, D.M.D. Dr. Chopski motioned to accept the order as written, and the motion passed by unanimous consent.

The agenda item: Janene McNeal, RPh., stipulation was vacated.

Mr. Sheffler asked Board inspectors if they had any questions. Mike Brown, Compliance Officer, asked about the legality of utilizing chart orders in retail settings. Dr. Chopski responded that a retail prescription must comply with Rule 159. Dr. Chopski inquired about transferring a prescription without first filling it. Ms Atkinson, Senior Compliance Officer replied that Rule 160 applies. The Board directed Mr. Johnston to address language in Rule 160: “a pharmacist may transfer prescription order information for the purpose of refilling...”, so that a prescription can be transferred without first filling. Dr. Henggeler supported the inspectors being at the board meetings. Mr. Fraser thought it was valuable if they had something to present or discuss, and each inspector agreed that attendance was educational. Lisa Culley, Compliance Officer, questioned pharmacies not having the annual controlled substance inventory in a bound book at the time of inspection. Mr. Sheffler suggested a maximum of two days out for book binding. Mr. Fraser requested clarification of electronic signatures, faxed prescriptions, and e-prescriptions. Mr. Johnston explained the UETA and the Code of Federal Regulations role in this matter.

Mr. Sheffler asked for public comment. Public comment was received from a concerned citizen regarding her health care issues.

Legislation and rule review was reengaged with Mr. Johnston presenting on the promulgation of rules for the 2011 legislative session. The Board agreed with the addition of “may, at its discretion” added in three places within existing Rule 470. The Board agreed to change existing Rule 492, not requiring that notice be on “a form provided by the Board.” The Board agreed to new draft language for fees for dishonored payment, but changed language to mandate that the license or registration terminate immediately upon receiving notice of a dishonored payment, as opposed to after 15 days. The Board also was hesitant to place an actual dollar amount for the fee to be charged, so that it can be changed without rule promulgation. The Board agreed with draft language for

overpayment of fees, but with all overpayments to not be refunded. The Board agreed that a rule for renewal of intern registration was needed. The Board resolved a conflict between two rules by supporting a \$10 fee for “V” non-pharmacy outlets, as per current Rule 404. Language “on or by” was questioned in draft language 091.03.d.ii. The Board approved of extending the duplicate pharmacist license fee to registrations. The numbering of draft language 091.05 was questioned. The Board approved of deleting the requirement to provide two years of updates with each Idaho Pharmacy Laws and Rules Book. The Board approved of promulgating a rule for manufacturer registration, which was absent from the rules, with a fee of \$100-\$500 to be determined at a later meeting of the Board.

Mr. Johnston reported on rule promulgation and potential statute changes for the 2010 legislative session, starting with conflicts between Rules 291, 139 and statute 54-1724 and 54-1728. The board agreed that the rules and statutes need to be rewritten to match current Board policy with regards to late fees and reinstatements. Mr. Johnston presented NABP rule and statute language for the independent practice of pharmacy. The Board approved, but requested further clarification of required documentation. Mr. Johnston reported that draft language was not written yet, addressing the issues of fingerprinting, notifications, 90 day supplies and faxed authorization to refill. The board approved of the document presented, adding 66 controlled substances to the scheduling lists in statute. These substances were already scheduled in Idaho as per statute 37-2702.

The Board reengaged the topic of telepharmacy across state lines and directed Mr. Johnston to copy existing telepharmacy rules with the additional restrictions of contiguous states with Idaho and common ownership between the two institutional facility pharmacies participating in telepharmacy across state lines. The Board agreed upon a \$250 registration fee for out of state pharmacists participating in telepharmacy across state lines. The Board agreed to presented language extending time limits in statute 54-1734(3)(b) from 2 to 7 days. The Board approved language allowing the delivery of Rx items by ultimate users for disposal, with a “double negative” corrected. The Board agreed to draft language changing Rule #321.11, mimicking 2009 changes to the Idaho Wholesale Drug Distribution Act. The Board agreed to draft language requiring pharmacies to report hours of operation to the Board and mandating that said pharmacies remain open during reported hours.

Kelly Hancock, student pharmacist, presented on the Idaho Legend Drug Donation Act. There were five areas in which the Board was to promulgate rules. These included standards and procedures for the transfer, acceptance and safe storage of donated drugs; standards and procedures for inspecting donated drugs to ensure that the drugs are in compliance; standards and procedures for the distribution of donated drugs to qualifying charitable centers or clinics; standards and procedures for the dispensing of donated drugs to qualifying medically indigent patients; and any other standards and procedures the board deems appropriate or necessary to implement or enforce the provisions of the Idaho Legend Drug Donation Act. Ms. Hancock presented draft language for several rules under each of the 5 areas. The Board was very appreciative of her hard work and accepted all language with several corrections in terminology, the reiteration of the

statutory requirement of lot number on labeling, clarification of documentation requirements, the addition of language from Rule 159 on labeling, and additional dispensing fee language.

Mr. Johnston noted that statute 54-1755(1)(b) requires the Board by July 1, 2009 to determine a targeted implementation date for electronic track and trace pedigree technology, which may be no sooner than July 1, 2010 and extended by the Board in one year increments. By unanimous consent the Board agreed to extend by one year.

Mr. Johnston reviewed the calendar. A tentative conference call meeting was scheduled for July 29, 2009 at 8:00 a.m. MST. The next Board meeting was confirmed for August 14, 2009 in Boise. Dr. Chopski is to present in Pocatello at the White Coat ceremony on August 20, 2009, and Mr. Johnston is directed to ask Ms. Gurnsey to present on August 19, 2009 in Boise. Dr. Chopski confirmed attendance with Mr. Johnston at the NABP regional meeting in New Orleans on September 30, 2009 to October 2, 2009.

Mr. Johnston presented a review of the Board's finances for all 5 Board members.

Via unanimous consent the Board voted Dr. Chopski as Chairman, and Dr. Henggeler as the Vice-Chair.

Mr. Fraser motioned to adjourn the meeting. Dr Chopski seconded. Motion carried unanimously, meeting adjourned at 6:07p.m.

Minutes respectfully submitted by Mark Johnston