

BOARD MEETING

at the

Las Vegas Chamber of Commerce
Turnberry Town Square
6671 Las Vegas Boulevard, South
Building D1, Suite 300
Las Vegas

January 13th & 14th, 2010

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

Board Members Present:

Keith Macdonald	Beth Foster	Kirk Wentworth
Donald Fey	Chad Luebke	Kam Gandhi
Mary Lau		

Board Members Absent:

Mary Lau was not present on January 13th, 2010.

Board Staff Present:

Larry Pinson	Jeri Walter	Carolyn Cramer	Nancy Savage
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CONSENT AGENDA

1. Approval of December 2-3, 2009, Minutes
2. Applications for Out-of-State MDEG – Non Appearance:
 - A. Binson’s Hospital Supplies, Inc. – Center Line, MI
 - B. Orbit Medical of Indiana, Inc. – Indianapolis, IN
 - C. National Seating & Mobility, Inc. – Sacramento, CA
 - D. North Coast Medical Supply – Carlsbad, CA
 - E. PharMerica – Smyrna, GA
 - F. Sanvita CBGM, LLC – Bedford, MA
 - G. Symbios Medical, LLC – Phoenix, AZ

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

- H. Costco Wholesale Corporation – Corona, CA

- I. Depot Drug – Salt Lake City, UT
- J. Griff's Compounding Center, Inc. – Scottsbluff, NE
- K. Express Scripts, Inc. – Phoenix, AZ
- L. Lee Silsby Compounding Pharmacy – Cleveland Heights, OH
- M. Precision Pharmacy – Bakersfield, CA
- N. Preferred Rx, LLC – Arlington, TX

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

- O. Aidapak Services, LLC – Vancouver, WA
- P. Bioform Medical, Inc. – Franksville, WI
- Q. Butler Schein Animal Health Supply – Columbus, OH
- R. Butler Schein Animal Health Supply – Salt Lake City, UT
- S. Butler Schein Animal Health Supply – Tualatin, OR
- T. Butler Schein Animal Health Supply – Visalia, CA
- U. Cardinal Health – Valencia, CA
- V. DeRoyal Industries, Inc. – New Tazewell, TN
- W. Fresenius Medical Care North America – Los Lunas, NM
- X. Glenwood-LLC – Englewood, NJ
- Y. Medicis Aesthetics, Inc. – Scottsdale, AZ
- Z. Medicis, The Dermatology Company – Scottsdale, AZ
- AA. Owens & Minor Healthcare Logistics – Louisville, KY
- BB. Physicians' Pharmaceutical Corporation – Oak Ridge, TN
- CC. Promotech – Totowa, NJ
- DD. Ucyglyd Pharma, Inc. – Scottsdale, AZ

Applications for Nevada MDEG – Non Appearance:

- EE. Hathaway Medical – Las Vegas
- FF. True Pharmacy – Las Vegas
- GG. Zee Medical Service Company – Las Vegas

Applications for Nevada Pharmacy – Non Appearance:

- HH. BHS Specialty Pharmacy – Las Vegas
- II. Horizon Surgical Center – Henderson
- JJ. Metro Drugs – Las Vegas
- KK. Nevada Drug Compounding Pharmacy East – Henderson
- LL. Nevada Drug Compounding Pharmacy West – Las Vegas
- MM. Remedy Rx – Las Vegas
- NN. Smoke Ranch Surgery Center – Las Vegas
- OO. True Pharmacy – Las Vegas

Discussion:

The consent agenda applications and supporting documents were reviewed. Larry Pinson asked the Board to pull Items M, EE and NN for discussion.

Board Action:

Motion: Keith Macdonald found the consent agenda application information to be accurate and complete and moved for approval with the exception of Items M, EE and NN.

Second: Kam Gandhi

Action: Passed Unanimously.

Motion: Chad Luebke found the minutes to be accurate and complete and moved for approval.

Second: Kirk Wentworth

Action: Passed Unanimously.

Discussion:

Item M, Precision Pharmacy, failed to check that they plan on shipping parenterals into Nevada which requires an appearance. Larry Pinson asked that the license be granted with the understanding that they must appear prior to expanding that license to include parenterals.

Board Action:

Motion: Chad Luebke moved to approve the application with the understanding that they will not ship parenterals into Nevada until they have appeared before the Board.

Second: Keith Macdonald

Action: Passed Unanimously

Item EE, Hathaway Medical, indicated on their application that they had been involved in a lawsuit however they gave no explanation. Hathaway Medical deals in bone growth stimulators.

Board Action:

Motion: Keith Macdonald moved to table this application until Board staff can obtain information regarding the lawsuit.

Second: Kam Gandhi

Action: Passed Unanimously

Item NN, Smoke Ranch Surgery Center, also indicated on their application that there was some sort of legal issue and they did not provide any explanation. Board staff was directed to change the application to require an explanation if they answer "yes" to any of the questions regarding lawsuits, arrests, administrative actions, etc.

Board Action:

Motion: Keith Macdonald moved to table this application until Board staff can obtain information regarding the legal issue.

Second: Beth Foster

Action: Passed Unanimously

REGULAR AGENDA

3. Disciplinary Actions:

- A. Warren C. Rolen, R.Ph (09-040-RPH-S)
- B. Mountain View Pharmacy (09-040-PH-S)

This matter was continued to the April Board meeting.

- C. William C. Colton, PTT (09-107-PTT-S)

Carolyn Cramer advised the Board that Mr. Colton was notified of the hearing at his last known address and he failed to appear.

Ms. Cramer explained that Mr. Colton diverted controlled substances from his employing pharmacy. In his written statement he admitted that he diverted approximately 300 hydrocodone/APAP 10/500 tablets and 20 Xanax tablets for his personal use for a total loss to his pharmacy of approximately \$175.37.

Board Action:

Motion: Chad Luebke moved to find Mr. Colton guilty of the alleged violations.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Chad Luebke moved to revoke Mr. Colton's pharmaceutical technician in training registration.

Second: Keith Macdonald

Action: Passed Unanimously

Carolyn Cramer explained that Ms. Wells was notified of the hearing at her last known address and she failed to appear.

Ms. Cramer explained that Ms. Wells diverted controlled substances from her employing pharmacy. In her written statement she admitted that she had been diverting hydrocodone/APAP 10/500 since March, 2008. Ms. Wells would take bottles of 100 and transfer the tablets to an empty Excedrin bottle. Ms. Wells estimated that she diverted approximately 235 bottles of 100 hydrocodone 10/500 at a loss to her pharmacy of approximately \$10,126.15.

Board Action:

Motion: Mary Lau moved to find Ms. Wells guilty of the alleged violations.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Mary Lau moved to revoke Ms. Wells' pharmaceutical technician registration.

Second: Beth Foster

Action: Passed Unanimously

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

A. Anzon Pablo

Anzon Pablo appeared and was sworn by President Fey prior to answering questions or offering testimony.

Carolyn Cramer explained that Mr. Pablo had answered yes to one of the questions on the application for pharmaceutical technician in training indicating that he had a gross misdemeanor criminal conviction in Clark County and was present to explain the circumstances.

Mr. Pablo advised that he was attending the Pima Institute and was enrolled in the pharmaceutical technician program. He indicated that he entered into an Alford Plea so he would not have to continue with the court case. He stated that he had attended a party and two girls claimed that he had assaulted them. When the case went to hearing, the girls that made the accusation advised the Judge that they wanted to drop the charges. Even though they requested the charges be dropped, the Judge sentenced Mr. Pablo to three years probation, required him to pay a \$500.00 fine, obtain counseling, have a substance abuse evaluation and perform 100 hours of

community service. Mr. Pablo has complied with all of the requirements of his probation and noted that the substance abuse evaluation showed a low propensity toward addiction.

Board Action:

Motion: Keith Macdonald moved to accept the application for pharmaceutical technician in training for Mr. Pablo.

Second: Chad Luebke

Action: Passed Unanimously

B. Genero Siciliano

Genero Siciliano appeared and was sworn by President Fey prior to answering questions or offering testimony.

Ms. Cramer explained that Mr. Siciliano also answered yes to a question on his application for pharmaceutical technician in training and was present to explain the circumstances.

Mr. Siciliano explained to the Board that he and his girlfriend had a heated argument earlier in the day of the incident and she left to stay with a friend. The friend heard about the argument, contacted the police and advised them that Mr. Siciliano had a shotgun. Later that evening the police arrived at Mr. Siciliano's home and asked him about the weapon. He indicated it was unloaded and in the house. The police officers asked him to leave his property and he refused, asking them if they had a warrant. The officers then advised him that he was obstructing justice and arrested him. Mr. Siciliano advised the Board that he understands that what he did was not the appropriate thing to do, however, that was what he was arrested for. Mr. Siciliano indicated that he had a court date on January 25th, 2010 and would have a judgment at that time.

Board Action:

Motion: Keith Macdonald moved to table the application for pharmaceutical technician in training until the April meeting, pending the outcome of January 25th hearing.

Second: Chad Luebke

Action: Passed Unanimously

5. Request for Pharmacist License – Examinee – Appearance:

David Katsules

David Katsules and Larry Espadero, PRN-PRN monitor, appeared and were sworn by President Fey prior to answering questions or offering testimony.

Mr. Katsules explained that the PRN-PRN program is the best thing he has ever done for himself. He has learned how to cope with issues he found insurmountable while he was under the influence of alcohol. Mr. Espadero affirmed that Mr. Katsules has been in the PRN-PRN program since January, 2006 and has been in compliance with his contract since Mr. Katsules came to him from Oregon. Mr. Katsules explained that he had a DUI in August, 2004 in Las Vegas. He reported this to the Oregon Board where they Ordered him into treatment and allowed him to be monitored by Mr. Espadero. Mr. Katsules explained that he is currently working in Arizona on an Indian reservation, however he would like to come home to Las Vegas and practice in Nevada. Mr. Katsules requested that he be allowed to take the NAPLEX exam for Nevada.

Board Action:

Motion: Chad Luebke moved to approve the request for Mr. Katsules to take the NAPLEX for Nevada.

Second: Beth Foster

Action: Passed Unanimously

6. Request for Pharmacist License – Reciprocal – Appearance:

Madonna Wilcox

Madonna Wilcox was notified that her application was going to expire if she did not appear at this meeting to request reciprocity. Ms. Wilcox did not appear.

Board Action:

Motion: Kam Gandhi moved to deny Ms. Wilcox's request for reciprocity.

Second: Beth Foster

Action: Passed Unanimously

7. Request for Reinstatement of Pharmacist License – Appearance:

Zachary W. Bergan (07-083-RPH-N)

Zach Bergan appeared and was sworn by President Fey prior to answering questions or offering testimony.

NOTE: Kirk Wentworth recused from participation in this matter as he used to employ Mr. Bergan.

Mr. Bergan provided letters of recommendation, a resume of his pharmacy accomplishments and an employment history other than pharmacy. Mr. Bergan was very open with the Board regarding his dependence on controlled substances and what he has been doing since his license was revoked in March, 2008. He indicated that he has been in Connecticut for the last two years where he has family and a support group of friends. He indicated that he would like to have his license reinstated in Connecticut however he knew he would have to reinstate in Nevada first since Connecticut paralleled the Nevada action. The Board was interested in what kind of treatment he had been in, however the paperwork was not in his file for Carolyn Cramer to reference. After discussion it was determined to table Mr. Bergan's request until he could provide proof of treatment for at least a six month period.

Board Action:

Motion: Chad Luebke moved to table Mr. Bergan's request for reinstatement until he can provide the Board with proof that he had been in a treatment program for at least six months.

Second: Mary Lau

Action: Passed Unanimously

8. Application for Out-of-State Pharmacy – Appearance:

Altius Healthcare – Prescott, AZ

Kevin Nestruck appeared and was sworn by President Fey prior to answering questions or offering testimony.

Carolyn Cramer explained that Mr. Nestruck answered yes to one of the questions on the application for out of state pharmacy and is present to explain the circumstances.

Mr. Nestruck explained that he owned two or three stores in Arizona. During an inspection it was found that one of his stores failed to have a rubber spatula and a "C" stamp. The Arizona Board charged him personally as the owner with the violations rather than the responsible managing pharmacist in that particular store. Mr. Nestruck advised the Board that he is now the owner of eleven facilities and all of them are 797 compliant with no further violations found in any of his stores.

Board Action:

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

Second: Mary Lau

Action: Passed Unanimously

9. Your Success Report:

Burke's Drug

Larry Pinson advised the Board that Katie Johnson, Herb Burke and Ted Mackie came to the Board office and met with him and Carolyn Cramer for their Your Success Rx Report. Mr. Pinson reminded the Board that originally they had no policies and procedures in their pharmacy including a standardized NDC check to ensure medication accuracy which was the primary reason for their discipline. Policies and procedures now exist. Ms. Johnson advised them that they needed to set cleanliness standards and they had the bathroom professionally cleaned and bought a vacuum cleaner. Mr. Pinson indicated that they felt the program was beneficial to their pharmacy practice and the monthly inspections showed a marked improvement overall, and recommended that probation be lifted.

Board Action:

Motion: Kirk Wentworth moved to take Burke's Drug off probation.

Second: Keith Macdonald

Action: Passed Unanimously

10. Presentation:

Preparing for Regulatory Inspectors & Inspecting for Safety
Larry Pinson & Katie Johnson

Mr. Pinson advised the Board that he and Ms. Johnson put this program together and have presented it to a group at Scolari's and wanted the Board to see it since it will be the basis of this years law CE. The presentation was given and well received by the Board.

11. General Counsel Report:

Sanchez v. Wal-Mart

Ms. Cramer summarized the Sanchez v. Wal-Mart decision for the Board. She also advised them that we prevailed in the appeal for the McKesson contract.

12. Executive Secretary Report:

A. Financial Report

B. Investment Report

Larry Pinson gave the financial and investment reports to the Boards satisfaction.

C. Temporary Licenses

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

D. Staff Activities

- Katie Johnson and he presented the “Inspecting for Safety” program to a group of Scolari’s pharmacy staff and it was well received. Mr. Pinson advised that he and Ms. Johnson will make the presentation to them later in the meeting.
- Mr. Pinson noted that he gave a talk to a medical staff credentialing group last night.
- He advised that he will be making a presentation for the Nevada Osteopathic Medical Association (NOMA) at Lake Tahoe on January 22nd.
- Mr. Pinson and Carolyn Cramer will be setting up a meeting with Mo Denis in the upcoming weeks to discuss prescription drug abuse as mandated by the legislature.
- He will also do a presentation to Northern Nevada Dental Society on prescription drug abuse and current dental drug issues.

E. Reports to Board

- Mr. Pinson presented the AB128 Marketing Code of Conduct Annual Compliance Report for the Board’s review. He also indicated that he may do a program again for the manufacturers and wholesaler’s here on the west coast in April.
- Larry Pinson also reported that he has agreed to do Fax blasts for the Health Department when they have pertinent information to disseminate.
- NABP has reviewed the new owners of ICPT and it looks favorable that the program will continue with the previous owners’ standards.
- Mr. Pinson advised the Board that he received a call from Rich Polombo of Medco Health Solutions. Mr. Polombo stated that Medco would like to ship AIDS drugs and antibiotics by the palate to Haiti for the survivors of the devastating earthquake. Mr. Pinson advised the Board that he gave Mr. Polombo his approval to supply that humanitarian support to Haiti.

F. Activities Report

13. Discussion and Determination:

A. Refrigerator Log

Mr. Pinson reported that Ray Seidlinger has found a lot of discrepancies throughout all pharmacies he inspects where they are not documenting or checking their refrigerators on a regular basis to ensure proper temperature levels. He has found variances in temperature, precipitation in vials and virtually no procedures in place. Mr. Pinson asked the Board to consider regs to mandate a refrigerator log to ensure biologicals are protected for patient safety.

President Fey noted that non-industrial refrigerators cycle too often and it’s difficult to maintain consistent temperatures. Beth Foster agreed and noted that the VA has ordered pharmacy quality refrigerators for her facility. Keith Macdonald wanted to know what the Board is going to do to pharmacies that cannot keep the refrigerator at consistent temperatures. Mr. Pinson advised that the law already requires pharmacies to keep drugs safely stored and all Board staff is asking for is a log to show that temperatures are being checked regularly. Chad Luebke indicated that was a good

practice to ensure public safety. The Board agreed and instructed Carolyn Cramer to draft regs and bring them forward in Workshop format.

B. Scheduling of Propofol as a Controlled Substance

Larry Pinson reported that he took this issue to the Task Force meeting and they did not think scheduling Propofol was necessary. Mr. Pinson asked President Fey how it would affect the hospital setting. President Fey indicated that various other states are already treating Propofol like a controlled substance. He did not think scheduling Propofol was necessary. Beth Foster agreed and did not think it would be beneficial. It was noted that the hospitals are not particularly worried but perhaps it was more of an issue in surgery centers. The Board was advised that if they choose to schedule Propofol they should be prepared to hear from the manufacturers and anesthesiologists. Mr. Pinson advised the Board that Propofol is somewhat difficult to abuse because it is so rapidly acting that it generally takes someone other than the abuser to administer.

The Board directed staff to contact NABP, the DEA, law enforcement and the coroner to get their take on this issue and report back.

C. Scheduling of Lisdexamfetamine, Lacosamide and Tapentadol as Controlled Substances

Mr. Pinson received a request from Tracy Birch, the forensic lab manager for the Las Vegas Metro Police Department, asking the Board to schedule Lisdexamfetamine, Lacosamide and Tapentadol. Ms. Birch noted that the DEA has already scheduled Lisdexamfetamine and Tapentadol in Schedule II and Lacosamide in Schedule V and asked that we parallel the federal law.

Board Action:

Motion: Kam Gandhi moved to make the regulatory changes necessary to schedule Lisdexamfetamine, Lacosamide and Tapentadol to parallel federal law.

Second: Keith Macdonald

Action: Passed Unanimously

*14. Discussion on Patient Counseling

At Mr. Macdonald's request a discussion was held including all of the Board inspectors and investigators on counseling. The core of the discussion was to develop an appreciation for Board staffs duty to enforce our statutes and regulations as well as understand the challenges working pharmacists face in meeting counseling standards.

Joe Kellogg and Khanh Pham appeared and offered their thoughts.

WORKSHOP

*15. **Proposed Regulation Amendment Workshop**

Amendment of Nevada Administrative Code 639.NEW Telepharmacy Regulation This language sets the parameters for a pharmacist or dispensing practitioner to practice from a remote site.

Carolyn Cramer and Larry Pinson advised the Board that this issue evolved from Assemblyman Carpenter's bill in the last legislative session. The only pharmacist in Wells retired and no one took his place. Wells had a physician, however he had no interest in becoming a dispensing practitioner, leaving the community without access to pharmaceutical care. The concept of satellite pharmacy and telepharmacy was the result.

Lillian Shell, representing Nevada Health Centers appeared and provided suggestions to the language as presented. Ms. Shell described how a doctor goes from one location to another to serve the rural community. She noted that they would only dispense to their own patients – someone would not be able to come in with a written prescription to be filled.

Carolyn Cramer described Board staff's vision of this concept regarding training, the people that would be allowed to perform Telepharmacy, etc. Larry Pinson said he does not want to see a pharmaceutical technician in the rural settings without the supervision of a pharmacist. Ms. Shell indicated that it would be a hardship to have to wait for a technician to receive 500 hours of training because then they would have to have two people, a trained technician and the trainee, instead of one person manning the rural Telepharmacy location. Mr. Pinson reminded the Board that the PA's and APN's started out in the rurals and now are practically all practicing in urban settings in Nevada.

Various suggestions were made and Board staff was directed to bring the language back again for a second Workshop after some of the suggestions are incorporated.

15. Next Board Meeting:

March 3 & 4, 2010 – Reno, Nevada

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

Liz Macmenamin asked that the Board not limit monitoring and keeping a refrigerator log to pharmacist's duties – allowing other pharmacy staff to monitor refrigerator temperatures.