

August 23, 2006

AGENDA

◆ PUBLIC NOTICE ◆

NEVADA STATE BOARD OF PHARMACY

BOARD MEETING

at the

Meadow Wood Courtyard
5851 S Virginia Street
Reno, Nevada

Wednesday, September 6th, 2006 – 9:00 am

Thursday, September 7th, 2006 – 9:00 am

Please Note: The Nevada State Board of Pharmacy may address agenda items out of sequence to accommodate persons appearing before the Board or to aid in the efficiency or effectiveness of the meeting.

Public comment is welcomed by the Board, but will be heard only when that item on the agenda is reached and will be limited to five minutes per person. The president may allow additional time to a given speaker as time allows and in his sole discretion.

◆ CONSENT AGENDA ◆

The Consent Agenda contains matters of routine acceptance. The Board Members may approve the consent agenda items as written or, at their discretion, may address individual items for discussion or change.

September 2006 Board Meeting Agenda

- * 1. Approval of July 19-20, 2006, Minutes
- * 2. Applications for Out-of-State MDEG – Non Appearance:
 - A. Source One Medical, Inc. – Irvine, CA
 - B. Bischoff's Medical Supplies – Boulder Creek, CA

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

- C. Amber Pharmacy – Omaha, NE
- D. BioPlus Specialty Pharmacy Services, Inc. – Altamonte Springs, FL
- E. DaVita Rx, L.L.C. – Coppell, TX
- F. Grand Pharmacy – New Port Richey, FL
- G. MedfusionRx, LLC – Birmingham, AL
- H. Prescription Dispensing Laboratories, Inc. – San Antonio, TX
- I. Ream's Family Foods – Provo, UT

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

- J. Artes Medical, Inc. – San Diego, CA
- K. Butler Animal Health Supply, LLC – Salt Lake City, UT
- L. Butler Animal Health Supply, LLC – Tualatin, OR
- M. Owens & Minor Distribution, Inc. – Lathrop, CA
- N. Professional Veterinary Products, Ltd. – Omaha, NE

Applications for Nevada MDEG – Non Appearance:

- O. Alternative Medical Services – Reno
- P. Commerce Medical Supply – Las Vegas
- Q. Concentrator Repair Service LLC – Las Vegas
- R. JM Medical Supplies Inc. – Las Vegas

Applications for Nevada Pharmacy – Non Appearance:

- S. Longs Drug Store #368 – Reno
- T. Sav-on Pharmacy #6076 – Las Vegas
- U. Target Pharmacy T-2164 – Las Vegas
- V. Wal-Mart Pharmacy #10-3351 – North Las Vegas

Application for Nevada Pharmacy – Ownership Change – Non Appearance:

- W. Summerlin Hospital Medical Center Pharmacy – Las Vegas

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Applications for Nevada Wholesaler – Non Appearance:

- X. Darby Dental Supply, LLC – Reno
- Y. Owens & Minor Distribution, Inc. – Las Vegas

Application for Nevada Warehouse – Non Appearance:

- Z. Materiel Solutions – Reno

◆ REGULAR AGENDA ◆

* 3. Applications for Nevada Pharmacy – Appearance:

- A. Advanced Pharmacy Staffing, Inc. – Las Vegas
- B. Culinary Pharmacy – Las Vegas

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

- A. Home HealthCare Resources, Inc. – Bensalem, PA
- B. Integrated Rx Care – Orlando, FL
- C. US Bioservices – Englewood, CO

* 5. Application for Canadian Pharmacy – Non Appearance:

Langdon Drugs LTD – Calgary, Alberta

* 6. Disciplinary Action: Note – The Board may convene in closed session to consider the character, alleged misconduct, professional competence or physical or mental health of any of the below named parties.

- A. Davidson Okpukpara, R.Ph (05-053-RPH-N)
- B. Rite Aid #6281 (05-053-PH-N)
- C. Andrew P. Wright, R.Ph (05-051-RPH-N)
- D. Walgreens #02662 (05-051-PH-N)
- E. William Locke. R.Ph (06-007-RPH-N)
- F. Hales 50 Kirman Pharmacy (06-007-PH-N)
- G. Walgreens #04789 (06-028A-PH-N)
- H. Walgreens #05295 (06-028B-PH-N)
- I. Walgreens Co. (06-028C-PH-N)

* 7. Requests for Technician in Training Registration – Appearance Required:

- A. Elvis Lewis
- B. Meikile Legg

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- * 8. Appearances:
 - A. Katie Johnson –Marcie Mountan
Your Success Rx Report
 - B. Gretta Woodington
PRN-PRN Request for Funding
 - C. Iain Buxton and John Q. Adams –
University of Nevada School of Pharmacy Funding
- * 9. General Counsel Report
- *10. Executive Secretary Report:
 - A. Financial Report
 - B. Investment Report
 - C. Temporary Licenses
 - D. Pending Policy Questions
 - E. Staff Activities
- *11. Discussion and Determinations:
 - A. NTI Drugs
 - B. Canadian Affiliates and Storefronts

W O R K S H O P – Thursday, September 7th, 2006 – 9:00 am

- *12. **Proposed Regulation Amendment Workshop** – The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations.
 - 1. **Amendment of Nevada Administrative Code 639.NEW Compounding**
This amendment defines the conditions under which preparation of sterile and non-sterile compounded prescription drugs are prepared.
 - 2. **Amendment of Nevada Administrative Code NAC 453.540 Schedule II Prescriptions** This amendment clarifies certain requirements regarding prescriptions for controlled substances in schedule II.
 - 3. **Amendment of Nevada Administrative Code NAC 639.245 Pharmaceutical Technician Changes** This regulation clarifies issues related to

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the technician-to-pharmacist ratio and changes prescription data entry to being a technician function.

4. **Amendment of Nevada Administrative Code NAC 639.NEW Workload Balancing** This new language establishes regulations regarding the storing of prescription information by pharmacies who utilize common databases and software.

5. **Amendment of Nevada Administrative Code NAC 639.NEW Retail Dispensing Devices** This new language will allow for refilled prescriptions to be dispensed through an automated device located in retail pharmacies.

6. **Amendment of Nevada Administrative Code NAC 639.240 Requirements for registration of pharmaceutical technicians.** Changes the educational standards for pharmaceutical technicians.

PUBLIC HEARING – Thursday, September 7, 2006 – 9:00 am

*13. Notice of Intent to Act Upon a Regulation:

1. **Amendment of Nevada Administrative Code 639.5007 Issuance of license to conduct pharmacy for applicant required to be designate representative: Restricted and unrestricted licenses.** New language will allow the Board to place conditions upon the grant of a license for pharmacy under certain circumstances and ensure that the license is used only to conduct legitimate pharmacy practice.

2. **Amendment of Nevada Administrative Code 639.6941, 6943, 6945, 6946, 6951, 6954, 6955 and NEW LANGUAGE** Medical Devices Equipment and Gas changes.

14. Next Board Meeting:

October 25 & 26, 2006 – Las Vegas, Nevada

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

Note: No vote may be taken upon a matter raised under this item of the agenda until the matter itself has been specifically included on an agenda as an item upon which action will be taken. (NRS 241.020)

* Board action may be taken on these items.

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Note: We are pleased to make reasonable accommodations for members of the public who are disabled and wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Nevada State Board of Pharmacy, 555 Double Eagle Court, Suite 1100, Reno, Nevada 89521, or call Jeri Walter at (775) 850-1440, as soon as possible.

Anyone desiring additional information regarding the meeting is invited to call the board office at (775) 850-1440.

Mailing a copy of the Nevada State Board of Pharmacy meeting agenda to any person who has requested it will not continue unless a request for reinstatement on the mailing list is made in writing every six months. Accredited Continuing Education credit of 1 hour will be given per day of Board meeting attendance of a minimum of 4 hours. A pharmacist can receive Nevada Law Credit for attending the board meeting for a minimum of 4 hours.

This notice has been posted at the following locations:

Elko County Courthouse – Elko
Mineral County Courthouse – Hawthorne
Washoe County Courthouse – Reno
Nevada State Board of Pharmacy – Reno and Las Vegas

BOARD MEETING

Meadow Wood Courtyard
5851 S Virginia Street
Reno, Nevada

Wednesday, September 6th, 2006

Thursday, September 7th, 2006

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

Board Members Present:

Dave Wuest
Leo Basch
Ray Seidlinger

Keith Macdonald
Katie Craven

Joe Kellogg
Ann Peterson

Board Members Absent:

Board Staff Present:

Larry Pinson

Jeri Walter

Louis Ling

Keith Marcher

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Discussion:

The consent agenda applications and supporting documents were reviewed.

NOTE: Ray Seidlinger recused from participation from item 2T as he was formerly employed by Sav-On. Keith Macdonald recused from participation from item 2V as he is currently employed by Wal-Mart.

Board Action:

Motion: Keith Macdonald read the information related to the consent items and found the information to be accurate and complete and moved for approval of items 1 and 2 with the exception of item 2V.

Second: Ann Peterson

Action: Passed Unanimously

Motion: Ray Seidlinger moved to approve item 2V.

Second: Leo Basch

Action: Passed Unanimously

Motion: Katie Craven moved to approve item 2T.

Second: Dave Wuest

Action: Passed Unanimously

REGULAR AGENDA

3. Applications for Nevada Pharmacy – Appearance:

A. Advanced Pharmacy Staffing, Inc. – Las Vegas

Jerry Igbinovia appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Igbinovia described the concept of his business. He would not be a pharmacy and would maintain no drugs, but he would be working for hospitals that do not maintain 24 hour pharmacies. He would have a pharmacist on staff to cover for the closed hours of hospitals. The pharmacist, with secured access, would be able to remotely verify prescriptions for nurses to be able to retrieve medications for patients from pyxis machines.

After discussion with Mr. Igbinovia, he was advised that his model is not compliant with current regulations in Nevada.

Board Action:

Motion: Dave Wuest moved to deny Mr. Igbinovia's application and return his fee. Mr. Wuest asked staff to agendaize a discussion on telepharmacy at the next Board meeting and invited Mr. Igbinovia to attend and take part in the discussion.

Second: Katie Craven

Action: Passed Unanimously

This topic will be on the October agenda as a Discussion and Determination item.

B. Culinary Pharmacy – Las Vegas

Hal Aspler, Karen Humphrey, and Brenda Vondereaux appeared and were sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Aspler explained that he is a pharmacist and this pharmacy will be used by culinary workers only. He has two relief pharmacists and four pharmaceutical technicians that would work in pairs on different days. This pharmacy would not be open to the public and would only serve the culinary workers.

Board Action:

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

Second: Keith Macdonald

Action: Passed Unanimously

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

A. Home HealthCare Resources, Inc. – Bensalem, PA

Home Health Care Resources will appear at the October Board meeting.

B. Integrated Rx Care – Orlando, FL

Integrated Rx Care cancelled their appearance.

C. US Bioservices – Englewood, CO

Phil Turner appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Turner gave an overview of their pharmacy in Colorado. He noted for the Board that they buy from AmeriSource Bergen, solely, as US Bioservices is owned by AmeriSource Bergen.

Board Action:

Motion: Keith Macdonald moved to approve the application for US Bioservices.

Second: Katie Craven

Action: Passed Unanimously

5. Application for Canadian Pharmacy – Non Appearance:

Langdon Drugs LTD – Calgary, Alberta

President Kellogg asked for a motion on Langdon Drugs

Board Action:

Motion: Keith Macdonald moved to hold off on approval until the Board discussed storefront operations.

Second: Katie Craven

Action: Passed Unanimously

After discussion of Item 11 B the Board made the following motion.

Board Action:

Motion: Keith Macdonald moved to approve the application for Langdon Drugs providing they do not accept storefront prescriptions and pending inspection.

Second: Dave Wuest

Action: Passed With Two Negative Votes

6. Disciplinary Action

- | | | |
|----|--------------------------|----------------|
| A. | Davidson Okpukpara, R.Ph | (05-053-RPH-N) |
| B. | Rite Aid #6281 | (05-053-PH-N) |

Davidson Okpukpara appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Hal Taylor was present to represent Mr. Okpukpara and Mike Dyer was present to represent Rite Aid #6281.

Louis Ling advised the Board that he and Mr. Dyer were in the process of working on a stipulation for Rite Aid with Jim Krahulic when Mr. Krahulic met with an untimely death. Mr. Ling and Mr. Dyer agreed that no disciplinary determination would come at today's hearing. Mr. Dyer will meet with Mr. Krahulic's replacement when that person is appointed and he will appear at the October meeting in Las Vegas to conclude this matter. Mr. Dyer did clarify that Rite Aid did not contest the Causes of Action, just the computer changes Board staff was preparing to recommend.

Karen Fini appeared by teleconference and was sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Ling questioned Ms. Fini regarding the circumstances of this matter. Ms. Fini testified that Patient H had surgery on his nasal passages and throat. Patient H was given prescriptions for Amoxicillin and Roxicet after surgery. Ms. Fini went to the pharmacy on a snowy afternoon to fill the prescriptions for Patient H. She had difficulty finding the pharmacy as she was not familiar with the area and had come from out of town to help Patient H after his surgery. Ms. Fini spoke with Mr. Okpukpara for directions to the pharmacy. When Ms. Fini arrived at the pharmacy she gave the prescriptions to a pharmaceutical technician. Ms. Fini testified that while she waited for Patient H's prescriptions to be filled, she observed Mr. Okpukpara discussing soccer with someone that dropped in to chat. When the prescriptions were filled, Ms. Fini paid for them and left the pharmacy. Ms. Fini stated that she was not counseled regarding Patient H's prescriptions.

Ms. Fini arrived at Patient H's home and found him sleeping. At approximately 11:00 p.m. Patient H awoke and Ms. Fini gave him pain medication as directed on the label of one of the prescriptions she had filled at Rite Aid #6281. Ms. Fini testified that Patient H awoke about 4:00 a.m. sweating profusely. By 6:00 a.m. Patient H had dry heaves. At 6:15 a.m. Patient H stopped breathing and Ms. Fini gave him CPR and called 911. Paramedics arrived approximately 25 minutes later and could not revive Patient H but did keep Patient H on life support until his son could be reached in Atlanta. Ms. Fini took the medication she had received from Mr. Okpukpara and Rite Aid #6281 to the hospital at their request. It was determined at that time that Patient H had received Roxinol (morphine) rather than the Roxicet (oxycodone/APAP) that he had been prescribed by his physician. Believing that she had what was prescribed, Ms. Fini gave Patient H two or three teaspoonfuls when he awoke at 11:00 p.m. in pain. After Patient H's son and determined the circumstances, Patient H was removed from life support.

Mr. Taylor noted for the record that he had corrected Mr. Okpukpara's Answer and Notice of Defense to reflect that Rite Aid #6281 did not have any Roxicet in the store at the time Patient H's prescription was filled and there was no doubt that Mr. Okpukpara had filled the prescription with Roxinol.

Mr. Okpukpara made an emotional statement to the Board taking responsibility for this tragic error. Mr. Okpukpara explained that Patient H had been a long-time patient of his and that Patient H came all the way from Sparks to have his prescriptions filled. Mr. Okpukpara explained that he knew that Ms. Fini was concerned about leaving Patient H alone and since the weather was bad it took her some time to travel to Rite Aid #6281 from Patient H's home. He asked his technician to stay late help him with the prescriptions because he would have been alone and he wanted to prepare them quickly for her. Mr. Okpukpara had experienced a very busy day and did not want to prolong Ms. Fini's wait for Patient H's prescriptions. Mr. Okpukpara removed a bottle from the CII cabinet and handed it to his pharmaceutical technician (PT). She then scanned the bottle and began to type in the dosage instructions. It was then that she realized that the prescription called for one pint (473 ml) and all that was in the bottle was 230 ml. The PT informed Mr. Okpukpara of this and he instructed her to fill the prescription with what they had and the rest would be ordered. The PT transferred the liquid from the bottle she had scanned into a cough syrup bottle. The PT attempted to print the label but was unable to do so. A DUR rejected the input and prevented the label from printing. The PT informed Mr. Okpukpara of this and suggested that he would probably have to clear the problem with a bioscan and she left for the evening. Mr. Okpukpara did a quick scan of the computer screen and cleared the problem with a bioscan which allowed the label to print. Mr. Okpukpara did not know what procedure Patient H had so he informed Ms. Fini that if Patient H had any questions he should call him. Mr. Okpukpara apologized to Patient H's family and to the Board and was terribly disturbed by his error as Patient H was a friend.

Mr. Taylor asked Mr. Okpukpara what had been done in the pharmacy to help alleviate the lack of staff. It was noted that they were in the process of training another PT and another staff pharmacist so Mr. Okpukpara would not have to work his own schedule but fill in for the other pharmacist when he could not work. Mr. Okpukpara was not scheduled to work that day but had filled in for the staff pharmacist because he had family business he needed to attend to. Mr. Okpukpara had filled over 150 prescriptions already that day with the help of one technician that was leaving at 4:00 p.m. Mr. Okpukpara has since learned that there is a limit to what he can do. He has also learned to counsel in more detail and to take his time and review the medications and how to use them before dispensing them – especially with a care giver if he is not speaking with the patient.

Mr. Ling questioned Mr. Okpukpara regarding the procedures Mr. Okpukpara had previously described. Mr. Okpukpara described Rite Aid's policy on scanning a bottle pulled from stock into the computer rather than typing it in the computer from the written prescription. By scanning the bottle first the screen would fill with the medication information and a technician or pharmacist would type in the dosage and directions. Mr.

Ling asked what Mr. Okpukpara did when the high dosage warning appeared and the PT called him to review it. Mr. Okpukpara stated that he used a bioscan to clear the problem but noticed at the time the teaspoon direction and changed the teaspoon direction to cc's and ml's and approved the prescription and bypassed the high dosage warning.

The Board asked questions regarding Rite Aid's policies and procedures, what he thought attributed to the error, and asked why scanning took place prior to input.

Mr. Ling gave closing remarks and noted that Mr. Okpukpara has always taken complete responsibility for this matter. He recommended a \$5,000 fine for the First Cause of Action. He feels that Mr. Okpukpara's counseling was inadequate whether the Board believed Ms. Fini's testimony or Mr. Okpukpara's and recommends a fine of \$750 for the Second Cause of Action. Mr. Ling also recommended that Mr. Okpukpara would benefit from the Your Success Rx program and is willing to allow part of the \$5,000 fine to be used for that purpose.

Mr. Taylor also gave closing remarks and feels that Mr. Okpukpara would benefit from the Your Success Rx program. Mr. Taylor gave an overview of Mr. Okpukpara's history as a pharmacist and his qualifications. Mr. Taylor feels that the fine of \$5,000 is a lot of money and noted that he would have counseled differently had he known he was dispensing Roxinol.

Board Action:

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

Second: Leo Basch

Action: Passed Unanimously

Motion: Keith Macdonald moved to find Mr. Okpukpara guilty of the Second Cause of Action.

Second: Leo Basch

Action: Passed Unanimously

Motion: Leo Basch moved to place Mr. Okpukpara on probation for two years, fine him \$3,000 for the First Cause of Action to be paid within 90 days of the signing of the Order, and complete the Your Success Rx program.

Second: Keith Macdonald

Amendment: Katie asked to amend the motion by adding that Mr. Okpukpara complete 15 hours of CE on pain management and error prevention in addition to the CE required for renewal plus have Mr. Okpukpara pay one half the fees and costs in this matter.

The amendment was accepted by the First and the Second.

Action: Passed Unanimously

Motion: Katie Craven moved to fine Mr. Okpukpara \$750 for the Second Cause of Action regarding counseling and attend the first day of the next four Reno Board meetings.

Second: Dave Wuest

Action: Passed Unanimously

C.	Andrew P. Wright, R.Ph	(05-051-RPH-N)
D.	Walgreens #02662	(05-051-PH-N)

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

Andrew Wright appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Rob Graham was present to represent Mr. Wright and Walgreens #02662.

Mr. Wright explained that Patient G had telephoned in four refills for her medications. One of the prescriptions, hydrocodone/APAP 5 mg./500 mg. tablets, needed to be authorized by her physician. Mr. Wright prepared all four of the prescriptions and placed one of them in the "quarantine drawer" to await approval from Patient G's physician. Patient G picked up three prescriptions, took them home and realized that she had received the unauthorized prescription for hydrocodone/APAP but did not receive one of the prescriptions that was authorized that she needed.

Robbie Jacobs, Walgreens IT representative, appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Jacobs described how the Walgreens computer system will be updated in 2007. He also described the hypothetical steps for "quarantined" prescriptions. 1) Two prescriptions are brought in. 2) One needs authorization by the physician. 3) Both prescriptions are filled. 4) The one that needs authorization goes into the quarantine drawer to wait for the physician's approval. 5) The date on the prescription is the date it was brought in to the pharmacy. 6) The date the physician authorizes the prescription is a few days later. 7) The date on the prescription is not the true date the prescription is authorized.

Louis Ling gave closing statements and recommended Mr. Wright receive a letter of admonition. For Walgreens, by using wrong filling dates on labels, make sure that this problem is fixed in their 2007 computer update. Mr. Ling asked that practice to be stopped.

Rob Graham stated that if it's not broken don't fix it. Mr. Graham reflected that this was an incidental issue and if they did not use the quarantined prescription method the backlog would be outrageous.

Board Action:

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

Second: Ann Peterson

Action: Passed Unanimously

Motion: Keith Macdonald moved for Mr. Wright to receive a letter of reprimand.

Second: Katie Craven

Action: Passed Unanimously

Motion: Dave Wuest moved to find Walgreens #02662 guilty of the alleged violations.

Second: Ann Peterson

Action: Passed Unanimously

Motion: Dave Wuest moved that Walgreens will pay administrative fees and costs in this matter and receive a letter of reprimand for non-compliance of Nevada law (NAC 639.2801).

Second: Katie Craven

Action: Passed Unanimously

- | | | |
|----|--------------------------|----------------|
| E. | William Locke. R.Ph | (06-007-RPH-N) |
| F. | Hales 50 Kirman Pharmacy | (06-007-PH-N) |

There was a stipulated agreement accepted by both Mr. Locke and Hales 50 Kirman Pharmacy. Louis Ling presented the stipulation to the Board.

Mr. Locke received a prescription for Seroquel 50 mg. tablets #90 with directions to take one tablet three times a day. He did not have 50 mg. tablets so he substituted 25 mg. tablets and revised the instructions to read take two tablets three times a day. The patient took the medication as directed but was experiencing cramping in her arms and legs. The patient went to her physician with her medications and it was discovered that Mr. Locke had placed the label on a stock bottle of 100 mg. tablets of Seroquel.

The stipulated agreement offered was a fine of \$250 plus the administrative fee for both Mr. Locke and Hales 50 Kirman Pharmacy.

Board Action:

Motion: Dave Wuest moved to accept the stipulated agreement as presented.

Second: Ann Peterson

Action: Passed With One Negative Vote

G.	Walgreens #04789	(06-028A-PH-N)
H.	Walgreens #05295	(06-028B-PH-N)
I.	Walgreens Co.	(06-028C-PH-N)

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

Alyssa Gabica, administrative assistant to Dr. Preston, appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Louis Ling prepared a wall chart to map how a prescription for Norco without refills was filled eleven times between Walgreens #04789 and Walgreens #05295.

Ms. Gabica testified that she handles all of Dr. Preston's prescription authorizations. Patient B had knee surgery and was given a prescription for Norco at discharge. There were no refills on the chart order. Ms. Gabica received two requests for refills which were both denied because Dr. Preston had given Patient B a prescription for another medication for his pain.

Exhibit 1 – a packet of 34 pages of miscellaneous documents.
Defense Exhibit A – a patient profile for Patient B

Both exhibits were admitted into the record.

Joe Depczynski, Board investigator, appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Louis Ling questioned Mr. Depczynski regarding the complex procedures he followed throughout the investigation to trace the original prescription to discover that it had originated in Walgreens #05295, was transferred to Walgreens #04789, and refilled under nine different prescription numbers.

Eman Gobran, district pharmacy supervisor for Walgreens, appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Ms. Gobran reviewed Defense Exhibit B and advised the Board that John Luther, the pharmacist that filled the original prescription, had added six refills per MDFax. Ms. Gobran went on to say that Walgreens does not keep faxes so there is no proof that one ever existed. They neither keep the paper copy nor do the scan the faxed or verbal (written down) prescription into the computer.

Exhibit B – a screen shot of the “prescriber inquiry” screen was admitted into the record.

After excruciating discussion of how a prescription for 40 Norco without refills was filled ten times for a total of 400 dosage units even after Dr. Preston’s office had tried to stop this process by denying refills when faxed requests were received by Ms. Gabica. Walgreens admitted that they had no proof how these refills were added and assumed that their procedures were working.

Louis Ling gave closing remarks and went through each Cause of Action and ultimately gave recommendations.

First Cause of Action – filling refills without authorization

Second Cause of Action – creating six refills without authorization

Third Cause of Action – failing to keep accurate records of filled prescription returned to stock

Fourth Cause of Action – failing to decrement fill

Fifth Cause of Action – filling six times after original fill

Sixth Cause of Action – failing to keep accurate records for Rx #586445-04789

Seventh Cause of Action – failing to keep accurate records for Rx #590330-04789

Eighth Cause of Action – filling Rx #594849-04789 after doctor denied authorization

Ninth Cause of Action – failing to keep accurate records for Rx #594849-04789

Tenth Cause of Action – filling Rx #596685-04789 without authorization

Eleventh Cause of Action – failing to decrement from one Rx and creating new Rx

Twelfth Cause of Action – failing to keep accurate records for Rx #596685-04789

Thirteenth Cause of Action – Walgreens inadequate computer system and failing to follow their own policies and procedures.

Mr. Ling recommended a severe fine plus attorney's fees and costs. Both pharmacies do an audit back to January 2006 to see how many other strings of prescription filling without authorization have taken place and report to Board at the December Board meeting. Beginning immediately begin keeping faxes either in paper form or scanned into the computer at both pharmacies and build into the computer stops that prevent this pattern from happening again.

Mr. Graham gave closing remarks and refuted Mr. Ling's suggestions. Mr. Graham kept calling the pharmacists involved in this matter "liars" for failing to document. He admitted that keeping faxes may be a good idea but insisted that the Walgreens computer system is fine and that the problem in these matters is the pharmacists not entering information appropriately. Mr. Graham asked to dismiss the Seventh Cause of Action because the daily transaction log is available at the store. He asked to dismiss the Sixth Cause of Action and was willing to admit the lack of documentation on three of the prescriptions. Mr. Graham found no fault for adding refills on the original prescription because the pharmacist said there was an MDFax and it was documented. Mr. Graham does not feel audits are necessary.

Board Action:

Motion: Ann Peterson moved to find Walgreens guilty of all thirteen Causes of Action with a change to the Fifth Cause of Action to reflect April 17th.

Second: Katie Craven

Discussion: The Eighth through Twelfth Causes of Action are admitted. Keith Macdonald and Dave Wuest felt that the Thirteenth Cause of Action duplicates the First through the Twelfth Causes of Action.

Amendment: Ann Peterson moved to amend her motion to charge only the First through the Twelfth Causes of Action and dismiss the Thirteenth Cause of Action.

Katie Craven accepted the amendment.

Action: Passed Unanimously

Motion: Ann Peterson moved to fine Walgreens \$10,000 for each Cause of Action plus costs and fees, keep fax authorizations and fix the computer system so this won't happen again.

Second: There Was No Second

Action: Motion Failed

Motion: Dave Wuest moved to fine Walgreens \$2,000 for each Cause of Action plus costs and fees, audit Walgreens #04789 and Walgreens #05295 back to January 2006, and keep copies of faxes, either hardcopy or scanned.

Second: Keith Macdonald

Amendment: Katie Craven would like to add two years probation.

The amendment was accepted by both the First and the Second.

Action: Passed With One Negative Vote

7. Requests for Technician in Training Registration – Appearance Required:

A. Elvis Lewis

Elvis Lewis appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Lewis indicated on his application for pharmaceutical technician-in-training that he had been charged, arrested or convicted of a felony, thus the reason for his appearance.

Mr. Lewis explained that when this incident occurred he was young and angry. Through a misunderstanding with the video store where he was employed he took a Playstation II. He confessed to his employer that he took the video because he was angry. His employer had him arrested for embezzlement. This was over four years ago. Mr. Lewis brought letters of recommendation for good conduct from his PTT school.

Board Action:

Motion: Katie Craven moved to approve the PTT application for Mr. Lewis.

Second: Ann Peterson

Action: Passed Unanimously

B. Meikile Legg

Meikile Legg appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

After discussion with the Board and conditions agreed to the following motion was made.

Board Action:

Motion: Keith Macdonald moved to approve Mr. Legg's application for pharmaceutical technician-in-training and place him on probation until fingerprints are returned from the Nevada Criminal History Repository.

Second: Dave Wuest

Action: Passed Unanimously

8. Appearances:

A. Katie Johnson –Marcie Mountan
Your Success Rx Report

Ms. Johnson described that she went to Montana to work with Ms. Mountan and that Ms. Mountan felt she had gained insight from the program. She indicated that she had recommended counseling for Ms. Mountan, however Ms. Mountan so far had not taken that particular advice. Ms. Johnson noted that Ms. Mountan had quit her job and had decided to take a break from pharmacy practice for the time being.

Ms. Mountan described the process Ms. Johnson led her through and she indicated that she had learned a lot about her pharmacy practice and herself. Ms. Mountan was still very emotional from the error she made that caused a death and confided that she has made an appointment for counseling. She indicated that she loved the practice of pharmacy but thought she may pursue another avenue of pharmacy rather than working in a hospital or a compounding pharmacy.

Larry Pinson asked Ms. Mountan if she thought the Your Success Rx program would have helped her right after the incident occurred rather than wait for several months while this matter was investigated. She indicated that it definitely would have helped. Mr. Pinson noted for the Board that it could be presented in circumstances such as this as a voluntary measure like the PRN-PRN program when someone enters voluntarily before the Board takes an action. He will agendize it for the next Board meeting for further discussion.

B. Gretta Woodington
PRN-PRN Request for Funding

Gretta Woodington appeared and presented a financial statement for PRN-PRN. PRN-PRN has been receiving \$20,000 annually from the Board of Pharmacy for operating expenses, however Ms. Woodington advised that they would be requesting only \$15,000 this year.

Board Action:

Motion: Keith Macdonald moved to appropriate \$15,000 to PRN-PRN for operating expenses.

Second: Dave Wuest

Action: Passed Unanimously

C. Iain Buxton and John Q. Adams –
University of Nevada School of Pharmacy Funding

John Adams and Iain Buxton appeared before the Board. Iain Buxton gave a presentation requesting input from the Board regarding their thoughts on a pharmacy school at UNR.

9. General Counsel Report

1. The court ordered Dutchess to resubmit their “brief” and it is due back to the court in three weeks. Board staff then has 30 days after that to file their response.
2. Mr. Ling advised the Board that the Wholesaler topic is active again because of the legislation passed and with renewals coming up. All the new requirements are causing an impact.
3. Mr. Ling noted that it looked very promising that the DEA would be releasing the money owed to us in the Michael Cosenza/Prescriptiononline.com matter.

10. Executive Secretary Report:

- A. Financial Report
- B. Investment Report

Larry Pinson gave the financial and investment reports to the Board’s satisfaction. He also advised them that we had our audit and everything was good. There was one suggestion made and Mr. Pinson implemented it immediately.

C. Temporary Licenses

Mr. Pinson authorized two temporary licenses since the last Board meeting.

D. Pending Policy Questions

1. CE Credit for Board Meetings

Nevada law CE has become an issue from the number of cases brought before the Board after a random audit. NAC 639.330 states that one CE unit of jurisprudence may be gained by “attending any meeting of the Board for not less than 4 hours.” The Board directed staff to change our regs to require attendance all day of one day of the Board meeting and grant 4 hours of CE. They also requested Board staff to prepare a matrix specifically for CE to ensure consistency.

2. CII Prescription Issues

Mr. Pinson explained that he has had communication with the DEA regarding three issues involving CII prescriptions. A) Multiple CII prescriptions on one blank. The DEA has no problem with this, noting that each drug must be assigned its own prescription number. B) Returning a cancelled CII prescription to the patient. The DEA has no problem with this, noting that our policy of requiring the pharmacy filling the “cancelled” prescription to verify with the previous pharmacy that the prescription was not filled. C) A CII prescription “tendered” within 14 days is fillable within a six month period. The DEA is not sure about this concept and will check into this and will hopefully have an answer for us before the October Board meeting.

E. Staff Activities

1. The Board received a thank you card from the Mahaffey family for acknowledging Fred Mahaffey’s death.
2. The Board received a thank you from the Antibiotic Awareness group for the contribution made to their cause.
3. HOPES is open again and the Board no longer owns a pharmacy. Sue Trimmer has returned.
4. BDR’s of interest. Titus has a BDR that revises requirements on drugs that can be used to make meth. Weiner has a BDR requiring stores to have a web page on prescription drugs, services and prices. Matthews has a BDR on a drug repository program. Schneider has a BDR to abolish the Board of Pharmacy. Things to keep our eye on.
5. Larry Pinson attended and reported on a Model Drug Law Seminar held in Reno.
6. Leo Basch attended a Disaster Preparedness Conference and gave a brief overview of the presentation.

7. Mr. Pinson provided the Board with the activity report he sent to all legislators.
8. Board staff will send condolences to Rite Aid for Jim Krahulic.
9. Reviewed the Committee for Review of Child Deaths – Insulin related.
10. Advised that he testified at a hearing for the Board of Medical Examiners.
11. Gave a CE to 350 people in Las Vegas. He will do a large CE in Reno, also, on December 2, 2006.
12. Mr. Pinson was appointed to NABP's Constitution and Bylaws Committee.
13. Met with Beth Foster from the Reno VA. Ms. Foster has coordinated an extensive program on diabetes management for physicians which Mr. Pinson is advising to allow CE credit for pharmacists as well. They have a program we can give credit for. Ms. Foster also advised Mr. Pinson that VA pharmacy staff is making a concerted effort to educate their physicians to better control pain medications.
14. Has a certificate that two Board members refuse to sign. They seem unsure that this candidate might have had someone else take the exam for him. They do not consider him a competent pharmacist. Louis Ling said they can not stop licensure if they have fulfilled all parameters but a Board member does not have to sign the wall certificate. Board staff was directed to investigate.
15. Social Security numbers will be required for all interns again due to the lack of applicant's to complete the process, thus causing undue work for Board staff.
16. Walgreens CAP system is getting close to being able to use biometrics.
17. The best package deals for the District meeting is through AAA.
18. 2007 meeting dates – changes in North/South location.

11. Discussion and Determinations:

A. NTI Drugs

Mr. Pinson noted that Board staff is becoming increasingly alarmed by recent patient harm secondary to the misfiling of NTI drugs. Mr. Pinson asked each of the Board members to think about solutions to this problem and bring them to the October Board meeting for discussion.

B. Canadian Affiliates and Storefronts

The Board discussed the issues arising from Canadian affiliates and storefronts for possible future consideration. The consensus was that they had no appetite to condone those options.

WORKSHOP

12. **Proposed Regulation Amendment Workshop**

1. **Amendment of Nevada Administrative Code 639.NEW Compounding**

This amendment defines the conditions under which preparation of sterile and non-sterile compounded prescription drugs are prepared.

Larry Pinson advised the Board that Board staff had held two additional Compounding Workshops – one in Reno and one in Las Vegas getting input from each end of the state. The impact on the compounding arena is big. There will be no firm decisions today and we will Workshop these regs again in October.

Louis Ling advised that we have abandoned the LCB version and we are now working with a whole new document. Mr. Ling has made headings which should make it easier to understand, beginning with definitions and general rules from pages 1 – 8, non-sterile compounding from pages 9 – 12, sterile compounding pages 13 – 17, low risk sterile compounding pages 18 – 21, high risk sterile compounding pages 22 – 24, immediate use sterile compounding pages 25 – 26, compounding by dispensing practitioners.

Robin Keith would like to see 24 hours vs. 12 hours for immediate use sterile compounding. She submitted that input by e-mail which was read into the record for discussion. Katie Craven stated that she did not like 24 hours. It was noted that the rural areas could be dramatically impacted. Dave Wuest indicated that if the products are compounded in a hood 24 hours is OK, but if the products are compounded on the floor 12 hours, would be the rule.

Paul Vitkus, St. Mary's, appeared and supported the 24 hour immediate use concept.

Bryon Pinson, Washoe Med Pharmacy, appeared and had some questions regarding testing of employees annually for proficiency. He wanted to know if 797 required annual testing. He suggested testing every two years. Katie Craven thinks they should be watched occasionally and tested annually. Beth Foster from the VA feels annual testing is appropriate. Testing costs money and Dave Wuest feels we should pick our priorities when we deviate from 797.

A 5% variation in compounding capsules was discussed.

Section 6 regarding automated compounding devices was discussed. Mr. Pinson wanted to know if this was for ointments or just for parenteral products. Would like to see page 11 on recordkeeping changed to 90% rather than 95% - 110% to be consistent.

Bryon Pinson noted that the number of ingredients that could be compounded without a hood is 3 but he would like to see that number changed to 5. It was discussed whether a specific number was even necessary. It was decided that the number would remain at 3 if they were compounded outside a hood but if compounded in a hood the number could be unlimited unless hyperalimentation.

Testing on the first recipe is required. If the recipe varies in any way it would then have to be tested again. David Vasenden, Don's Pharmacy, questioned testing on a product such as capsules where it is a single-use patient and is prescribed for a 30 day supply. Mr. Vasenden usually makes 100 capsules because that's what the capsule maker holds. If his product had to be tested for \$250 he would have to charge \$300 and the insurance would not pay. Brant Skanson, Village Pharmacy, routinely compounds product and wondered if a pharmacy could set their own policies. Maybe test 5% of new products.

Mark Hincer, Kronos, questioned non-sterile compounds. He wanted to know how you could exceed a standard (Section 8). Mr. Hincer questioned the 14 day expiration date on a water containing product – how do you deal with a 30 day dose? If you use sterile water? Non-sterile water (tap water)? PRN non-sterile? Clean? Thinks there should be a deeper meaning.

Mr. Hincer asked what "state of the art" meant in reference to air quality testing (Section 16). There are air testing companies in the North and the South and there are some that are doing their own testing but those doing their own testing will have to be validated twice a year. 24C daily testing? Mr. Hincer suggests random testing monthly. (Section 8) page 10 regarding single-use patient issues. The industry should be able to provide the patient with the medication they need.

Liz Macminamen made comments on Section 14.

Paul Vitkus asked what the competency test will be (page 4 1(c)). The Board does not want to conduct testing, so whatever the institution deems appropriate will be alright with Board staff.

Louis Ling asked the Board if they wanted a section on chemo products. Katie Craven wanted a separate section because she is afraid if it's incorporated it will muddy the rest of the language. Dave Wuest thought a real light section would be adequate.

2. Amendment of Nevada Administrative Code NAC 453.540 Schedule II Prescriptions This amendment clarifies certain requirements regarding prescriptions for controlled substances in schedule II.

This language changed direction completely since the last Workshop. It will allow whatever a physician wants to put on one prescription blank – including more than one

CII prescription. If a patient requests their original prescription back after it has been cancelled, you can give it back. The DEA approves both of these concepts.

Mary Ryan noted that the DEA is going to allow post-dated prescriptions for 90 day fills. It was determined that this has not gone into effect yet. It looks like there will be about 60 more days before it will be allowed.

Board Action:

Motion: Keith Macdonald moved to move forward to public hearing with this language.

Second: Dave Wuest

Action: Passed Unanimously

3. Amendment of Nevada Administrative Code NAC 639.245

Pharmaceutical Technician Changes This regulation clarifies issues related to the technician-to-pharmacist ratio and changes prescription data entry to being a technician function.

This amendment will require a pharmaceutical technician or a pharmacist to enter the initial prescription data into the computer system. The PT ratio will be increased from two to one to three to one.

Liz Macminamen advised that her members encourage the increase in PT ratio but they do not like the initial input taken out of the clerks hands.

Cookie Quandt noted that at Longs clerks now do the input and that Longs is going to need time to get up to speed to get PTT's trained. Ms. Quandt requested a January 2007 implementation date. She also indicated that she had a problem with badges.

Mark Hincer proposed a new category of data entry PT's. He suggested keep the PT ratio two to one and allow two data entry PT's also.

Joe Kellogg explained that the Board's intent is to have qualified licensed PT's entering prescriptions because that is where errors happen most often.

Katie Craven wanted 2 (c) changed to "compounded products rather than just "parenteral."

Leo Basch would like to see "initial prescription information" be defined by drug information not patient information. He also asked that we remove "one" before "or two" in Section 2 (1).

Board Action:

Motion: Ray Seidlinger moved to move forward to public hearing.

Second: Katie Craven

Action: Passed Unanimously

4. **Amendment of Nevada Administrative Code NAC 639.NEW Workload Balancing** This new language establishes regulations regarding the storing of prescription information by pharmacies who utilize common databases and software.

Dan Luce, representing Walgreens, suggested the Board consider striking “at the pharmacy that entered the information” on page 2 number 3.

President Kellogg noted that he did not want to move forward with the regulation amendment in light of the Walgreens case that was heard the previous day.

Leo Basch wanted to move forward because he feels it would be helpful to patient safety. This concept is currently being used in institutional and mail order pharmacies and did not see an issue in the retail arena.

Keith Macdonald noted that the Board allowed outlying hospital pharmacies do this and feels the Board should be equitable.

Dave Wuest is not sure the technology is there to implement in retail pharmacies.

Katie Craven suggested Board staff take this matter to committee.

Board Action:

Motion: Keith Macdonald moved to move forward to Public Hearing.

Second: Ray Seidlinger

Discussion: Dave Wuest reiterated Katie Craven’s suggestion about taking this matter to hearing. Ann Peterson does not trust this concept for retail pharmacies. Leo Basch feels that the Walgreen hearing yesterday is an isolated incident. Louis Ling noted that the Board was not sure yesterday whether the quarantine drawer was a good idea. Perhaps the Board should require a unique identifier because initials are not meaningful.

Action: Motion Failed

Board Action:

Motion: Keith Macdonald moved to bring back for another Workshop to resolve issues.

Second: Katie Craven

Action: Passed With One Negative Vote

5. Amendment of Nevada Administrative Code NAC 639.NEW Retail Dispensing Devices This new language will allow for refilled prescriptions to be dispensed through an automated device located in retail pharmacies.

Louis Ling explained to the Board that the language before them had been found in a couple of other states' language where they allow automated dispensing devices and his own ideas.

Jason Reiser, representing Wal-Mart, asked if the Board had considered calling it a "retail delivery system" rather than "dispensing device" throughout the language since only a pharmacist can dispense. Mr. Reiser questioned other language and made suggestions.

Bill Holms, DDM Corporation, noted that in his equipment the pharmacist is the only person with a code to open the machine for filling. He said that if the prescription is wrong, it is wrong at filling, not from dispensing. This is just a secure holding bin for filled prescriptions that patients would have access to.

Keith Macdonald and Joe Kellogg both acknowledged that they work for Wal-Mart.

Mr. Reiser noted that number (i) was not applicable because CII's always need to be counseled and they are never refills. He asked if in number (k) an 800 number could be used to go to a pharmacist out of state for counseling. It was noted that this language does not specify, but Board's intent was to have a Nevada licensed pharmacist counseling.

Bill Holms offered suggestions how language could be altered.

Rob Swart, representing Safeway, advised the Board that Safeway has been using Mr. Holms dispensing devices in California and he finds them to be safe and secure.

The Board directed staff to make changes as suggested and discussed and move to Public Hearing.

6. Amendment of Nevada Administrative Code NAC 639.240 Requirements for registration of pharmaceutical technicians. Changes the educational standards for pharmaceutical technicians.

This language requires schools that provide pharmaceutical technician programs to be accredited by ASHP.

Liz Macminamen noted that NACDS wanted more choices besides ASHP as accrediting agencies.

Suggestions to reword number five were made. The Board indicated that they wanted one set of requirements for consistency and advised Board staff to move this regulation amendment forward to Public Hearing with the suggested changes to number 5.

PUBLIC HEARING

13. Notice of Intent to Act Upon a Regulation:

1. **Amendment of Nevada Administrative Code 639.5007 Issuance of license to conduct pharmacy for applicant required to be designate representative: Restricted and unrestricted licenses.** New language will allow the Board to place conditions upon the grant of a license for pharmacy under certain circumstances and ensure that the license is used only to conduct legitimate pharmacy practice.

Louis Ling reviewed the language for the Board. It will give the Board discretion rather than mandatory requirements and will allow the Board to condition a license.

President Kellogg opened the Public Hearing.

There was no comment.

President Kellogg closed the Public Hearing.

Board Action:

Motion: Keith Macdonald moved to adopt the language with the addition of the word "license" in section 1(b).

Second: Dave Wuest

Action: Passed Unanimously

2. **Amendment of Nevada Administrative Code 639.6941, 6943, 6945, 6946, 6951, 6954, 6955 and NEW LANGUAGE** Medical Devices Equipment and Gas changes.

Louis Ling explained that this language added custom prosthetics and orthotics since the last version. It allows nurses to own an MDEG facility and it must be a real store,

there must be someone certified on pumps and redundant lifesaving equipment. Board staff also included mastectomy product people.

President Kellogg opened the Public Hearing.

Rich Pozeski, NAMPS, appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Mr. Pozeski approved of the language as written and suggested that in a future version a definition of what a custom prosthetics and orthotics people are and that people that do compression stockings need to be defined, also.

Dolli Kurtz and Kathy Brinkmeyer, Mobile Medical Services, appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Their business specializes in compression stockings. They would also like to see definitions for O and P people. They do want mastectomy and compression stockings separated out from O and P. They do not want to pass these regulations until those issues are added to the language.

Melinda Lisle appeared and was sworn by President Kellogg prior to answering questions or offering testimony.

Ms. Lisle agreed that there needs to be a separate section for mastectomy products, but she did not think compression stockings fall into the same category.

Larry Pinson will call for another MDEG Committee meeting to discuss these matters.

President Kellogg closed the Public Hearing.

Board Action:

Motion: Katie Craven moved it added that insulin pump people cannot talk about health information to their patients.

Second: No Second

Action: Motion Failed

Motion: Keith Macdonald moved to adopt as presented.

Second: Leo Basch

Action: Passed With One Negative Vote

14. Next Board Meeting:

October 25 & 26, 2006 – Las Vegas, Nevada

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

There were no public comments.