

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

March 7, 2008

**SpringHill Suites
BOISE, IDAHO**

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

Chairman Berk Fraser, RPh called the meeting to order at 8:07 a.m. In attendance were Kitty Gurnsey; Dwayne Sheffler, RPh; Nicole Chopski, Pharm D; Holly Henggeler, Pharm D; Mark Johnston, Executive Director; Mike McPeck, Deputy Attorney General; Jan Atkinson, Senior Compliance Officer; Lisa Culley, Compliance Officer; Barbara Beehner-Kane, Deputy Attorney General; Fred Collings, Chief Investigator; and Ellen Mitchell.

Regarding the minutes of the January 4, 2008 meeting, Nicki Chopski made a motion to accept the minutes as written. Kitty Gurnsey seconded. Motion carried unanimously.

Regarding the minutes of the January 8, 2008 conference call, Nicki Chopski made a motion to accept the minutes as written. Holly Henggeler seconded. Motion carried unanimously.

Citation 2178 issued to James Tanzini, RPh for violation of Idaho Statute 54-1704, Board Rules 180.02 and 496.04. Holly Henggeler motions to fine \$200 per violation. Motion dies for lack of a second. Dwayne Sheffler motions to have Fred Collings conduct an audit of Mr. Tanzini's invoices. Mr. Tanzini to pay costs of audit not to exceed \$600. Kitty Gurnsey seconds. Motion carries.

Citation review: Lisa Culley, inspector, presents 5 citations issued for failure to renew a Controlled Substance registration and working. Discussion of process involved in citing pharmacists for working without renewing their Controlled Substance registration. Board discussed consistency in fines for these violations. Holly Henggeler motions to fine \$200 and \$25 per day actually worked. Kitty Gurnsey seconded. Poll of the Board, motion fails. Dwayne Sheffler motions to fine \$250 for working without renewing Controlled Substance registration. Kitty Gurnsey seconded. Poll of the Board, motion carries, with Nicki Chopski against. Dwayne Sheffler amends his motion the fine not exceed \$250. Kitty Gurnsey seconded. Motion carries, with Nicki Chopski against.

Paul Bodes Citation 2598 issued for failure to renew his Controlled Substance registration and working. Dwayne Sheffler motions to fine \$100. Motion dies for lack of a second. Holly Henggeler motions to fine \$200. Kitty Gurnsey seconds. Motion carries with Nicki Chopski against.

Todd Gatesh Citation 2176 issued for failure to renew his Controlled Substance registration and working. Holly Henggeler motions to fine \$200. Kitty Gurnsey seconds. Nicki Chopski against. Motion carries.

Bruce Reeder Citation 2599 issued for failure to renew his Controlled Substance registration and working. Kitty Gurnsey motions to fine \$225. Motion dies for lack of a second. Holly Henggeler motions to fine \$200. Kitty Gurnsey seconds. Nicki Chopski against. Motion carries.

Raymond Joffer Citation 2597 issued for failure to renew his Controlled Substance registration and working. Nicki Chopski notes Mr. Joffer worked January 2 and 3, 2008. Holly Henggeler motions to fine \$200. Kitty Gurnsey seconds. Nicki Chopski and Dwayne Sheffler against. Chairman Fraser votes for. Motion carries.

Mark Araki Citation 2596 issued for failure to renew his Controlled Substance registration and working. Kitty Gurnsey motions to fine \$200. Holly Henggeler seconds. Nicki Chopski against. Motion carries.

Citation 2177 issued to Walco International Inc. presented by Lisa Culley, Inspector. Citation is issued for violation of Board Rule 359.01 and 357.04 Sarah Sinatra and Angus Dewalt, Manager Regulatory Affairs, appear on behalf of Walco International. Kitty Gurnsey motions to fine \$200. Dwayne Sheffler seconds. Motion carries unanimously.

Jason Jungert, Pharm D appears before the Board. Fred Collings offers background information regarding Mr. Jungert. Barbara Beehner-Kane presents the Proposed Order. Nicki Chopski motions to suspend Mr. Jungert's license and CS registration indefinitely, that he follows the proposed order as outlined and seek treatment. Dwayne Sheffler seconds. Clarification of the Order: the Board is altering section (a) of the Order by adding the word "indefinitely" in front of the word "suspended" and removing the words "for a period of 5 years" and accepting sections b – (c). Mr. Jungert is welcome to re-petition the Board when he feels he is ready to return to the profession. Motion carries unanimously. Further discussion approves use of hair follicle testing or UA.

Dennis Beach, RPh appears with Counsel Samuel A. Hoagland. Berk Fraser recused himself as Chairman in this matter due to his relationship with Mr. Beach. Dwayne Sheffler takes the Chair. Nicki Chopski motions to suspend licenses indefinitely. Mr. Beach is welcome to re-petition the Board when he is comfortable returning to the profession. Dr. Chopski would like the Board Order to reflect the following sections from the Respondent's proposed Order included in the Board's Order 1 (a) – 1 (e); 1 (g) – (h); 1 (i) doesn't apply at this time; modify 1(f) to \$500; 1 (j) – (k) don't apply at this time. Kitty Gurnsey seconds. After further discussion, Holly Henggeler requests to amend motion to \$2,000 fine. Dr. Chopski consents to the amendment. Dwayne Sheffler seconds the amended motion. Motion carries with 3 for and Ms. Gurnsey against.

Barbara Beehner-Kane presents the matter regarding Scott Bressler, MD. The Board of Medicine has entered into a Stipulation with Dr. Bressler. The Board of Pharmacy staff requests the Board to issue a stipulation to mirror the one issued by the Board of Medicine. Nicki Chopski motions to accept the mirror stipulation as written. Kitty Gurnsey seconds. Motion carries unanimously.

Barbara Beehner-Kane presents the matter regarding Randy Shinneman, RPh. Mr. Shinneman appears with his mother. Dwayne Sheffler motions to accept the Hearing Officer's recommendation to suspend pharmacist license and controlled substance registration for life commencing immediately. Mr. Shinneman may seek reinstatement no sooner than one year from the date of the Order, subject to terms and conditions outlined in the order. Kitty Gurnsey seconds. Motion carries unanimously.

Dwayne Sheffler motions to amend Findings of Fact 46 to include *'the evidence has been presented by admission from the respondent that he failed to test from November 16, 2007 through January 4,*

2008 and failed thereafter tests through NCPS as required by the June 2007 Stipulation'. Holly Henggeler seconds. Motion carries unanimously.

Nicki Chopski motions to accept the points of authority and conclusions of law as presented by the Hearing Officer. Holly Henggeler seconds. Motion carries unanimously.

Holly Henggeler motions to accept the additions to the points of authority and conclusions of law. Nicki Chopski seconds. Motion carries unanimously.

Dwayne Sheffler motions to accept the recommended Order with modifications to 1 (a) to read '*is suspended commencing immediately; (change for life to indefinitely) and the respondents Controlled Substance registration is suspended under the same terms. (d) Attend 350 meetings in 365 days.* Holly Henggeler seconds. Motion carried unanimously.

Mark Sulik appears before the Board to request reinstatement of his pharmacist license. Fred Collings presented a chronological description of events relating to Mr. Sulik. By unanimous consent, the Board has chosen not to act on this matter. The Board feels Mr. Sulik should return to the Board later with evidence of being clean and sober and on the right path.

Jackoline Livingston, Pharm Tech Applicant appears before the Board to request approval of her pharmacy tech application. Board staff denied the application based on criminal history. Dwayne Sheffler motions to approve the application. Nicki Chopski seconds. Motion carries unanimously.

Mohamad Alamiri, Pharm Tech Applicant appears before the Board to request approval of his pharmacy tech application. Mr. Alamiri presented a technician application from a pharmacy who would allow him to work enough hours to graduate from his technical school. Board members approved Mr. Alamiri's request and approved his pharmacy technician application.

Barbara Beehner-Kane presents the matter of Ann Jenette Rowland, Pharmacy Tech who was fired for possession of controlled substances that were not hers. Board grants unanimous consent for Barbara Beehner-Kane to move forward with revoking the registration.

Tami Eide, from Medicaid, appeared to discuss Tamper Resistant pads required by Medicaid. The Board instructed Mr. Johnston to determine if prescribers would oppose a proposal to mandate that all three characteristics be required on all prescription blanks, as will be required by federal code for Medicaid and Medicare Rx's. Proposed language requested.

Alan Bell submitted a letter to the Board to request all restrictions on his license be removed including the requirement for UA's. Fred Collings provided a history of Mr. Bell's case. Holly Henggeler motions to grant Mr. Bell's request and discontinue UA's. Dwayne Sheffler seconds. Motion carries unanimously.

Legislation review – All BOP pending rules have passed the Senate and House Health and Welfare committees and are awaiting the close of the legislative session, where it is expected the respective floors will approve. All pending BOP Statute changes have passed the Senate and House floors. Discussion ensued on bills involving naturopaths, midwifery, chiropractors, negotiated rulemaking, Board audio taping, MTM therapy and discount card. Emily's Act is a bill to federally regulate pharmacy techs.

Inspector Q & A – Berk Fraser welcomes the inspectors to ask questions and voice any concerns. Mike Brown mentions his concern over the ‘body’ language of the Board during the Controlled Substance citations this morning. Nicki Chopski indicates the standard for these citations has now been established. Mr. Brown also asks for direction regarding what they are to look at during inspections. Dr. Chopski reaffirms the Board’s support for the inspectors and encourages them to continue doing what they are doing. Board defines a ‘bound’ book as a book that leaves evidence when a page has been removed. Discussion of status of inspections and workload; Jan Atkinson indicates all the pharmacies, wholesalers, DME and nursing home facilities are being inspected annually. The non-pharmacy facilities are behind. Lisa Culley is catching up on the inspection in the Southwestern Idaho area. Jan Atkinson commends the inspectors for their ability to get into all their facilities; they each do an amazing job. Nicki Chopski asks the inspectors if there is a consistency in what each inspector looks for during an inspection. Mr. Brown and Ms. Atkinson both respond indicating there is consistency among the inspectors as they communicate on a regular basis and cognizant of the fact they need to be consistent.

Mark Johnston shares his research regarding Board member pay. They have not been paid for some of the official duties they have performed in the past. Mr. Johnston indicates the Board will be paid from the beginning of the fiscal year for duties they performed. Mr. Johnston also discussed the budget for FY08 and FY09 and the travel calendar.

Rule 442 Requirements of a Prescription. By unanimous consent, the Board directs Mr. Johnston to bring new language changing the tendering of CII scripts within 30 days to expiring after 90 days, to align with the new DEA rule.

Board grants unanimous consent to for Mr. Johnston to return with language which:

- 1) Changes rule 405.03 to match 100.02: 7/15/08 expiration date.
- 2) Moves rule 405.01 to rule 404: 6/30/08 expiration
- 3) Changes rule 405’s title from Due April 1 annually to Intern and Extern registration

Board grants unanimous consent to propose rule changes to mirror recent Idaho Code changes: Eliminate security bonds & fund and clarify lawsuit information requirements.

ACPE terminology for continuing education has changed. Board directs Mr. Johnston to return with language clarifying this.

Mr. Johnston desires to change “responsible pharmacist manager” and “registered pharmacist manager” in rule #156 to “pharmacist in charge”, as RPM terminology is never used in the rules again. Discussion of who the responsible pharmacist manager is at a given time. Pharmacist in Charge is the responsible pharmacist manager and would be the pharmacist cited in the case of a technician not wearing a name badge. Board grants unanimous consent to move forward with new language.

Discussion of Veterinary Drug Outlets (VDO) not conducting business in accord with Board of Pharmacy Rules by not having veterinary drug orders signed by the veterinarians within 72 hours. Joint letter from Board of Veterinary Medicine and the Board of Pharmacy to be mailed.

Technician discussion includes question of DEA tech requirements. Discussion of fingerprinting and background checks on applicants ensues. Board directs Mr. Johnston to develop program of fingerprinting for background check on all new tech and RPh applicants.

Discussion on Long Term Care, pharmacotherapy and 90 day supplies tabled until next meeting:
6/29/08 in Coeur d'Alene.

Kitty Gurnsey motions to adjourn the meeting. Dwayne Sheffler seconds. Motion carried.

Meeting adjourned 6:15 p.m.

Chairman

Vice-Chairman

Member

Member

Member

Executive Director