

## BOARD MEETING

Las Vegas Chamber of Commerce  
6671 Las Vegas Blvd South  
Las Vegas, Nevada

January 14 & 15, 2009

The meeting was called to order at 9:00 a.m. by Don Fey Board President.

### Board Members Present:

Keith Macdonald	Leo Basch	David Chan
Donald Fey	Chad Luebke	Kam Gandhi
Mary Lau		

### Board Members Absent:

### Board Staff Present:

Larry Pinson	Jeri Walter	Carolyn Cramer	Nancy Savage
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## CONSENT AGENDA

1. Approval of December 4, 2008, Minutes
2. Applications for Out-of-State MDEG – Non Appearance:
  - A. Matria Womens and Childrens Health, LLC – Marietta, GA

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

  - B. Costco Wholesale Corporation – Corona, CA
  - C. ePharmPro Services – Brookhaven, PA
  - D. HealthTrans Pharmacy – Greenwood Village, CO
  - E. Omnicare of Lodi – Lodi, CA
  - F. Orchard Pharmaceutical Services, Inc. – North Canton, OH
  - G. Salmon Pharmacy – Orem, UT

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

  - H. 3M ESPE Dental Products – Bentonville, AR
  - I. ALK-Abello, Inc. – Port Washington, NY
  - J. ALK-Abello, Inc. – Round Rock, TX
  - K. EXP Pharmaceutical Services Corp. – Fremont, CA

- L. Fenwal International, Inc. – San German, PR
- M. INO Therapeutics LLC – Port Allen, LA
- N. Reckitt Benckiser, Inc. – Forth Worth, TX
- O. RedPharm Drug – Eden Prairie, MN

Applications for Nevada Pharmacy – Non Appearance:

- P. Apothecary Shop of Las Vegas – Las Vegas
- Q. CVS/pharmacy #157 – Reno
- R. CVS/pharmacy #1507 – Las Vegas
- S. Rx Discount Pharmacy – Las Vegas
- T. Target Store T-2497 – N Las Vegas
- U. Walgreens #12641 – Las Vegas

Discussion:

The consent agenda applications and supporting documents were reviewed.

NOTE: Leo Basch recused from participation on the vote of item 2U as he is employed by Walgreens. Mary Lau disclosed that items 2Q-U were members of RAN in accordance to the memo on file. Chad Luebke recused from participation on the vote of items 2Q and R as he is employed by CVS and item S as he knows the managing pharmacist. Don Fey disclosed that he previously worked for the owner of item P. Kam Gandhi disclosed that he worked for CVS for 30 days.

Board Action:

Motion: Leo Basch found the consent agenda application information to be accurate and complete and moved for approval of all but items 2Q-U.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Keith Macdonald moved to approve items 2Q-T.

Second: Leo Basch

Action: Passed Unanimously

Motion: Keith Macdonald moved to approve item 2U.

Second: Chad Luebke

Action: Passed Unanimously

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

Second: Chad Luebke

Action: Passed Unanimously

### REGULAR AGENDA

3. Application for Nevada Pharmacy – Appearance:

TPS LLC – Las Vegas

Robert Gussenhoven appeared and was sworn by President Fey prior to answering questions or offering testimony.

Mr. Gussenhoven described his facility as a pain management compounding pharmacy. He answered questions regarding their model and policy and procedures to the Board's satisfaction.

Board Action:

Motion: Keith Macdonald moved to approve TPS's application for Nevada pharmacy pending inspection.

Second: Kam Gandhi

Action: Passed Unanimously

4. Applications for Nevada MDEG – Appearance:

A. Caring Medical Supply, LLC – Henderson

Caring Medical Supply withdrew their application.

B. Freemotion Plus – Las Vegas

The application for Freemotion Plus was tabled as they did not appear.

C. Gabel Distributors, LLC – Las Vegas

Gabel Distributors will appear at the April Board meeting.

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

A. DCRX Infusion – Sunrise, FL

Miguel Martin appeared and was sworn by President Fey prior to answering questions or offering testimony.

Mr. Martin described his facility and advised that he would be sending a three week supply of infusion products to individual patients. They ship by FedEx or UPS in temperature controlled packaging. Mr. Martin gave details of their model and practices to the Board's satisfaction.

Board Action:

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

Second: Mary Lau

Action: Passed Unanimously

B. Palm Beach Pharmaceuticals Inc. – Palm Beach Gardens, FL

Anderson Triggs appeared and was sworn by President Fey prior to answering questions or offering testimony.

Mr. Triggs stated that he was the operations manager for Palm Beach Pharmaceuticals and that they were a compounding pharmacy that provided estrogen products to men and women. He described their facility, the shipping methods, and detailed their practice to the Board's satisfaction.

Board Action:

Motion: Leo Basch moved to approve the application for out of state pharmacy for Palm Beach Pharmaceuticals.

Second: Keith Macdonald

Action: Passed Unanimously

6. Requests for Pharmaceutical Technician in Training License – Appearance:

A. Savannah Kennedy

Savannah Kennedy appeared and was sworn by President Fey prior to answering questions or offering testimony.

Larry Pinson reminded the Board that they had seen Ms. Kennedy at the October, 2008, Board meeting because she had answered "yes" to having been charged, arrested or convicted of a misdemeanor or felony on her pharmaceutical technician in training application. The Board requested Ms. Kennedy re-appear with documentation from the court regarding the charges.

Ms. Kennedy provided a docket sheet from the Las Vegas Justice Court to Carolyn Cramer who read the contents to the Board. It confirmed what Ms. Kennedy had told

the Board in October. Her conviction was reduced to a misdemeanor, she did community service, paid a fine of \$117.00, and participated in a counseling program. Ms. Kennedy was also advised by the Board to get a PRN-PRN evaluation prior to her appearance today, which she did, and the results indicated that there was low probability of chemical abuse.

Mark Brunton, pharmaceutical technician program director at Kaplan, appeared and was sworn by President Fey prior to answering questions or offering testimony.

Mr. Brunton testified on Ms. Kennedy's behalf indicating that she was a good student in the pharmaceutical technician program at Kaplan.

Board Action:

Motion: Keith Macdonald moved to approve the application for pharmaceutical technician in training for Ms. Kennedy.

Second: Leo Basch

Action: Passed Unanimously

B. Michelle Lambert

Ms. Lambert contacted Board staff and cancelled her appearance as she has decided to take another position with Walgreens where she would not need a PTT registration.

7. Disciplinary Action:

A. Tameika T. Williams, PT (08-084-PT-S)

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

It was noted that Tameika Williams was not present at hearing even though the Notice of Intended Action and Accusation was mailed to the last known address on December 16, 2008.

Carolyn Cramer reviewed the circumstances of this matter for the Board. Ms. Williams had been terminated from employment at Walgreens #02590 for creating fraudulent prescriptions for personal gain. She was taught by another pharmaceutical technician in another Walgreens pharmacy how to manipulate the computer system to use patient profiles to create and fill prescriptions. The other pharmaceutical technician monetarily compensated Ms. Williams for filling prescriptions for hydrocodone, Oxycodone, Methadone, carisoprodol and Alprazolam. These prescriptions were picked up by an unknown person. Ms. Williams gave a detailed account of how she participated in this scheme in a written statement as part of her exit interview. Walgreens loss resulting from Ms. Williams billing fraudulent prescriptions was \$1,408.94.

Board Action:

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

Second: David Chan

Action: Passed Unanimously

Motion: Keith Macdonald moved to revoke Ms. Williams pharmaceutical technician registration.

Second: Chad Luebke

Action: Passed Unanimously

B. Kirsten Eitner, PT

(08-085-PT-S)

It was noted that Kirsten Eitner was not present at hearing even though the Notice of Intended Action and Accusation was mailed to the last known address on December 11, 2008.

Carolyn Cramer reviewed the circumstances of this matter for the Board. Ms. Eitner had been terminated from employment at Summerlin Hospital Medical Center for removing controlled substances from Pyxis dispensing machines and the CII safe and for purchasing controlled substances without lawful authorization. Ms. Cramer noted that Steve McMillan was present to testify if the Board had questions.

NOTE: President Fey recused from participation in this matter as he worked for Mr. McMillan and with Ms. Eitner in the past. He asked Keith Macdonald to preside.

Steve McMillan and Karen Ortlet appeared and were sworn by Mr. Macdonald prior to answering questions or offering testimony.

The Board questioned Mr. McMillan as to how Ms. Eitner could order controlled substances. Mr. McMillan explained that Ms. Eitner had power of attorney to order CII's, however she was required to bring the invoices to him so he could check the orders in when they were delivered to the hospital. Ms. Eitner circumvented this process, checked them in herself, and diverted the drugs. They discussed, in depth, how Ms. Eitner misused the system and her authority. Mr. McMillan also explained that they have new policies and procedures so this problem would not recur at Summerlin. Ms. Eitner diverted Oxycodone, methylphenidate, and Oxycontin. Summerlin's financial loss was \$5,679.00.

Board Action:

Motion: Chad Luebke moved to find Ms. Eitner guilty of the alleged violations.

Second: Kam Gandhi

Action: Passed Unanimously

Motion: Chad Luebke moved to revoke Ms. Eitner's pharmaceutical technician registration.

Second: David Chan

Action: Passed Unanimously

C. Craig Irwin Kline, R.Ph

(08-007-RPH-S)

Carolyn Cramer advised the Board that she and Dominic Genteel, legal counsel to Mr. Kline, had devised a stipulated agreement allowing Mr. Kline to surrender his pharmacist license. Ms. Cramer explained that Nevada has no legal definition of a "surrender" of license and acceptance of this agreement would constitute a revocation. She also noted that Mr. Kline has agreed to pay \$600.00 in fees and costs in this matter. Ms. Cramer advised the Board that they could question her and Mr. Genteel but would not be able to question Mr. Kline directly.

The Stipulated Agreement noted, for the purposes of this matter only, in Section 1 that Mr. Kline did not contest the facts in the First Cause of Action in the Notice of Intended Action and Accusation. The First Cause of Action accuses Mr. Kline of violating Nevada law by removing controlled substances from his employing pharmacy, namely hydrocodone and Alprazolam, without a prescription or lawful authority.

The Board asked Mr. Genteel if Mr. Kline was licensed in any other states. Mr. Genteel indicated that Mr. Kline was also licensed in California. Mr. Luebke asked Board staff if we would notify California of this issue and was advised that Board staff does send a report to NABP and the federal entity, HIPDB. Mr. Genteel was asked if Mr. Kline was working and he advised that Mr. Kline was not working.

Board Action:

Motion: Leo Basch moved to accept the Stipulated Agreement as presented.

Second: Keith Macdonald

Action: Passed Unanimously

8. 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 granted since the last Board meeting.

D. Staff Activities

1. Meetings

- a. MDEG Committee (12/18)
- b. Pharmaceutical Technician Advisory Committee (12/10)
- c. Legislative Committee on Regulations

Two regulations that were lost at LCB were passed at the Legislative Committee on Regulations.

d. Speaking invitations

Mr. Pinson advised the Board that he will be speaking at the 11<sup>th</sup> Annual Pharmaceutical Industry Conference in Virginia and at the APhA Annual Meeting in San Antonio. He will also be giving a live CE at the Veteran's Administration Hospital in Reno and to two dental groups.

E. Report to Board

1. AB 128 Progress and Final Report

Ray Seidlinger compiled the AB128 report and it was submitted to the Governor.

2. Letter of Admonition

Kenneth To appeared before the Board in October because he did not respond to the CE audit letter he was sent. Mr. To explained to the Board that he had moved from his home and was staying with a relative for a while and did not get the notice. He provided 30 CE's at hearing. The Board ordered a letter of admonition and reminded him that by law he was to provide Board staff with a change of address within ten days. Mr. Pinson showed the Board the returned letter of admonition that he had sent to Mr. To certified. It was marked "Return to Sender, Unclaimed, Unable to Forward". After discussion the Board made the following motion:

Board Action:

Motion: Keith Macdonald moved to take an action against Mr. To for not notifying Board staff of an address change.

Second: Leo Basch

Action: Passed Unanimously

F. Board Related News

- Kentucky added Tramadol to Schedule IV.
- Mr. Pinson updated the Board on the tobacco ban. Boston has banned the sale of tobacco in pharmacies completely. Unlike the San Francisco ban that exempted big box retailers and grocery stores, the Boston ban includes all retail establishments that contain a pharmacy or drugstore.

- NABP has included veterinary medicine in the VIPPS program to evaluate and accredit legitimately operating online veterinary pharmacies.
- Larry Pinson advised the Board that he planned to attend the University of Utah Drug and Alcohol program in June.
- Dr. Edna Makabenta was murdered by one of her patients in her office in Las Vegas. The gunman was an 80 year old who then turned the gun on himself and later died at UMC. The police knew of no possible motive.
- Mr. Pinson advised the Board that they needed to choose a delegate and an alternate for the NABP Annual Meeting in May. Staying true to Board custom, Mr. Pinson suggested the newest Board members would be good candidates.

Board Action:

Motion: Chad Luebke moved to nominate David Chan as Delegate and Kam Gandhi as Alternate.

Second: Leo Basch

Action: Passed Unanimously

G. Activities Report

9. General Counsel Report

Carolyn Cramer stated that she had not heard from Judge Adair on the Dutchess matter.

Ms. Cramer advised the Board that staff has implemented a new policy that no Board books would be provided to outside entities because of the circumstances regarding Barry Boudreaux's unfortunate dismissal from the Board of Pharmacy. The letter that Mr. Pinson received from Mr. Boudreaux was a personal letter indicating that he had accepted a position in another state and he would have to resign from the Board at a future date. Mr. Pinson shared that letter with Board members for their information only. Mr. Boudreaux had not submitted a letter to the Governor resigning from the Board, yet he was replaced. The letter in possession of the Governor's appointment secretary came directly from the Board book.

Mary Lau stated that everything in the Board book is public record and has to be provided without cost to anyone and indicated that she thought the Board book should be published on the website. Ms. Cramer stated that she would check the open meeting laws and see what could be done, but there is information in the Board book that is not appropriate for the public to have, such as applications that have social security numbers and personal information that should not be made public.

Keith Macdonald stated that Board staff has always made copies available to the public where they have indicated a specific interest and did not think it was inappropriate not to provide a Board book to outside entities.

10. Discussion and Determination:

A. Review Discipline Matrix

Larry Pinson noted that Mary Lau had requested a list of things she wanted to discuss at the December Board meeting. We could not hear her issues because they were not submitted in a timely manner as requested to be agendaized. Consequently Mr. Pinson will work in the items for discussion over the next few meetings as time permits.

One of the items for discussion was the matrix. Mr. Pinson gave the genesis of the matrix and explained how Board staff operates when it receives a public complaint. Mr. Pinson explained that the matrix is a guideline for staff to determine what comes to hearing. It was suggested that a Board member be included on the disciplinary committee, which consists of the board coordinator, the executive secretary, an investigator, and legal counsel. Mr. Pinson indicated that if a Board member were to participate in the committee process, that Board member would not be able to participate in the hearing process and that often recently, the Board is dangerously close to not having a quorum secondary to Board member recusals. The Board's policy of charging the "owning and operating" entity appears to be an issue Ms. Lau wanted to address, also. Mr. Pinson used the analogy that if he took his car to Midas to have his breaks fixed and they failed after the service, Mr. Pinson would not go back to Midas and seek out the technician to rectify the situation, he would go after Midas. He feels strongly that the same applies to pharmacies taking responsibility for "owning and operating" the facility that an error took place in. Carolyn Cramer added that the Board of Pharmacy has a very small complaint backlog compared to other Boards and feared that if we were to add a Board member to the committee it would delay the process. Ms. Cramer feels that the whole pharmacy and their staff be looked at in its entirety.

Mary Lau said the statement on the matrix that says "all" is not appropriate for charging pharmacies because we are not consistent in always charging pharmacies. She indicated that we should change "all" to "may" so we would not be contradicting ourselves. She also questioned the dollar amounts on the matrix and reminded the Board that we had authority to fine up to \$10,000.00 per cause and on the other hand could fine nothing. The Board discussed the merits of changing the matrix and it was agreed that Board staff would change the word "all" to "may" as discussed. Board staff reminded the Board that the matrix is simply a guideline and ultimately the decision in any case is up to them.

Keith Macdonald thought Board staff should increase the fines on the matrix. He noted that the matrix had not been updated since 2006 and felt stiffer fines would be more effective. They discussed other states that have more stringent fining policies and it was determined that Board staff would look at the numbers and update them.

Khanh Pham and Katie Craven both voiced their support for keeping the matrix. Ms. Craven, speaking from experience as a Board member, found the matrix a big help in keeping consistency in hearing determinations. Ms. Craven suggested the Board may want to add CE to the matrix but it was determined that CE or any other alternative dispositions were at the Board's discretion on a case by case basis.

Board staff was directed to re-work the matrix.

**B. Life Sustaining Equipment**

Rich Pozeski appeared representing NAMPS and as a member of the Board's MDEG Committee. He requested that "oxygen concentrator" be removed from the definition of "life sustaining equipment" because an oxygen concentrator is not life sustaining equipment. Mr. Pozeski explained that a ventilator would be life sustaining but not a concentrator. He also advised that a respiratory therapist has to be on staff at an MDEG facility if they carry life sustaining equipment.

Khanh Pham and five students from the University of Southern Nevada appeared and opined that all MDEG facilities need to have respiratory therapists on staff and she indicated that she did not want oxygen concentrator's removed from the definition of life sustaining equipment.

Board Action:

Motion: Keith Macdonald moved to bring language to Workshop.

Second: Chad Luebke

Action: Passed Unanimously

**C. MDEG Administrator**

Rich Pozeski appeared and gave the new Board members the background on the original MDEG regulations. Mr. Pozeski came to the Board some years ago and asked the Board of Pharmacy to take the MDEG community under their umbrella resulting in the Board licensing MDEG providers. He was hopeful that by having MDEG providers under the scrutiny of a licensing agency it would help legitimize the industry. After several years, Mr. Pozeski indicated that it was time to tighten up the MDEG regulations. He feels that they are too permissive now and they need to be more specific in the requirements for providers.

The Board voiced concerns regarding the legality of denying a license to an MDEG applicant. Carolyn Cramer stated that the Board had the right to deny an application if they lie on the application and she commended the Board for ferreting out the truth from some applicants in the recent past. The Board may want to require an MDEG provider to appear before them if they change administrators. This would assure that the new administrator will have the knowledge necessary to provide the appropriate service to the public.

Mr. Pozeski suggested another MDEG Committee meeting to provide Board staff with suggestions from the industry to include in the language before amending the MDEG regulations.

Board Action:

Motion: Keith Macdonald moved to have Board staff host another MDEG Committee meeting to obtain suggestions from the industry before bringing language to Workshop. Mr. Macdonald also would like to have the MDEG Committee prepare standardized questions that the Board could ask MDEG applicants.

Second: Mary Lau

Action: Passed Unanimously

D. Remote Chart Order Processing

This item was removed from the agenda.

E. Report - PT Advisory Committee

Larry Pinson gave a summary of the committee meeting and noted that the pharmaceutical technicians on the committee were appalled with the amount of diversion in pharmacies and the number of errors attributed to technicians. The committee members asked Board staff to bring three considerations to the Board that they felt would be beneficial to ensure patient safety.

1. Require pharmaceutical technicians to attend an annual Nevada law CE.
2. Create a diversion hotline. Sometimes diversion is noticed by other pharmacy employees but they fear repercussions if they report to store management.
3. Require PTCB or ICPT certification.

Chad Luebke reminded the Board that he was the Board representative for the PT Advisory Committee and feels that annual Nevada law CE is a good opportunity to bring awareness and concerns to pharmaceutical technicians. Board staff could accomplish this by regulation. Board staff was directed to bring language forward for consideration.

Board consensus regarding a diversion hotline was to bring that concept back as a Discussion and Determination item.

The Board had no appetite to require certification of pharmaceutical technicians at this time.

11. Next Board Meeting:

March 4-5, 2009 – Reno

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

Mary Staples, from NACDS, stated that often times proposed Workshop and Public Hearing language was difficult to obtain via the website. Board staff agreed to e-mail those items to her as they develop.