

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

October 26, 2007

**AMERITEL INN
BOISE, IDAHO**

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

Chairman Berk Fraser, RPh called the meeting to order at 8:15 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; Fred Collings, Chief Investigator; and Ellen Mitchell.

Regarding the minutes of the August 2-3, 2007 meeting, Mr. Sheffler noted Mike Griffith's interview for the executive director position was not included. Ms. Chopski noted an error regarding Mr. Gurnsey versus Mrs. Gurnsey. Kitty Gurnsey made a motion to accept the minutes of the August 2-3, 2007 meeting with corrections. Dwayne Sheffler seconded. Motion carried unanimously.

Dwayne Sheffler made a motion to accept the minutes of the August 15, 2007 conference call as written. Nicole Chopski seconded. Motion carried unanimously.

Nicole Chopski made a motion to accept the minutes of the August 20, 2007 conference call after corrections. Dwayne Sheffler seconded. Motion carried unanimously.

Fred Collings presented citation #1300 issued to Devon Trone, Pharm D for violating Idaho Code 54-1733 and Idaho Code 37-3723. Berk Fraser pointed out the severity of these violations in that there were roughly 5,000 prescriptions involved and each prescription could carry 2 violations, each violation could carry a fine up to \$2,000. If it was broken down to even \$20 per prescription with only the internet prescriptions involved the fine could be \$200,000 such a fine could wipe out a pharmacy completely. This is a serious offense and has been in the newsletter as a serious issue. Mr. Fraser encouraged all pharmacists to call the Board office instead of taking the risk of losing their business. These penalties could be assessed and wants everyone to be aware of the possible consequences. Nicole Chopski motioned to fine Mr. Trone \$5,000 for violations as stated knowing they could go higher, plus the cost of the investigation. Kitty Gurnsey seconded. Dwayne Sheffler voted in favor. Holly Henggeler opposed indicating the profit was \$75,000. Motion carried.

Fred Collings presented citation #1299 issued to Kaye Harrison, RPh for violation as stated above. Nicole Chopski motioned to fine Mr. Harrison \$5,000. Holly Henggeler seconded. Motion carried unanimously.

Barbara Beehner-Kane, DAG indicated citation #2201 issued to Alan Kohal had been vacated.

Andrew Welch, Pharm D appeared before the Board requesting the provision in his stipulation not allowing him to be pharmacist-in-charge be removed. Nicole Chopski motioned the stipulation as written remain in force. Dwayne Sheffler seconded. Motion carried unanimously.

Barbara Beehner-Kane presented the stipulation and order involving Janet Stickler, RPh. Ms. Stickler and her attorney Wynn Mosman were present. Ms. Stickler voluntarily surrendered her pharmacist license and controlled substance registration on September 28, 2007. Mr. Mosman thanked the Board and Board staff for their availability and willingness to work through this issue with Ms. Stickler. The comprehensive evaluation required by the stipulation has not been received from New Directions. New Directions will provide a copy of the evaluation or another one will be completed within 10 days. Mr. Mosman requests the one-year suspension is backdated to the date of voluntary surrender making the suspension complete on September 28, 2008. Kitty Gurnsey motioned to accept the stipulation as written. Nicole Chopski seconded the motion with the addition of backdating the suspension date. Motion carried unanimously.

Robert Fischer, RPh appeared before the Board to discuss the Remote Dispensing Pharmacy pilot project. Mark Johnston and Holly Henggeler recently visited the pharmacy. Ms. Henggeler indicated she had concerns about the depoting of drugs, which is in violation of Board Rule 179. Also of concern were technicians distributing controlled substances and violation of Board Rule 161 regarding faxing of prescriptions. Video feed with Park-Vu pharmacy must happen with each prescription. Since there is no pharmacist on site and no DEA certificate for the Remote Dispensing Pharmacy prescriptions from Park-Vu can not be stored there. Nicole Chopski made a motion to create a task force to work on the issues regard the pilot project. Members should include the executive director and inspectors of the Board of Pharmacy, Mr. Fischer, and any other parties as deemed necessary. Holly Henggeler seconded commenting that counseling isn't happening as it should. Goal of permanent rule for August 2008. Motion carried.

Barbara Beehner-Kane presented the stipulation for Paul Battershell, NP. Dwayne Sheffler motioned to accept the stipulation as written. Kitty Gurnsey seconded. Motion carried unanimously.

Barbara Beehner-Kane indicated the matter regarding Randy Shinneman has been vacated. Hearing set for November 16, 2007, Board directs Mr. Johnston to act as Hearing Officer.

Fred Collings presented the stipulation in regards to Kristine Babb, NP. Nicole Chopski motioned to accept the stipulation as written with the exception of correcting the spelling of Mr. Fraser's name. Holly Henggeler seconded. Motion carried unanimously.

Fred Collings presented the voluntary surrender forms and stipulation regarding Jan Sund, NP. Dwayne Sheffler motioned to suspend Ms. Sund's Controlled Substance registration indefinitely and accept the stipulation as written. Kitty Gurnsey seconded. Motion carried unanimously.

Lis Houchen representing the National Association of Chain Drug Stores appeared before the Board to discuss proposed language for Board Rule 464 Positive ID.

Mike McPeek requested approval of the revision of Rule 464 from the Board. Unanimous consent.

New rules regarding limited service pharmacy and Tech check Tech will publish in the Administrative Bulletin on December 5, 2007, no comments have been received.

Letter from Elyse Tung Pharm D candidate from University of Washington School of Pharmacy requesting Idaho recognize prescriptions written by Washington pharmacists. The Board directs Mr. Johnston to respond to Ms. Tung and explain that Idaho Code Section 54-1733(1)(b) currently

prohibits such prescriptions. Board also directed Mr. Johnston and Mr. McPeek to research federal and state laws regarding pharmacist prescriptive authority for possible changes or modifications to existing statutes in the future. Mr. Johnston also directed to notify Idaho pharmacies of the invalidity of such prescriptions.

Berk Fraser reminded everyone that a controlled substance prescription can not be transferred by a pharmacist intern/extern. The transfer can only be conducted pharmacist to pharmacist.

Kitty Gurnsey made a motion to adjourn for lunch and go into executive session as allowed by Idaho Code § 67-2345(a) at 1:00 p.m. Holly Henggeler seconded. Motion carried by individual poll of the Board.

Nicole Chopski motioned to end executive session. Kitty Gurnsey seconded. Motion carried. Executive session adjourned 2:10 p.m.

Chairman Fraser convened the open meeting at 2:15 p.m.

Mike McPeek distributed the language from Administrative Rules Division that should be placed in the front of the Board of Pharmacy Rules as a matter of procedure. Mr. McPeek asked for approval to submit the Positive ID rule and the language from Administrative Rules for printing in the Administrative Bulletin. Unanimous consent.

Mr. McPeek also proposes reviewing a third of the law book each year for review and update with the intent of having the entire law book reviewed and updated at the end of three years. Unanimous consent.

Mark Johnston presented the Board with some items of focus for the upcoming legislative session. Mr. Johnston requested changing the pharmacy technician Additional Work Location forms from the requirement for a signed form from each location a technician works to a signed form from each employer a technician works for. Unanimous consent.

In regards to e-prescribing and controlled substance prescriptions Mr. Johnston discussed the increasing number of practitioners who continue to violate Federal and State law prohibiting electronically signed controlled substance prescriptions. Practitioners continue to ignore Board directives which result in pharmacists having to turn the illegal prescriptions into phone-ins or violate federal law by filling them as received. Mr. Johnston discussed the possibility of the Board enforcing Rule 470 Discipline of Practitioners if continued warnings are ignored. Mr. Johnston asked for the Board's support in instituting an educational process with cooperation from the Board of Medicine, the IMA and the Board of Nursing prior to taking any official disciplinary action against the practitioners. Unanimous consent.

Mr. Johnston proposed review of Rule 165 Pharmacotherapy. He would like to have workshops to gain input from the pharmacy and medical communities in regards to the collaborative practice agreements and look toward possible changes. Unanimous consent.

Other areas Mr. Johnston would like to focus include: Limited service, compounding, nuclear pharmacy, PBM. Mr. Fraser asked to include Central Fill to the list. Mr. Sheffler asked the issue of prescription refills (30 pills per month or 360 pills per year) be included as well. Ms. Chopski suggested the following priority list: Long Term Care rules; Compounding rules; Nuclear Pharmacy rules; PBM statutes; central fill pharmacy; prescription refill; creating a section in the law book with interpretations of laws and rules.

Discussion and review of 54-1723 regarding wholesalers. Board directs Mr. McPeek to submit the following changes for the next legislative session: Sections H & I: Amend section exempting chain pharmacy warehouse; remove 'education' replace with 'training'; amend reverse versus return; pedigree requirements section (f) leave as is (j) remove (l) remove.

Mr. McPeek reported his findings on inducements to the Board. Rule #161.03 Supplying Facsimile equipment: Pharmacies are precluded from supplying facsimile equipment to practitioners, hospitals, nursing homes, or any health care provider or facility. No rule or statute addresses electronic medication administration records as an inducement.

Mr. McPeek discussed Canadian prescriptions indicating they are prevented by Federal law from being shipped into the United States; Board of Pharmacy statute requires Canadian pharmacy would have to be registered with us before shipping prescriptions. Deemed illegal per state and federal law.

Mr. Johnston gave a report of his travel and expenses to the Board. He discussed meetings that he has attended and upcoming meetings. He and Jan Atkinson will be addressing the P1 students at ISU on November 8. IPLC meeting; MPJE meeting in January 2008 to be attended by Mr. Johnston, Jan Atkinson and Dwayne Sheffler. Mr. Johnston will also be offering some CE programs in northern Idaho. Nicki Chopski will be attending ASCP in regards to Long Term Care law and issues in Pennsylvania

The following meetings have been or will be attended by staff: Dustie Reyna presented information to medical staff professionals at IMA's recent meeting in Sun Valley. Teresa Anderson will attend the annual NASCA meeting this month.

Mr. Johnston presented a proposal for a new state business contract that would incorporate the six individual cell phone accounts currently utilized by office staff. The plan allows for cell phone upgrades for each staff member, including upgrades to BlackBerry devices for himself and Jan Atkinson that will facilitate email access outside the office. Unanimous consent.

Nicole Chopski motioned to adjourn the meeting. Kitty Gurnsey seconded. Motion carried. Meeting adjourned 5:35 p.m.

Chairman

Vice-Chairman

Member

Member

Member

Executive Director