

BOARD MEETING

at the

Airport Plaza Hotel  
1981 Terminal Way  
Reno

Wednesday, June 3, 2009

Thursday, June 4, 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:

Keith Macdonald absent on June 4, 2009

Board Staff Present:

Larry Pinson	Jeri Walter	Carolyn Cramer	Keith Marcher
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CONSENT AGENDA

1. Approval of April 15, 2009, Minutes
2. Applications for Out-of-State MDEG – Non Appearance:
  - A. American Diabetes Wholesale, LLC – Pompano Beach, FL
  - B. Atos Medical, Inc. – West Allis, WI
  - C. Avnet, Inc. – Chandler, AZ
  - D. Destiny Medical Supply, Inc. – Aurora, CO
  - E. Diabetes Care Club, LLC – Brentwood, TN
  - F. Kolob Oxygen + Medical Equipment – St. George, UT
  - G. Optigen Inc. – Jacksonville Beach, FL

- H. Total eMedical, Inc. – Pompano Beach, FL
- I. Walgreen Medical Supply, LLC – Tinley Park, IL
- J. Wilmington Medical Supply, Inc. – Wilmington, NC

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

- K. Apothecary Shop of Scottsdale – Scottsdale, AZ
- L. Apothecary Shop of Tucson – Tucson, AZ
- M. Axelacare Health Solutions LLC – Lenexa, KS
- N. Benecard Central Fill – Mechanicsburg, PA
- O. Mayo Clinic Pharmacy – Rochester, MN
- P. Meds for Vets – Sandy, UT
- Q. San Ysidoro Pharmacy – Santa Barbara, CA
- R. Specialty Compounding, LLC – Cedar Park, TX

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

- S. Abbott Laboratories, Inc. – Fontana, CA
- T. Ace Surgical Supply Co., Inc. – Brockton, MA
- U. Bryant Ranch Prepack – North Hollywood, CA
- V. Cardinal Health – St Charles, MO
- W. DSC Logistics, Inc. – Roanoke, TX
- X. Sanvita, Inc. – Tampa, FL
- Y. Septodont, Inc. – New Castle, DE

Application for Nevada MDEG – Non Appearance:

- Z. Airgas, Northern California & Nevada – Winnemucca, NV

Applications for Nevada Pharmacy – Non Appearance:

- AA. Center for Surgical Intervention, LLC – Las Vegas
- BB. Solutions II – LTC – Henderson
- CC. Target Pharmacy T-2569 – Las Vegas

Discussion:

The consent agenda applications and supporting documents were reviewed.

NOTE: Leo Basch recused from participation in the vote on item 2 I as he is employed by Walgreens. Mary Lau recused from participation in the vote on items 2 I and CC as Walgreens and Target are members of RAN.

Board Action:

Motion: Leo Basch found the consent agenda application information and minutes to be accurate and complete and moved for approval with the exception of items I and CC.

Second: Kam Gandhi

Action: Passed Unanimously.

Motion: Chad Luebke moved to approve items 2 I and CC.

Second: David Chan

Action: Passed Unanimously.

### REGULAR AGENDA

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

##### A. College Pharmacy – Colorado Springs, CO

Jerry Gillick appeared and was sworn by President Fey prior to answering questions or offering testimony.

Carolyn Cramer prefaced Mr. Gillick's testimony by reviewing the documents he provided and asked why he was appearing when he still had two more violations that had not be cleared up with his Board Order in Colorado. Mr. Gillick explained that other states have licensed College Pharmacy and have paralleled the seven year federal probation. He indicated that he had fixed all of the problems in the pharmacy and feels that this was a good time to get licensed in Nevada. He also stated that he had been with College Pharmacy since May, 2005, and the federal investigation was already in process against the previous owner, Tom Bader. Tom Bader is no longer associated with College Pharmacy in any manner, they do not compound HGH any longer and they do not intend to in the future.

The Board asked Mr. Gillick why he had not checked that College Pharmacy is a retail pharmacy and they will be shipping parenteral products into Nevada on his application. Mr. Gillick indicated that it was an oversight.

#### Board Action:

Motion: Leo Basch moved to approve the application for out-of-state pharmacy for College Pharmacy.

Second: Kam Gandhi

Action: Passed With One Negative vote

##### B. Med Shop Total Care – Longview, TX

Dee Downing appeared and was sworn by President Fey prior to answering questions or offering testimony.

Ms. Downing indicated that she was the pharmacist in charge for Med Shop Total Care. They are going to work with a surgery center in Nevada to provide a three day post-op pain product to the surgery center for patient specific orders. They have worked out the specifics with the facility and the consulting pharmacist. They are 797 and 795 compliant and have two clean rooms. Ms. Downing advised that Med Shop Total Care is a family owned pharmacy. Her father and sister are both pharmacists in this practice and she has another sister just graduating from pharmacy school and she may also be working at Med Shop Total Care.

Board Action:

Motion: Kam Gandhi moved to approve the application for Med Shop Total Care.

Second: Chad Luebke

Action: Passed Unanimously

4. Disciplinary Action

A. Walgreens #05295 (08-076-PH-N)

Mary Lau recused from participation in this matter as Walgreens is a member of RAN. Leo Basch recused from participation in this matter as he is employed by Walgreens. Kam Gandhi recused from participation in this matter as he has a working relationship with Debra Dorigatti.

Rob Graham was present to represent Walgreens.

Debra Dorigatti, pharmacist for Walgreens, Angela Ortiz, complainant, and Joe Depczynski, Board investigator, appeared and were sworn by President Fey prior to answering questions or offering testimony.

Carolyn Cramer presented 21 exhibits that were accepted into the record. Rob Graham presented one exhibit, Audit/Board of Pharmacy Inspection Report, that was marked Exhibit A and accepted into the record.

Carolyn Cramer called Angela Ortiz to testify. Ms. Ortiz explained that her father, Enrique Ortiz, had amputated his finger in a work related accident. Mr. Ortiz was taken to Concentra Medical Center where he was treated by Dr. Mikel Meyer. Dr. Meyer dressed the wound and provided Mr. Ortiz with a bottle of cephalexin 500 mg. tablets and a prescription for Vicodin. Dr. Meyer also referred Mr. Ortiz to a hand surgeon. The hand surgeon was not immediately available so Mr. Ortiz went to Renown Medical Center where he was seen by Dr. S. Shepherd. Dr. Shepherd wrote additional prescriptions for Vicodin and Keflex. The following day Ms. Ortiz took her father's prescriptions to her work, Sparks Pediatrics, where she copied the prescriptions written by Dr. Shepherd and the prescription for Vicodin from Concentra onto one piece of paper, and faxed the prescriptions to Walgreens #05295. Ms. Ortiz explained that she asked her brother to pick up the prescriptions for her father, however Walgreens

#05295 would not give them to her brother. Ms. Ortiz and her mother went to Walgreens #05295 later that day with Mr. Ortiz's identification so they would release the medication since this was a worker's comp claim. Ms. Ortiz testified that she and Ms. Dorigatti had a heated argument because Ms. Dorigatti would not dispense the Keflex prescription. Ms. Ortiz advised that she was very concerned about her father getting an infection and could not understand why Ms. Dorigatti would not release the medication to her. Ms. Dorigatti gave Ms. Ortiz the filled prescription for Vicodin and she left the store. Ms. Ortiz was questioned regarding counseling and Ms. Ortiz was adamant that she was not counseled upon receiving the Vicodin. Ms. Cramer asked if she ever received the Keflex from Walgreens #05295 and Ms. Ortiz stated that she never went back to Walgreens #05295 nor had any of her family members.

Mr. Graham cross examined Ms. Ortiz, specifically, regarding her testimony on not being counseled by Ms. Dorigatti.

Ms. Cramer had redirect.

Carlos Marquez, an audience member that speaks Spanish, appeared and was sworn by President Fey prior to interpreting Mr. Ortiz's testimony.

Carolyn Cramer and Rob Graham asked Mr. Ortiz questions, through Mr. Marquez, regarding picking up his medications at Walgreens #05295. David Chan asked if Mr. Ortiz still had the empty prescription vials and he indicated that he no longer had them.

Ms. Cramer called Joe Depczynski to testify. Ms. Cramer led Mr. Depczynski through the 21 staff exhibits and he described what each represented. He testified to the specifics he learned from his investigation regarding the Walgreens computer. Mr. Depczynski interviewed Carla Knight, the managing pharmacist for Walgreens #05295, who helped him understand the filling process of Mr. Ortiz's prescriptions. He indicated he used a paper trail to determine who was responsible for the filling and verifying of these prescriptions.

There was discussion about the date in the Walgreens computer that indicated someone was counseled for the Keflex that had not been dispensed to Mr. Ortiz or any member of his family. The date was earlier, actually the fill date, than the prescription was dispensed.

Mr. Graham cross examined Mr. Depczynski and seemed to discount Mr. Depczynski's investigation procedures because he asked Ms. Ortiz if she had been counseled. Mr. Depczynski explained that was part of what he tries to determine when he is doing an investigation. Mr. Graham noted that if Mr. Depczynski was unable to locate records all he had to do was ask because the records are always available either in the store or on a national level. Mr. Graham produced a copy of the Audit/Board of Pharmacy Inspection Report and indicated that all of the information was on this report. Mr. Depczynski stated that he had never seen that report and was unaware that it existed.

The Board questioned Mr. Depczynski and discussed the case at length. After a break, Carolyn Cramer and Rob Graham presented a stipulated agreement to the Board.

Carolyn Cramer recommended dismissing this matter, however in future investigations she would expect that the Audit/Board of Pharmacy Inspection Report and the CAPS reports be given to the Board's staff.

Board Action:

Motion: Chad Luebke moved to dismiss this matter with the agreement Ms. Cramer suggested.

Second: Kam Gandhi

Action: Passed Unanimously

B. Smith's Pharmacy #392 (08-070-PH-N)

NOTE: Mary Lau recused from participation in this matter as Smith's is a member of RAN.

Carolyn Cramer presented the details of this matter noting it was an instance of a patient receiving a prescription for bupropion SR 150 mg. tablets that belonged to someone else. The stipulated agreement was for a \$500.00 fine and a \$295.00 administrative fee.

Board Action:

Motion: Keith Macdonald moved to accept the stipulated agreement as presented.

Second: Chad Luebke

Action: Passed With One Negative Vote

5. Requests for Reinstatement – Appearance:

Henry A. Miller (08-006-RPH-S)

NOTE: Chad Luebke recused from participation in this matter as Mr. Miller was employed by CVS, Mr. Luebke's employer.

Henry Miller and Larry Espadero appeared and were sworn by President Fey prior to answering questions or offering testimony.

Carolyn Cramer advised the Board that Mr. Miller was present to request reinstatement of his pharmacist license. She noted that the terms of Mr. Miller's previous Board Order required him to pay restitution to Smith's and One Point. Mr. Miller indicated that he had paid restitution to both parties to their satisfaction and copies of the letters from Smith's and One Point should be in the Board's files, which they were. Ms. Cramer also noted that Mr. Miller was not to request reinstatement of his license until after June 5<sup>th</sup>,

2009. Since it is the day before the 5<sup>th</sup>, the Board determined they would hear Mr. Miller at this time.

Mr. Miller stated that he joined PRN-PRN and has learned how to deal with his problems and others because he has a support system now. He is in recovery, has been clean and sober for over a year, and has learned how to make better decisions in his life. He indicated that rather than using controlled substances for the pain in his knee from a college football injury, he now seeks help from physical therapy and takes Advil.

Mr. Espadero testified that Mr. Miller is an entirely different person than he was a year ago when he first appeared before the Board. His biggest attribute is that he has learned humility. Mr. Espadero is very happy with Mr. Miller's progress and recommends that he be allowed to practice pharmacy at this time.

The Board questioned Mr. Miller and he showed genuine humility and shared some of his experiences. When asked what he had been doing for a living, he indicated that he was a chauffeur. This experience has made him realize how much he took his pharmacist profession for granted and now he knows that he has to earn the respect of his peers back again. Mr. Miller was asked if he had sought employment as a pharmacist yet and if he had any leads. Mr. Miller stated that he had not looked until he learned the outcome of today's appearance. Mr. Miller also noted that he has kept up with his continuing education.

Board Action:

Motion: Keith Macdonald moved to lift the suspension of Mr. Miller's pharmacist license effective June 5, 2009 providing he continue with his PRN-PRN program.

Second: Kam Gandhi

Action: Passed Unanimously

6. General Counsel Report

Carolyn Cramer gave a legislative update. She noted that everything we were tracking has been signed by the Governor. The cancer drug donation bill passed and we will need to do some rule making on this. There were minor modifications to the prescription monitoring program and we will not need to do any rule making. The satellite pharmacy bill was amended to include rural settings for doctors to see patients remotely. Long term care facilities will be able to return drugs for re-dispensing. Pharmacists will be able to do blood glucose testing. The Board will be seeing regulation Workshops and Public Hearings to define these newly signed laws.

7. Executive Secretary Report:

- A. Financial Report
- B. Investment Report

The financial and investment reports were presented to the Boards satisfaction.

C. Temporary Licenses

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

D. Staff Activities

1. Meetings

a. PT Committee (4/22)

We conducted another Pharmaceutical Technician Committee meeting and discussed the three issues they had sent to the Board and were pleased to learn that pharmaceutical technicians will now be responsible to obtain one CE on Nevada law presented by Board staff or by attending a Board meeting for the whole day, just like pharmacists.

b. Telepharmacy/Telemedicine (4/23 & 4/28)

Meetings were held with the Nevada Health Center's staff exploring the details of both Telepharmacy and telemedicine.

c. NABP – Miami

One of the topics at the NABP annual meeting was problems with dispensing practitioners across the nation. Nevada is one of the few states that actually license them but most states do not. Mr. Pinson indicated the states that do not license prescribing physicians were very interested in learning how we operate to stop the questionable dispensing practices in their states.

2. Legislative Update

a. Hillerby Report

Mr. Pinson noted that Fred Hillerby's report was in the Board book. He also noted that the bill requiring a black box warning did not pass.

E. Reports to Board

1. Abuse of Emergency CII Rx Rule

There appears to be an abuse of the emergency CII prescription rule within the long-term care community. The DEA said long-term care facilities cannot abuse the emergency CII rule for their patients.

2. Ryan Haight Act

This act was passed by Congress and signed into law and will strengthen the prevention of illicit internet pharmacy practices.

3. Virginia PMP Hack

Larry Pinson reported on the security breach of the prescription monitoring program in Virginia. The hackers were demanding \$10,000,000.00 for return of the data. We did a security check of our system and we are OK. We are still trying to contract with McKesson. Otech was the company that Virginia was using when their computer system was compromised, which is the company we are currently using. We have blocked Otech from access to our data. If they need to make a change, they send it to Joanee Quirk on a CD.

#### 4. Tech School Requirements

Previous Board discussions on the fact that past criminal activity and drug abuse may impact a tech school student's ability to get licensed prompted Mr. Pinson to contact David Perlman of the Nevada Commission on Post Secondary Education. Often the students were unaware of these circumstances until well into the program and after paying tuition. Mr. Perlman graciously responded by notifying all pharm tech schools that incoming students must be advised of the above, prior to beginning the program.

#### 5. Temporary Regulations

The two temporary regulations that we had during this session of the legislature have been passed. One requiring pharmaceutical technicians to acquire one hour of Nevada law and amendments to the MDEG regulations. They will be heard again when LCB drafts language for permanent adoption. We are working on multiple ways of notifying pharmacies, pharmacists and pharmaceutical technicians of this new requirement.

#### F. Board Related News

Because of the hysteria on the swine flu issue, Mr. Pinson advised the Board that he will bring a D and D item to them on disaster planning and asked the Board to be thinking of ideas and bring them to the July meeting. We have a framework in place now because of Keith Macdonald's forethought to put something together, but now we need to refine it.

Ray Seidlinger has been working on the AB128 re-ups. Mr. Seidlinger has had difficulty obtaining immunization data. Liz Macmenamin will be getting information to Mr. Seidlinger from the retail community. Immunization is more complex and time consuming than AB128 was.

Mr. Pinson introduced Mark Stechschulte who is a representative of Sharps. Mr. Stechschulte gave a presentation on expired medication disposal. Sharps provides containers for the drug disposal, when the container is full it is mailed via USPS to Sharps where the container is incinerated. Sharps does not open the containers, they go directly to the incinerator. The program does not allow controlled substance disposal. The containers are approved for shipment through the postal service.

#### G. Activities Report

#### 8. Personnel Review

##### A. Personnel Evaluation and Salary Review

##### B. Executive Secretary Evaluation

Larry Pinson gave the Board the CPI figures for them to make a determination about a salary increase. He advised that the Board is independent, self funded and solvent and can afford an increase. He presented the CPI with no merit recommendations. The Board was very complimentary of all Board staff and made the following motion:

#### Board Action:

Motion: Keith Macdonald moved to accept the CPI for Board staff's salary increase.

Second: David Chan

Action: Passed Unanimously

9. Review and Approval of 2010 Board Meeting Dates

The Board approved the proposed 2010 Board meeting dates as presented.

## WORKSHOP

10. **Proposed Regulation Amendment Workshop**

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

Carolyn Cramer noted that this was the recommendation Keith Macdonald had requested removal of the list of specific topics that need to be addressed during counseling. LCB would not allow that since statute requires the list but now we are trying to find language that will be appropriate and address Mr. Macdonald's issues. It was determined that adding the words "and may consider" to section 2 and 4 should satisfy Mr. Macdonald and the LCB. Ms. Cramer also indicated that she added black box language due to the recent legislation proposed this session. Mary Lau indicated that she did not like the term "black box" and it was specifically directed to doctors, not pharmacists. Mr. Pinson indicated that this is just a proactive step. There was discussion and it was determined that the black box warning was in the drug packaging insert where contraindications are indicated. Liz Macmenamin appeared and noted that the FDA considers it a "box" warning, not a "black box" warning and indicated that her members did not want reference to it in the counseling regs. Russ Smith, a pharmacist, appeared and advised how he approaches the black box issues when he counsels and points the patient to the package insert and advises them to read the therapeutic contraindications as they are more in depth. The Board determined that they wanted "and may consider" added to section two and change the language in 4(c) to add "box warnings".

Board Action:

Motion: Leo Basch moved to bring this language to Public Hearing with the changes discussed.

Second: Chad Luebke

Action: Passed Unanimously

2. **Amendment of Nevada Administrative Code 639.7125** Use of fulfillment pharmacy by dispensing pharmacy.

Carolyn Cramer explained that the language presented was the result of the input from the Fulfillment Committee. Liz Macmenamin, representing RAN, Bill Okuna and Jim Palm, both representing Raley's gave input regarding the language presented by Board staff. Ms. Macmenamin had concerns regarding the NDC codes and why the language still included that requirement. Mr. Pinson advised that the NDC code identifies the drug and if there is a recall, it would be necessary to identify the drugs that were dispensed. This was an issue from Cookie Quandt who represented Long's and she is no longer employed with Long's since CVS bought the chain. Mr. Pinson noted that he did not think CVS was going to use fulfillment pharmacies and Mr. Luebke confirmed this so it is not an issue. Mr. Okuna noted that he thought in section II (f) "pharmacy personnel" was going to be substituted for "pharmaceutical technician". Mr. Pinson advised that he did not think it was appropriate for a clerk to do the verification process. After discussion staff was given direction and a motion was made.

Board Action:

Motion: Mary Lau moved to approve with changes and bring to Public Hearing.

Second: Leo Basch

Action: Passed Unanimously

3. **Amendment of Nevada Administrative Code 639.694** MDEG Administrator required.

The Board discussed the language as presented and found it to be an accurate representation of what was necessary for an applicant to be a facility administrator in an MDEG facility.

Board Action:

Motion: Mary Lau moved to take this regulation to Public Hearing.

Second: David Chan

Action: Passed Unanimously

4. **Amendment of Nevada Administrative Code 639.725** Use of mechanical counting device for dispensing medications to be taken orally.

After discussion and input from Liz Macmenamin and Robert Mai it was determined to abandon further consideration of this regulation amendment.

Board Action:

Motion: Chad Luebke moved to abandon this regulation amendment.

Second: Leo Basch

Action: Passed Unanimously

5. **Amendment of Nevada Administrative Code 639.528** Preparation and storage of food in prescription department of pharmacy.

Carolyn Cramer advised that this is a staff initiated request resulting from an issue brought up by Ray Seidlinger while he was inspecting a pharmacy. He found food in the refrigerator where drugs were stored. It was noted that Arkansas has passed regulations prohibiting food in pharmacy refrigerator's where drugs are stored. Further research found that the Joint Commission does not allow food storage in a refrigerator containing drugs in the hospital setting. Board inspectors have found horrible things in refrigerators and feel it would be best if food and drinks were kept in separate refrigerators from pharmacy drugs. Chad Luebke clarified that the food kept in the pharmacy would be for pharmacy personnel's own consumption and suggested that "for his own personal consumption" be left in the language.

Board Action:

Motion: Chad Luebke moved to bring this amendment to Public Hearing with the suggested change.

Second: Mary Lau

Action: Passed Unanimously

Mary Lau requested that the Public Hearing on these topics be held in September so she could participate since she was not going to be present for the July Board meeting.

11. Next Board Meeting:

July 15-16, 2009 – Las Vegas

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

There were no public comments.