

BOARD MEETING

Las Vegas Chamber of Commerce
3720 Howard Hughes Parkway
Las Vegas

January 16 & 17, 2008

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

Board Members Present:

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

Board Members Absent:

Board Staff Present:

Larry Pinson	Jeri Walter	Louis Ling	Nancy Savage
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CONSENT AGENDA

1. Approval of December 5, 2007, Minutes
2. Applications for Out-of-State MDEG – Non Appearance:
 - A. Ameri-Fab LLC – Phoenix, AZ
 - B. Lincare Inc. – Cedar City, UT
 - C. Owl Homecare Pharmacy – Baldwin Park, CA
 - D. Smiths Medical MD, Inc. – St Paul, MN

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

- E. Kovac's Pharmacy – Van Nuys, CA
- F. MedPro Rx, Inc. – Raleigh, NC
- G. North Colorado Medical Center – Greeley, CO
- H. Professional Pharmacy Services – Salt Lake City, UT
- I. US Bioservices – Nashville, TN
- J. Walgreens Specialty Pharmacy, LLC – Beaverton, OR

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

- K. Abbott Patient Assistance Foundation Inc. – Abbott Park, IL
- L. Ameridose, LLC – Framingham, MA
- M. Celgene Corporation – Allentown, PA
- N. Logistics Health Incorporated – LaCrosse, WI

Applications for Nevada MDEG – Non Appearance:

- O. Caring Medical Supply – Henderson
- P. Nevada Sleep Diagnostics, Inc. – Henderson
- Q. Nevada Sleep Diagnostics, Inc. – Las Vegas
- R. Nevada Sleep Diagnostics, Inc. – Pahrump
- S. Nevada Sleep Diagnostics, Inc. - Reno
- T. Quality Shoe Repair & Luggage – Henderson
- U. Walgreens Home Care, Inc. – Las Vegas

Applications for Nevada Pharmacy – Non Appearance:

- V. Walgreens #07842 – Las Vegas
- W. Wal-Mart Pharmacy #10-4370 – Fernley

Discussion:

The consent agenda applications and supporting documents were reviewed. Leo Basch noted that the minutes reflected something he said that should have been referenced as “the Board” and asked for a change to be made.

Board Action:

Motion: Leo Basch found the minutes to be accurate and complete and moved for approval with the suggested change.

Second: Ray Seidlinger

Action: Passed Unanimously

NOTE: Leo Basch recused from participation in the vote on Items 2J, U and V because he is employed by Walgreens. Keith Macdonald recused from participation in the vote on Item 2W as he is employed by Wal-Mart. Mary Lau noted that she represents RAN however her association with RAN will not effect her vote on Items 2J, U, V and W.

Motion: Ray Seidlinger found the consent agenda application information to be accurate and complete and moved for approval with the exception of Items 2J, U, V and W.

Second: Leo Basch

Action: Passed Unanimously

Motion: Ray Seidlinger moved to approve Item 2W.

Second: Chad Luebke

Action: Passed Unanimously

Motion: Ray Seidlinger moved to approve Items 2J, U and V.

Second: Keith Macdonald

Action: Passed Unanimously

REGULAR AGENDA

3. Applications for Nevada Pharmacy – Appearance:

A. Pathway Specialty Compounds – Las Vegas

Kate Kavorkian, owner, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Kavorkian testified that Pathway specializes in hormone replacement therapy. She works alone and her facility is 797 compliant. Ms. Kavorkian stated that she buys her supplies from Spectra and that the only controlled substance she orders is testosterone. She compounds gels and creams, some tablets and occasionally sublingual preparations.

Board Action:

Motion: Ray Seidlinger moved to approve the application pending inspection.

Second: Keith Macdonald

Action: Passed Unanimously

B. Web Vet Rx – Reno

Dave Arakelian appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Arakelian described that he was a pharmacy for veterinary products only. He uses no controlled substances and only compounds products. Mr. Arakelian explained that he gets a prescription from a veterinarian for a specific owner, fills the order then ships it back to the veterinarian. The veterinarian establishes the price and the patient picks up and pays at the veterinarian's office.

Louis Ling explained to Mr. Arakelian that this practice is not allowed in Nevada. He can only directly ship to and bill the pet owner.

Board Action:

Motion: Keith Macdonald moved to deny this application.

Second: Chad Luebke

Amend: Leo Basch asked to amend the motion to refund the application fee, since the applicant was unaware that this model is illegal in Nevada.

The amendment was accepted by the First and the Second.

Action: Passed Unanimously

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

A. Apothecure Inc. – Dallas, TX

Gary Osborn, PIC and president for Apothecure Inc., appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Osborn discussed his business plan for Apothecure Inc. and described that it was a compounding pharmacy that was 797 compliant. Mr. Osborn indicated that they have state of the art equipment for their compounding procedures and a sizable staff. His goal is to be licensed in all states so there are no problems shipping his products to patients wherever they are located.

Mr. Osborn was questioned regarding the two affirmative answers to questions on his application regarding being denied a license in any state and if any of the owners had been the subject of an administrative action relating to the pharmaceutical industry. Mr. Osborn indicated that there were still legal issues being addressed with the Attorney General in Texas.

NOTE: Ray Seidlinger abstained from the vote on this matter as he was not present for all of the testimony.

Board Action:

Motion: Don Fey moved to table this application until all of the legal issues with the Attorney General's office were resolved.

Second: Mary Lau

Action: Passed With One Negative Vote

B. BCWA Health Services – Bellingham, WA

Kevin Faris appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Faris was asked what his association was with CanadaPharmacy.com. Mr. Faris explained that the prescription goes to CanadaPharmacy.com first, then the actual prescription is filled at BCWA. Mr. Ling advised that it was a different concept but from a legal perspective it would be an illegal practice. CanadaPharmacy.com would need to be licensed by our Board in order for that to work.

Board Action:

Motion: Leo Basch moved to table this application until CanadaPharmacy.com becomes licensed if they choose.

Second: Don Fey

Action: Passed Unanimously

C. College Pharmacy – Colorado Springs, CO

Rachel Christopher, president, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Christopher advised the Board that they had just had a change in ownership. They compound non-manufactured drug products in Colorado. Ms. Christopher stated that they generally ship and bill the patient directly, but occasionally they ship to and bill the physician. The Board explained that in Nevada the practice of billing the physician is not legal. Ms. Christopher noted that they were fully 797 compliant.

During questioning, the Board asked Ms. Christopher about the three “yes” questions on the application that was submitted for out-of-state pharmacy licensure. Ms. Christopher explained that because of the change of ownership only one “yes” answer should be reflected on the application for pharmacy. When Ms. Christopher was presented with the original application where three “yes” answers were checked, she conceded that it was her signature on the application. She explained that the first question regarding the firm or any owner being charged or convicted with a felony or misdemeanor was answered yes and it was Mr. Bader, the previous owner, that was the problem. The second answer regarding a license or permit being denied was the Nevada Board of Pharmacy that denied Mr. Bader’s application for pharmacy. The third question referenced any proceeding regarding the pharmaceutical industry.

The Board determined that they denied the application for out-of-state pharmacy license to College Pharmacy because of those issues and told Mr. Bader or whoever represented College Pharmacy before the Board, to get his issues straightened out before Nevada would consider licensure. Ms. Christopher noted that the court case at issue is not final yet.

Board Action:

Motion: Keith Macdonald moved to table this application until the court hearing in April comes to a determination.

Second: Ray Seidlinger

Action: Passed Unanimously

D. HHI Infusion Services – Hinsdale, IL

Landon Lackey, vice president of sales and marketing, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Lackey explained that HHI provides home infusion products. They have 20 employees in the compounding pharmacy and they do not dispense controlled substances. When asked about shipping to physicians offices, Mr. Lackey testified that they did, occasionally, for indigent homeless Medicaid patients. Mr. Lackey explained that their long-term goal would be to open a pharmacy in Nevada, however in the interim they will partner with a local pharmacy to ensure good patient care.

Board Action:

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

Second: Don Fey

Action: Passed Unanimously

5. Application for Out-of-State Pharmacy – Non Appearance:

Infusion Technologies, Inc. – North Miami, FL

Larry Pinson reported to the Board that Infusion Technologies, Inc. does not prepare infusions as the name implies.

Board Action:

Motion: Ray Seidlinger moved to approve the out of state pharmacy application for Infusion Technologies, Inc.

Second: Keith Macdonald

Action: Passed Unanimously

6. Application for Nevada MDEG – Appearance:

Synergy Medical Supply Inc. – Las Vegas

Avetis Artyunian, owner, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Artyunian testified that he would be selling wheelchairs, back braces, gloves and other durable medical equipment. He would not be selling gasses or orthotics and prosthetics. Mr. Artyunian stated that he has contacts with some doctors in Las Vegas and that he had two consultants. When Mr. Artyunian was asked who the consultants were he stated there was no one in particular at the moment. Mr. Artyunian was asked about his funding and he replied that he had a \$50,000.00 line of credit at Wells Fargo.

Board Action:

Motion: Ray Seidlinger moved to table this application until Mr. Artyunian could bring consultants with him and provide more information on his business plan.

Second: Don Fey

Action: Passed Unanimously

7. Disciplinary Action

- A. Dina Haileyesus, R.Ph (07-009-RPH-S)
- B. Wal-Mart Pharmacy #10-2050 (07-009-PH-S)

NOTE: Mary Lau disclosed that Wal-Mart is a member of RAN however that membership will not affect her judgment in participating in this matter.

Louis Ling raised the objection that Ms. Lau's participation could jeopardize the integrity of this case.

Nancy Savage asked if Mr. Ling was going to request a motion that Ms. Lau not participate.

Mr. Ling again explained that Board staff is concerned that Ms. Lau could jeopardize the integrity of this matter.

Ms. Lau stated that she had the approval of the Governor's office and the Legislative Counsel Bureau to participate as the public member of the Board of Pharmacy.

Louis Ling proposed that Ms. Lau seek an Ethics Commission opinion. When the Ethics Commission makes a determination the Board will abide by it. President Boudreaux proposed that Ms. Lau and Board staff seek a joint Ethics Commission opinion so all facets of this issue are addressed and all parties protected. Ms. Lau indicated that she

would check with her legal counsel regarding a joint Ethics Commission opinion. Nancy Savage stated that the Ethics Commission opinion is the final word in determining what Ms. Lau can do with regard to participation in Board hearings where her RAN members are respondents in disciplinary matters. President Boudreaux directed Board staff to seek a joint Ethics Commission opinion.

Ms. Lau stated that she would participate in this hearing however abstain from the vote. Mr. Ling noted for the record that he objected to any participation by Ms. Lau in cases where her members are respondents in a disciplinary matter.

It was noted that Ms. Haileyesus was not present for hearing.

Hal Taylor, legal counsel for Wal-Mart #10-2050, Kevin Burr, Debbie Mack, Phil Reynolds, Charlie Curtis, Diedra Taylor, Jack Dalton and Lanikai Abbott, all representing Wal-Mart, were present.

Louis Ling called Joseph Selima to testify.

Joseph Selima appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Selima advised the Board that his wife has von williebrand's disease which is a bleeding disorder. Mrs. Selima suffered from a nose bleed that would not stop and ultimately had surgery to stop the bleeding. In February, 2007, Mrs. Selima was given a prescription for Valium because she was very anxious as a result of her nose bleeding again. That prescription was called in to Wal-Mart #10-2050 at approximately 10:00 a.m. and picked up at approximately 4:00 p.m. Mr. Selima noted that when he arrived at the pharmacy to pick up Mrs. Selima's prescription, there was a long line and there seemed to be some confusion in the pharmacy. When it was Mr. Selima's turn, a person at the register put the prescription vial in a bag and stapled it. Mr. Selima asked if this was his wife's Valium in the bag and the person he was speaking with indicated that it was. Mr. Selima paid for the medication and left the pharmacy. Mr. Selima testified that he was not counseled. He took the bag home, gave it to his wife and she took one tablet. Mrs. Selima did not relax so she took another dose. Mr. Selima testified that Mrs. Selima indicated that she was very cold and still insisted that the Valium was not working to help her relax and alleviate her anxiety. Mrs. Selima had taken three doses of the medication given to her from Wal-Mart #10-2050 before it was determined that she had been taking warfarin. When the Selima's contacted the pharmacy they were told that the doctor's office had called in warfarin. The doctor's office denied calling in warfarin for a patient with a bleeding disorder and insisted they called in Valium. Mr. Selima took his wife to the doctor's office to be checked to see if ingesting the warfarin did any harm. Mrs. Selima's condition is now more under control.

Hal Taylor cross-examined Mr. Selima.

The Board questioned Mr. Selima regarding the expenses incurred from this incident. Mr. Selima testified that he had spent several thousand dollars as his wife is not

covered by insurance. Mr. Selima also noted that he has been reimbursed by Wal-Mart and he was treated well by the people he dealt with at Wal-Mart.

Mr. Taylor reviewed the steps Wal-Mart has taken to prevent this type of incident from happening again. Mr. Taylor called Debbie Mack to testify.

Debbie Mack, Director of Pharmacy Services for Wal-Mart, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Mack testified that this error was made on a very high dose of warfarin and that the pharmacist, who now works for CVS, overrode the high dose alert. Ms. Mack noted that there are at least three places in the Wal-Mart policies and procedures regarding overriding high dose alerts. Wal-Mart also reviewed their counseling policies and procedures and have implemented another procedure to ensure that Wal-Mart is in compliance with Nevada law. Now when a new prescription is rung up and paid for by the patient, the prescription is passed to a pharmacist in a clear plastic bag for counseling. The pharmacist counsels and then bags the prescription for the patient.

Louis Ling questioned Ms. Mack regarding her interpretation of the written prescription that was telephoned to Wal-Mart #10-2050. Ms. Mack, a registered pharmacist, stated that she would read the prescription to be Valium, not warfarin. Mr. Ling had questions regarding the counseling logs used by Wal-Mart. Ms. Mack indicated that district pharmacy managers review counseling logs when they visit their stores to ensure compliance. Ms. Mack testified that she was unsure if Wal-Mart #10-2050 was using the clear bag system at the time of this error and noted that Mr. Salima should have been counseled by the pharmacist.

Louis Ling gave closing statements and recommendations. The First Cause of Action was admitted by Ms. Haileyesus and he recommended a \$500.00 fine plus additional CE on error prevention and counseling. The Second Cause of Action regarding counseling, Board staff feels that Mr. Salema's testimony was credible and that he was not counseled. He recommends a \$750.00 fine for both the pharmacist and the pharmacy. Mr. Ling leaves the Third Cause of Action regarding Wal-Mart to the Board's discretion.

Hal Taylor gave closing statements and noted that Wal-Mart had policies and procedures in place and the pharmacist ignored them, thus Wal-Mart should not be held responsible.

Board Action:

Motion: Leo Basch moved to find Ms. Haileyesus guilty of the First Cause of Action and her portion of the Second Cause of Action.

Second: Don Fey

Action: Passed Unanimously

Motion: Leo Basch moved to fine Ms. Haileyesus \$500.00 for the First Cause of Action, place her on probation for one year, and have her do ten hours of CE regarding error prevention and counseling, in addition to the 30 required for renewal, due to the Board office within 90 days signing of the Board's Order.

Second: Don Fey

Action: Passed Unanimously

Motion: Leo Basch moved to fine Ms. Haileyesus \$750.00 for the Second Cause of Action.

Second: Don Fey

Action: Passed Unanimously

After several failed motions the following was Ordered.

Motion: Leo Basch moved to find Wal-Mart #10-2050 not guilty of the Second Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Leo Basch moved to find Wal-Mart #10-2050 guilty of the Third Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Leo Basch moved to place Wal-Mart #10-2050 on probation for one year and pay one half the fees and costs in this matter.

Second: Don Fey

Action: Passed With One Negative Vote Plus President Boudreaux's Vote.

C. Aubrie A. Wilcox, PT (07-088-PT-S)

NOTE: Leo Basch recused from participation as he is employed by Walgreens.

Louis Ling advised the Board that staff had been contacted by Ms. Wilcox and she did not plan to be present for hearing.

Board staff was notified by Walgreens that they had terminated the employment of Ms. Wilcox for stealing controlled substance drugs and cash from the pharmacy. Ms. Wilcox admitted in a written statement that she had taken approximately \$200.00 in cash and ten controlled substance tablets amounting to \$55.18. Ms. Wilcox agreed to pay restitution to Walgreens.

Board Action:

Motion: Keith Macdonald moved to find Ms. Wilcox guilty of the alleged violations.

Second: Don Fey

Action: Passed Unanimously

Motion: Ray Seidlinger moved to revoke Ms. Wilcox's pharmaceutical technician registration. If Ms. Wilcox ever requests reinstatement she needs to provide proof of restitution and be evaluated by PRN-PRN.

Second: Keith Macdonald

Action: Passed Unanimously

D. Le Thi Hong Diem Turner, PT (07-087-PT-S)

NOTE: Leo Basch recused from participation as he is employed by Walgreens.

Even though Ms. Turner received her Accusation and was sent a letter with the time of her hearing, Ms. Turner did not appear.

Board staff was notified of Ms. Turner's termination of employment from Walgreens for cash theft and theft of controlled substances. Ms. Turner admitted in a written statement that she had stolen \$250.00 in cash and 15 Ambien tablets and between fifteen and twenty prenatal tablets. Ms. Turner agreed to pay restitution of \$386.67.

Board Action:

Motion: Keith Macdonald moved to find Ms. Taylor guilty of the alleged violations.

Second: Chad Luebke

Action: Passed Unanimously

Motion: Keith Macdonald moved to revoke Ms. Taylor's pharmaceutical technician registration. If Ms. Taylor ever requests reinstatement she needs to provide proof of restitution and be evaluated by PRN-PRN.

Second: Don Fey

Action: Passed Unanimously

E. Carol Eng, R.Ph (07-090-RPH-S)
F. Kindred Pharmacy Services (07-090-PH-S)

Don Fey disclosed that he has had a working relationship with Kindred.

Louis Ling advised the Board that there were some problems with the computer system during the renewal period and that Ms. Eng had tried to renew her license on line but could not access the payment portion of the renewal process. Ms. Eng worked unlicensed for two days.

Board Action:

Motion: Keith Macdonald moved to find Ms. Eng not guilty

Second: Mary Lau

Action: Three Yes Votes, Four Negative Votes – Motion Fails

Motion: Leo Basch moved to find Ms. Eng guilty of the First Cause of Action.

Second: Don Fey

Action: Three Yes Votes, Three Negative Votes Plus President Boudreaux's Yes Vote – Motion Passed

Motion: Leo Basch moved to fine Ms. Eng \$200.00 plus take and pass the law examination.

Second: No Second

Action: Motion Failed

Motion: Ray Seidlinger moved to impose no penalty.

Second: Chad Luebke

Action: Motion Passed With One Negative Vote

Chris Hill appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Hill advised the Board that he reviewed with his pharmacy staff that pharmacist licenses needed to be renewed by October 31st, 2007. Mr. Hill stated that he did not speak with Ms. Eng as she was out of the pharmacy when he had this review. Mr. Hill testified that he did not speak to Ms. Eng regarding her license renewal until he was contacted by Board staff.

NOTE: Don Fey abstained from the vote regarding Kindred.

Motion: Mary Lau moved to find Kindred guilty of the Second Cause of Action.

Second: Chad Luebke

Action: Passed Unanimously

Motion: Keith Macdonald moved to fine Kindred \$200.00.

Second: Leo Basch

Action: Passed Unanimously

G.	Maria Fellows, R.Ph	(07-089-RPH-S)
H.	St Rose Dominican Hospital	(07-089-PH-S)

NOTE: Don Fey recused from participation as he employs Ms. Fellows.

Maria Fellows appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Louis Ling advised the Board that Ms. Fellows worked without a license for three days and makes the same recommendation as in the other cases.

Ms. Fellows testified that she completed her renewal and wrote a check to pay the fees, put it in the envelope, and put it away so her two year old would not destroy it as she had previously done with other bills. Ms. Fellows stated that she forgot that she had put it away and failed to retrieve and mail it in a timely manner.

Board Action:

Motion: Keith Macdonald moved to find Ms. Fellows guilty of the First Cause of Action.

Second: Leo Basch

Action: Passed Unanimously

Motion: Keith Macdonald moved to fine Ms. Fellows \$300.00 and take and pass the law examination.

Second: Leo Basch

Action: Passed Unanimously

Carl Tunison, representing St. Rose, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

NOTE: Ray Seidlinger disclosed that he knows Mr. Tunison.

Mr. Tunison testified that our license verification program was difficult to use and that he could not print verifications for his pharmacists.

Board Action:

Motion: Leo Basch moved to find St. Rose guilty of the Second Cause of Action.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Leo Basch moved to fine St. Rose \$200.00.

Second: Keith Macdonald

Action: Passed Unanimously

I. Craig Pivo, R.Ph (07-092-RPH-S)

NOTE: Chad Luebke recused from participation as he is employed by CVS.

Craig Pivo appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Pivo was represented by Scott Martin, legal counsel.

Louis Ling advised the Board that Mr. Pivo surrendered his pharmacist license in California and Utah and did not disclose this on his renewal for licensure in Nevada.

Mr. Martin advised that after the death of Mr. Pivo's father he became dependant on controlled substances. Mr. Pivo was treated and abstained from use until he relapsed in 2005. The Utah Board of Pharmacy gave Mr. Pivo a choice of going into a substance abuse program or surrendering his license. Mr. Pivo chose to voluntarily surrender his license because he felt it would be better for him at that point to be out of the pharmacy profession. Mr. Pivo came to practice in Nevada in 2007 and has been clean since 2005.

Mr. Pivo advised the Board that he has been working at CVS since July 2007. Mr. Pivo testified that when he renewed his license on line he was having difficulty and called the Board office. Mr. Pivo stated that he spoke with Candy Nally in the Board office and she helped him with the credit card payment he was having difficulty with. Even though Mr. Pivo could not have completed the on line process if he had answered any of the questions regarding discipline in the affirmative, he testified that he did not remember

seeing any questions. He indicated that he did not know why he did not answer "yes" to those questions.

Board Action:

Motion: Keith Macdonald moved to find Mr. Pivo guilty of the alleged violations.

Second: Leo Basch

Action: Passed Unanimously

Motion: Keith Macdonald moved to have Mr. Pivo evaluated by PRN-PRN and pay the fees and costs in this matter.

Second: Ray Seidlinger

Action: Passed Unanimously

J.	James A. Baumgarten, R.Ph	(07-091-RPH-S)
K.	Wal-Mart Pharmacy #10-3355	(07-091-PH-S)

NOTE: Keith Macdonald recused from participation as he is employed by Wal-Mart.

Hal Taylor, legal counsel, was present to represent Wal-Mart. Debbie Mack, Kevin Burr and Deidre Taylor were also present.

Debbie Mack and Deidre Taylor appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

Louis Ling advised that Mr. Baumgarten worked without a license for two days and recommended the same penalty as imposed upon Mr. Zeger and Rite Aid of a \$200.00 fine.

Deidre Taylor testified that she sent out two notices to all of her stores reminding all pharmacists that their licenses were due for renewal by October 31, 2007. Mr. Baumgarten worked for two days without a license and when it was discovered, Ms. Taylor relieved him of his duties and put a relief pharmacist in the pharmacy.

Debbie Mack is putting a procedure in place in Nevada to require pharmacy staff to be renewed prior to October 31st so if there is a problem it can be rectified before the renewal deadline.

Board Action:

Motion: Leo Basch moved to find Mr. Baumgarten guilty of the First Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Leo Basch moved to fine Mr. Baumgarten \$400.00 plus take and pass a law examination prepared by Board staff.

Second: Don Fey

Action: Passed With One Negative Vote

Motion: Leo Basch moved to find Wal-Mart #10-3355 not guilty of the Second Cause of Action.

Second: No Second

Action: Motion Failed

Motion: Chad Luebke moved to find Wal-Mart #10-3355 guilty of the Second Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Chad Luebke moved to fine Wal-Mart #10-3355 \$200.00.

Second: Ray Seidlinger

Action: Passed Unanimously

L. Ihsaan J. Abdul-Hamid, PT (07-094-PT-S)

Ihsaan Abdul-Hamid appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Louis Ling noted that Ms. Abdul-Hamid was before them because she had not paid restitution to Costco as the result of a hearing on June 6, 2007. The Board Order was signed on June 28, 2007 and Ms. Abdul-Hamid was required to pay restitution within 120 days.

Mr. Ling advised that he was going to present telephone testimony from Joanne Lawson, a regulatory supervisor for Costco.

Joanne Lawson appeared by telephone and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Lawson testified that because of contact by Board staff in the form of the Accusation, Ms. Abdul-Hamid contacted her to make restitution. Ms. Abdul-Hamid

agreed to pay \$200.00 per month until \$830.40 was paid in full to fulfill her obligation to Costco. Ms. Lawson stated that she was notified on January 5, 2008 that the warehouse manager in Las Vegas received a \$200.00 payment from Ms. Abdul-Hamid on December 24, 2007.

Ms. Abdul-Hamid testified that she was delinquent in paying Costco because of hardship circumstances. She stated that her check to Costco cleared her bank on January 9, 2008, and that she intends to make her payments until she is compliant.

Board Action:

Motion: Leo Basch moved to find Ms. Abdul-Hamid guilty of the alleged violations.

Second: Don Fey

Action: Passed Unanimously

Motion: Leo Basch moved to have Ms. Abdul-Hamid make monthly payments to Costco by the 20th of each month. If Ms. Abdul-Hamid does not make a payment and provide proof to Board staff in the form of a receipt faxed to Board staff by the 20th of the month, Ms. Abdul-Hamid's pharmaceutical technician registration will be suspended on the 21st.

Second: Keith Macdonald

Action: Passed Unanimously

M.	FMC Distributors of Nevada, Inc.	(07-046-WH-S)
N.	FMC Distributors, Inc.	(07-046-WH-O)

NOTE: Keith Macdonald recused from participation because of prior legal actions.

Jim Boyle appeared to represent FMC.

Louis Ling advised that a stipulated agreement was signed by both parties and he and Mr. Boyle presented it to the Board as follows:

- FMC admits to allegations that violate the First, Second, Eighth, Ninth, and Fifteenth Causes of Action. Purchase of drugs from wholesalers not licensed in Nevada. The Second and Ninth were for pedigrees that were not legally sufficient.
- Both have agreed to a range of penalties. The fine not to exceed \$25,000.00 and the fees and costs in this matter not to exceed \$20,000.00 and surrender of their licenses with conditions.

Louis Ling recommended acceptance of the stipulated agreement.

Larry Pinson strongly recommended acceptance in light of going to hearing with a goal of what has been stipulated in the agreement.

Board Action:

Motion: Ray Seidlinger moved to accept the stipulated agreement with a fine of \$25,000.00 and actual fees and costs.

Second: Chad Luebke

NOTE: Mary Lau disclosed that she worked on the wholesaler laws.

Action: Passed Unanimously

O.	Edwin R. Zegen, R.Ph	(07-095-RPH-S)
P.	Rite Aid #6217	(07-095-PH-S)

Louis Ling explained that Mr. Zegen worked without a license for 20 days. Board of Pharmacy regulations allow a fine of \$200.00 a day for each day a pharmacist works without a license, however he advised the Board to use their judgment.

Mike Dyer was present to represent Mr. Zegen and Rite Aid #6217.

Mr. Zegen appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Zegen did not contest the charges and gave testimony as to the circumstances. He had sent his renewal form to the Board office with his check. The renewal form was not complete and was returned to Mr. Zegen. Mr. Zegen noted that he was out of the country and when he returned he sorted his mail. When he saw the envelope from the Board of Pharmacy he assumed it was his new license and did not open the envelope. Mr. Zegen took full responsibility for this oversight.

Board Action:

Motion: Keith Macdonald moved to find Mr. Zegen guilty of the First Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Keith Macdonald moved to fine Mr. Zegen \$200.00.

Second: Chad Luebke

Action: Passed Unanimously

Motion: Ray Seidlinger moved to find Rite Aid #6217 guilty of the Second Cause of Action.

Second: Don Fey

Action: Passed Unanimously

After several failed motions, the following was Ordered.

Motion: Ray Seidlinger moved to fine Rite Aid #6217 \$200.00.

Second: Keith Macdonald

Action: Passed Unanimously

8. Request for Change in Disciplinary Order – Appearance Required:

Marie Moseley, R.Ph

(07-002-RPH-S)

Ms. Moseley did not appear. She had contacted Board staff and advised that the pharmacy she works in had hired a managing pharmacist and she would not have to ask for a change in her disciplinary order.

9. Request for Reconsideration – Appearance Required:

CVS/pharmacy #2989

(06-071-PH-S)

Louis Ling advised the Board that Mike Dyer, local legal counsel for CVS, requested reconsideration of the Board's Order in Case Number 06-071-PH-S. Mr. Dyer would like to have the probation removed from the Order as he and his client felt that the punishment was too severe for the circumstances of this matter.

Mr. Dyer reviewed the original case for the new Board members. This matter hinged on a complaint from a patient that received two prescriptions that had expiration dates on the label that were longer than the manufacturer's expiration dates. The pharmacy computer automatically inputs a date of one year from the fill date and the pharmacist failed to check the expiration dates on the manufacturer bottles as he should have according to CVS policies and procedures. The Board fined the pharmacist \$100.00 for the error plus \$750.00 for failure to counsel. CVS was fined \$750.00 plus costs and fees for a total of \$2,500.00 plus one year probation. Mr. Dyer and his client CVS requested the Board remove the probationary term from the Order as they do not feel it is warranted. Mr. Dyer noted that Board staff did not recommend probation in this case and asked the Board for reconsideration.

Board Action:

Motion: Ray Seidlinger moved to grant reconsideration.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Keith Macdonald moved to remove probation from the Order in Case Number 06-071-PH-S.

Second: Ray Seidlinger

Action: Passed Unanimously

10. Request for Reinstatement of Pharmacist License – Appearance Required:

Jonathan Corey Ray

(06-053-RPH-N)

Jonathan Ray and Larry Espadero, PRN-PRN monitor, appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Espadero advised the Board that Mr. Ray has been very involved in our PRN-PRN program and also the Southwest PRN program. He has had continued success with the program.

Mr. Ray testified that he has found the PRN-PRN program really helpful in understanding his issues. He has been humbled by the experience. Mr. Ray stated that he has bonded with his son and family and is in a better place because of the program. Mr. Ray has been working as a security guard at Northstar since he lost his pharmacist license. He indicated that he is comfortable going back into pharmacy. He would like to go into clinical pharmacy and is not interested in working in the retail environment. Mr. Ray testified that through the PRN-PRN program he has learned coping skills that will help him re-enter the pharmacy world.

Mr. Espadero supports Mr. Ray in his request for reinstatement of his pharmacist license.

Board Action:

Motion: Keith Macdonald moved to reinstate Mr. Ray's pharmacist license and for Mr. Ray to continue to fulfill his obligation to the PRN-PRN program.

Second: Leo Basch

Action: Passed Unanimously

11. Requests for Technician in Training License – Appearance Required:

A. Christina Mathews

Christina Mathews contacted Board staff and advised that she no longer wanted to apply for a pharmaceutical technician-in-training license and would not appear.

B. Eduardo Diaz

Mr. Ling advised the Board that Mr. Diaz was present because Board staff was notified that Mr. Diaz tested positive for marijuana during a routine drug screening at Heritage College.

Eduardo Diaz appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Diaz explained that he got into trouble after he became depressed. His cousin mentored him and he quit using marijuana in August, 2007. Mr. Diaz admitted that he was involved with the wrong crowd and he no longer associates with them. With the counsel of his cousin, Mr. Diaz has learned to stay away from situations that would tempt him from using marijuana.

Board Action:

Motion: Keith Macdonald moved to table the application for PTT until Mr. Diaz is evaluated by PRN-PRN. Mr. Diaz must be evaluated within 10 days of today's hearing. Board staff is given authority to approve the application if this Order is complied with.

Second: Leo Basch

Action: Passed With One Negative Vote

C. Lisa Simpson

Mr. Ling advised the Board that Ms. Simpson was present because Board staff was notified that Ms. Simpson tested positive for marijuana during a routine drug screening at Heritage College.

Lisa Simpson appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Simpson testified that she made a bad decision when she used marijuana. She was with friends that were using marijuana and she used, too. She was tested four days later which resulted in a positive UA.

Board Action:

Motion: Keith Macdonald moved to table the application for PTT until Ms. Simpson is evaluated by PRN-PRN. Ms. Simpson must be evaluated within 10

days of today's hearing. Board staff is given authority to approve application if this Order is complied with.

Second: Leo Basch

Action: Passed With One Negative Vote

D. Trina Trinidad

Trina Trinidad appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Trinidad was requesting a pharmaceutical technician-in-training application to go to work at Rite Aid. Since her submission of the application Rite Aid has changed ownership and she has no opportunity for employment at this time.

Ms. Trinidad took a correspondence course and asked the Board if she could use that certificate for licensure. Since the correspondence course was not ACPE accredited it could not be considered.

When asked about the affirmative questions she answered on her application, she indicated that she spent 25 days in jail for traffic tickets. She had warrants out for her arrest and some of them were very old so she was jailed. Ms. Trinidad also indicated that she was charged with hitting her mother-in-law but she stated that she was cleared of those charges.

Since Ms. Trinidad has no managing pharmacist or store to work in, the Board can not accept her application for pharmaceutical technician-in-training. The Board directed staff to have Ms. Trinidad re-appear if she pursues a job as a PTT in the future.

12. Request for Correction to September 2007 Minutes – Non Appearance:

Robb Miller – Diabetic Life Supply

Robb Miller made a request to the Board to amend the September 2007 meeting minutes to remove the inference that Robert Maxwell stated that Diabetic Life Foundation was the parent company of Diabetic Life Supply. Diabetic Life Foundation is not the parent company of Diabetic Life Supply.

Board Action:

Motion: Ray Seidlinger moved to amend the September 2007 Board meeting minutes as referenced.

Second: Chad Luebke

Action: Passed Unanimously

13. General Counsel Report

Louis Ling noted that he has not heard anything from the Supreme Court yet regarding the Dutchess matter.

14. Executive Secretary Report:

- A. Financial Report
- B. Investment Report

Larry Pinson gave the financial and investment reports to the Board's satisfaction.

C. Temporary Licenses

There were no temporary licenses issued since the last Board meeting.

D. Staff Activities

1. Meetings

- a. Task Force scheduled for February 1st
- b. NABP Executive Committee scheduled for February 8th
- c. CE Committee scheduled for January 30th
- d. USN – Keith Macdonald represents the Board and gave a report

2. Miscellaneous

- a. NDSU student rotations
- b. Controlled Substance Prescription Fact Sheet
- c. 2008 Financial Disclosure for Board Members

E. Reports to Board

1. Lipo-dissolve

Mr. Pinson reported that Custom Medications of St. Louis and Las Vegas (two pharmacies involved with lipo-dissolve) were closing due to bankruptcy.

2. October Board meeting date change to October 29 & 30

F. Board Related News

1. Ohio Grand Jury

The Ohio Grand Jury indicted a pharmacist with manslaughter and reckless homicide in a case involving the death of a baby.

2. Fentanyl Patch & Exposure to Heat

It has been discovered that if Fentanyl patches are exposed to heat they become more potent.

3. "Sizzurp"

This is a new "drug cocktail" of abuse in the hip-hop culture consisting of phenergan and codeine.

G. Activities Report

15. Discussion and Determination:

A. Tech CE

A Board member requested a discussion regarding the quality of in-service training being provided to pharmaceutical technicians. Given the integral role by the technician in the prescription filling process as well as the involvement of the technician in many of the prescription errors that the Board sees, the question arises if it is time to require formal CE for pharmaceutical technicians. ACPE recently announced that CE courses for technicians will be accredited specifically for technicians. ACPE numbers are assigned for specific courses specifically for pharmacists (course numbers ending in "P") or for technicians (course numbers ending in "T"). "P" courses will still be acceptable for technician certification.

Mary Lau noted that the original legislative intent was not to make technicians into pseudo pharmacists, and Leo Basch concurred. In Mr. Basch's experience, technicians that take pharmacist CE think they can do pharmacist tasks and that is not the intent of the education.

It was noted that PTCB requires 20 hours of CE for PTCB renewal.

The end result of the discussion was to not require pharmaceutical technicians to take formal continuing education but rather to continue with in-service training.

B. ICPT

Becky Rabbitt appeared and gave a presentation of the ICPT program they offer for technician certification and accreditation of technician programs. It is a similar program comparable to PTCB. Ms. Rabbitt noted that they do testing on demand and the curriculum varies for all aspects of pharmacy such as hospital, compounding, retail, etc. Their examination includes 110 questions, costs \$95.00, and their pass rate is between 70 and 72%. Ms. Rabbitt asked if the Board would recognize her program as we do PTCB. ICPT requires 20 hours of technician CE for renewal of their licenses.

Keith Macdonald noted that in his experience he can not tell the difference between a PTCB certified technician and an on the job trained technician. Besides the certification, they need pharmacy hands on training.

Board staff was directed to review the ICPT program and report back to the Board.

C. Selection of Delegates for NABP Annual Meeting

Chad Luebke was selected as the Delegate for the NABP Annual Meeting and Don Fey was chosen as Alternate.

WORKSHOP

16. **Proposed Regulation Amendment Workshop**

1. **Amendment of Nevada Administrative Code 453.450 Controlled Substance Prescriptions** Removes requirement for canceling Schedule II prescriptions.

This language removes the requirement to hand cancel a CII prescription.

There was no public comment.

Board Action:

Motion: Ray Seidlinger moved to move forward to Public Hearing as presented.

Second: Keith Macdonald

Action: Passed Unanimously

2. **Amendment of Nevada Administrative Code 639 NEW Language**
Inactive status for pharmacists license.

Christina Matheson appeared and questioned if a pharmacist is practicing in another state could they use that parameter to reactivate their license in Nevada.

They would have to have proof of CE for the current period plus they would need to attend a live Nevada law CE presented by Board staff. There was discussion regarding how much CE they would have to provide. If they were practicing in another state that CE would be accepted, if they were not practicing they would have to do CE for the period of time they were not practicing and other variations. Board staff was directed to rewrite the regulation and bring it back to the next meeting.

PUBLIC HEARING

17. Notice of Intent to Act Upon a Regulation:

Amendment of Nevada Administrative Code 453.510, 453.530, 453.540 and 453.550 Controlled Substance Schedules Las Vegas Metropolitan Police Department request to add certain controlled substances to the schedules.

President Boudreaux opened the Public Hearing.

There was no public comment.

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

Board Action:

Motion: Ray Seidlinger moved to adopt the regulation amendments as presented.

Second: Leo Basch

Action: Passed Unanimously

18. Next Board Meeting:

March 5-6, 2008 – Reno, Nevada

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

There were no public comments.