

## BOARD MEETING

Airport Plaza Hotel  
1981 Terminal Way  
Reno, Nevada

Wednesday, December 5, 2007

The meeting was called to order at 9:00 a.m. by Barry Boudreaux, Board President.

NOTE: Mary Lau read a statement into the record where she indicated that she had spoken with the governor and the AG's office allowing that she is qualified and entitled to serve and participate in the capacity of a Board member on this Board.

### Board Members Present:

Barry Boudreaux	Keith Macdonald	Leo Basch
Ray Seidlinger	Donald Fey	Mary Lau

### Board Members Absent:

Chad Luebke

### Board Staff Present:

Larry Pinson	Jeri Walter	Louis Ling
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## CONSENT AGENDA

1. Approval of October 24-25, 2007, Minutes
2. Applications for Out-of-State MDEG – Non Appearance:
  - A. Celleration, Inc. – Eden Prairie, MN
  - B. Jaspan Medical Systems – Carpinteria, CA
  - C. Praxair Inc. #765 – Magna, UT
  - D. Respironics Logistics Services, LLC – Youngwood, PA
  - E. Zee Medical, Inc. Indianapolis, IN

Applications for Out-of-State Pharmacy – Non Appearance:

- F. Arizona Discount Pharmacy – Mesa, AZ
- G. B & H Pharmacy – Provo, UT
- H. Infusion Technologies, Inc. – North Miami, FL
- I. Pet Pharmacy Rx – Carlsbad, CA

- J. Pharmacia El Amanacer Inc. – Chicago, IL
- K. Publix Super Markets, Inc. – Lakeland, FL
- L. Ridgeway Pharmacy – Victor, MT
- M. US Bioservices – Charlotte, NC
- N. VetSource Home Delivery – Portland, OR

Application of Out-of-State Wholesaler – Non Appearance:

- O. Prasco Laboratories – Mason, OH

Applications for Nevada MDEG – Non Appearance:

- P. AmPro Orthotics & Prosthetics Inc. – Pahrump
- Q. Choice Healthcare Inc. – Las Vegas
- R. Pure Medical Equipment – Las Vegas
- S. Senior Uplift & Mobility Company – Carson City

Applications for Nevada Pharmacy – Non Appearance:

- T. Longs Drug Store #368 – Reno
- U. Walgreens #10783 – Las Vegas
- V. Walgreens #11445 – Las Vegas
- W. Wal-Mart Pharmacy #10-4356 – Las Vegas

Discussion:

The consent agenda applications and supporting documents were reviewed.

NOTE: Keith Macdonald recused from participation in the vote for item 2 W as he is employed by Wal-Mart. Leo Basch recused from participation in the vote for items 2 U and V as he is employed by Walgreens. Mary Lau disclosed that the stores reflected in items T, U, V and W are members of the Retail Association of Nevada of which Ms. Lau is the President and CEO.

Board Action:

Motion: Keith Macdonald moved to table item 2H until they present a business model.

Second: Leo Basch

Action: Passed Unanimously

Motion: Leo Basch found the consent agenda application information to be accurate and complete and moved for approval of items 2 A through S excluding item H.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Ray Seidlinger moved to approve items 2 T, U, V and W.

Second: Don Fey

Action: Passed Unanimously

Motion: Ray Seidlinger found the minutes to be accurate and complete and moved for approval.

Second: Leo Basch

Action: Passed Unanimously including President Boudreaux's vote

### REGULAR AGENDA

3. Applications for Out-of-State Pharmacy – Appearance:

A. Apothecure Inc. – Dallas, TX

Apothecure Inc. has been rescheduled to the January 2008 meeting.

B. Caremax Medical Resources, LLC – Centennial, CO

C. Caremax Medical Resources, LLC – Tampa, FL

No one appeared to represent Caremax.

D. Owl Healthcare Pharmacy – Baldwin Park, CA

Maher “Peter” Kaldas appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Keith Macdonald led questioning regarding his business model. He indicated that they were a long-term care pharmacy. When questioned about his discipline in California, he explained that he failed to notify the California Board of Pharmacy within 30 days of a change of ownership when he took a partner, that he let someone other than a pharmacist sign for a shipment of drugs from a wholesaler, and that there were some record keeping issues. When asked to further explain the discipline involving the large quantity of Viagra purchases, Mr. Kaldas noted that he made the purchases from Owl Homecare Pharmacy. The drugs were transferred to Minaceuticals Wholesaler, owned by his partner, for resale to other pharmacies and physicians which Mr. Kaldas advised was not a violation of California law at the time he did this. Mr. Kaldas was advised that that practice is a violation of Nevada law. Mr. Kaldas purchased approximately \$4,000,000.00 worth of Viagra for this purpose.

Board Action:

Motion: Leo Basch moved to accept the application for out-of-state pharmacy.

Second: No Second

Action: Motion Failed

Motion: Keith Macdonald moved to deny the application for out-of-state pharmacy.

Second: Don Fey

Action: Passed With One Negative Vote

Mr. Kaldas and his partner, Mr. Soliman, noted that they did not want to ship drugs into Nevada, but mattresses. Mr. Kaldas and Mr. Soliman were advised that they would need to apply for an MDEG license rather than a pharmacy license and to contact Board staff for the application.

E. PCM Venture I LLC – Murray, UT

PCM Venture I cancelled their appearance and will reapply since their application will expire shortly.

F. Wellness Pharmacy Inc. – Birmingham, AL

Mary Ann Davis and Angela Chatwood appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

They provided a letter from Rod Harbin, Jr., Vice President of Wellness Pharmacy, giving them authority to speak on Wellness' behalf.

Ray Seidlinger led the questioning regarding their business model. Ms. Davis and Ms. Chatwood indicated that they are a compounding pharmacy that would be shipping sterile and non-sterile compounded products into Nevada from Alabama. They have 24 hour toll free telephone numbers available to their patients and if their application is approved they will have a local patient contact. Don Fey and Keith Macdonald questioned them regarding shipping and patient administration and they responded to the Board's satisfaction.

Board Action:

Motion: Ray Seidlinger moved to approve the application for out-of-state pharmacy.

Second: Don Fey

Action: Passed Unanimously

4. Application for Nevada MDEG – Appearance:

Sunrise Medical Supply – Las Vegas

Vage “Vick” Karapetyan, manager for Sunrise Medical Supply, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Karapetyan was questioned regarding how he decided to go into the MDEG business. He stated that it was a good job opportunity and it provided an opportunity to help people. Mr. Karapetyan noted that they have a large store next door to the VA and Sunrise Hospital where they have plenty of foot traffic and drop-ins. He indicated that neither he nor Amy Madzharyan had been involved in MDEG practices before. Mr. Karapetyan was asked how they were going to finance this venture and he indicated that Ms. Madzharyan was providing the financing but he was unsure how she was obtaining the money. He thought perhaps credit cards may be one means. He estimated they would need approximately \$23,000.00 to open. Mr. Karapetyan indicated that they were contracted with Sterling, an MDEG wholesaler, located in Florida to purchase their supplies.

Board Action:

Motion: Keith Macdonald moved to approve the application for MDEG provider.

Second: Ray Seidlinger

Action: Passed With One Negative Vote

5. Your Success Rx Report – Appearance:

Katie Johnson, R.Ph and Steven J. Peters, R.Ph

Katie Johnson gave her report to the Board in accordance with Mr. Peters’ Board Order. Mr. Peters noted that he found Ms. Johnson’s program helpful in his practice of pharmacy. He indicated that at the time he was in a transition period in his pharmacy and now he has the tools that help catch errors. Mr. Peters indicated that he learned through the Your Success Rx program that errors are inevitable but now he can focus and be more cognitive of them. Mr. Peters has shared his experience with his co-workers.

6. Request for Restrictions to be Lifted on Pharmacist License – Appearance:

Paul L. Hampton, R.Ph (06-041A-RPH-N)

Mr. Hampton appeared with Larry Espadero, the PRN-PRN monitor, to request the condition in his Order requiring him to work with another pharmacist be lifted. Mr. Hampton advised the Board that he has been participating in the PRN-PRN program for seventeen months and was doing well. Mr. Espadero agreed that Mr. Hampton was doing well in his program and recommended this reconsideration be approved. Mr.

Hampton provided a letter from his employer, allowing that Mr. Hampton would be working with technicians and not alone. This change in his Order would allow his employing pharmacist to take some time off since she is the sole pharmacist for Pharmerica, other than Mr. Hampton.

Board Action:

Motion: Keith Macdonald moved to amend Mr. Hampton's Board Order to reflect that he not have to be supervised by another pharmacist.

Second: Leo Basch

Action: Passed Unanimously

7. Requests for Technician in Training License – Appearance:

A. Richard Arribillaga, III

Mr. Arribillaga is a student at Milan Institute in their pharmaceutical technician program. When Mr. Arribillaga completed a technician-in training application he indicated that he had been arrested and convicted twice for felonies, both of which were over ten years ago. Mr. Arribillaga explained the circumstances of the 1991 drug charge where he was arrested for possession of marijuana and a 1995 conviction for cashing a forged check for a friend where the consequence for this action was time in prison and restitution.

Board Action:

Motion: Keith Macdonald moved to deny the application for pharmaceutical technician-in-training.

Second: Don Fey

Action: Passed Unanimously

B. Amber Williamson

Ms. Williamson is a student at Milan Institute in their pharmaceutical technician program. She answered questions on the application indicating that she had a criminal history. Ms. Williamson was charged with felony grand larceny for being in possession of a stolen credit card that she and her husband were trying to use. Ms. Williamson explained that her husband robbed a house and stole the credit card. She indicated that they stole to sell items to gain money to pay bills. Mr. Williamson went to jail and Ms. Williamson was remanded to probation. Ms. Williamson indicated that she has a job pending at Walgreens. When Ms. Williamson was asked to elaborate about the handwritten statement on the back of her application she responded that she had no knowledge of such statement. Upon being presented with the original she indicated that it was her husbands handwriting and that she had not read it.

Eman Gobran, district pharmacy manager for Walgreens, was present in the audience and came forward to clarify that Ms. Williamson was an employee of Walgreens, however she was no longer employed with their company.

Board Action:

Motion: Leo Basch moved to deny the application for pharmaceutical technician-in training.

Second: Ray Seidlinger

Action: Passed Unanimously

8. Request for Reinstatement of Pharmacy Technician License – Appearance:

Vaughn Terry

(07-056-PT-N)

Vaughn Terry's pharmaceutical technician registration was revoked at the September Board meeting as he did not appear to explain the circumstances of his positive UA for marijuana.

Mr. Terry explained that he intended to appear but thought the Board meeting was on another day, even though he was notified of the correct date and time to appear. Mr. Terry advised the Board that he was involved with a group of people that used drugs and he tried marijuana that one time right before a random drug screen. He told the Board that he takes full responsibility for his actions and has since changed friends.

Leo Basch noted that he had no appetite to change the Board's Order of revocation. Keith Macdonald thought another approach would be to give Mr. Terry the opportunity to be evaluated by PRN-PRN.

The Board directed Mr. Terry to be evaluated by PRN-PRN and request another appearance after the evaluation. It was made clear to Mr. Terry that even if the evaluation determined he did not have a drug problem, or if he did have a problem and he joined PRN-PRN, that the Board may not change their original determination.

9. Requests for Appearance:

A. Kent Worswick, R.Ph

Mr. Worswick cancelled his appearance.

B. Joanee Quirk – Controlled Substance Task Force

Larry Pinson gave a history of the Task Force for the benefit of the new Board members. Today, the Legislature has made the Task Force a standard of practice for physicians. Mo Dennis drafted language this last session secondary to a death of the daughter of one of his constituents from an overdose of MS Contin. Mr. Pinson noted that the Task force has existed on piecemeal equipment, software and the skills of staff and that due to its increasing utilization an upgrade would be prudent. He then asked Joanee Quirk to present three options. One, we could keep the Task Force as is and upgrade the hardware. Two, we could use Atlantic to collect the data and Otech for everything else. Three, we could use Otech for full service including data collection. Joanee Quirk noted that she would prefer the full service Otech option. Ms. Quirk indicated that she was working on another \$400,000.00 grant and there is another federal grant she is looking into. She indicated that if they went full service there would be approximately a \$59,000.00 difference. Mr. Pinson noted that if we went full service, when Ms. Quirk retires, one person would be able to carry the program. If the Board would have to pick up the costs and if there were no more grants, it could afford it comfortably.

Mr. Pinson asked President Boudreaux to ask for a motion.

Board Action:

Motion: Ray Seidlinger moved that he would like to go full service with Otech.

Second: Leo Basch

Action: Passed Unanimously

10. Reconsideration of Application for Canadian Pharmacy – Non Appearance:

Universal Drug Services – Winnipeg, Manitoba

Larry Pinson noted that he was asked by a Board member to bring this item back for reconsideration. Mr. Pinson advised that the message the Board sent to the Legislature had been received and asked the Board to reconsider their action. Louis Ling noted that the application stands on its own merits and there is nothing different about this application for pharmacy than any of the other applications for Canadian pharmacies already approved. President Boudreaux asked for a motion.

Board Action:

Motion: Mary Lau moved to reconsider the application for Canadian pharmacy.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Keith Macdonald moved to approve the application for Canadian pharmacy pending inspection.

Second: Don Fey

Action: Passed With One Negative Vote

11. General Counsel Report

Louis Ling reported that he testified before the supreme court regarding the Dutchess case. He felt that it went well, however he has no idea how long it would take to get the Order.

President Boudreaux noted that he and Mr. Pinson had attended and that Mr. Ling did an exemplary job.

12. Executive Secretary Report:

- A. Financial Report
- B. Investment Report

Larry Pinson gave the financial and investment reports to the Board's satisfaction. He also provided the Board with copies of our audit with some review.

- C. Temporary Licenses

Mr. Pinson granted two temporary licenses since the last Board meeting.

- D. Staff Activities
  - 1. Meetings
    - a. ASPL

Larry Pinson advised that he attended the ASPL meeting and found it to be a good experience. Roger Morris, an attorney who appeared before our Board representing NNMC, was present at the meeting also and told the Roger Ly/FBI story. Mr. Morris was to appear after Mr. Ly was arrested by the FBI after he identified himself. Mr. Morris noted that he had never been to a Board meeting that was so exciting, yet a little unnerving when it was his turn to follow.

Mr. Pinson also noted that he and Mr. Ling appeared before the Legislative Committee on Regulations as the Board had three regulations up for approval. Seven more were added at the last minute and all passed except the regulation with regard to AB128. That one will be held over for the next meeting for clarification.

- 2. Miscellaneous
  - b. Licensing program process

Board staff is in the process of negotiating a contract to use Versa, a company out of Canada, for our new licensing program. They currently have eight or nine Boards in Nevada using their product and all are pleased with the program. Their pricing has

improved and we can afford it. Once the contracts are approved, we are looking at being up and running in July prior to renewal time. The capability for the public to use it for verifications will be sooner.

- E. Reports to Board
  - 1. Lipo dissolve (Kansas)

As directed at the October meeting, Mr. Pinson contacted the Kansas Board of Pharmacy to see how they were handling the Lipo dissolve issue. He found that the Kansas Medical Board passed a regulation to ban lipo dissolve because it is not FDA approved, then was sued by a physicians group. The judge remanded the issue back to the Board where they amended the regulation to allow lipo dissolve only if the physician is affiliated with an IRB and protocols were in place.

- 2. Wal-Mart #10-3408 (07-010-PH-N)

Mr. Pinson advised that he and Louis Ling met with Debbie Mack and Kevin Burr with regard to their Order in the referenced case. Wal-Mart has brought their computer system into compliance and they have implemented new policies and procedures to ensure all new prescriptions go directly to the pharmacist so he can ensure counseling is occurring. They now have the pharmacist and the technician both initial the original prescription which is again reviewed via image of the prescription at verification for all new prescriptions. Wal-Mart is implementing a pediatric high dose alert that will be in red and be much more obvious. Mr. Pinson advised that staff was very pleased with the cooperation and responsiveness of Wal-Mart and that staff feels that Wal-Mart has fully complied with the Board's Order.

- F. Board Related News

On November 19, 2007 the FDA announced that the "Do not fill until" concept for up to a 90 day supply on CII's will again be allowed effective on December 19, 2007.

Larry Pinson advised that Board member pay now has a maximum of up to \$150.00. He asked if they wanted a raise from the \$80.00 a day they are currently receiving. If the Board would like an increase, he asked that they wait to implement it until the new fiscal year so it can be budgeted for. The Board directed staff to revisit this topic in July at the beginning of the new fiscal year.

- G. Activities Report

- 13. Discussion and Determination:

- A. Canceling of C-II Prescriptions

The Board discussed the merits and practicality of defacing prescriptions with a large X across the hardcopy. Keith Macdonald noted that he did not see a need to cancel and sign a completed prescription because of the computer technology today. Leo Basch indicated that he felt a need for canceling a prescription to be able to identify a pharmacist if more than one pharmacist is on duty at the same time. After further discussion Board staff was directed to bring the concept to Workshop

#### B. Reciprocity

Mr. Pinson noted that despite Nevada's growth, the number of pharmacists registered with the Board had decreased approximately 6%. Previous years, registered pharmacists generally increased by 1 to 2%. Mr. Pinson asked the Board if they would consider reciprocity with California and Florida now that they are using the NAPLEX as are all the other states. Currently Florida will reciprocate an applicant if they have taken the NAPLEX within the last twelve years and California if taken after January, 2004. The Board directed staff to begin the process of changing policy to allow reciprocity with California and Florida.

#### C. Inactive Pharmacist Status

Nevada does not have an inactive status for pharmacists, as many states have, for the purpose of retirement, moving out of state, disability, etc. Mr. Pinson suggested that the Board consider this possibility requiring them to pay their licensing fee but excuse the CE requirement until they reactivate their licenses. Board staff was directed to write regulations and bring to Workshop to allow an inactive status.

#### D. Infusion Suite within a Pharmacy

Mr. Pinson was asked if an infusion suite could be located in a pharmacy. They knew they needed a nurse to administer the medication, but did not know if that concept would fall within Nevada law. After discussion, the Board determined this concept would be acceptable providing there was a registered person there to start the infusion process. Board staff was directed to write regulations and bring to Workshop to allow this concept providing they have a separate room. In the meantime, approve the people that asked if they could do this.

### WORKSHOP

#### 14. **Proposed Regulation Amendment Workshop**

**Amendment of Nevada Administrative Code 639.NEW** Pharmacist practice outside of pharmacy.

Louis Ling explained that he made the changes as directed from input from the last Board meeting.

Liz Macmenamin asked for clarification on immunizations and diabetic education for her members. The immunization programs would be exempted because we already have regulations for that concept. Diabetic education would be affected by these regulations. A chain would only have to apply once with their education model just to let the Board know what kind of educational program they would anticipate using. Ms. Macmenamin asked about the application process and was advised it would just be an appearance and there would be no paper application or fee. Ms. Macmenamin indicated that she thought that concept would be acceptable.

Rochelle Spiro appeared as an independent industry consultant and was representing the American Society of Consultant Pharmacists and the Nevada Society of Health System Pharmacists. Her concern is for the consulting programs they have for the senior population. Ms. Spiro would like to be assured that all of the consulting programs the American Society of Consultant Pharmacists and the Nevada Society of Health System Pharmacists use are exempted. Ms. Spiro asked that a work group be formed with the members of the two Societies for further refining the language and ensuring exemptions. Board staff advised Ms. Spiro that the language does not prohibit what they are doing right now and did not see a need for a work group.

Steve Carlton, representing Spectrum Pharmacy, noted that Part D has changed the whole pharmacy picture. Call centers are in operation already and this technology is already being practiced. Mr. Carlton indicated that he did not see a need for appearances as outlined in this language. Mr. Ling suggested the concept might be set up as the CE committee currently is.

Vic Vercammen, representing SuperValue/Albertson's, indicated that he did not have a problem with pharmacists being trained, but what would happen if the pharmacists went off-site to do immunizations, in a senior center for example. Mr. Vercammen also did not want to be confined to "payment" because they may donate their services and may not be paid. Mr. Ling advised that he will make changes to the immunization regulations where Mr. Vercammen's concerns can be addressed. Mr. Ling also advised that he will look into Part D to ensure our regulations parallel that program.

Mr. Macdonald suggested that with the considerable changes being made to this language that we revisit this again at another Workshop. He did indicate that he was not sure if this regulation was going to help anyone.

Mary Ryan, appearing for Medco, indicated that she participated on the NABP Task Force on Telepharmacy and their view is that the center or the pharmacist has to be licensed in any state they practice in.

## PUBLIC HEARING

15. Notice of Intent to Act Upon a Regulation:

1. **Amendment of Nevada Administrative Code 453.460 Controlled**

**Substance Partial Fill** To clarify that by partially filling a prescription it does not constitute a refill.

President Boudreaux opened the Public Hearing.

Liz Macmenamin, representing the Retail Association of Nevada, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Macmenamin thanked the Board for this regulation as her members feel it has paralleled the federal regulations.

President Boudreaux closed the Public Hearing and asked for a motion.

Board Action:

Motion: Ray Seidlinger moved to adopt this regulation as presented.

Second: Keith Macdonald

Action: Passed Unanimously

2. **Amendment of Nevada Administrative Code 639.245, 639.250, 639.701 PT Changes and PT Ratio Changes** This language clarifies the duties of pharmaceutical technicians and changes the pharmaceutical technician ratio three to one.

President Boudreaux opened the Public Hearing.

Liz Macmenamin appeared again and was reminded that she was already under oath. Ms. Macmenamin thanked the Board for making the clarifications to clerk duties and paralleling the tech ratio for the retail industry with hospitals.

Barry Boudreaux closed the Public Hearing and asked for a motion.

Board Action:

Motion: Keith Macdonald moved to adopt this regulation amendment as presented.

Second: Leo Basch

Action: Passed Unanimously

3. **Amendment of Nevada Administrative Code 639.240 Pharmaceutical Technician Education** This language will standardize the education requirements to be provided to students entering a pharmaceutical technician

training program in a school. The program will have to be American Society of Health-System Pharmacists (ASHP) accredited.

President Boudreaux opened the Public Hearing.

Vic Vercammen, representing SuperValue/Albertson's, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Liz Macmenamin joined him at the table. Ms. Macmenamin provided the Board with a joint letter from RAN and NACDS. They indicated that the language as written was confusing and did not want to have their in-house training programs accredited by ASHP. Mr. Ling advised that the language was not intended for retail programs, but for schools that provided technician training.

Rich Mazzoni, representing CVS, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Mazzoni pointed out that two of the sections conflict. NAC 639.258 is intended to be for schools offering PT programs not employers, but NAC 639.258 will need to be changed to clarify NAC 639.256. Mr. Ling indicated that if he added, "pursuant to NAC 639.256" at the end of the sentence in Section 4, that should fix the problem.

President Boudreaux closed the Public Hearing and asked for a motion.

Board Action:

Motion: Ray Seidlinger moved to adopt the language with the minor change as described.

Second: Leo Basch

Action: Passed Unanimously

16. Next Board Meeting:

January 16 & 17, 2008 – Las Vegas, Nevada

17. Public Comments and Discussion of and Deliberation Upon Those Comments

There was no public comment.