

## BOARD MEETING

Airport Plaza Hotel  
1981 Terminal Way  
Reno

Wednesday, September 3, 2008  
and  
Thursday, September 4, 2008

The meeting was called to order at 10:30 a.m. by Barry Boudreaux Board President.

### Board Members Present:

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

### Board Members Absent:

Keith Macdonald

### Board Staff Present:

Larry Pinson	Jeri Walter	Louis Ling	Bob Bryant
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## CONSENT AGENDA

1. Approval of July 16-17, 2008, Minutes
2. Applications for Out-of-State MDEG – Non Appearance:
  - A. Invatec LTD – Stafford, TX
  - B. Lynncore MedGroup, Inc. – Sherman, TX
  - C. McKesson Medical-Surgical Inc. – Kansas City, MO
  - D. McKesson Medical-Surgical Inc. – Kansas City, MO
  - E. National Rehab Equipment, Inc. – Moon Township, PA
  - F. Optimal, Ltd. – Stafford, TX
  - G. UPS Supply Chain Solutions, Inc. – Louisville, KY

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

- H. Aetna Rx Home Delivery, LLC – Kansas City, MO
- I. El Rey Rx, Inc. – Los Angeles, CA
- J. Fairview Specialty Pharmacy Services – Minneapolis, MN

- K. Greater Sacramento Pharmacy – Sacramento, CA
- L. LDI Integrated Pharmacy Services – Creve Coeur, MO
- M. Matrix Pharmacy, LLC – Tampa, FL
- N. Sav-Rx Pharmacy – Fremont, NE

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

- O. Bellco Drug Corp. – North Amityville, NY
- P. Boston Scientific Corporation – Quincy, MA
- Q. Caraco Pharmaceutical Laboratories, Ltd. – Wixom, MI
- R. Ceva Logistics U.S., Inc. – Arlington, TX
- S. Cumberland Distribution, Inc. – Nashville, TN
- T. Fenwal, Inc. – Lake Zurich, IL
- U. National Pharmaceutical Returns, Inc. – Urbandale, IA
- V. Patterson Logistics Services, Inc. – Phoenix, AZ
- W. Zycare, Inc. – Chapel Hill, NC

Applications for Nevada Pharmacy – Non Appearance:

- X. Lifefirst Pharmacy – North Las Vegas
- Y. Linden Street Mental Health Center Pharmacy – Reno
- Z. Nevada Cancer Institute – Las Vegas
- AA. Raley’s Pharmacy #110 – Sparks
- BB. Target T-2472 – Sparks
- CC. Wal-Mart Pharmacy #10-4557 – Las Vegas
- DD. Wellcare Pharmacy III, LLC – Las Vegas

Application for Nevada Wholesaler – Non Appearance:

- EE. Dental Health Products, Inc. – Reno

Discussion:

The consent agenda applications and supporting documents were reviewed.

Board Action:

NOTE: Mary Lau recused from the vote on items AA, BB and CC because she is the president of the Retail Association of Nevada and Raley’s, Target and Wal-Mart are members of RAN. Chad Luebke recused from the vote on items X and DD as he is acquainted with the managing pharmacists.

Motion: Leo Basch found the consent agenda application information to be accurate and complete and moved for approval of items AA, BB, CC, W, X and DD.

Second: Ray Seidlinger

Action: Passed Unanimously With President Boudreaux's Vote

Motion: Don Fey found the consent agenda application information to be accurate and complete and moved for approval of the remaining items.

Second: Mary Lau

Action: Passed Unanimously With President Boudreaux's Vote

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

Second: Don Fey

Action: Passed Unanimously

### REGULAR AGENDA

#### 3. Application for Nevada Pharmacy – Appearance:

Advanced Isotopes of Nevada, LLC – Las Vegas

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

Mr. Southwick will be the managing pharmacist for Advanced Isotopes of Nevada which will be a nuclear pharmacy. He described the standards of operation, safety procedures and the corporate structure to the Board's satisfaction.

#### Board Action:

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

Second: Leo Basch

Action: Passed Unanimously

#### 4. Application for Out-of-State Wholesaler –Appearance:

Deseret Biologicals, Inc. – Sandy, UT

Larry Pinson prefaced Mr. Castleberry's appearance by advising the Board that this is the wholesaler for homeopathic products and nutritionals that was shipping into Nevada to Dr. Fong without being licensed. When they learned that they needed to be licensed in Nevada they submitted this application.

Charles Castleberry appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Castleberry has been in business in Utah for about 21 years and he described the products that they wholesale. They do not manufacture - Apothica is the manufacturer for the products that Deseret wholesales. They have nine physicians in Nevada that they serve.

Mr. Castleberry stated that he was extremely unhappy when he learned that Dr. Fong was using their water based products as injectables. Deseret will not sell water based products in the future to ensure the situation with Dr. Fong never happens again. Mr. Castleberry stated that the instructions on the water based products sent to Dr. Fong was to administer one to ten drops under the tongue – and certainly not to inject. Mr. Castleberry showed the Board the new pamphlets noticing their customers that they no longer sell water based products.

Board Action:

Motion: Leo Basch moved to approve the application for out of state wholesaler pending completion the application process.

Second: Mary Lau

Action: Passed Unanimously

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

A. Infusion Innovations – West Valley City, UT

Jay Lewandowski appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Lewandowski is the managing pharmacist for Infusion Innovations. He described the standards of operation, safety procedures and the corporate structure to the Board's satisfaction.

Board Action:

Motion: Don Fey moved to approve the application for out of state pharmacy for Infusion Innovations.

Second: Mary Lau

Action: Passed Unanimously

B. Rx3 Pharmacy – Richmond, VA

Rx3 Pharmacy cancelled their appearance.

6. Disciplinary Action:

NOTE: Mary Lau recused from participation in items 6A, B, C and D as she is the president of the Retail Association of Nevada and Raley's is a member of RAN.

- A. David M. Carroll, R.Ph (08-003-RPH-N)
- B. Raley's Drug Center #104 (08-003-PH-N)

David Fluitt, district pharmacy manager, was present to represent Raley's. Hal Taylor represented David Carroll.

Louis Ling called Ed Kolar to testify.

Ed Kolar appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Kolar testified that he had an issue with Raley's and how they operate their pharmacy. Mr. Kolar was prescribed amlodipine 5 mg. tablets #30 with three refills. When Mr. Kolar had his prescription refilled for the first time, he testified that he was handed a bag and when he looked inside to view the medication he was given, he noticed that the medication was round blue tablets, unlike the white octagon shaped tablets he was given originally. Mr. Kolar questioned the clerk regarding the difference and was told it was probably just another generic.

Mr. Kolar began taking the round blue tablets the following day and immediately got a headache and felt weak and fatigued. He also noticed that his vision was blurred. Mr. Kolar testified that he took the medication for four days and finally took it back to Raley's and spoke with the managing pharmacist, Jackie Patel. It was discovered that he had been taking isosorbide dinitrate 30 mg. tablets. Ms. Patel apologized and replaced the medication for Mr. Kolar. Mr. Kolar testified that Ms. Patel called him for four days in a row to check to see if his symptoms were improving. Mr. Kolar's vision was so blurred that he went to his ophthalmologist and was diagnosed with macular degeneration, however when he returned a few weeks later for a follow up appointment, fortunately it was determined that he did not have macular degeneration.

Mr. Kolar stated that Mr. Fluitt called him six days after the misfill incident and explained to him that he had put procedures in place to ensure that this situation did not occur again. Mr. Kolar indicated that he found this to be infuriating and that procedures should have always been in place so the public is protected.

David Carroll appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Carroll apologized to Mr. Kolar for the misfill.

Jackie Patel appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Patel indicated that she is the pharmacy manager for Raley's #104 and has worked with Mr. Carroll for approximately two years. Ms. Patel testified that when Mr. Kolisar brought the medication to her for identification, she corrected the error and directed him to see his physician. Ms. Patel stated that she checked the other patient's medications that were filled at the same time to be sure Mr. Kolisar's medication did not go to someone else. She described her filling procedures and the pharmacy's policy at the time of the misfill. Ms. Patel surmised that there was more than one medication on the counter at the time this happened. Ms. Patel questioned Mr. Carroll regarding his filling procedures and asked if he opened the prescription vial to check the medication and he told her he did not do it because it wasn't in Raley's Policies and Procedures.

The Board questioned Ms. Patel about the Policies and Procedures and if they did not "say" to open the bottle when checking a prescription, they wanted to know what they did say. Ms. Patel indicated that the policy was to scan the stock bottle and the label to match the NDC codes, however it was discovered in this instance that the stock bottle was not scanned.

Mr. Ling questioned Mr. Carroll. Mr. Carroll was the responsible pharmacist for filling Mr. Kolisar's prescription. Mr. Carroll testified that he did not open the bottles of prescriptions filled by technicians to check to see if they were filled correctly. Mr. Carroll indicated that he had never had a problem before this and checking the NDC codes seemed adequate. Mr. Carroll admitted that he did not scan this prescription, but he did check it manually and it matched. It was brought to Mr. Carroll's attention that pharmaceutical technicians do make mistakes and the only way to know what is in the bottle is to look. Mr. Carroll stated that he does look now since it is Raley's Policy and Procedure since this incident.

Mr. Taylor indicated that nobody can figure out how this misfill occurred. He also noted that it was not Raley's policy to open the bottle and look at the medication at the time of the error so Mr. Carroll did not violate Raley's procedures. Mr. Taylor asked Mr. Carroll if he has done anything to improve his pharmacy practice since this incident and Mr. Carroll indicated that he had taken a continuing education course in error prevention.

The Board asked Mr. Carroll what he has learned from this situation and he stated that he takes more time with patients and practices show and tell counseling. Mr. Carroll indicated that pharmaceutical technicians have also learned that if there is a medication question from a patient they are to call a pharmacist.

David Fluitt appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Fluitt testified that it was alluded to that the pharmacy was under staffed. He stated that there were 122 prescriptions filled that day with two pharmacists and two pharmaceutical technicians on duty plus a clerk and that was not an under staffed situation. Mr. Fluitt indicated that he has counseled Mr. Carroll regarding his pharmacy procedures. Don Fey asked Mr. Fluitt why it was not a written policy for a pharmacist to

open the bottle and view the contents when checking a pharmaceutical technicians work. Mr. Fluitt indicated that it is inherent in his practice of pharmacy to look in the bottle and he assumed others practiced in the same manner, but now it is a written policy.

Louis Ling gave closing statements and recommendations. Mr. Carroll has admitted to the First Cause of Action that he dispensed the wrong medication to Mr. Kolar. For the Second Cause of Action for failure to verify the prescription that was ultimately dispensed to Mr. Kolar, Mr. Ling finds that Mr. Carroll should be found guilty. Mr. Ling stated that it was not a mystery as to how this misfill happened as Mr. Taylor indicated it was. There was a filled bottle of the wrong medication that had Mr. Kolar's label on it. Mr. Carroll admitted that for 21 years he has not been looking at the medications he checks. Mr. Ling advised that it is Mr. Carroll's professional obligation to know – not assume – what is in the bottle that is being dispensed to patients and that has been in Nevada law since 1992. Mr. Ling recommends in the First Cause of Action the Board fine Mr. Carroll at least \$1,000.00. For the Second Cause of Action he recommends a fine of \$1,000.00 plus participation in the Your Success Rx program. The Third Cause of Action regarding Raley's #104, Mr. Ling recommended a fine to be determined by the Board, written policies and procedures to include that a pharmacist must look in the bottle of medication that they are verifying before they sign off, not have more than one prescription on the counter at a time during the filling and verification process, address return to stock bottles of medication and pay the fees and costs in this matter.

Mr. Taylor made closing statements and noted that he thought Mr. Ling's recommendations were too stringent.

Board Action:

Motion: Don Fey moved to find Mr. Carroll guilty of the First Cause of Action.

Second: Leo Basch

Action: Passed Unanimously

Motion: Don Fey moved to find Mr. Carroll guilty of the Second Cause of Action.

Second: Chad Luebke

Action: Passed Unanimously

Motion: Don Fey moved to find Raley's #104 guilty of the Third Cause of Action.

Second: Chad Luebke

Action: Passed Unanimously

Motion: Don Fey moved to fine Mr. Carroll \$500.00, provide proof of the CE he took on error prevention within 30 days of signing of the Order – and that

CE will not count for his next renewal period, and participate in the Your Success Rx program for the First Cause of Action.

Second: Ray Seidlinger

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

Motion: Don Fey moved to fine Mr. Carroll \$1,000.00 for the Second Cause of Action.

Second: Chad Luebke

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

After several failed motions and discussion the following passed.

Motion: Chad Luebke moved for Raley's #104 to pay the fees and costs in this matter, review their policies and procedures to ensure they are adequate and review the policies and procedures with pharmacy staff.

Second: Ray Seidlinger

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

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|----|--------------------------|----------------|
| C. | David M. Carroll, R.Ph   | (07-085-RPH-N) |
| D. | Raley's Drug Center #104 | (07-085-PH-N)  |

Louis Ling indicated that there was agreement between Mr. Carroll, Mr. Taylor, Mr. Fluit and himself that they would like to incorporate the testimony from the previous case into this case to conserve time.

Lena Naughton appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Ling asked Ms. Naughton to explain the circumstances in this matter to the Board. Ms. Naughton testified that her 17 year old son Brandon was diagnosed with bipolar disorder and was prescribed Depakote ER 500 mg. with directions for use to take two tablets each night at bedtime. She advised that she generally took her prescriptions to the Golden Valley Raley's but this prescription was taken to Raley's #104 because Brandon was being admitted to China Springs because of behavioral problems and Raley's #104 was on the way. Ms. Naughton and Brandon were escorted by a staff representative of China Springs and they all took the hardcopy prescription in to Raley's #104 to be filled. Ms. Naughton stated that the prescription was filled in about 20 minutes, she paid for the medication, and gave it directly to the China Springs staff representative. The China Springs representative and Brandon continued on to the facility. Ms. Naughton indicated that she received a telephone call two days after Brandon was taken to China Springs advising her that her son's behavior was worse than when he was admitted. They advised her that Brandon needed to see his doctor

or he would be released from the program. Ms. Naughton took Brandon to his physician and it was discovered through conversation with Brandon that he was taking a pink pill that tasted like bubble gum rather than the blue or white ones he generally took. It was discovered that Brandon had been taking Depakote 500 mg. tablets rather than Depakote ER 500 mg. tablets that were prescribed for him. Ms. Naughton indicated that once Brandon began taking the prescribed medication his behavior became less disruptive and he is doing better now.

A copy of the counseling log for Raley's #104 was admitted into evidence as Exhibit A.

Ms. Naughton advised the Board that when she brought the misfill to Mr. Carroll's attention he accused her of putting the wrong medication into the prescription vial. She stated that she got angry at the accusation and filed the complaint with the Board of Pharmacy to investigate Mr. Carroll's pharmacy practice.

Because of the testimony in the previous case regarding Mr. Carroll's pharmacy practice, it was dispensed with in this instance. Mr. Ling gave recommendations. In the First Cause of Action with regard to the misfill, Mr. Ling recommended a fine of \$150.00 or \$250.00. The Second Cause of Action regarding failure to verify the prescription he would leave to the Board's discretion. The Third Cause of Action with reference to Raley's he recommended fees and costs.

Board Action:

Motion: Ray Seidlinger moved to find Mr. Carroll guilty of the First and Second Causes of Action.

Second: Leo Basch

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

Motion: Ray Seidlinger moved to find Raley's #104 guilty of the Third Cause of Action.

Second: Leo Basch

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

After several failed motions and discussion the following passed.

Motion: Leo Basch moved to assess Mr. Carroll with one half the fees and costs in this matter and issue him a letter of reprimand for the First and Second Causes of Action.

Second: Ray Seidlinger

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

Motion: Leo Basch moved to assess Raley's #104 with one half the fees and costs in this matter for the Third Cause of Action.

Second: Ray Seidlinger

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

- E. William Duskin, R.Ph (08-015-RPH-N)
- F. Longs Drug Store #122 (08-015-PH-N)

NOTE: Mary Lau recused from participation in items 6 E and F as she is the president of the Retail Association of Nevada and Long's is a member of RAN. Chad Luebke recused from participation in this matter as CVS just purchased Longs Drug Stores.

William Duskin appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Cookie Quandt was present to represent Long's #122 and Mike Dyer was present as legal counsel for both Mr. Duskin and Long's #122.

Louis Ling presented a stipulated agreement that came from a meeting with Mike Dyer, Cookie Quandt, Larry Pinson and Mr. Ling. The Board was given a copy of the agreement and Mr. Ling noted that this is the document that will be referenced throughout the hearing in this matter.

Mr. Ling described that a refill authorization request for Darvocet went to a doctor's office where it was authorized and returned to the pharmacy and ultimately filled. The patient did not ask for a refill for Darvocet. During the course of the investigation into this matter it could not be determined how the refill request was initiated. Mr. Ling requested the Board to dismiss the First and Second Causes of Action as they could not be proven. Mr. Duskin admits to the Third and Fourth Causes of Action. The Fifth Cause of Action is a central fill issue. Mr. Ling advised that our central fill regulations would be addressed at a later time. The complainant indicated that they were not counseled when they picked up the new prescriptions. Mr. Ling noted that Mr. Duskin seems to be a good pharmacist and counsels appropriately and recommended a letter of reprimand at the most for discipline.

Mr. Dyer thanked Board staff for working with them to try to uncover the unusual circumstances in this matter. They did determine it is not a systemic problem with the Long's computer system but cannot figure out how the request was initiated. Mr. Dyer reiterated that Mr. Duskin is a good pharmacist and Long's is a good pharmacy chain.

Mr. Duskin testified that he is very sorry about this issue and that he has agonized about how this situation could have happened. He advised the Board that he pled guilty to the Third and Fourth Causes of Action even though he indicated that he always counsels on new prescriptions and documents whether counseling was accepted or refused. He could not understand why there is no documentation.

Cookie Quandt, pharmacy compliance manager for Long's, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Quandt gave a report on the steps they have taken to find out how this occurrence transpired. They reviewed their counseling logs and found them to be 98% accurate. It was also determined that Mr. Duskin was not the only pharmacist working at the time the prescriptions in question were picked up and since there was no documentation to be found, it would be unfair to accuse Mr. Duskin of failing to counsel.

After verbal discussion between Mr. Dyer and Mr. Ling it was agreed to stipulate to dismiss the Third and Fourth Causes of Action against Mr. Duskin.

Board Action:

Motion: Ray Seidlinger moved to accept the stipulated agreement, both written and verbal.

Second: Don Fey

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

G. Caitlyn Beaubriand, PT (08-036-PT-N)

Mr. Ling noted for the record that Ms. Beaubriand was not present and that her Accusation was unclaimed and returned to the Board office.

Board staff was notified that Ms. Beaubriand was terminated from employment from Smith's #344 because she failed a random drug screen. Ms. Beaubriand tested positive for cocaine metabolites benzoyleogonine.

Board Action:

Motion: Ray Seidlinger moved to revoke Ms. Beaubriand's pharmaceutical technician registration.

Second: Don Fey

Action: Passed Unanimously

7. Requests for Reinstatement of Pharmacist License – Appearance:

A. Cindy J. Vert, R.Ph (07-098-RPH-N)

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

Ms. Vert appeared to request reinstatement of her pharmacist license. Ms. Vert explained that she had been working since her suspension in a clerical position in

another field. She testified that she is doing well and concentrating on her recovery. Ms. Vert stated that she was getting a lot of support from her family and friends and feels confident that she is ready to return to pharmacy.

Mr. Espadero indicated that Ms. Vert was doing well in the PRN-PRN program. Has attended all peer group meetings and has tested negative on all UA's.

Board Action:

Motion: Don Fey moved to reinstate Ms. Vert's pharmacist license providing that she abides by the Board's previous Order and continues to participate in the PRN-PRN program.

Second: Ray Seidlinger

Action: Passed Unanimously

B. Roger T. Ly, R.Ph (04-045-RPH-S)

Roger Ly appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Espadero was reminded that he was still under oath.

Louis Ling reviewed the circumstances of the original Board Order for new members of the Board. Mr. Ly was employed by Von's for two years and during that time Mr. Ly created fraudulent prescriptions for Oxycontin 40 and hydrocodone 10/500 products in the name of Von's patients. He would then fill the fraudulent prescriptions, would pay the co-pay and bill the patients' insurances and take the filled prescriptions for his personal use. Mr. Ly was subsequently arrested by the FBI, pled guilty, and was sentenced to three years probation and pay restitution. Mr. Ly has participated in the PRN-PRN program for the last three and one half years and is currently doing drug screens for both PRN-PRN and the FBI.

Mr. Espadero testified that Mr. Ly has sold his home to begin the restitution process. He indicated that when Mr. Ly first joined the PRN-PRN program he was very insecure however now he has become more comfortable and confident.

Don Fey disclosed for the record that Sunrise Hospital, his employer, interviewed Mr. Ly for a position.

Mr. Ly testified that he, his wife and child are living with relatives. He is doing odd jobs as a handyman for his brother-in-law who works in real estate and is taking care of his son while his wife works full time. Mr. Ly requested reinstatement of his pharmacist license so he can work and make more money to pay his debts more quickly.

Mr. Ly was asked if he pled guilty to drug related charges and he stated he was not sure because his attorney had all the paperwork. He was advised that if he did plead guilty

to drug related charges that he would not be able to work in a pharmacy with controlled substances as his name would be on the OIG list disallowing him.

Board Action:

Motion: Ray Seidlinger moved to table the request for reinstatement until Board staff could obtain a copy of the plea agreement.

Second: Mary Lau

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

8. Application for Technician in Training License – Appearance:

Yvonne Bailey

NOTE: Mary Lau recused from participation as Ms. Bailey works at the pharmacy that Ms. Lau uses.

Ms. Bailey answered yes to the question on the pharmaceutical technician in training application that asked if she had been charged, arrested or convicted of a misdemeanor.

Ms. Bailey explained that in January she embezzled money from her employer because of a series of personal events in her life and she was at an all time low. Her previous employer was a casino and not pharmacy related.

The Board asked Ms. Bailey what assurances she could give them that she wouldn't embezzle from a pharmacy if they allowed her to proceed with her application for pharmaceutical technician in training. Ms. Bailey explained that she is a single mom with two boys to raise and wanted to begin a new career so she could provide for them properly. She doesn't have an explanation for why she embezzled from her previous employer. Ms. Bailey stated that she was severely depressed because of family circumstances and knows that does not excuse the behavior. She sought counseling and was helped through her difficulties and is now in a good place in her life. Ms. Bailey stated that Walgreens had told her that no matter what the circumstances of her past they would like to keep her and train her as a pharmaceutical technician.

Board Action:

Motion: Leo Basch moved to approve the application for pharmaceutical technician in training for Ms. Bailey.

Second: Don Fey

Action: Passed Unanimously

9. PRN Orders – Appearance:

Larry Espadero

Mr. Espadero asked the Board if they would consider a change to the standard PRN-PRN Order to limit the number of hours a pharmacist could work to 90 hours in a two week period. He noted that the Nursing Board has this limit and he feels it would benefit pharmacists, also. Mr. Espadero indicated that he has encountered pharmacists who sometimes work almost that number of hours in a one week period and it does not help them in their practice of pharmacy or recovery to be stressed and over-tired.

Board Action:

Motion: Don Fey moved to add to the standard PRN-PRN Order that a pharmacist may not work more than 90 hours in a two week period.

Second: Leo Basch

Action: Passed Unanimously

10. Fulfillment Pharmacies – Appearance:

Cookie Quandt – Longs Drug Stores

Cookie Quandt and Mike Dyer appeared to request a change be made to the fulfillment pharmacy regulations. It appears that a change was made by the Legislative Counsel Bureau and went unnoticed by Board staff. They changed the language from a “new” prescription to “a” prescription which completely changed the intent of the regulation. This regulation was originally a temporary reg and the language was correct at the time it was submitted. Mr. Dyer went back and pieced as much documentation together as he could find but the bottom line is they would like the Board to re-Workshop and Public Hear this regulation to correct the intent to reflect new prescriptions only. Raley’s and Long’s are the only two pharmacies in Nevada to use the central fill procedure, but in order to continue this practice the language needs to be amended.

Board Action:

Motion: Leo Basch moved to bring the language to Workshop to correct the intent of these regulations.

Second: Ray Seidlinger

Action: Passed Unanimously

11. Required Discipline Report to Board – Appearance:

Walgreens #03841 (07-071-PH-S)

Larry Pinson advised the Board that in the referenced matter Dan Luce and Duane Piniñ met with Board staff and together they came up with policies and procedures that address the Board's concerns. Mr. Pinson provided the Board with a copy to the agreed upon language for their review. Mr. Luce was present for discussion and the Board was satisfied with the language as presented.

12. For Health Technologies – Appearance:

Joe Sullivan

Dennis Tribble and Joe Sullivan appeared and gave a presentation on their robotic device for IV preparation. They reviewed the basic application and general workings of their product. After the presentation, the Board discussed the new Compounding regulations that were adopted with Mr. Tribble and Mr. Sullivan. They indicated that after the Compounding regulations were approved by the Legislative Commission, they would like a copy to ensure their robotic compounding equipment met with Nevada law requirements.

13. Your Success Rx – Appearance:

Katie Johnson

Since the Board is relatively new, Ms. Johnson asked for an appearance to describe what the Your Success Rx program is and her qualifications. Ms. Johnson provided the Board with her educational, professional and business background. She reviewed her training agenda that she uses for her training and evaluation process. She also gave a synopsis of where she would like to take her program in the future and asked the Board what they would like to see included or if they had any suggestions for improvement. Ms. Johnson left the Board with an evaluation and suggestion form for them to complete at their leisure.

14. Your Success Rx Report – Appearance:

Katie Johnson and Kenton Crowley

Katie Johnson and Kenton Crowley both appeared. Ms. Johnson stated that she advised Mr. Crowley that she wanted to do her site visit to observe his practice habits at the pharmacy that he owned in Las Vegas. Ms. Johnson reported that Mr. Crowley cancelled the site visit in Las Vegas and asked to have the site visit at Carson Tahoe Hospital where he would be working as a temp pharmacist. She noted that a site visit under those circumstances is difficult as the pharmacist cannot always answer operational questions about the location but she did observe him for two hours under those circumstances. She reported that Mr. Crowley had the potential to be a competent safe practitioner but she could not state with confidence that Mr. Crowley would always meet his potential. Overall, Mr. Crowley was cooperative in participating in the Your Success Rx process, was open about his past issues and completed the data collection as requested.

Mr. Crowley indicated the Your Success Rx program was helpful to him and felt that all pharmacists should take the course. He realizes that he leads a very hectic life and works long hours. He indicated that Ms. Johnson was unaware of how many issues he was trying to handle all at once, including a legal matter with his partner at Applied Pharmacy Services which is why he could not practice at that location as Ms. Johnson requested and had to have an alternative site visit. Mr. Crowley indicated that there were circumstances beyond his control and ultimately he has been in stressful situations for a long time and he is trying to eliminate them so he can just practice pharmacy in a normal manner. Mr. Crowley explained to the Board that they made him nervous and he felt that he does not communicate with them well when he appears before them. He read a lengthy explanation of his thoughts about what is pertinent to show him in a positive manner. Mr. Crowley also provided a packet of letters written by friends and associates acknowledging his accomplishments.

The Board questioned Mr. Crowley about his status in California with the Board of Pharmacy and he indicated that he went before their Board just yesterday but did not have an Order yet. The Board showed concern regarding the long hours Mr. Crowley works and the stress he is constantly under. President Boudreaux noted that at every appearance Mr. Crowley makes before the Board he never takes responsibility for his own actions and indicates it is always someone else's fault that he gets into these predicaments. He indicated that he had serious concerns about this continuing trait.

Board Action:

Motion: Chad Luebke moved to have Mr. Crowley return to the October Board meeting and report on his progress for removing the stressors in his life and the Board would review his probationary status.

Second: Ray Seidlinger

Action: Passed With Two Negative Votes Plus President Boudreaux's Vote

15. Reducing Drug Diversion – Appearance:

Meetesh Soma

Mr. Soma requested an appearance to make a presentation regarding how drug diversion could be reduced in Nevada. Leo Basch asked Mr. Soma to appear, however the time was not convenient and he did not appear. Mr. Basch gave an overview of Mr. Soma's concept for reducing drug diversion such as multiple copy prescription pads issued by the State that would be serially numbered and tracked or to mandate tamper proof paper for prescription pads. Another of Mr. Soma's concepts would be an internet or telephone confirmation process. Mr. Basch would like to see the Board require tamper proof prescription pads.

The Board discussed various scenarios requiring doctors to use tamper proof paper for the prescriptions. First and foremost is patient care and what happens if a doctor does not use tamper proof pads and is still writing prescriptions on plain paper for his patients

and pharmacies are refusing to fill them. Patient care could be compromised. The question arose regarding the Medical Board and would they support this requirement. Larry Pinson noted that the large Board's meet occasionally and he stated that he would bring the idea to them at a future time. Cost is another issue with tamper proof paper and it is difficult to obtain.

16. Antibiotic Awareness – Appearance:

William Berliner, MD

Dr. Berliner will appear at the October Board meeting in Las Vegas.

17. 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

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

- D. Staff Activities

- 1. Meetings

- a. Center for Business Intelligence on AB 128 (8/13)

Mr. Pinson reported that he gave an hour and a half talk on AB 128 and the Nevada Board's experiences.

- b. Controlled Substance Abuse Prevention Task Force (8/22)

The Task Force had a successful and informative meeting covering several topics.

- c. Drug Disposal Teleconference (8/26)

The conference call determined that a need for education on drug disposal was paramount.

- E. Report to Board

- 1. General Counsel search

In light of Louis Ling's departure from Board staff, Mr. Pinson advised that an Executive Committee was formed to include Board president Barry Boudreaux and Board treasurer Leo Basch to help him with the interview process. To date, the committee has interviewed several qualified candidates.

- 2. Inspector

It has become evident that additional help is necessary, and as earlier discussed and budgeted for, a new inspector should be in place by November 1, 2008.

- 3. Versa

Renewals printed from Versa smoothly and quickly. This year for the first time, businesses will be able to renew online. Time will tell as to how well the rest of the renewal process will proceed.

- 4. Legislative Commission on Health Care

Mr. Pinson advised that the Legislative Commission on Health Care was pleased with our proposed regulations for surgery centers and expected the language to be passed at the meeting on September 17<sup>th</sup>.

F. Board Related News

1. Domestic Fatal Medical Errors

A paper was provided to the Board regarding a steep increase in domestic fatal medication errors when the patient is released from the hospital where their medications are constantly monitored.

2. Florida reciprocity

The Florida Board of Pharmacy removed the 12 year requirement for reciprocity.

3. Tobacco sales

The City of San Francisco has banned the sale of tobacco products in stores with pharmacies.

4. E-prescribing of controlled substances

Mr. Pinson noted that he is confident that e-prescribing of controlled substances is going to be allowed. The DEA is taking comments through mid-September.

5. NABP task force appointment

Barry Boudreaux has been appointed to NABP's Task Force on labeling issues.

G. Activities Report

18. Discussion and Determination:

Scheduling of Prescription Decongestants

Barry Boudreaux brought a concern to Board staff's attention regarding prescription ephedrine products. NAC 453.530 identifies drugs listed in Schedule III. Subsection 6 reads "Except as otherwise provided in subsections 7 and 8, or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of: a) Ephedrine, pseudoephedrine or phenylpropanolamine, their optical isomers, salts and salts of optical isomers, other than an over the counter ephedrine, pseudoephedrine or phenylpropanolamine drug product; are, as immediate precursors, controlled, the control of which is necessary to prevent, curtail or limit the manufacture of the controlled substances methamphetamine and N, N-dimethylamphetamine."

The question is, with all of the prescription products available containing pseudoephedrine, primarily used for colds and flu, should those products be considered "precursors" to methamphetamine. There is no misuse of prescription ephedrine products which is why the limitations were put on the OTC products, since they were being purchased in large quantities and were being misused for the purposes of making methamphetamine. Louis Ling indicated that this would be easily fixed by just inserting a few words to correct the intent.

Board staff was directed to correct the language and bring to Workshop.

19. Review and Approval of New PhRMA Code of Conduct

Mr. Pinson provided a copy of the new PhRMA Code of Conduct to the Board members and reviewed the key changes. Now the Code of Conduct prohibits promotional items, meals in restaurants and entertainment, and speaking engagements to promote their drugs.

20. Topics:

A. Ratification of Pharmacy Technician Advisory Committee

Mr. Pinson advised the Board that he reviewed the qualifications of the people he asked to be on the Pharmacy Technician Advisory Committee and is confident that they will bring thoughtful ideas forth. He indicated that the committee would meet a couple of times a year to discuss PT issues. Mr. Pinson asked the Board to ratify the committee.

Board Action:

Motion: Don Fey moved to ratify the Pharmacy Technician Advisory Committee.

Second: Chad Luebke

Action: Passed Unanimously

B. CE Committee Appointment

Larry Pinson advised the Board that Ray Seidlinger has been the Board representative on the CE committee for years and since he is going off the Board a replacement needs to be assigned. Don Fey will take Mr. Seidlinger's place on the CE committee.

21. General Counsel Report

Mr. Ling reported that he had still not heard anything more on the Dutchess matter.

WORKSHOP

22. **Proposed Regulation Amendment Workshop**

1. **Amendment of Nevada Administrative Code 639.707 Counseling of patients: Duties of pharmacist or intern pharmacist; documentation.**

Makes changes to the requirement that a pharmacist or intern pharmacist counsel a patient regarding his or her prescription.

This language is allowing the quality of counseling to be determined by the professional judgment of the pharmacist rather than being held to a list of things that are currently required. Louis Ling indicated that it will change the disciplinary structure also and Board staff will charge quality of counseling rather than no counseling at hearings.

President Boudreaux opened the Workshop to the public.

Liz Macmenamin and Rich Mazzoni appeared and questioned why number 9 was stricken from the language. Mr. Mazzoni indicated that he wanted to see 9B remain in the language allowing that a pharmacist or intern would not be required to comply with the provisions in subsection 6 if the patient or caretaker refused counseling.

Leo Basch reviewed the regulation changes and made suggestions to clean up the language but was insistent that all of subsection 9 should be removed.

It was suggested that subsection 9 stay in and redirect to subsection 1 rather than subsection 6.

Board Action:

Motion: Leo Basch moved to take to Public Hearing with the changes as discussed.

Second: Ray Seidlinger

Action: Passed Unanimously

2. **Amendment of Nevada Administrative Code 639.NEW** Adds new language to allow for the use of a mechanical device by a dispensing practitioner.

President Boudreaux opened the Workshop to the public.

Mary Staples and Liz Macmenamin appeared. Ms. Staples indicated that NACDS had concerns regarding lack of counseling. Ms. Macmenamin indicated that she wanted a pharmacist involved in some manner.

Matt Sneller and Ed Rickert from Instymends appeared and indicated that they were comfortable with the language as it is currently written.

Don Fey indicated that he has reservations about putting dispensing machines in doctor's offices. Surgery centers are one thing, but not in doctor's offices.

Chad Luebke stated that he does not think putting a dispensing machine in a doctor's office is a good idea at all because it takes the pharmacist out of the equation completely.

Mary Lau agreed that dispensing machines in surgical centers are alright but not in doctor's offices. Ms. Lau stated that she is all for technology, but not in a doctor's office.

Ray Seidlinger also agreed that surgery centers are fine, but not in doctor's offices. Surgery centers have consultant pharmacists so there is some oversight.

Louis Ling advised that 1) we could scrap the concept, 2) modify this language, or 3) modify the previous (existing) regulations.

Board Action:

Motion: Mary Lau moved to take no action on this language and modify the existing language to allow surgical centers to have mechanical devices.

Second: Don Fey

Action: Passed Unanimously

PUBLIC HEARING

23. Notice of Intent to Act Upon a Regulation:

1. **Amendment of Nevada Administrative Code 639.5007 Pharmacy License Changes** Text from 1(a) through 6(e) will be repealed. New language will allow the Board to place conditions upon the granting of license for pharmacy under certain circumstances and ensure that the licensure is used only to conduct legitimate pharmacy practice.

Mr. Ling reviewed the language with the Board. The language in sections 1 through 6 is repealed and the new language would give the Board the discretion to limit practice of closed door pharmacies or not to ensure they practice in a legitimate manner.

President Boudreaux opened the Public Hearing.

Mary Staples, representing NACDS, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Staples asked to withdraw their comments in the letter they submitted.

President Boudreaux closed the Public Hearing.

Board Action:

Motion: Leo Basch moved to adopt as presented.

Second: Don Fey

Action: Passed Unanimously

2. **Amendment of Nevada Administrative Code 639.NEW Positive Identification of User of Pharmacy Computer Systems.** This language requires a person using the pharmacy computer to be identified by a unique identifier.

Louis Ling explained to the Board that this regulation was passed as a Temporary reg, and was in effect, over a year ago. It was at the Legislative Counsel Bureau for them to put it into their language, return it and Public Hear it for final permanent adoption. Something happened and it was lost at LCB and we have just received it back for final adoption.

Mr. Ling noted that several Workshops were held before the Temporary regulation was adopted. Board staff worked with the industry and came to agreement before adoption. This is not new language. It has been in effect for over a year as a Temporary reg. It basically allows any type of computer identification but it would also limit the time the computer could be left alone without timing out.

President Boudreaux opened the Public Hearing.

Dan Luce, representing Walgreens, and Vic Vercammen, representing SuperValue, appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Vercammen is uncertain if SuperValue pharmacy computers could comply with these regs as written. Page 3 in the draft copy that addresses pharmaceutical technicians adding information in particular. He is not sure his computer system can comply with that level of granularity. Mr. Vercammen is not sure if their computers can identify a person that would make a change, such as a suite number change for a physician. Leo Basch noted that the section Mr. Vercammen was referencing would require an initial indicating who is making the change. Our laws have always required documentation on a hardcopy by initialing. Louis Ling advised that we were trying to make this a broader scope allowing technicians to be able to make these changes rather than it having to be a pharmacist.

Mr. Luce indicated that there have been changes in electronic prescribing requirements. This language does not address those changes, such as "initials adjacent to, on or near" indicates it would be a paper prescription but would not address an electronic transmission of a prescription. If it is electronic to electronic, initialing should not be a mandate. The language does not address this technology.

The Board took a break to discuss language with the industry that would be appropriate to address their issues.

President Boudreaux closed the Public Hearing.

After the break, Board staff and the industry came to agreement on the language. President Boudreaux asked for direction for Board staff.

Board Action:

Motion: Mary Lau moved to bring the new language to Public Hearing in October.

Second: Chad Luebke

Action: Passed Unanimously

24. Next Board Meeting:

October 29 & 30, 2008 – Las Vegas

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

There were no public comments.