BOARD MEETING

at the

Airport Plaza Hotel
1981 Terminal Way
Reno

Thursday, December 4, 2008

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

Board Members Present:

Barry Boudreaux	Keith Macdonald	Leo Basch
Donald Fey	Chad Luebke	Mary Lau

Board Members Absent:

Board Staff Present:

Larry Pinson Jeri Walter Carolyn Cramer

CONSENT AGENDA

1. Approval of October 29-30, 2008, Minutes

2. Applications for Out-of-State MDEG – Non Appearance:

   A. CCS Medical – Forest Hill, TX
   B. NovaVision Therapy, Inc. – Boca Raton, FL
   C. Omega Medical Health Systems, Inc. – Pottstown, PA
   D. UroMed, Inc. – Alpharetta, GA

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

   E. Bio Scrip Pharmacy, Inc. – Chicago, IL
   F. Planned Eldercare, Inc. – Buffalo Grove, IL
   G. Right Source – West Chester., OH
   H. St Jude Children's Research Hospital Pharmacy – Memphis, TN
   I. TPS LLC – Fultondale, AL

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

J. Apace Packaging, LLC – Fountain Run, KY
K. C.R. Bard, Inc. – Covington, GA
L. Integrated Commercialization Solutions, Inc. – Brooks, KY
M. Global Pharmaceutical Sourcing LLC – Rockville, MD
N. Med-Search – Fort Lauderdale, FL
O. Smiths Medical ASD, Inc. – Keene, NH

Applications for Nevada Pharmacy – Non Appearance:

P. CVS/pharmacy #4691 – Sparks
Q. Walgreens #11206 – Las Vegas
R. Walgreens #11227 – Sparks

Applications for Nevada MDEG – Non Appearance:

S. Orthopedic Motion, Inc. – Las Vegas
T. Spring Valley Pharmacy – Las Vegas

NOTE: Chad Luebke recused from participation in the vote on item 2P because he is employed by CVS. Leo Basch recused from participation in the vote on items 2Q and R as he is employed by Walgreens. Mary Lau disclosed that she is the president of RAN and Walgreens and CVS are members of her association.

Discussion:

The consent agenda applications and supporting documents were reviewed. Item I was removed from the agenda as they have determined that they should be a Nevada pharmacy and will appear at the January Board meeting.

Board Action:

Motion: Don Fey found the consent agenda application information to be accurate and complete and moved for approval of item 2P.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Don Fey moved for approval of items 2Q and R.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Don Fey moved for approval of the remaining items on the Consent Agenda with the exception of item 2I.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Keith Macdonald found the minutes to be accurate and complete and moved for approval with the minor changes discussed.

Second: Don Fey

Action: Passed Unanimously

REGULAR AGENDA

3. Application for Nevada Pharmacy – Appearance:

M Pharmacy – Las Vegas

Brant Skanson appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Skanson gave an overview of the pharmacy model he would be using to operate this pharmacy that will be located within the M Resort. The property is still under construction and is slated to open in March, 2009. The M Resort is a casino located approximately seven miles off the Strip. M Resort is the full owner of the pharmacy. It will be a regular retail pharmacy open to the public from 9:00 a.m. to 9:00 p.m. The Board questioned Mr. Skanson and received answers to their satisfaction.

Board Action:

Motion: Keith Macdonald moved to approve the application for pharmacy for M Pharmacy pending inspection.

Second: Chad Luebke

Action: Passed Unanimously

4. Applications for Nevada MDEG – Appearance:

A. 1st Medical Supply – Las Vegas

Rafael Rey and Tatyana White appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

Carolyn Cramer gave a history of the appearances for Ms. White and Mr. Rey. Ms. White indicated that they have now determined what they are going to sell at 1st Medical Supply and Mr. Rey has the qualifications for those products to be the administrator.

Board Action:

Motion: Keith Macdonald moved to approve the MDEG license for 1st Medical Supply pending inspection.

Second: Don Fey

Action: Passed Unanimously

B. Fairview Medical Supplies, Inc. – Las Vegas

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

Mr. Ebong indicated that he was currently working for a DME business doing deliveries. He planned to be the facility administrator for Fairview Medical Supplies when they open.

President Boudreaux noted the type of products that Fairview Medical Supplies was going to carry and asked Mr. Ebong about ostomy supplies. Mr. Ebong could not answer what ostomy supplies were. After a period of time, President Boudreaux explained to Mr. Ebong that he had to be knowledgeable about the MDEG business before he would be allowed to be a facility administrator.

Board Action:

Motion: Keith Macdonald moved to deny the application for MDEG provider for Fairview Medical Supplies because Mr. Ebong does not have enough knowledge to operate this business.

Second: Leo Basch

Action: Passed Unanimously

C. Freemotion Plus – Las Vegas

Sam Phankonsy appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

The Board asked Mr. Phankonsy what role he played in the ownership of Freemotion Plus and he indicated that he had none. Mr. Phankonsy indicated that his sister-in-law, Alegria Phankonsy is the owner but that she was hospitalized and could not appear.

The Board indicated that they would like to speak to Ms. Phankonsy and tabled the application until the January Board meeting when she could appear.

5. Application for Out-of-State Wholesaler – Appearance:

Smith Medical Partners, LLC – Wood Dale, IL

Thomas Twitty appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Stacy Cook, general counsel for HD Smith in Indiana, and Elizabeth High, local legal counsel from Lionel Sawyer and Collins, were also present.

Smith Medical Partners is a specialty division within HD Smith that will do transfers between the two entities. They are both owned by the HD Smith family. They are licensed in Illinois where the Board of Pharmacy there considers what they will be doing a transfer and not a wholesale transaction.

Larry Pinson advised the Board that representatives from HD Smith came to Reno for a meeting with him and legal counsel to discuss this concept. Mr. Pinson indicated that he found this practice of transferring between the two entities to be acceptable.

Board Action:

Motion: Keith Macdonald moved to approve the application for wholesaler for Smith Medical Partners, LLC.

Second: Leo Basch

Action: Passed Unanimously

Motion: Keith Macdonald moved to approve the transfer practice between Smith Medical Partners, LLC and HD Smith as not being a wholesale transaction subject to pedigree rules.

Second: Chad Luebke

Action: Passed Unanimously

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

A. DCRX Infusion – Sunrise, FL

No one appeared to represent DCRX Infusion and no action was taken by the Board.

B. Rx3 Pharmacy – Richmond, VA

Mark Young, Sr. appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Young advised the Board that Rx3 Pharmacy is a compounding pharmacy in Virginia. They compound B12, B1, and B6 injectables. They would be shipping to physicians in Nevada for administering to their patients in their offices. Mr. Young indicated that they ship via UPS and noted that these products do not need refrigeration. Mr. Young also noted that they are currently licensed in nineteen states and they are the number one hospice provider in Virginia.

Board Action:

Motion: Don Fey moved to approve the application for Rx3 Pharmacy.

Second: Mary Lau

Action: Passed Unanimously

7. Disciplinary Action:

A. Wyatt Robards, PT (08-066-PT-N)

Carolyn Cramer noted that Mr. Robards was not present at hearing. Ms. Cramer advised that this was brought before them because Mr. Robards was terminated from employment from SaveMart for selling Oxycontin on the SaveMart premises. Mr. Robards admitted that he had obtained Oxycontin from a friend that had a legal prescription for it and he sold it to another employee of SaveMart. Mr. Robards denied diverting the Oxycontin from the pharmacy. An inventory of the pharmacy's controlled substances substantiated this.

Board Action:

Motion: Mary Lau moved to find Mr. Robards guilty of the alleged violations.

Second: Don Fey

Action: Passed Unanimously

Motion: Mary Lau moved to revoke Mr. Robards pharmaceutical technician registration.

Second: Keith Macdonald

Action: Passed Unanimously

B. Robyn R. Ousby, PT (08-069-PT-N)

Carolyn Cramer noted that Ms. Ousby was not present for hearing. Ms. Cramer explained that Board staff had received a letter from Larry Espadero indicating that Ms. Ousby was no longer participating in the PRN-PRN program. This act violates the Board's Order of July 3, 2008.

Board Action:

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

Second: Leo Basch

Action: Passed Unanimously

Motion: Keith Macdonald moved revoke Ms. Ousby's pharmaceutical technician registration.

Second: Leo Basch

Action: Passed Unanimously

8. Probation Review – Appearance:

Kenton Crowley

Kenton Crowley and Larry Espadero appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

Carolyn Cramer advised the Board that the California Board of Pharmacy revoked Mr. Crowley's pharmacist license. Nevada is now the only state he is licensed in. She advised the Board that they could amend his Order, leave it as it is, or condition it further. Ms. Cramer made suggestions she felt would be beneficial to Mr. Espadero for his monitoring purposes, including a requirement that Mr. Crowley reside in Nevada.

Larry Espadero testified that Mr. Crowley is participating in the PRN-PRN program and that all tests have been negative. Mr. Espadero also noted that Mr. Crowley generally operates better when he is being monitored and suggested that the Board lengthen the PRN-PRN Order to ten years as they had done in other cases.

President Boudreaux asked Mr. Crowley what he has been doing to lessen the stressors in his life since he appeared in October. Mr. Crowley stated that he has been staying at home and enjoying his family and trying to get his financial situation settled. He is thinking of working retail again in Nevada. He and his wife will try to determine where to settle if they can sell their home in Temecula without a huge loss. He did note that he is looking for a place to live in Nevada.

Ms. Cramer recommended that the Order be amended to require Mr. Crowley to live in Nevada, that there be no deviation from his PRN-PRN Order without Board approval, that Mr. Crowley not seek licensure in other states without prior Board approval, and

that he report directly to Larry Espadero and that he not work more than 90 hours in a two week period.

Mr. Crowley requested that he be allowed to be a managing pharmacist because it would be easier to find a job if he could accept that responsibility.

President Boudreaux stated that he did not feel comfortable allowing Mr. Crowley to be a managing pharmacist at this time and Mr. Fey and Ms. Lau agreed.

Chad Luebke asked if the Board had the authority to require Mr. Crowley to live in Nevada. Ms. Cramer indicated that she wanted assurance that Mr. Espadero would personally be monitoring Mr. Crowley.

Mr. Crowley indicated he was working diligently to reduce his expenses, including bringing his daughter back from college and enrolling her in community college. He can not sell his home in Temecula but he assured the Board that he would at least have a room in Nevada that he would stay in while he was working. He would travel home only on days off so he was not "commuting" from California to Nevada to work.

Board Action:

Motion: Leo Basch moved to modify Mr. Crowley's Order to include that he seek approval from the Board prior to applying to reciprocate to another state, work no more than 90 hours in a two week period, and that there be no modification to his PRN-PRN contract.

Second: Don Fey

Action: Passed With Three Favorable Votes and Two Negative Votes

9. Task Force Data Clarification – Appearance:

Joanee Quirk

Ms. Quirk advised that the Task Force data has discrepancies caused by pharmacies that have to input a controlled substance prescription for a patient more than one time, usually for adjudication reasons. Occasionally a prescription is rejected a couple of times by the insurance company before it is accepted. The rejected prescriptions are being reported to the Task Force as filled creating inaccurate data which in turn could be perceived as drug seeking activity.

In some instances the reporting of this inaccurate information to practitioners will cause the practitioner to fire a patient suspecting drug diversion and abuse.

Leo Basch suggested the software vender be held responsible to not report unless the prescription is adjudicated by the insurance company.

It was suggested that Board staff approach pharmacies to see if they can clean their data before it is reported to the Task Force. Board staff was directed to send a letter to NACDS and RAN for suggestions and Ms. Quirk was directed to contact the software vendor.

Ms. Quirk also reported that the contract for the development and implementation of PMP Software, jointly owned by Nevada, Hawaii and Mississippi, goes before the Board of Examiners on January 13th, 2009.

Again, Ms. Quirk encouraged chain stores to allow their pharmacists limited internet access as it would save the Task Force as much as $10,000.00 annually in postage if they could request and receive patient profiles by e-mail. Internet access would also expedite inquiries by pharmacists.

10. Strategic Planning

1. Board staff received a request from Sheila Leslie of the Legislative Committee on Health Care requesting that the Board of Pharmacy develop a system to monitor the sale and use of anesthesia in the ambulatory surgery center setting and the practitioner's office setting. Mr. Pinson noted that the Board's prudent and immediate regulatory action shortly after learning of the hepatitis crisis in Las Vegas already addresses the ambulatory surgery center issue. Monitoring anesthesia in practitioner's offices is a different matter. Mr. Pinson and Ms. Cramer called a meeting of large healthcare Boards to discuss accomplishment of this challenge. At the meeting Mr. Pinson and Ms. Cramer outlined with other Boards a means to monitor themselves worked out by pharmacy Board staff feeling that each Board should monitor themselves and that it is not feasible for every practitioner to have a consultant pharmacist. The group plans to meet again on January 13, 2009 and in the meantime pharmacy Board staff will respond to Ms. Leslie's letter.

2. Inspection forms are being revised and Board staff is trying to build safety issues into the inspection process. The retail form is almost ready and ASC and hospital inspection forms are high on the priority list. The inspectors will be trained to inspect to 797 compliance. Ray Seidlinger, Ron Shockey and Joe Depczynski are working on this project and they are incorporating ISMP standards into the inspection practice.

3. Board staff advised the Board to begin thinking of ways to fund the Controlled Substance Abuse Prevention Task Force should grant money dry up. Staff feels that funding is sufficient through 2010.

4. The hospital regulations need to be updated and a committee should be formed to tackle that project. It was suggested Robin Keith from the Rural Hospital Association and Bill Welch from the Nevada Hospital Association would be good candidates along with Don Fey and Keith Macdonald and possibly a hospital pharmacy resident. Board staff was directed to search hospital regulations from other states to see how they have approached regulating to more current standards.

5. Several prescription issues have come up during Board meetings such as warnings, security paper, doctor's handwriting, cell phone call-ins, and more. Regarding ancillary warning labels, there are no regulatory requirements for stickers on prescription vials. The label makers include them on the sheet that prints the patient label. Pharmacists are to use their professional judgment in choosing what goes on the vial and it is acknowledged that some pharmacists go "sticker crazy." President Boudreaux noted that this topic is going to be explored at an NABP meeting and he would report back on their conclusions.

Keith Macdonald noted that he felt strongly that Tramadol should be scheduled. Kentucky has scheduled it as a CIII. There was further discussion and one of the negative reasons was the impact it would have on the Task Force.

6. At the September Board meeting it was suggested to Board staff that adding mechanical dispensing devices to ASC's be allowed. The concept is that patients would have easy access to obtain prescribed medication after surgery. They would not have to drive to a pharmacy and wait for long periods of time while they were still recovering from surgery. After discussion it was determined not to allow mechanical dispensing devices in ASC's.

Board Action:

Motion: Mary Lau moved to discontinue the regulation process to allow ASC's to have mechanical dispensing devices.

Second: Keith Macdonald

Action: Passed Unanimously

11. Executive Secretary Report:

A. Financial Report
B. Investment Report

Due to the recent licensing program conversion and renewal cycle, these reports will be presented at the January Board meeting. Mr. Pinson provided the annual audit to the Board and gave highlights of the audit. He indicated that the only negative was their suggestion that the Board should hire a person with sufficient knowledge of generally accepted accounting principles to oversee the financial reporting and disclosure process. Mr. Pinson advised the Board that we did not need a CPA, especially since there were no negative areas in the audit resulting from inappropriate performance he did not feel it will be necessary to make any changes in our procedures. He also noted that the audit firm makes that suggestion every year.

C. Temporary Licenses

Larry Pinson approved one temporary license since the last Board meeting.

D. Staff Activities

1. Meetings

a. ASPL (11/08)

Mr. Pinson reported that he asked Carolyn Cramer to attend this meeting in his place. Ms. Cramer reported that it was a good meeting and that she participated on a panel.

b. CE presentations

Mr. Pinson will be giving law CE at the VA in Reno in January.

E. Report to Board

1. Inspector

Ray Seidlinger was hired as an inspector for the Board. He will help with the inspections in both the South and the North. He will also be doing special projects for Board staff. One of the projects Mr. Seidlinger has already completed was compiling the statistical data for the Biennial Report to the Governor. Larry Pinson reported that the addition of Ray Seidlinger has already had an impact on staff workload.
Mr. Pinson advised the Board that he and Ms. Cramer went to Las Vegas to meet with the investigators to address the issue of outstanding disciplinary cases.

2. Drug Disposal Flyer

Mr. Pinson reported that he has received many offers of help to initiate the drug disposal flyer implementation.

3. Renewals progress

The renewal process is finally over. There were bumps along the way with the new licensing program but they are being worked on. Versa is a far superior program to what we had and once some of the remaining issues are handled it should be easier for Board staff to perform their job duties.

12. General Counsel Report

Carolyn Cramer had no report for this meeting. Still no word on the Dutchess matter.

WORKSHOP

13. **Proposed Regulation Amendment Workshop**

1. **Amendment of Nevada Administrative Code 639.7125** Changes to the Central-Fill pharmacy regulations regarding new prescriptions.

Mary Lau asked how it was determined to make these changes since she was not present at the last Board meeting. Carolyn Cramer explained that Mary Ryan and Cookie Quandt had made these suggestions and she wrote the language as she understood their ideas.

President Boudreaux opened the Workshop.

Liz Macmenamin presented language that she felt was more the intent of Mary Ryan and Cookie Quandt's proposals. One of the issues the RAN members had regarding the language as written was they found it problematic to tell their patients where their prescriptions were going to be filled. They did not think the patient needed to know if their prescriptions were going to a central fill pharmacy for filling and if they were not going to tell them, then logging patient consent was unnecessary.

Larry Pinson advised Ms. Macmenamin that it was important for the patient to know where their prescriptions were filled. When they drop off or call in a prescription for refilling they are expecting to come back to the store where they left the information to pick it up. Some patients go to a specific pharmacy because of the pharmacist or pharmacy staff and feel comfortable with them fulfilling their pharmacy needs and they may not want their medications filled elsewhere. Patients should have a choice.

Roger Smith, a staff pharmacist, noted that there are some instances where the patient does not keep the pharmacy apprised of their current address or telephone number. Even when he asks they just agree that the address is correct whether it is or not. If a central fill pharmacy sends a prescription to a patient by mail and the address is not correct the patient may suffer by not receiving their medication. If the drugs are not delivered, where do they go?

David Squires, a staff pharmacist, noted that in his experience patient's do not understand the central fill concept and find it confusing.

David Fluitt, district pharmacy manager for Raley's, introduced Flint Pendergraft, vice president of pharmacy for Raley's, and Bill Okuno, administrative director of pharmacy for Raley's and turned over the discussion to Mr. Pendergraft. He noted that Raley's opened their central fill pharmacy in Sacramento in 2002. Raley's model is that they always send the medication back to the originating pharmacy the following day for dispensing. If the Board does allow this language to move forward they suggest that several areas of the language be a addressed – even if it is not the new language that Ms. Cramer created. Mr. Pendergraft made several suggestions for change to these regulations because the pharmacy practice today versus pharmacy practice in 1992 when the central fill concept was new is very different. Central fill mail order is an entirely new concept and would be in addition to the current standard. Mr. Pendergraft indicated that it would be cumbersome to try to fill both needs in one regulation because the requirements for each would conflict.

Bill DelloRusso, of Medco, noted that he thought the language was fine the way it was written but noted that patients need to know if they are going to receive their medication by mail. He does not consider the word "consent" appropriate in that connotation.

President Boudreaux closed the Workshop.

Larry Pinson suggested that he work with Mr. Pendergraft and Cookie Quandt to rework the language and bring it back to Workshop. The Board then asked staff to call a meeting of identified parties to work on the regulation.

2. **Amendment of Nevada Administrative Code 453.530** Change to schedule III regarding prescription items containing ephedrine, pseudoephedrine and PPA

President Boudreaux opened the Workshop.

There were no public comments.

President Boudreaux closed the Workshop.

Leo Basch noted that number 9G was incorrect. HGC should be corrected to HCG as there is no such thing as HGC.

Board Action:

Motion: Keith Macdonald moved to approve as presented, change HGC to HCG and move to Public Hearing.

Second: Mary Lau

Action: Passed Unanimously

14. Next Board Meeting:

January 14-15, 2009 – Las Vegas

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

There were no public comments.