

## MINUTES

June 1, 2016

### BOARD MEETING

Hyatt Place  
1790 E. Plumb Lane  
Reno, Nevada

#### Board Members Present:

Leo Basch                      Cheryl Blomstrom      Kevin Desmond      Tallie Pederson  
Jason Penrod                  Kirk Wentworth      Darla Zarley

#### Board Staff Present:

Larry Pinson                  Dave Wuest              Paul Edwards          Shirley Hunting  
Joe Depczynski                Brett Kandt              Kristopher Mangosing

#### 1.      Public Comments

There was no public comment.

#### 2.      Approval of April 13-14, 2016, Minutes

Mr. Pinson stated that on pg. 10 “pending a positive drug test,” has been corrected to “pending a positive outcome on his drug test.”

#### Board Action:

Motion:      Cheryl Blomstrom moved to approve the Minutes with the correction as noted.

Second:      Tallie Pederson

Action:      Passed Unanimously

#### 3.      Applications for Out-of-State Pharmacy – Non Appearance for Possible Action:

- A.      Allcare Specialty Pharmacy, LLC – Little Rock, AR
- B.      Baytree Pharmacy, LLC – Irvine, CA

- C. BeneVi Health LLC – Cary, NC
- D. Cottrill’s Pharmacy – Arcade, NY
- E. Medicine Man Pharmacy – Cerritos, CA
- F. Medzdirect Inc. – Miami, FL
- G. MH Express Pharmacy – Monrovia, CA
- H. Mylan Health Management – Greensboro, NC
- I. Optime Care, Inc. – Earth City, MO
- J. Pinnacle Pharmacy – Scottsdale, AZ

Applications for Out-of-State Compounding Pharmacy – Non Appearance for Possible Action:

- K. Kremco Pharmacy – Houston TX
- L. LLC Patient Services, Inc. – Tempe, AZ
- M. Medtain Pharmacy – Chicago, IL
- N. MT Olympus Compounding, LLC – Draper, UT
- O. Pagosa Specialty Pharmacy – Pagosa Springs, CO
- P. SafeDose – Indianapolis, IN
- Q. SP2, L.L.C. – Jacksonville, FL
- R. Studio Pharmacy – Studio City, CA
- S. Thies Lombard Pharmacy Inc. – Lombard, IL
- T. University of Colorado Hospital Atrium Pharmacy – Aurora, CA

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

- U. AngioDynamics, Inc. – Queensbury, NY
- V. Becton, Dickinson and Company – Canaan, CT
- W. Cangene biopharma LLC – Baltimore, MD
- X. Dynavax Technologies Corporation – Berkeley, CA
- Y. Eli Lilly and Company – Indianapolis, IN
- Z. Epic Fulfillment, Inc. – Broomfield, CO
- AA. Life-Assist, Inc. – Rancho Cordova, CA
- BB. Merit Medical Systems, Inc. – Malvern, PA
- CC. Miller Veterinary Supply Co., Inc. – Fort Worth, TX
- DD. Owens & Minor Distribution, Inc. – Olive Branch, MS
- EE. Purdue GMP Center LLC – West Lafayette, IN
- FF. Qualgen, LLC – Edmond, OK
- GG. Tolmar, Inc. – Fort Collins, CO
- HH. VistaPharm, Inc. – Largo, FL
- II. Yiling Pharmaceutical, Inc. – West Chester, OH

Applications for Out-of-State Medical, Devices, Equipment and Gases – Non Appearance for Possible Action:

- JJ. A & E Home Supply, Inc. – Port St. Lucie, FL
- KK. Airgas USA, LLC – Burley, ID
- LL. Allcare Medical Equipment, Inc. – Bloomfield, NJ

- MM. DJO, LLC – Vista, CA
- NN. Excelsior Medical, LLC – Neptune, NJ
- OO. Medline Industries, Inc. – Tracy, CA
- PP. National Biological Corporation – Beachwood, OH
- QQ. National Durable Medical – Skiatook, OK
- RR. Praxair, Inc. #579 – Glendale, AZ
- SS. Praxair, Inc. #935 – Pittsburg, CA
- TT. Specialty Medical Equipment, Inc. – Shelby Township, MI
- UU. The Home DME Company – Southfield, MI
- VV. The Richmond Light Co. – North Chesterfield, VA
- WW. WI Medical – Largo, FL

Applications for Nevada Pharmacy – Non Appearance for Possible Action:

- XX. Advanced Care Rx Pharmacy 2 LLC – Las Vegas
- YY. First Class Rx Pharmacy #2 – Las Vegas
- ZZ. Henderson Medical – Henderson
- AAA. Nevada Infusion – Reno
- BBB. Refill Pharmacy – Las Vegas
- CCC. Southern Nevada Health District Pharmacy – Las Vega

Mr. Pinson explained that Board Staff has questions regarding Nevada Infusion’s (Item AAA.) business model. Board Staff requested this matter be tabled until the next meeting to have a pharmacy representative appear to address these questions.

Mr. Desmond stated that Medicine Man Pharmacy (Item E) did not list the Toll Free Number as required by law.

Board Action:

Motion: Jason Penrod moved to approve the Consent Agenda with the exception of Items E. and AAA.

Second: Cheryl Blomstrom

Action: Passed Unanimously

Mr. Pinson stated that Board Staff has contacted Medicine Man Pharmacy. Medicine Man Pharmacy was waiting for the Pharmacy License approval before obtaining the Toll Free Number, but understood that it was mandatory by law.

Board Action:

Motion: Jason Penrod moved to approve Medicine Man Pharmacy’s (Item E.) Out-of-State Pharmacy License pending verification of the Toll Free Number by Board Staff.

Second: Kevin Desmond

Action: Passed Unanimously

4. Discipline

- A. Shahin Banayan, R.Ph (16-017-RPH-N)
- B. Safeway Pharmacy #1537 (16-017-PH-N)

Mr. Edwards stated that Mr. Banayan was not present. He explained that during the April 2016 Board meeting Mr. Banayan appeared before the Board to receive approval to renew his pharmacist license. Mr. Banayan was cited and fined \$5,000.00 for working approximately sixty-two days without an active pharmacist license. Mr. Banayan contacted Board Staff to request permission not to appear at the Board meeting due to his starting of a new job.

Anthony Provenzano, Vice President of Pharmacy Compliance for Albertson's, appeared and was sworn by President Basch prior to answering questions or offering testimony.

Mr. Edwards presented a Stipulation and Order regarding Mr. Banayan and Safeway Pharmacy for the Board's consideration. The Respondents agreed that evidence exists to establish a factual basis for the violations alleged in the Accusation. Mr. Banayan worked as the pharmacist in charge of Safeway Pharmacy for approximately sixty-two days without a valid pharmacist license.

Mr. Banayan shall complete one additional CE unit on the topic of managing pharmacist responsibilities. Safeway Pharmacy shall pay an administrative fee of \$495.00, pay a fine of \$2,500.00 for the Second and Third Cause of Action for a total fine of \$5,000.00. Safeway Pharmacy shall also provide to Board Staff a written explanation of the factors that allowed the licensing error to occur and the changes that Safeway will make to prevent similar licensing errors from occurring in the future.

Mr. Provenzano described to the Board the changes Safeway has made to the Policies and Procedures to prevent employees from working unlicensed in the future.

Board Action:

Motion: Kirk Wentworth moved to accept the Stipulation and Order regarding Shahin Banayan as presented.

Second: Jason Penrod

Action: Passed unanimously

Board Action:

Motion: Jason Penrod moved to accept the Stipulation and Order regarding Safeway Pharmacy as presented.

Second: Kirk Wentworth

Action: Passed unanimously

C. Darin Flynn, MD

(16-028-CS-N)

Darin Flynn appeared and was sworn by President Basch prior to answering questions or offering testimony.

Lynn Beggs was present as counsel representing Dr. Flynn.

Kevin Desmond disclosed that he knows Dr. Flynn's brother, who is a pharmacist at Carson Tahoe Regional Medical Center (Carson Tahoe), but stated that he could participate fairly and without bias.

Mr. Edwards explained that in February 2016, Board Staff received reports stating that Dr. Flynn had accessed Carson Tahoe's Pyxis machines on multiple occasions, while scheduled to be on vacation, and removed approximately 190 mls of Fentanyl. Dr. Flynn later admitted that the Fentanyl was for personal use. Based on this set of facts, Mr. Edwards explained that Board Staff has brought four Causes of Action for diversion of a controlled substance, possession of a controlled substance, unlawful use of a controlled substance and unprofessional conduct.

Ms. Beggs requested the Board hold a closed session to discuss Dr. Flynn's treatment programs and the specific details in the Accusation.

Mr. Edwards had no objections to going into closed session.

Mr. Kandt reviewed NRS 241.030 regarding a public body holding a closed session.

Board Action:

Motion: Kirk Wentworth moved to hold a closed session to discuss Dr. Flynn's treatment and the specifics of this case while protecting Dr. Flynn's privacy. No action shall be taken during the closed session.

Second: Jason Penrod

Action: Passed unanimously

The Board entered closed session.

Board Action:

Motion: Jason Penrod moved to go back into open session.

Second: Cheryl Blomstrom

Action: Passed unanimously

Mr. Edwards presented a Stipulation and Order regarding Dr. Flynn for the Board's consideration. The Respondent agrees that evidence exists to establish a factual basis for the violations alleged in the Accusation.

Dr. Flynn shall comply with the terms and conditions of his agreement with Promises Professional Treatment Program, LifePath Recovery and the Board of Medical Examiners monitoring agreement. Dr. Flynn shall provide copies of all reports, test results and evaluations to the Board and pay an administrative fee of \$1,500.00.

Board Action:

Motion: Cheryl Blomstrom moved to approve the Stipulation and Agreement as presented.

Second: Jason Penrod

Action: Passed unanimously

5. Applications for Out-of-State Compounding Pharmacy – Appearance

A. Apothecary by Design – Portland, ME

Francis Jamison, pharmacy manager, appeared and was sworn by President Basch prior to answering questions or offering testimony.

Mr. Jamison presented a Letter of Authorization allowing him to speak on behalf of the pharmacy.

Mr. Jamison explained that Apothecary by Design is a sterile compounding pharmacy that specializes in compounding infertility treatment medications and shipping them directly to patients.

Mr. Jamison answered questions to the Board's satisfaction regarding the pharmacy's sterile product shipping procedure, past inspections and the training of compounding staff.

Board Action:

Motion: Kirk Wentworth moved to approve Apothecary by Design's Application for Out-of-State Pharmacy License pending a positive review by Board Staff of the

pharmacy's policies & procedures regarding sterile compounding and the clean room specifications.

Second: Kevin Desmond

Action: Passed Unanimously

B. PharmaScript Inc. – Chicago, IL

Michael Green, pharmacy manager, appeared and was sworn by President Basch prior to answering questions or offering testimony.

Mr. Green presented a Letter of Authorization allowing him to speak on behalf of the pharmacy.

Mr. Green stated that PharmaScript Inc. is a home infusion pharmacy that specializes in sterile-to-sterile compounding. Mr. Green explained that PharmaScript Inc. primarily produces cancer treatment medications and TPN products.

Mr. Green answered questions to the Board's satisfaction regarding shipping procedures, employee training, employee work history, pharmacy clean room specifications and past inspections.

The Board removed PharmaScript Inc.'s affidavit not to ship sterile products into Nevada from the record at Mr. Green's request.

Board Action:

Motion: Kevin Desmond moved to approve PharmaScript Inc.'s Application for Out-of-State Pharmacy License.

Second: Jason Penrod

Action: Passed Unanimously

C. Wedgewood Village Pharmacy, LLC – Swedesboro, NJ

This matter was tabled until the July 2016 Board meeting.

6. Request for Reinstatement of Suspended Pharmaceutical Technician License – Appearance

Jodi Hopkins

Jodi Hopkins and Colin Hodgen, Director of Renegade Counseling, appeared and were sworn by President Basch prior to answering questions or offering testimony.

Ms. Hopkins explained that in 2006 her pharmaceutical technician license was placed on probation for diverting cocaine from Don's Pharmacy, where she was employed at the time. Ms. Hopkins explained that she diverted the cocaine for personal use.

Mr. Pinson provided additional background on Ms. Hopkins' past case and clarified that Ms. Hopkins' license was placed on probation until PRN-PRN determined that she could safely resume serving the public at which time, Ms. Hopkins and a PRN-PRN representative would have to appear before the Board for reconsideration.

The Board questioned Ms. Hopkins regarding her treatment agreement with PRN-PRN.

Ms. Hopkins explained that she was initially compliant with her treatment agreement, but eventually left the program.

Mr. Edwards added that Larry Espadero, Director of PRN-PRN, submitted letters to Board Staff indicating that Ms. Hopkins was participating in the program in September 2007, but stated in another letter that she had dropped out of the program by November 2007.

The Board questioned Ms. Hopkins regarding her activities between November 2007 and the present date, as well as her recent re-enrollment in the PRN-PRN program.

Dave Wuest, Deputy Executive Secretary of the Board of Pharmacy, appeared and was sworn by President Basch prior to answering questions or offering testimony.

Mr. Wuest explained that he had spoken to Ms. Hopkins and suggested that re-entering her treatment agreement with PRN-PRN would be a good first step to getting her license back. Ms. Hopkins agreed that Mr. Wuest's suggestion was the reason she contacted PRN-PRN.

Mr. Hodgen explained that he felt it was important for Ms. Hopkins' recovery that she appear before the Board, but stated that if the Board were to approve her license, she would need to have strict supervision and comply with her treatment agreement.

The Board expressed concern that Ms. Hopkins' did not have a positive record in her treatment program and that she has not been employed as a pharmaceutical technician in several years.

The Board suggested Ms. Hopkins reappear in six months after she has established a positive history with her treatment program, completed CE units or training courses on pharmaceutical technician duties and have a pharmacy manager who is willing to hire her as a pharmaceutical technician.

7. Application for Pharmacist by Examination - Appearance

Van K. Pham

Van Pham appeared and was sworn by President Basch prior to answering questions or offering testimony.

Ms. Pham requested the Board's permission to take the NAPLEX exam again. She stated that her last NAPLEX score was disqualified because she accessed her cell phone during the break. Ms. Pham acknowledged that she violated the rules and apologized for her mistake.

Mr. Wuest stated that Board Staff contacted NABP and verified that Ms. Pham's last exam was disqualified. Mr. Wuest explained that Ms. Pham needed the Board's permission to retake the NAPLEX exam because she has unsuccessfully taken the exam on four other occasions.

The Board expressed concern that Ms. Pham was unable to pass the NAPLEX after multiple attempts.

Ms. Pham explained that in her past attempts she was unable to prepare for the exam due to family matters. Ms. Pham stated that she is committed to properly studying for the exam if the Board allows her permission to take the NAPLEX again.

Board Action:

Motion: Tallie Pederson moved to allow Van K. Pham to sit for the NAPLEX exam.

Second: Darla Zarley

Action: Passed Unanimously

8. Application for Pharmacy Technician in Training License – Appearance

Nicholaus A. Paquin

Nicholaus Paquin appeared and was sworn by President Basch prior to answering questions or offering testimony.

Ms. Pederson disclosed that she is employed by Walgreens. Mr. Paquin is applying for a pharmaceutical technician in training position at Walgreens, but Ms. Pederson states that she will be able to participate in this matter fairly and without bias.

Mr. Paquin explained that in 2013, he was arrested for driving under the influence of marijuana. Mr. Paquin stated that he completed DUI school and complied with all requirements of the Court Order.

Mr. Paquin answered questions to the Board's satisfaction regarding his employment and educational history.

Board Action:

Motion: Jason Penrod moved to approve Nicholaus A. Paquin's Application for Pharmacy Technician in Training License pending Mr. Paquin disclosing the

details of the DUI to the current Walgreen's pharmacy manager, receipt of a new Pharmacy Technician in Training Application signed by the current Walgreen's pharmacy manager, receipt of official court documentation showing the outcome of Mr. Paquin's DUI and a positive evaluation by PRN-PRN. Board Staff is authorized to review Mr. Paquin's documentation and report to the Board if there are any negative findings.

Second: Cheryl Blomstrom

Action: Passed Unanimously

9. Applications for Nevada Medical, Devices, Equipment and Gases – Appearance

A. Back in Step LLC – Las Vegas

Yee Lim, MDEG administrator, appeared and was sworn by President Basch prior to answering questions or offering testimony.

Ms. Lim stated that she is a certified pedorthist specializing in fitting shoes and orthotics.

Ms. Lim explained that Back in Step LLC. provides foot exams and balance tests for seniors and will fit them for diabetic footwear or orthotics if necessary for fall reduction.

Ms. Lim answered questions to the Board's satisfaction regarding her past work experience, educational history and Back in Steps' business model.

Board Action:

Motion: Jason Penrod moved to approve Back in Step LLC's Application for Nevada MDEG License.

Second: Darla Zarley

Action: Passed Unanimously

B. Ozomor Medical Supplies, Inc. – Las Vegas

Emmanuel Biabene, MDEG Administrator, appeared and was sworn by President Basch prior to answering questions or offering testimony.

Mr. Biabene explained that Ozomor Medical Supplies, Inc. provides oxygen machines, hospital beds as well as other medical equipment.

Mr. Biabene clarified that the MDEG application was to have Ozomor Medical Supplies, Inc.'s ownership change approved.

Board discussion ensued regarding the laws on health professionals owning MDEGs.

The Board questioned Mr. Biabene regarding documentation that Board Staff requested during their latest inspection. Mr. Biabene expressed concern that the Board Inspector was not actually a member of Board Staff.

Mr. Wuest explained that Luis Curras was the inspector who went to Ozomor Medical Supplies, Inc. The Board encouraged Mr. Biabene to call the Board Office in the future if he feels the need to verify that the individual is an inspector for the Board of Pharmacy.

Mr. Wuest stated that because the inspection documentation has not been provided to Board Staff, the inspection is currently not complete.

The Board offered Mr. Biabene the option to table the application for a later date to complete the inspection and provide the Board with the requested documentation.

The Board tabled Ozomor Medical Supplies, Inc.'s application for MDEG Ownership Change at Mr. Biabene's request.

10. Application for Nevada Pharmacy – Appearance:

Care First Concierge Pharmacy – Las Vegas

Darla Zarley disclosed that she knows Ms. Robinson, but she could participate in this matter fairly and without bias.

Kellie Robinson, owner, and Linda Darlene Wild, managing pharmacist, appeared and were sworn by President Basch prior to answering questions or offering testimony.

Mr. Edwards explained that this matter was tabled during the April Board meeting so that Ms. Wild could appear before the Board to answer questions regarding her work history and pharmacy experience.

Ms. Wild answered questions to the Board's satisfaction regarding her past work experience specifically about her role as operations manager at Pathway Specialty Pharmacy.

Ms. Robinson and Ms. Wild explained that Care First Concierge Pharmacy will operate as a closed door pharmacy servicing the outpatient program for Desert Hope Treatment Center

The Board recommended Ms. Robinson and Ms. Wild contact Board Staff to make sure the pharmacy layout is in compliance with state law and encouraged them to review pharmacy laws.

Ms. Robinson and Ms. Wild answered questions to the Board's satisfaction.

Board Action:

Motion: Jason Penrod moved to approve Care First Concierge Pharmacy's Application for Nevada Pharmacy pending review and approval of the pharmacy layout by Board Staff and a positive inspection.

Second: Tallie Pederson

Action: Passed Unanimously

11. Requested Appearance for Mandated Formal Education for Newly Licensed Pharmacy Technicians – Appearance

Roberta Duskin, R.Ph and Adrienne Santiago, PT

Ms. Duskin and Ms. Santiago appeared before the Board to advocate for mandatory formal education for pharmaceutical technicians.

Ms. Duskin stated that mandatory formal education would standardize the knowledge of pharmaceutical technicians before they are hired at a pharmacy.

Ms. Duskin and Ms. Santiago listed benefits of mandatory formal education for pharmaceutical technicians including confidence to speak up against unlawful practices as well as decreasing the likelihood of technicians engaging in illegal activity after investing their time and money in formal training.

Board discussion ensued that mandatory formal education may deter potential pharmaceutical technicians who want to work as a technician while preparing to apply for pharmacy school or other educational programs.

The Board thanked Ms. Duskin and Ms. Santiago for their presentation and information on this topic.

12. Election of Officers

The Board stated their satisfaction with the current Officers.

Board Action:

Motion: Cheryl Blomstrom moved to keep the Officers in their current positions.

Second: Kevin Desmond

Action: Passed Unanimously

13. Personnel Review

A. Personnel Evaluation

Larry Pinson commended his entire staff commenting on their hard work and efficiency. He cited several attributes and accomplishments of all members of the staff.

#### B. Executive Secretary Evaluation

President Basch complimented Mr. Pinson's hard work and leadership. Mr. Pinson's leadership is reflected in the quality of work produced by Board Staff and their responsiveness to serve the public. President Basch made suggestions to improve staff's procedure and increase communication between the Board and Staff.

#### Board Action:

Motion: Kirk Wentworth moved to approve salary adjustments for Board Staff.

Second: Kevin Desmond

Action: Passed unanimously

#### 14. General Counsel Report for Possible Discussion

Mr. Edwards updated the Board on the status of the Vet Source case.

#### 15. Executive Secretary Report for Possible Discussion:

##### A. Financial Report

Mr. Pinson presented the financials to the Board's satisfaction. Mr. Pinson stated that the budget would be reviewed during the July Board meeting.

##### B. Temporary Licenses

Five temporary licenses were issued since the last meeting.

##### C. Staff Activities

1. Speaking Engagements
  - a. Coalition of Carson City

Mr. Pinson's and Ms. Long's presentation to this group was well received.

##### b. Division of Behavioral Health

Mr. Pinson and Ms. Long will be presenting to this group in July.

##### 2. Executive Committee NASCSA

Mr. Pinson attended a meeting with this group in Chicago to discuss the prescription monitoring programs across the country.

- D. Reports to Board
  - 1. Collaborative Efforts
    - a. BOME; DEA; FBI

Mr. Pinson stated that Board Staff has been working with the DEA, FBI and local law enforcement on the Rand/West case.

Mr. Pinson has been available for multiple news interviews to discuss the intended role of the Prescription Monitoring Program and controlled substance abuse.

- 2. NABP Annual Meeting

Darla Zarley represented the Board at the NABP Annual Meeting in San Diego, CA.

- E. Board Related News
  - 1. State Chemist in Amherst Lab

Mr. Pinson presented a news article for the Board's information.

- F. Activities Report

16. Notice of Intent to Act upon a Regulation

- A. **Amendment of Nevada Administrative Code (NAC) 639.921 Sharing of information between two or more pharmacies.** The proposed amendment would allow for the sharing of information concerning prescriptions between the computerized system of two or more pharmacies that are commonly owned or contractually related.

Mr. Edwards summarized the proposed amendment.

President Basch opened the Public Comment.

There was no public comment.

President Basch closed Public Comment

The Board discussed that if the proposed amendment was accepted, who would be held responsible if an error occurred, and would the Board then need to license out-of-state pharmacists.

After discussion, the Board felt that more information is necessary. They directed Board Staff to obtain industry input, consult with NABP and reach out to other states to see how they are handling the same situation.

Board Action:

Motion: Cheryl Blomstrom moved to take no action on this matter at this time.

Second: Jason Penrod

Action: Passed unanimously

The Board instructed Board Staff to bring this matter back for Public Hearing.

**B. Amendment of Nevada Administrative Code (NAC) 639.955 Imposed fines for not transmitting information regarding the dispensing of controlled substances.** The proposed amendment provides a penalty for the failure to transmit certain information concerning the dispensing of controlled substances.

Mr. Edwards and Mr. Wuest summarized the proposed amendment.

President Basch opened the Public Comment.

Liz McMenamain, RAN, appeared and was sworn by President Basch prior to answering questions or offering testimony.

Ms. McMenamain thanked the Board and Board Staff for their work on this proposed amendment.

Ms. McMenamain had questions regarding the procedure through which this penalty could be imposed.

Board Staff provided an explanation of the due process to which a licensee would be entitled before the penalty is imposed.

After hearing the explanation, Ms. McMenamain stated no objection to the regulation.

President Basch closed the Public Comment.

Board Action:

Motion: Cheryl Blomstrom moved to adopt the regulation as amended.

Second: Jason Penrod

Action: Passed unanimously

17. Next Board Meeting:

July 20-21, 2016 – Las Vegas, Nevada

18. Public Comment

There was no public comment.

DRAFT