

February 18, 2009

AGENDA

◆ PUBLIC NOTICE ◆

NEVADA STATE BOARD OF PHARMACY

BOARD MEETING

at the

Airport Plaza Hotel
1981 Terminal Way
Reno

Wednesday, March 4, 2009 – 9:00 am

Thursday, March 5, 2009 – 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.

March 2009 Board Meeting Agenda

- * 1. Approval of January 14-15, 2009, Minutes
- * 2. Applications for Out-of-State MDEG – Non Appearance:
 - A. Advanced Respiratory, Inc. – St Paul, MN
 - B. First Choice Medical Supply, Inc. – Salt Lake City, UT
 - C. Hanger Prosthetics & Orthotics, Inc. – Bullhead City, AZ
 - D. Hanger Prosthetics & Orthotics, Inc. – Salt Lake City, UT
 - E. Hanger Prosthetics & Orthotics, Inc. – St George, UT
 - F. Homelink – Waterloo, IA
 - G. National Seating & Mobility, Inc. – Murray, UT
 - H. Tibro Medical, Inc. – Salt Lake City, UT
 - I. Vascular Solutions, Inc. – Maple Grove, MN

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

- J. Commcare Pharmacy – FTL – Ft Lauderdale, FL
- K. Correct Rx Pharmacy Services, Inc. – Linthicum, MD
- L. Costco Pharmacy #1043 – West Sacramento, CA
- M. Daily Med Pharmacy – Indianapolis, IN
- N. Pharmacy South Inc. – Alabaster, AL

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

- O. A-S Medication Solutions LLC – Libertyville, IL
- P. Ben Venue Laboratories, Inc. – Walton Hills, OH
- Q. Clipper Distributing Company, LLC – St Joseph, MO
- R. Diamond Animal Health, Inc. – Des Moines, IA
- S. Genzyme Corporation – Ridgefield, NJ
- T. Gulf South Medical Supply, Inc. – Sacramento, CA
- U. Johnson & Johnson Health Care Systems Inc. – Memphis, TN
- V. Mylan Pharmaceuticals Inc. – Morgantown, WV
- W. Norwich Pharmaceuticals, Inc. – North Norwich, NY
- X. Somerset Pharmaceuticals Inc. – Morgantown, WV

Application for Nevada MDEG – Non Appearance:

- Y. Precision Orthotics & Prosthetics – Las Vegas

Applications for Nevada Pharmacy – Non Appearance:

- Z. Apothecary Shop of Las Vegas II – Las Vegas
- AA. Coronado Surgery Center – Henderson
- BB. Family Pharmacy – Pahrump

March 2009 Board Meeting Agenda

◆ REGULAR AGENDA ◆

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

- A. Apothecure, Inc. – Dallas, TX
- B. DrugCrafters – Frisco, TX

* 4. 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. Jerel E. Zak, R.Ph (08-057-RPH-N)
- B. Scolari's Pharmacy #19 (08-057-PH-N)
- C. Carol Cigliano, R.Ph (08-024A-RPH-N)
- D. Jose Rodriguez, R.Ph (08-024B-RPH-N)
- E. Professional Pharmacy (08-024-PH-N)
- F. Cathi Ketterling, R.Ph (07-068A-RPH-N)
- G. Jose Rodriguez, R.Ph (07-068B-RPH-N)
- H. Professional Pharmacy (07-068-PH-N)
- I. Burke's Drug (08-026-PH-N)
- J. Cindy J. Vert. R.Ph (09-009-RPH-N)
- K. Kelly L. Gomes, PT (08-075-PT-N)

* 5. Request for Reinstatement of Pharmacy Technician License – Appearance:

Vaughn R. Terry (07-056-PT-N)

* 6. Appearance Requests:

- A. Controlled Substance Task Force - Joanee Quirk
- B. Nevada State Board of Veterinary - Debbie Machen
- C. Nevada Health Telepharmacy – Carl Heard

* 7. Your Success Rx – Appearance:

Dave Carroll

* 8. Your Success Rx – Non-Appearance:

Summerlin Hospital

* 9. Discussion and Determination:

- A. Canadian Intern Hours
- B. Matrix Guideline for Disciplinary Actions
- C. Outside Entity Compounding for Hospitals and Rural Health Facilities
- D. Review of Veterinarian Controlled Substance Registration Requirements

March 2009 Board Meeting Agenda

- *10. Continuing Education Committee Report
- *11. General Counsel Report
- *12. Executive Secretary Report:
 - A. Financial Report
 - B. Investment Report
 - C. Temporary Licenses
 - D. Staff Activities
 - 1. Meetings
 - a. MDEG Committee (2/19)
 - b. CE Committee (2/11) – see agenda item
 - c. Fulfillment Committee (2/11)
 - d. Speaking engagements
 - e. Legislative update
 - 1. Meeting with Senator Weiner
 - 2. Hillerby Report
 - E. Reports to Board
 - 1. Your Success Rx Report on Summerlin Hospital
 - 2. Letter of Admonition
 - 3. Business Applications
 - 4. PSE Concerns
 - 5. December Questions
 - F. Board Related News
 - 1. National News
 - a. PMP budget cuts
 - b. Tech certification in WA
 - G. Activities Report

W O R K S H O P – Thursday, March 5, 2009 – 9:00 am

- *13. **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 639.254 Initial and biennial in-service training pharmaceutical technicians working in or pharmacy; substitution of continuing education for in-services training.** Changes to the pharmaceutical technician regulations regarding in-service training.
 - 2. **Amendment of Nevada Administrative Code 639.6934 “Life-sustaining equipment” defined.** Changes to the definition of life sustaining equipment.

March 2009 Board Meeting Agenda

14. Next Board Meeting:

April 15-16, 2009 – Las Vegas

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.

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, 431 W Plumb Lane, Reno, Nevada 89509, 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. Continuing Education credit of 4 hours, including 1 hour of law, will be given per day of Board meeting attendance. You are required to attend the board meeting for a full day to receive CE credit including the law credit.

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

Airport Plaza Hotel
1981 Terminal Way
Reno

March 4th and 5th, 2009

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

Board Members Present:

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

Board Members Absent:

Board Staff Present:

Larry Pinson Jeri Walter Carolyn Cramer Keith Marcher Sarah Bradley

CONSENT AGENDA

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- BB. Family Pharmacy – Pahrump

Discussion:

The consent agenda applications and supporting documents were reviewed. Don Fey disclosed that he personally knows the managing pharmacists on Items C and AA.

Board Action:

Motion: Keith Macdonald found the consent agenda application information to be accurate and complete and moved for approval.

Second: Leo Basch

Action: Passed Unanimously

Discussion:

Leo Basch noted that he recused from participation in the matter of Tameika Williams.

Motion: David Chan found the minutes to accurate and complete and moved for approval with the noted change.

Second: Chad Luebke

Action: Passed Unanimously

REGULAR AGENDA

3. Applications for Out-of-State Pharmacy – Appearance:
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 - B. DrugCrafters – Frisco, TX

4. 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. Jerel E. Zak, R.Ph (08-057-RPH-N)
 - B. Scolari's Pharmacy #19 (08-057-PH-N)

NOTE: Mary Lau recused from participation as Scolari's is a member of RAN and David Chan recused from participation as he is employed by Scolari's.

Tiffinay Baker Pagni of Lemons, Grundy and Eisenberg was present to represent Ms. Zak. Debbie Leonard of McDonald, Carano, Wilson was present to represent Scolari's.

Leslie Stoll, complainant in this matter, Joe Depczynski, Board inspector/investigator, Dani Dooley, Scolari's pharmacy operations assistant, appeared and were sworn by President Fey prior to answering questions or offering testimony.

Carolyn Cramer gave opening statements regarding the circumstances of this matter noting that this was a misfill. Ms. Cramer also advised the Board that she would be presenting evidence regarding Scolari's computer system.

Ms. Pagni gave opening statements and wanted it on the record that she objected to not receiving a copy of the investigative report – noting that Board staff had told her that it was considered confidential communication between the Board investigator and general counsel.

Ms. Leonard gave opening statements noting that Scolari's was a good chain and had good pharmacy inspections. She also gave the circumstances of this matter and explained why Ms. Zak had printed a second label with the original fill date. Ms. Leonard indicated that Scolari's has taken measures to ensure that they comply with Nevada law.

Board staff admitted 23 exhibits that were accepted into the record. The defense admitted 6 exhibits that were also accepted into the record.

Carolyn Cramer called Leslie Stoll to testify. Ms. Stoll explained that she took a new prescription for Lexapro to Scolari's #19 to be filled. She had taken this medication before and Scolari's #19 had filled it before. When the prescription was ready she took it home and continued her medication therapy. Ms. Stoll testified that she began

experiencing symptoms of insomnia, nausea, chest pains and heart palpitations. She went to Renown and was kept overnight for observation but they could not determine why she was experiencing these symptoms. Ms. Stoll indicated that her condition did not improve and because she could not sleep one night she examined the medication that she had been taking. Ms. Stoll used her computer and went to the website of drug.com and entered the numbers that were on the tablets she was given. Ms. Stoll found that she had not been taking the Lexapro that was prescribed for her but was instead taking Actos that was dispensed to her by Scolari's #19.

Ms. Pagni and Ms. Leonard cross examined Ms. Stoll, each asking questions regarding her experience at Renown and whether she had seen or spoken to her physician.

The Board questioned Ms. Stoll.

Carolyn Cramer called Joe Depczynski to testify. Mr. Depczynski described his duties at the Board of Pharmacy and indicated that he investigated this matter. Ms. Cramer asked Mr. Depczynski to review the exhibits that were admitted into evidence. Mr. Depczynski testified that he could find no evidence of the corrected Lexapro prescription that was dispensed on July 31st, 2008 – only the original one dated July 11th, 2008. Mr. Depczynski gave details of the he had taken during the investigation to check Scolari's computer system.

Ms. Pagni and Ms. Leonard cross examined Mr. Depczynski and questioned his qualifications since he was not a pharmacist. Ms. Cramer asked for redirect and asked Mr. Depczynski for clarification on portions of his testimony. The Board also questioned Mr. Depczynski.

Ms. Pagni requested that the Board dismiss the Second Cause of Action against Ms. Zak because Ms. Zak used her professional judgment to purposely use the July 11th original fill date on the label of the corrected Lexapro prescription that was actually refilled on July 31st.

Ms. Cramer objected and asked the Board to uphold the Second Cause of Action as she had provided sufficient facts to prove cause.

Board Action:

Motion: Leo Basch moved to dismiss the Second Cause of Action.

Second: Kam Gandhi

Action: Passed Unanimously

Ms. Pagni called Ms. Zak to testify. Ms. Zak testified regarding her pharmacy practice and described her usual procedures when she fills a prescription. Ms. Zak readily admitted that she used the original fill date on the corrected prescription for Ms. Stoll because of the insurance issues that would arise if she used the July 31st date. Ms.

Leonard questioned Ms. Zak about Scolari's policies and procedures. Ms. Cramer cross examined and the Board questioned Ms. Zak.

Ms. Leonard called Dani Dooley to testify. Ms. Dooley gave specifics regarding the changes Scolari's has made to their pharmacy computer system (PDX) since this incident to allow accurate prescription information to be maintained. Ms. Cramer cross examined and the Board questioned Ms. Dooley.

Carolyn Cramer made closing remarks and recommendations. For the First and Third Causes of Action she recommended a fine of \$1,000.00 each.

Ms. Pagni made closing remarks and advised the Board that Ms. Zak did not act unprofessionally even though she did admit that the misfill did occur.

Ms. Leonard gave closing remarks and cited Scolari's policies and procedures. She reminded the Board that Scolari's has already made changes to their computer system to ensure that they are compliant with Nevada law. Ms. Leonard also noted that Scolari's #19 has had positive inspections by Board staff.

Because of remarks by Ms. Pagni and Ms. Leonard, Ms. Cramer reminded the Board that it was never OK to give a patient the wrong medication, let alone make accusations against the patient.

The Board had difficulty understanding why Scolari's would not have policies and procedures on final verification of a prescription and they indicated that they were not satisfied with Scolari's training practices.

Board Action:

Motion: Chad Luebke moved to find Ms. Zak guilty of the First Cause of Action with regard to the misfill.

Second: Leo Basch

Action: Passed Unanimously

Motion: Chad Luebke moved in the penalty phase for the First Cause of Action to fine Ms. Zak \$1,000.00 plus fees and costs and that she do four hours of CE on error prevention.

Amend: Leo Basch asked to amend the motion for Ms. Zak to pay half of the fees and costs in this matter. Mr. Luebke accepted the amendment.

Second: Leo Basch

Action: Passed Unanimously

Motion: Chad Luebke moved to find Scolari's #19 guilty of the Third Cause of Action in owning and operating the pharmacy in which the misfill occurred.

Second: Keith Macdonald

Amend: Leo Basch asked to amend the motion for to exclude (h) in the charges. Mr. Luebke and Mr. Macdonald accepted the amendment.

Action: Passed Unanimously

Motion: Chad Luebke moved to fine Scolari's #19 \$1,000.00 and pay half the fees and costs in this matter and ensure that Scolari's look at their policies and procedures regarding the final verification process.

Second: Kam Gandhi

Action: Passed Unanimously

- | | | |
|----|------------------------|-----------------|
| C. | Carol Cigliano, R.Ph | (08-024A-RPH-N) |
| D. | Jose Rodriguez, R.Ph | (08-024B-RPH-N) |
| E. | Professional Pharmacy | (08-024-PH-N) |
| F. | Cathi Ketterling, R.Ph | (07-068A-RPH-N) |
| G. | Jose Rodriguez, R.Ph | (07-068B-RPH-N) |
| H. | Professional Pharmacy | (07-068-PH-N) |

NOTE: Don Fey disclosed that he had previously worked with Ms. Cigliano.

Mike Dyer was present to represent Carol Cigliano, Jose Rodriguez, Cathi Ketterling, and Professional Pharmacy.

Carolyn Cramer advised the Board that she and Mr. Dyer had agreed to stipulate, verbally, in both cases. The first case was a misfill. Patient had a new prescription for Tricor 600 mg. tablets and it was filled with Trileptal instead. In the second case the patient requested refills for two medications – one for atenolol 50 mg. tablets and the other for spironolactone 25 mg. tablets. The pharmacy filled both containers with atenolol and the patient ingested twice the dosage prescribed and experienced adverse effects. There were record keeping issues in each case.

Mr. Dyer and Ms. Cramer have agreed to the following recommendation: Professional Pharmacy will be on probation for one year beginning today. Professional Pharmacy, Ms. Ketterling and Mr. Rodriguez will pay fines of \$100.00 each for each Cause of Action plus \$1,000.00 in fees and costs. Ms. Ketterling and Mr. Rodriguez will participate in the Your Success Rx program at their own expense. If Ms. Johnson of Your Success Rx deems it appropriate, and Ms. Ketterling and Mr. Rodriguez have successfully completed the program, she may recommend lifting the probation prior to one year. Ms. Cigliano was only at the pharmacy as a relief pharmacist and is not part of the stipulated agreement.

Carol Cigliano, Cathi Ketterling and Jose Rodriguez were sworn by President Fey prior to answering questions or offering testimony.

Ms. Cigliano explained that she is a 50 Year pharmacist and has never had discipline prior to this incident. She indicated that she thought a technician pulled the wrong drug and she filled the prescription from the label, not the hard copy prescription. Ms. Cigliano stated that she has learned from this experience and additionally she has put counseling procedures in her professional practice.

Mr. Rodriguez stated that he has corrected his pharmacy practice because of this error. He explained that he had only been at Professional Pharmacy for one week when this incident happened. Mr. Rodriguez indicated that the pharmacy now has a new machine that helps with his practice and they have also implemented a three point checking system.

Ms. Ketterling is the owner of Professional Pharmacy and indicated that she took these instances very seriously. She explained that she found a new counting machine that checks bar codes before the count and it seems to have improved the pharmacy's efficiency. Ms. Ketterling testified that she has studied her pharmacy and has implemented policies and procedures to additionally help the overall function of the pharmacy. One procedure she has implemented is show and tell counseling. She also indicated that she has taken continuing education.

Both Ms. Cramer and Mr. Dyer reiterated that Ms. Ketterling wants nothing more than to operate a quality pharmacy in Ely and she is open and willing to participate in the Your Success Rx program.

Board Action:

Motion: Kam Gandhi moved to accept the verbal stipulated agreement.

Second: Keith Macdonald

Action: Passed Unanimously

I. Burke's Drug (08-026-PH-N)

Ted MacKie, part owner of Burke's Drug, and Paul Geisinger, staff pharmacist for Burke's Drug, appeared and were sworn by President Fey prior to answering questions or offering testimony.

Joe Depczynski, Board inspector/investigator, and Irene Babcock, complainant, appeared and were sworn by President Fey prior to answering questions or offering testimony.

Carolyn Cramer gave opening statements and described the circumstances of this matter. Dorothy Babcock, Irene Babcock's mother, received a laxative rather than the prescribed cholestyramine powder for her chronic diarrhea.

Ms. Cramer called Irene Babcock to testify. Ms. Babcock testified that her mother suffered from numerous ailments including a stroke besides her chronic diarrhea. Dorothy Babcock lived at Park Place Assisted Living and Ms. Babcock stated that she visited her mother regularly. In April 2008, Ms. Babcock was informed by Park Place staff that her mother was sleeping more than usual and she was experiencing explosive diarrhea. Ms. Babcock went to visit her mother to check on her condition. While she was visiting an attendant came to give Dorothy Babcock her medication. Ms. Babcock is a nurse and was looking at her mother's medications. It was then discovered that Dorothy Babcock was being given polyethylene glycol, a laxative, rather than the cholestyramine that she had been prescribed. Ms. Babcock testified that she called Burke's Drug immediately and demanded that they bring the correct medication immediately. Ms. Babcock waited until 8:00 p.m. that evening and the corrected prescription had not yet been delivered. Ms. Babcock stated that the correct medication was not delivered to her mother until a day and a half later. Ms. Babcock indicated that this is not the first error Burke's Drug had made. The directions for administering the medication was incorrect a few times and was so thick when prepared as directed that her mother could not swallow it.

Ms. Cramer introduced eight Exhibits.

Exhibit 1 – Complaint

Exhibit 2 – Copy of the front of the misfilled prescription bottle

Exhibit 3 – Copy of the back of the misfilled prescription bottle

Exhibit 4 – Refill log

Exhibit 5 – Transaction update

Exhibit 6 – Patient record

Exhibit 7 – Refill authorization

Exhibit 8 – Investigation form

The exhibits were stipulated and accepted into the record.

Ms. Cramer reviewed Exhibits with Ms. Babcock.

Ms. Cramer called Joe Depczynski to testify. Mr. Depczynski described his duties for the Board and his investigation procedures in this matter. During his investigation he reviewed the refill log. Mr. Depczynski was told that the only person that circles the amount being dispensed is Paul Geisinger. Mr. Depczynski questioned Mr. Geisinger regarding this particular fill and Mr. Geisinger told him that he always circles the amount being dispensed but he also always initials and there were no initials on the log. Mr. Depczynski testified that he asked Mr. MacKie to show him the steps in the computer taken to refill this prescription however Mr. MacKie was unable to do that. While visiting Burke's Drug during his investigation, Mr. Depczynski observed that all of the computers in the pharmacy were logged on and anyone used the computers without the other logging out. Whatever was closest. Ms. Cramer asked Mr. Depczynski to describe some of the Exhibits. Mr. Depczynski indicated that there was no record of time sheets at the pharmacy during the investigation, however after Mr. MacKie received his Notice

of Intended Action and Accusation he brought a list of employees, by first name only, to the Board office.

Respondent's Exhibit A – time sheets.

Mr. Depczynski testified that there was no way to verify anything from the timesheets to indicate who had filled Dorothy Babcock's refill prescription.

Respondent's Exhibit B – refill log sheet.

Both Respondent's Exhibits were accepted into the record.

The Board questioned Mr. MacKie about the procedures at Burke's Drug – both at the time of the error and now. Mr. MacKie indicated that because of this incident he has introduced policies and procedures in the pharmacy. He also testified that he now documents work schedules and the filling process. When asked if there were any policies and procedures prior to this issue Mr. MacKie indicated that there had not been for the past two and a half years.

Carolyn Cramer gave closing statements and recommendations. Place Burke's Drug on probation for one year, have them participate in the Your Success Rx program and bear the expense for the program, pay a fine of \$1,000.00 for each Cause of Action to be paid within 90 days of the effective date of the Order plus the Board's fees and costs.

Board Action:

Motion: Leo Basch moved to dismiss the Second Cause of Action.

Second: Mary Lau

Action: Passed Unanimously

Motion: Chad Luebke moved to find Burke's Drug guilty of the First, Third, Fourth, Fifth and Sixth Causes of Action.

Second: Kam Gandhi

Action: Passed Unanimously

Motion: Chad Luebke moved to accept Board staff's recommendation and place Burke's Drug on probation for one year, have them participate in the Your Success Rx program and bear the expense for the program, pay a fine of \$1,000.00 for each Cause of Action to be paid within 90 days of the effective date of the Order plus the Board's fees and costs.

Second: Kam Gandhi

Discussion: Mary Lau indicated that she thought the fine was excessive since they were going to have to pay for their participation in the Your Success Rx program. After discussion, Mr. Luebke amended his motion.

Amend: Chad Luebke moved to amend his motion to reduce the fine to \$500.00 per Cause of Action and add that Burke's Drug be inspected quarterly during their probationary period.

Action: Passed Unanimously

J. Cindy J. Vert. R.Ph

(09-009-RPH-N)

NOTE: David Chan recused from participation in this matter as Ms. Vert worked for Scolari's as does Mr. Chan.

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

Carolyn Cramer questioned Mr. Espadero regarding the basic requirements of the PRN-PRN program. Mr. Espadero went over the highlights of the program and noted that one of the requirements is for a participant in the program to notify him of any medications they may be taking. Mr. Espadero advised the Board that Ms. Vert had been in the PRN-PRN program since November of 2007 and had been doing well – all UA's timely submitted with negative results, participation in meetings, and other requirements. On January 29, 2009 Mr. Espadero advised Board staff by letter that Ms. Vert had tested positive for opiates on January 28, 2009. Ms. Vert was notified of the test results and she claimed that the only medication she was taking was Tramadol. Mr. Espadero noted that Tramadol does not metabolize to opiates. At that time, Mr. Espadero advised Ms. Vert that she had violated her contract a second time by not informing him that she was taking Tramadol. Mr. Espadero did note that all of Ms. Vert's UA's have been negative since this incident. Mr. Espadero stated that he had a problem with Ms. Vert taking Tramadol since it is an addictive drug. PRN-PRN advises that no drugs or alcohol be kept in the home unless they are approved by PRN-PRN.

Exhibit A – Copy of hydrocodone prescription dated October 12, 2007.

Ms. Vert testified that she takes a lot of vitamins in the morning. She indicated that her life was hectic and busy and she is always rushing around trying to accomplish many things in the morning. Ms. Vert stated that she went through her medication drawer after she tested positive for opiates and found a bottle of hydrocodone that she was prescribed after a surgery she had in 2007. She indicated that while she was rushing around getting all her vitamins together to take, she must have accidentally opened the hydrocodone bottle and included one of the tablets to be taken with her vitamins.

The Board questioned that a pharmacist would not know the difference between a hydrocodone tablet and a vitamin and was concerned that this lack of knowledge could shift to her pharmacy practice. Ms. Vert testified that since this issue she is managing her life by not being so busy from doing too much. The Board asked if she had thought

about a pill minder and she indicated that she could not find one large enough for all the vitamins she takes.

Carolyn Cramer gave closing statement and recommended that the Board revoke Ms. Vert's license because of her drug history and failure to comply with her PRN-PRN contract.

Board Action:

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

Second: Chad Luebke

Action: Passed Unanimously

Motion: Keith Macdonald moved to revoke Ms. Vert's pharmacist license.

Second: Chad Luebke

Action: Passed With One Negative Vote

K. Kelly L. Gomes, PT (08-075-PT-N)

Carolyn Cramer noted that Ms. Gomes was not present and had not picked up any of the registered mail sent to her. Board staff received a notice of Ms. Gomes termination of employment from Long's for drug diversion. Long's video captured Ms. Gomes taking stock bottles of hydrocodone and concealing it on her person. In a written statement Ms. Gomes admitted that she had diverted approximately 1,250 dosage units of hydrocodone/APAP 10/325, 150 dosage units of Alprazolam 2 mg. tables, and 80 dosage units of Norco 10/325 tablets. Ms. Cramer recommended revocation of Ms. Gomes pharmaceutical technician registration.

Board Action:

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

Second: Kam Gandhi

Action: Passed Unanimously

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

Second: David Chan

Action: Passed Unanimously

5. Request for Reinstatement of Pharmacy Technician License – Appearance:

Ms. Cramer reviewed the circumstances for the Board. Mr. Terry's pharmaceutical technician registration was revoked in 2007 because Board staff was notified that he tested positive for marijuana on his new hire drug screening.

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

Mr. Terry testified that he had gone to a PRN-PRN meeting once, but it was a long meeting and he had to leave before the meeting was over and he never had the chance to speak with anyone regarding the program. Mr. Espadero indicated that he vaguely recalled Mr. Terry but Mr. Terry had not joined PRN-PRN. Mr. Terry stated that Board staff had recommended that he be evaluated before requesting reinstatement but his Board Order did not require him to do so. He had family problems that took precedence over requesting reinstatement before now, but he was in a better place now and was ready to work on getting his pharmaceutical technician registration back.

Board Action:

Motion: Keith Macdonald moved for Mr. Terry to be evaluated by PRN-PRN before requesting reinstatement again.

Second: Mary Lau

Action: Passed Unanimously

6. Appearance Requests:

A. Controlled Substance Task Force – Joanee Quirk

Joanee Quirk reported that she had been to Atlanta to meet with McKesson. They are capable of retrieving only dispensed prescription information that is submitted by pharmacies. That would take care of the duplicate data problem they have using their current vendor. Ms. Quirk indicated that McKesson is willing to sell source code, collect data and provide a help desk from 8:00 a.m. to 9:00 p.m. Pacific time. Our cost, if we went with McKesson would be under \$50,000.00 per year for a hosted system. Other vendors are at least \$150,000.00 and up. Ms. Quirk asked the Board for their support.

Board Action:

Motion: Keith Macdonald moved to go forward with contracts with McKesson.

Second: Leo Basch

Action: Passed Unanimously

B. Nevada State Board of Veterinary Examiners – Debbie Machen

Debbie Machen, Executive Director of the Board of Veterinary Examiners, and Dick Simmons, Vice President of the Board of Veterinary Examiners, appeared to obtain clarification regarding controlled substance registrations and DEA requirements for veterinarians.

Carolyn Cramer explained that Ms. Machen was helping her update an out of date Controlled Substance Fact Sheet for Veterinarians and she is appearing to get clarification on our laws.

After discussion it was determined that all veterinarians do not need to have controlled substance registrations and DEA licenses unless they plan to write prescriptions that would be given to a client to take to a pharmacy to be filled. If a veterinarian without a CS registration and DEA license writes a prescription for a controlled substance and is working under another veterinarian with a CS registration and a DEA license that is sufficient. If the veterinarian is working alone then they would need to be registered with the DEA and the Board of Pharmacy to prescribe controlled substances.

C. Nevada Health Telepharmacy – Carl Heard

Mr. Heard did not appear, however Stephanie Ingrey and Liliam Shell appeared and showed a video of how their telepharmacy practice would work if this concept is approved by the Board for rural sites in Nevada. They described the real-time video conferencing concept and noted that the sending site is defined as the remote site where the telemedicine consult is initiated and the receiving site is the clinical site of the provider or consultant. They went into detail regarding the procedures for dispensing, how the medication would get to the remote site, the show and tell process from the dispensing site, the labeling process and logging procedure, and other factors pertinent to their practice.

Board Action:

Motion: Keith Macdonald moved to write regulations to allow these services to be provided to rural Nevada patients of non-profit agencies.

Second: No Second

Action: Motion Failed

After further discussion, Mr. Macdonald made a second motion.

Motion: Keith Macdonald moved to write regulations to allow telepharmacy in rural Nevada to patients of non-profit agencies.

Second: Chad Luebke

Action: Passed Unanimously

7. Your Success Rx – Appearance:

Dave Carroll

Katie Johnson and Dave Carroll appeared and Ms. Johnson gave her report regarding her experience with Mr. Carroll during the Your Success Rx program.

Mr. Carroll stated that he was working in a new area of pharmacy. He has removed himself from the retail environment and has taken a position at Willow Springs as their director of pharmacy. Mr. Carroll indicated that the Your Success Rx program was helpful in directing him into that decision. He noted that he found the program to be a good experience.

8. Your Success Rx – Non-Appearance:

Summerlin Hospital

Since Ms. Johnson was present she reported to the Board that she returned to Summerlin Hospital after one year to see how they were progressing in their goals to improve the pharmacy workflow and procedures. She stated that overall they had made improvement but she noted that there was still room for improvement. Ms. Johnson indicated that with the addition of key personnel they are making headway.

9. Discussion and Determination:

A. Canadian Intern Hours

Larry Pinson advised that we recognize graduates from accredited schools of pharmacy in Canada, however do not recognize the intern hours they acquire during their training as we do with US schools. Nevada requires 1500 hours of internship and asked the Board if we should consider accepting, perhaps 1000 Canadian intern hours and require them to complete 500 hours in the US.

After discussion it was determined to leave the intern hours as required now and review on a case by case basis if a request is made by a Canadian pharmacy school graduate.

B. Matrix Guideline for Disciplinary Actions

As directed at the last Board meeting, staff has made changes to the matrix as discussed. Mr. Pinson asked if the new matrix presented was acceptable for use from now on.

Keith Macdonald noted that in a case against Wal-Mart some time ago they were fined twice as much as Burke's Drug was fined the previous day. In the circumstance of the Wal-Mart issue there was no ingestion and in yesterday's case there was ingestion. He also noted that Burke's Drug was not even fined for counseling violations. Mr. Macdonald wants each case to be treated equally.

After discussion regarding the changes made to the matrix, Board staff was directed to change the second action on cases where ingestion took place with the potential for harm or adverse reactions. The Board would like those cases to be brought to hearing.

C. Outside Entity Compounding for Hospitals and Rural Health Facilities

Larry Pinson reminded the Board that a group led by Roger Morris had appeared before the Board and requested changes to NAC 639.757 to allow an outside entity to compound for hospitals and rural health facilities.

Bill Jones, representing CAPS that had previously made a presentation to the Board, appeared and indicated that he would be happy to answer any questions the Board may have regarding this practice. The concern is the fine line as to whether the compounded products are patient specific or if they are manufacturing. Mr. Jones explained that they work closely with the FDA and they have determined that CAPS should work with individual Boards to define what each states requirements are. Mr. Jones stated that their primary business is patient specific, which is what Nevada requires, however they also have the ability to ship batch compounded products to a facility for administration to any patient. He noted that they are registered with the FDA as a manufacturer.

David Vasenden appeared and noted that their new compounding facility has to do testing on certain products it sends to hospitals and they have to compound in a batch in advance. He noted that the end result is that when it goes to the hospital it is patient specific, but he wanted to be sure they were working within Nevada's laws. The Board advised Mr. Vasenden that their pharmacy was operating appropriately.

The Board determined that there would be no changes to NAC 639.757 and asked Mr. Jones to provide a copy of the FDA's letter regarding CAPS manufacturing status to Board staff.

D. Review of Veterinarian Controlled Substance Registration Requirements

See Item 6B.

E. Counseling Issues – NAC 639.707

The counseling regulation changes that were presented at Workshop several months ago were submitted to LCB so they could go forward to Public Hearing. Board staff was advised by LCB that the language as written directly conflicts with statute (NRS 639.266(a)(1)). Mr. Pinson acknowledged that the purpose of the change was to allow the pharmacist to use his/her professional judgment as to how many of the required eleven items need to be addressed with the patient at counseling. Since the patient has the option to decline counseling it would seem to be redundant.

After discussion, the Board directed staff to bring back to Workshop with the change from "must" include, to "may" include, and then keep the list in place.

10. Continuing Education Committee Report

Larry Pinson advised the Board that the Continuing Education Committee met on January 29th and approved two programs that had been submitted. One was “Self-Care for Health Care Professionals: A Conference for Dentists, Physicians and Pharmacists” and the other was “Board of Pharmacy Compounding Regulations – A Law CE”. Mr. Pinson asked for approval from the Board.

Board Action:

Motion: Keith Macdonald moved to approve the two CE programs presented.

Second: Chad Luebke

Action: Passed Unanimously

11. General Counsel Report

Carolyn Cramer brought a Supreme Court case to the Board’s attention. It remanded pharmacists/pharmacies to take more responsibility in drug seeking behavior to prevent drug seekers from getting drugs. The case involved a patient that had an automobile accident and killed someone. The patient was getting prescriptions from a doctor she was having a relationship with but the court concluded that the pharmacist should have known that she was getting an excessive amount of drugs. By not providing the patient with the amount of drugs she was receiving could have prevented the accident and ultimately the death of an innocent person.

12. Executive Secretary Report:

- A. Financial Report
- B. Investment Report

Mr. Pinson gave the financial and investment reports to the Board’s satisfaction

C. Temporary Licenses

Four temporary licenses were issued since the last Board meeting.

D. Staff Activities

1. Meetings

a. MDEG Committee (2/19)

The committee discussed the requirements necessary to be an Administrator for an MDEG facility. Rich Pozeski will provide staff with questions that would be appropriate for questioning applicants to ensure they are knowledgeable.

b. CE Committee (2/11) – see agenda item

Already reported.

c. Fulfillment Committee (2/11)

The committee determined that they needed to do further work and another meeting will be scheduled.

d. Speaking engagements

Mr. Pinson, Mr. Depczynski and Ms. Cramer went to the VA and did a law CE.

e. Legislative update

1. Meeting with Senator Weiner

Mr. Pinson and Ms. Cramer met with Senator Weiner to discuss recycling of chemo drugs. They also met with Assemblyman Denis regarding pharmacies obtaining Task Force information. One way would be for pharmacies to be hooked up to the internet to get the information. Senator Washington has asked to meet with Board staff. Assemblyman Carpenter called and expressed concern that Wells did not have a pharmacy and wondered about telepharmacy services to remote areas of Nevada.

2. Hillerby Report

Included in the Board book.

E. Reports to Board

1. Your Success Rx Report on Summerlin Hospital

Ms. Johnson reported after Mr. Carroll's Your Success Rx report.

2. Letter of Admonition

Follow-up to previous report, Kenneth To did not move again. He just did not go to the post office and sign for his mail. Ms. Cramer advised Mr. To that it was in his best interest to pick up the mail sent to him by the Board.

3. Business Applications

Mr. Pinson reported that businesses cannot get a business license until they are licensed with the Board of Pharmacy, so they would not have license numbers to put on our applications.

4. PSE Concerns

Mr. Pinson advised the Board that there are still problems keeping pseudoephedrine out of the hands of people purchasing products to make methamphetamine. It has been reported that groups of six people go in at a time and purchase the legal amount and then go to the next pharmacy and do the same thing until they have as much as they want. Logs do not work.

5. December Questions

Mr. Pinson answered the remainder of Mary Lau's questions that she presented in December.

F. Board Related News

1. National News

a. PMP budget cuts

b. Tech certification in WA

G. Activities Report

WORKSHOP

13. Proposed Regulation Amendment Workshop

1. **Amendment of Nevada Administrative Code 639.254 Initial and biennial in-service training pharmaceutical technicians working in or pharmacy; substitution of continuing education for in-services training.** Changes to the pharmaceutical technician regulations regarding in-service training.

This regulation amendment would require one hour of Nevada law CE for pharmaceutical technicians. The records would be maintained at the pharmacy along with their in-service training records and would be reviewed during the course of the annual inspection of the pharmacy.

Katie Craven appeared and suggested a notice be sent to registered technicians and all pharmacies so they are aware of the new changes.

Board Action:

Motion: Mary Lau moved to continue with the process and prepare for Public Hearing.

Second: Keith Macdonald

Action: Passed Unanimously

2. **Amendment of Nevada Administrative Code 639.6934 “Life-sustaining equipment” defined.** Changes to the definition of life sustaining equipment.

This regulation amendment was discussed at a previous Board meeting where a discussion of life sustaining equipment ensued. Rich Pozeski explained that oxygen concentrators are not life sustaining equipment and it was determined that the words “oxygen concentrator” be removed from the definition of life sustaining equipment.

Jay McKnight appeared and gave additional information to the Board and advised that he supported the removal of the words “oxygen concentrator” from the definition of life sustaining equipment.

Board Action:

Motion: Mary Lau moved to continue with the process and prepare for Public Hearing.

Second: David Chan

Action: Passed Unanimously

14. Next Board Meeting:

April 15-16, 2009 – Las Vegas

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

There was no public comment.