

May 21, 2008

AGENDA

◆ PUBLIC NOTICE ◆

NEVADA STATE BOARD OF PHARMACY

BOARD MEETING

at the

Airport Plaza Hotel
1981 Terminal Way
Reno

Wednesday, June 4, 2008 – 10:30 am

Thursday, June 5, 2008 – 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.

June 2008 Board Meeting Agenda

- * 1. Approval of April 16-17, 2008, Minutes
- * 2. Applications for Out-of-State MDEG – Non Appearance:
 - A. Ancillary Management Solutions, Inc. – Franklin, TN
 - B. Doctor Diabetic Supply, Inc. – Miami, FL
 - C. InfuSystem, Inc. – Madison Heights, MI
 - D. McKesson Medical-Surgical Minnesota Supply Inc. – Kansas City, MO
 - E. Nipro Diabetes Systems, Inc. – Miramar, FL
 - F. Support Plus Medical, Inc. – Davie, FL

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

- G. Affinity Biotech – Omaha, NE
- H. Animal Rx Pharmacy – Edwardsville, KS
- I. Apothecary Shop of Deer Valley – Phoenix, AZ
- J. Omnicare of Nebraska – Omaha, NE

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

- K. Genentech USA, Inc. – Hillsboro, OR
- L. Patterson Logistics Services, Inc. – Blythewood, SC
- M. Provident Pharmaceutical, Inc. – Richmond, VA
- N. Richmond Pharmaceuticals, Inc. – Richmond, VA
- O. Safco Dental Supply Co. – Northbrook, IL
- P. West-Ward Pharmaceutical Corp – Eatontown, NJ

Application for Nevada MDEG – Non Appearance:

- Q. Sleep Care Systems – Laughlin

Applications for Nevada Pharmacy – Non Appearance:

- R. A Pharmacy – Las Vegas
- S. Sierra Compounding Pharmacy – Reno
- T. Spring Valley Pharmacy – Las Vegas
- U. Target Pharmacy T2402 – Henderson
- V. Walgreens #10215 – Las Vegas
- W. Walgreens #10782 – Las Vegas

June 2008 Board Meeting Agenda

◆ REGULAR AGENDA ◆

- * 3. Applications for Out-of-State Pharmacy – Appearance:
 - A. Biomed Pharmaceuticals – Inglewood, CA
 - B. United Scripts, Inc. – Villa Park, IL

- * 4. Applications for Out-of-State and Canadian Pharmacy – Appearance:
 - A. BCWA Health Services – Bellingham, WA
 - B. Newton Pharmacy – Surrey, British Columbia

- * 5. Application for Intern License – Appearance:

Chad Cadwell

- * 6. Applications for Technician in Training License – Appearance:
 - A. Adrian Dela Cruz
 - B. Sabrina Maes

- * 7. 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. Joseph Odem, R.Ph (08-019A-RPH-N)
 - B. Diane Kurtzer, R.Ph (08-019B-RPH-N)
 - C. Rite Aid #6121 (08-019-PH-N)
 - D. Russell E. Smith, R.Ph (08-017A-RPH-N)
 - E. Carla V. Frisby, R.Ph (08-017B-RPH-N)
 - F. Walgreens #04788 (08-017-PH-N)
 - G. Jan K. Schroder, PT (08-016-PT-N)
 - H. Robyn R. Ousby, PT (08-012-PT-N)
 - I. Celeste A. Martinez, PT (08-025-PT-N)
 - J. Henry A. Miller, R.Ph (08-008-RPH-S)

- * 8. Appearance Request:

Controlled Substance Task Force – Joanee Quirk

- * 9. General Counsel Report

June 2008 Board Meeting Agenda

*10. Discussion and Determination:

- A. Drug Destruction
- B. Biennial Inspections of Businesses
- C. Pharmacy Technician Advisory Committee

*11. Personnel Review – 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. Personnel Evaluation and Salary Review
- B. Executive Secretary Evaluation

*12. Executive Secretary Report:

- A. Financial Report
- B. Investment Report
- C. Temporary Licenses
- D. Staff Activities
 - 1. Meetings
 - a. Compounding Committee (4/24)
 - b. NABP Annual Meeting (May)
 - c. Workplace Assessment Committee (6/3)
- E. Report to Board
 - 1. ACP Medical Supply Corporation
 - 2. Patient Counseling Requirements
 - 3. DEA Related Issues
 - 4. Versa
 - 5. Annual Returned Drug Report
- F. Board Related News
 - 1. Internet Drug Outlet Identification Program
- G. Activities Report

W O R K S H O P – Thursday, June 5, 2008 – 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 639.220 Schedules of fees; penalty for late renewal; exemption of certain fees.** Changes to ASC and MDEG Fees

June 2008 Board Meeting Agenda

2. **Amendment of Nevada Administrative Code 639.240 Requirements for registration of pharmaceutical technicians.** Adding ICPT to Pharmaceutical Technician Training
3. **Amendment of Nevada Administrative Code 639.2971 Authorization; contents of and deviation from written protocol.** Changes Regarding Pharmacist Immunizations.
4. **Amendment of Nevada Administrative Code 639.4992 Dispensing of controlled substances: Registration and licensing required.** Changes regarding Consultant Pharmacists to Ambulatory Surgical Centers

PUBLIC HEARING – Thursday, June 5, 2008 – 9:00 am

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

1. **Amendment of Nevada Administrative Code 639.480 Correctional Facility** This language will add the parameters for drug room inspections in correctional facilities.
2. **Amendment of Nevada Administrative Code 639.515 Stock of drugs in facility for skilled nursing or intermediate care.** This amendment removed an invalid CFR reference.
3. **Amendment of Nevada Administrative Code 639.NEW Language Practicing outside a pharmacy.** This language will allow a pharmacist to practice outside of a pharmacy and sets the parameters in which he may practice.
4. **Amendment of Nevada Administrative Code 639.NEW Language MDEG changes.** This language adopts certain standards of professional conduct and other requirements for MDEG providers.
5. **Amendment of Nevada Administrative Code New Language Compounding Regulations** The Board's existing regulations regarding compounding practices were out of date and inadequate to address the changed practice and standards actually in use in Nevada's compounding pharmacies.

June 2008 Board Meeting Agenda

15. Next Board Meeting:

July 16 & 17, 2008 – Las Vegas

16. 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, Nevada

June 4 and 5, 2008

The meeting was called to order at 10:30 a.m. by Barry Boudreaux Board President.

Board Members Present:

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

Board Members Absent:

Board Staff Present:

Larry Pinson	Jeri Walter	Louis Ling	Keith Marcher
--------------	-------------	------------	---------------

CONSENT AGENDA

1. Approval of April 16-17, 2008, Minutes
2. Applications for Out-of-State MDEG – Non Appearance:
 - A. Ancillary Management Solutions, Inc. – Franklin, TN
 - B. Doctor Diabetic Supply, Inc. – Miami, FL
 - C. InfuSystem, Inc. – Madison Heights, MI
 - D. McKesson Medical-Surgical Minnesota Supply Inc. – Kansas City, MO
 - E. Nipro Diabetes Systems, Inc. – Miramar, FL
 - F. Support Plus Medical, Inc. – Davie, FL

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

- G. Affinity Biotech – Omaha, NE
- H. Animal Rx Pharmacy – Edwardsville, KS
- I. Apothecary Shop of Deer Valley – Phoenix, AZ
- J. Omnicare of Nebraska – Omaha, NE

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

- K. Genentech USA, Inc. – Hillsboro, OR
- L. Patterson Logistics Services, Inc. – Blythewood, SC
- M. Provident Pharmaceutical, Inc. – Richmond, VA
- N. Richmond Pharmaceuticals, Inc. – Richmond, VA
- O. Safco Dental Supply Co. – Northbrook, IL
- P. West-Ward Pharmaceutical Corp – Eatontown, NJ

Application for Nevada MDEG – Non Appearance:

- Q. Sleep Care Systems – Laughlin

Applications for Nevada Pharmacy – Non Appearance:

- R. A Pharmacy – Las Vegas
- S. Sierra Compounding Pharmacy – Reno
- T. Spring Valley Pharmacy – Las Vegas
- U. Target Pharmacy T2402 – Henderson
- V. Walgreens #10215 – Las Vegas
- W. Walgreens #10782 – Las Vegas

Discussion:

The consent agenda applications and supporting documents were reviewed.

NOTE: Leo Basch recused from participation on the vote for items 2V and W because he is employed by Walgreens. Mary Lau recused from participation on the vote for items 2U, V and W as she is the president of the Retail Association of Nevada and Target and Walgreens are members of RAN.

Board Action:

Motion: Leo Basch moved to pull item 2Q from the consent agenda and have them appear.

Second: Mary Lau

Action: Passed Unanimously

Motion: Keith Macdonald found the consent agenda application information to be accurate and complete and moved for approval except for items 2Q, U, V, and W.

Second: Leo Basch

Action: Passed Unanimously

Motion: Ray Seidlinger moved to approve items 2V and W.

Second: Don Fey

Action: Passed Unanimously

Motion: Ray Seidlinger moved to approve item 2U.

Second: Don Fey

Action: Passed Unanimously

Leo Basch requested a change be made to the minutes on page 23 – rather than “chain stores” change to “as a pharmacist” where reference is made to volunteer work.

Motion: Leo Basch moved for approve the minutes with the referenced change.

Second: Don Fey

Action: Passed Unanimously

REGULAR AGENDA

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

A. Biomed Pharmaceuticals – Inglewood, CA

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

Mr. Bush indicated that his pharmacy serves hemophiliac patients and noted that he has no controlled substances or high risk products. He has had specialty pharmacy experience for the last seven years. There are six pharmacies nationwide and there are 60 employees. Biomed is owned by Allion, an HIV/AIDS pharmacy. They ship their products by Fed Ex. Mr. Bush indicated that they would like to pursue serving hemophiliac patients in Nevada.

Board Action:

Motion: Don Fey

Second: Ray Seidlinger

Action: Passed Unanimously

B. United Scripts, Inc. – Villa Park, IL

United Scripts, Inc., has rescheduled to the July Board meeting.

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

- A. BCWA Health Services – Bellingham, WA
- B. Newton Pharmacy – Surrey, British Columbia

Larry Pinson reminded the Board that BCWA had appeared at a previous meeting and asked for licensure with a business model that included a relationship with a pharmacy in British Columbia that was not licensed in Nevada. Since that appearance, Newton Pharmacy has applied for a Canadian pharmacy license. Mr. Pinson suggested that the applications be approved, however, BCWA would not be able to utilize Newton until they have been inspected.

Board Action:

Motion: Keith Macdonald moved to accept the application for Canadian pharmacy for Newton Pharmacy pending inspection.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Keith Macdonald moved to accept the application for out-of-state pharmacy for BCWA.

Second: Ray Seidlinger

Action: Passed Unanimously

5. Application for Intern License – Appearance:

Chad Cadwell

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

Louis Ling explained that Mr. Cadwell has applied for an intern license and made that he had been charged, arrested or convicted of a felony or misdemeanor on his application. Mr. Cadwell was asked before the Board to explain the circumstances.

Mr. Cadwell indicated that he had two misdemeanors for possessing a bottle of alcohol and running from the officer that tried to arrest him. He said he made two irresponsible

mistakes that night and is remorseful. He went to a party and was leaving with a bottle of alcohol in his hand. He had been drinking at the party and was afraid he would be arrested because he was under age when he saw the officer so he ran. The officer caught him and arrested him where he was charged with two misdemeanors.

The Board questioned him in detail and concluded that this was a one-time incident.

Board Action:

Motion: Ray Seidlinger moved to approve the intern application and have Mr. Cadwell evaluated by PRN-PRN.

Second: Leo Basch

Action: Motion Failed

Motion: Keith Macdonald moved to approve the intern application.

Second: Mary Lau

Action: Passed Unanimously

6. Applications for Technician in Training License – Appearance:

A. Adrian Dela Cruz

Adrian Dela Cruz, Milan Institute student, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Dela Cruz stated that he attempted embezzlement from his casino employer. He took \$800.00 then tried to replace it but was too late because he was observed on surveillance camera taking the money. He took the money to go see his ailing grandmother in the Philippines. Mr. Dela Cruz testified that he does not do drugs or use alcohol.

President Boudreaux advised Mr. Dela Cruz that he was concerned because Mr. Dela Cruz is very impressionable and would worry about what would happen when friends tried to pressure him into getting drugs for them when he was working in a pharmacy. Mr. Dela Cruz indicated that he has changed his friends and knows right from wrong and will not do that.

Board Action:

Motion: Keith Macdonald moved to approve the pharmaceutical technician in training application.

Second: Leo Basch

Action: Passed Unanimously

B. Sabrina Maes

Sabrina Maes, Milan Institute student, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Maes stated that she had a DUI in August, 2006. She and a friend were out together and her friend got drunk. Ms. Maes had been drinking, too, but she was not out of control like her friend so chose to drive home when she was pulled over and arrested for DUI. Ms. Maes stated that she has never had any other problems and knows she should not drive if she has been drinking.

Board Action:

Motion: Chad Luebke moved to approve the application for pharmaceutical technician in training.

Second: Don Fey

Action: Passed Unanimously

7. Disciplinary Action:

- | | | |
|----|---------------------|-----------------|
| A. | Joseph Odem, R.Ph | (08-019A-RPH-N) |
| B. | Diane Kurtzer, R.Ph | (08-019B-RPH-N) |
| C. | Rite Aid #6121 | (08-019-PH-N) |

NOTE: Mary Lau recused from participation in this hearing as she is the president of the Retail Association of Nevada and Rite Aid is a member of RAN. Leo Basch recused from participation as he knows Diane Kurtzer.

Bruce Wiswell, district pharmacy manager for Rite Aid, and Joseph Odem appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

Mike Dyer was present to represent Mr. Odem, Ms. Kurtzer and Rite Aid #6121. It was noted that Ms. Kurtzer was not present as her husband was having heart surgery.

Louis Ling advised the Board that since the Accusation was written, proof of counseling had been provided to Board staff and he would like to dismiss the Second Cause of Action. The circumstances of this case involve a prescription for Norco that was refilled for a patient earlier than the prescribing physician authorized. The original prescription was written for 300 dosage units with specific directions on the prescription that the

medication must last for at least 30 days. The Norco prescription was refilled six times in 26 days for a total of 1800 tablets dispensed without authorization.

Mr. Dyer explained the complexity of the Rite Aid computer system. Even though a warning for “duplicate therapy” would appear, since the patient was paying cash and did not involve insurance, the duplicate therapy warning would be overridden by the pharmacist.

The Board questioned Mr. Odem about the duplicate therapy warnings and why they over ride them without looking at the history. Mr. Macdonald asked Mr. Odem how many times a day he sees that warning and Mr. Odem stated about 90% of the time. Mr. Macdonald noted that they were nonsensical, monotonous warnings and that as a pharmacist you ignore them. President Boudreaux asked if Mr. Odem thought a change in the computer system would be helpful. Mr. Odem advised that he has learned from this experience and has caught other early refills since this incident and feels comfortable with the Rite Aid computer system as it is.

There was general discussion regarding Mr. Odem's pharmacy practice and Rite Aid's policies and procedures. Mr. Wiswell also addressed the Rite Aid computer system functions.

Mr. Ling recommended a fine for each of the pharmacists and left the amount to the Board's discretion. He had no recommendation for Rite Aid and also left that to the Board's discretion.

Mr. Dyer gave closing statements and noted that both of the pharmacists in this matter have learned from their mistake and they have concluded that their practice of pharmacy has improved because of it. Mr. Dyer noted that Rite Aid should not have discipline imposed upon them and he cited the charges to the Board and gave reasons why they did not apply.

Board Action:

Motion: Ray Seidlinger moved to dismiss the Second Cause of Action.

Second: Don Fey

Action: Passed Unanimously

Motion: Ray Seidlinger moved to dismiss the First and Third Causes of Action regarding Rite Aid.

Second: Chad Luebke

Action: Passed Unanimously

Motion: Ray Seidlinger moved to find Mr. Odem guilty of the First Cause of Action.

Second: Chad Luebke

Action: Passed Unanimously

Motion: Ray Seidlinger moved to find Ms. Kurtzer guilty of the First Cause of Action.

Second: Don Fey

Action: Passed Unanimously

Motion: Ray Seidlinger moved to send letters of admonition to Mr. Odem and Ms. Kurtzer.

Second: Keith Macdonald

Action: Passed Unanimously

- | | | |
|----|------------------------|-----------------|
| D. | Russell E. Smith, R.Ph | (08-017A-RPH-N) |
| E. | Carla V. Frisby, R.Ph | (08-017B-RPH-N) |
| F. | Walgreens #04788 | (08-017-PH-N) |

NOTE: Mary Lau recused from participation in this hearing as she is the president of the Retail Association of Nevada and Walgreens is a member of RAN. Leo Basch recused from participation as he is an employee of Walgreens.

Rob Graham appeared to represent Mr. Smith, Carla Frisby and Walgreens #04788. Duane Piniñ, senior attorney for Walgreens, was also present.

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

Mr. Ling asked Ms. Ely to describe the circumstances of her complaint to the Board. Ms. Ely advised that her daughter had been to the doctor for acne. The doctor prescribed a birth control pill to treat her acne. Ms. Ely took the prescription to Walgreens #04788 and dropped it off at the drive through window and was told she could pick it up in 30 to 45 minutes. Ms. Ely testified that she returned to the drive through at Walgreens #04788 approximately two hours later. She stated that she spoke to someone she could not see through the intercom whom she believed to be a male and the clerk or technician at the window. Ms. Ely's daughter began taking the medication Ms. Ely was given. When Ms. Ely called for a refill on the Walgreens automated system, she received a telephone call from Ms. Frisby and was notified that the first prescription she was given had been filled incorrectly. It was determined that

Mr. Smith filled the prescription with a different birth control medication than what was prescribed. Ms. Ely testified that she never heard from Walgreens again.

Mr. Graham apologized for the error. He asked Ms. Ely if she was sure she had spoken with a male through the intercom and wondered if she possibly could have spoken to Ms. Frisby. Ms. Ely was positive she had not spoken to Ms. Frisby. Ms. Ely went on to describe her general experience with Walgreens #04788 and noted that it was always chaotic at that pharmacy. Mr. Graham continued by asking Ms. Ely about Joe Depczynski's investigation process. Mr. Graham was clear that he did not like that Mr. Depczynski asked if Ms. Ely was counseled when counseling was not at issue in her complaint. Ms. Ely advised Mr. Graham that she was unaware that counseling was mandatory. Mr. Graham asked Ms. Ely how she presented herself to Ms. Frisby and she stated that she was angry and that she stated her frustrations with her experiences at Walgreens #04788 such as long wait times and confusion. Mr. Graham asked if she had spoken with any other Board staff and she stated that she had spoken to Mr. Ling. Mr. Graham asked if she knew that Ms. Frisby was involved in this matter and Ms. Ely stated that she did not until Mr. Ling told her. Mr. Graham then asked her about her counseling experience at Wal-Mart. President Boudreaux asked why this was relevant and Mr. Graham indicated he was trying to show that Walgreens was being singled out regarding their pharmacy practices.

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

Louis Ling asked Mr. Depczynski to describe his general procedures when conducting an investigation. He explained that he tries to retrace the steps taken from filling of a prescription to dispensing to determine how the error occurred. During the course of his investigations he requests documents such as a copy of the prescription, who did the fill, who did the verification, who counseled. When he completes his investigation he writes a report to Mr. Ling and tries to determine how best to correct the problems he encountered. Mr. Depczynski also cites Nevada laws that may have been breached. Mr. Ling asked Mr. Depczynski if he followed those procedures during this investigation and Mr. Depczynski stated that he had contacted Ms. Ely to verify the complaint and then went to the pharmacy to begin checking as described. Mr. Depczynski stated that he spoke with a pharmaceutical technician at the pharmacy that had chosen the wrong medication from a drop-down list. It then went to Mr. Smith for verification and Mr. Smith did not catch the error and a label was printed. Another pharmaceutical technician took the label sheet and filled from that – not the original prescription. After filling, the prescription goes back to the pharmacist, and in this instance it was Mr. Smith, for another check. The pharmacist then bags the filled prescription. Mr. Depczynski testified that the CAP system indicated that counseling was refused, however when he spoke with Ms. Ely she was adamant that she was not approached about counseling. Mr. Depczynski described the CAP system counseling procedure. Mr. Depczynski learned that the pharmacist can indicate “accept” or “decline” counseling from any computer in the pharmacy so that the pharmaceutical technician,

who is locked out of the system because counseling needs to occur on a new prescription, can complete the transaction.

Mr. Graham cross examined Mr. Depczynski. The Board had no questions for Mr. Depczynski.

Carla Frisby, Matt Forster, Walgreens district pharmacy supervisor, Russell Smith, and Noel Rivera, pharmacy technician, appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

Rob Graham questioned Mr. Smith regarding his pharmacy practice. Mr. Smith answered the questions and expressed his apologies to the Board, Board staff and Ms. Ely for the error that occurred.

Mr. Ling and Mr. Graham questioned Mr. Smith regarding his general counseling procedures and how he uses the CAP system. Mr. Smith was asked if there were any male employees in the pharmacy the night Ms. Ely picked up her daughters prescription and Mr. Smith indicated that there were no male employees on duty at that time.

Mr. Graham questioned Ms. Rivera regarding her observations of Ms. Frisby's counseling practices. Ms. Rivera stated that she had worked with Ms. Frisby for approximately two years and that Ms. Frisby always counsels on new prescriptions. Ms. Rivera confirmed there were no male employees present in the pharmacy when Ms. Ely picked up her daughter's prescription. Mr. Luebke questioned Ms. Rivera regarding her practices of notifying the pharmacist when counseling is required.

Mr. Graham asked Ms. Frisby to describe her counseling practices. Ms. Frisby testified that she asks a patient if they have any questions on their prescription, especially on CII's. On birth control pills she just asks if they have any questions. She indicated that she takes counseling seriously even though it is time consuming. Mr. Graham asked about counseling on the intercom. Ms. Frisby indicated that there are two intercoms – one for the first lane and one for the second lane. There is no video at their drive through so the patient can not see whom they are speaking with.

Mr. Ling cross examined Ms. Frisby and asked if she identifies herself as a pharmacist when she counsels on the intercom and she indicated that she did not.

Mr. Graham and Mr. Ling had re-direct several times for clarification purposes.

Mr. Ling gave closing statements and recommendations. He recommended that the Third Cause of Action regarding the CAP system making a false record be dismissed. The First Cause of Action regarding Mr. Smith he recommended a fine of \$100.00. On the Second Cause of Action regarding Ms. Frisby he found that asking if a patient had any questions did not constitute counseling according to Nevada law. Ms. Frisby could not possibly have known if she was talking to a 17 year old or an adult if she had no visual of the patient she was speaking with on the intercom and therefore recommended

a fine of \$750.00 for failure to counsel. On the Fourth Cause of Action regarding Walgreens owning and operating the pharmacy in which the error took place, Mr. Ling recommended a fine of \$850.00 to parallel the Smith/Frisby fines, plus fees and costs in this matter.

Mr. Graham gave closing statements and asked that all the Causes of Action be dismissed.

Mr. Ling asked to clarify the record regarding Mr. Graham's assertions regarding burden of proof. It was a former Board member and district pharmacy supervisor for Walgreens that made it a policy for Board staff to ask all pharmacies the same questions during an investigation so Walgreens would not be "singled out" regarding their counseling practices. That has been Board staff's practice since we were directed to do so in every disciplinary case. Counseling in Nevada is mandatory and Ms. Frisby's own testimony proved that she is only offering counseling by asking if the patient has any questions. Mr. Graham stated that there was no place in our law that mandates a pharmacist identify themselves, but our regs require a pharmacist to wear a name tag with their name and capacity on it. If a patient is being spoken to on an intercom without a visual presence the pharmacist should definitely identify themselves as such.

Keith Marcher noted for clarification to the Board that the Nevada Supreme Court has defined burden of proof as evidence that a reasonable person might accept as adequate to support a conclusion.

Board Action:

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

Second: Don Fey

Action: Passed Unanimously

Motion: Don Fey moved to dismiss the Third Cause of Action.

Second: Ray Seidlinger

Action: Passed Unanimously

Motion: Ray Seidlinger moved to find Ms. Frisby guilty of the Second Cause of Action.

Second: Don Fey

Action: Passed With One Negative Vote

Motion: Keith Macdonald moved to dismiss the Fourth Cause of Action.

Second: Don Fey

Action: Passed Unanimously

Motion: Ray Seidlinger moved to fine Mr. Smith \$100.00.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Ray Seidlinger moved to fine Ms. Frisby \$750.00.

Second: Don Fey

Action: Passed Unanimously

G. Jan K. Schroder, PT (08-016-PT-N)

It was noted that Ms. Schroder did not appear even though she was noticed appropriately. Mr. Ling advised the Board that Ms. Schroder was terminated from employment from Long's for diverting drugs. He recommended revocation.

Board Action:

Motion: Mary Lau moved to find Ms. Schroder guilty.

Second: Don Fey

Action: Passed Unanimously

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

Second: Chad Luebke

Action: Passed Unanimously

H. Robyn R. Ousby, PT (08-012-PT-N)

Robyn Ousby and Larry Espadero, PRN-PRN monitor, appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

Louis Ling explained that he had spoken with Ms. Ousby several times. The first time she called, upon her being fired, she denied that she had removed injectable controlled

substances from her employing hospital pharmacy. The next time he spoke with Ms. Ousby she admitted that she was guilty. Ms. Ousby contacted Larry Espadero and signed a PRN-PRN contract. Mr. Ling recommends that Ms. Ousby be suspended until Mr. Espadero feels Ms. Ousby is ready to return to the practice of pharmacy and that she pay restitution to her previous employer.

Ms. Ousby was questioned by the Board as to any previous drug use. She stated that she used marijuana and cocaine when she was in college. When asked if she had used the injectable products she had taken from the pharmacy while she was working she admitted that she had used before work, while at work, while driving to work and any other time she needed to inject.

Mr. Espadero testified that Ms. Ousby had just joined the PRN-PRN program and agreed with Mr. Ling that Ms. Ousby should remain out of the pharmacy atmosphere at this point.

Board Action:

Motion: Leo Basch moved to find Ms. Ousby guilty of the alleged violations.

Second: Keith Macdonald

Action: Passed Unanimously

Motion: Keith Macdonald moved to suspend Ms. Ousby's pharmaceutical technician registration, participate in the PRN-PRN program until Mr. Espadero recommends she is ready to return to pharmacy practice, and pay restitution.

Second: Don Fey

Discussion: Leo Basch noted Ms. Ousby's history with drugs and felt that she should not be allowed to practice in a pharmacy again for the public's safety. Mr. Basch asked the Board not to consider not passing this motion.

Action: Passed With One Negative Vote

I. Celeste A. Martinez, PT (08-025-PT-N)

It was noted that Ms. Martinez did not appear even though she was noticed appropriately. Mr. Ling advised that Ms. Martinez confessed to diverting drugs just this one time for a friend. Mr. Ling recommended revocation.

Board Action:

Motion: Keith Macdonald moved to find Ms. Martinez guilty.

Second: Leo Basch

Action: Passed Unanimously

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

Second: Don Fey

Action: Passed Unanimously

J. Henry A. Miller, R.Ph

(08-008-RPH-S)

NOTE: President Boudreaux recused from participation in this case as he knows Mr. Miller. He assigned Ray Seidlinger to preside over this matter. Chad Luebke recused from participation as he previously employed Mr. Miller.

Erick Ferran was present to represent Mr. Miller.

Louis Ling commended Mr. Ferran for getting his client to admit that he has a drug problem. Mr. Ling advised the Board that Mr. Miller worked for Smith's and One Point and kept leaving the same marker on all of the fictitious prescriptions he made up by charging the same amount – \$59.99.

Mr. Miller testified that he is ashamed of his behavior. He stated that he played football in college, blew out his knee, had surgery and then a second surgery a couple of years ago. Mr. Miller noted that he worked long hours on his feet which caused his knee to become painful so he started self medicating by taking Lortab for the pain. Mr. Miller became so distraught from stealing Lortab that he could not sleep so he started taking Xanax. He said he was taking approximately 20 to 30 Lortab a day and 10 Xanax at night to sleep. Mr. Miller said when he received the notice of suspension of his license from the Board he knew he had to do something so he detoxed on his own which took about a month and then went out and got a job.

It was suggested that Mr. Miller get a good orthopedic surgeon so he does not fall back into his old self-medicating behaviors. Mr. Miller said that he is trying to loose weight and will check into treatment for his knee or possible knee replacement when he gets medical insurance.

Leo Basch asked Mr. Miller about his twelve year pharmacist career and Mr. Miller advised that he has worked at Walgreens, CVS, Target, Smith's, One Point and Medco. Mr. Fey asked about the quantity he was stealing from his employing pharmacies and he stated that he would stockpile. Mary Lau asked him about his knowledge of the PRN-PRN program and Mr. Miller said he did not go to PRN-PRN because he was

afraid he would lose his license or be brought before the Board. Mr. Macdonald asked Mr. Miller about steroid use and Mr. Miller testified that he did not use steroids or any other drugs.

Mr. Espadero said that Mr. Miller's tests have all been negative, but noted that Mr. Miller has only been in the PRN-PRN program for three weeks.

Louis Ling recommended license suspension and the standard PRN-PRN probation, and that he not be allowed to practice until he appears with Mr. Espadero and has his concurrence that he is ready to practice pharmacy again. The Board would then be able to check where he plans to work. In the meantime, Mr. Ling recommended that Mr. Miller remain on suspension.

Mr. Ferran agreed that suspension is appropriate and that Mr. Miller not return to pharmacy until Mr. Espadero approves.

Board Action:

Motion: Keith Macdonald moved to find Mr. Miller guilty of all Causes of Action.

Second: Mary Lau

Action: Passed Unanimously

Motion: Keith Macdonald moved to suspend Mr. Miller's pharmacist license for one year from April 1, 2007, continue with his PRN-PRN contract and be tested for steroids and HGH in addition to the normal testing standards, and pay restitution to Smith's and One Point before he appears for reinstatement.

Second: Leo Basch

Action: Passed Unanimously

8. Appearance Request:

Controlled Substance Task Force – Joanee Quirk

Ms. Quirk reported that OTEC has had some major changes and has lost three or four of their top personnel. She does not feel comfortable using them any longer especially in light of 24/7 processing about 600 requests a day. Rather than using the grant money for OTEC to go full service as was the plan, she is requesting permission to develop our own software in conjunction with at least two partner states and to purchase our own servers to be housed at the Reno Board office. The proposal to develop the product is \$40,000.00 and is the same person developing the e-pedigree

program. The developer is reliable and has developed products for the DEA and other federal agencies.

The Board agreed that this is a great concept and to move forward with her plan.

9. General Counsel Report

Louis Ling reported that the Supreme Court ruled in the Board's favor in the Dutchess case. The ruling did, however, ask the District Court to remand one part of the case back to the Board for reconsideration. Basically, the Supreme Court has approved the fees and costs and allows the Board to personalize the judgment which we plan to do.

The electronic pedigree program being developed by Steve Brock is progressing nicely. The program will satisfy Nevada's needs and hopefully can be housed at NABP. We should get the final blueprint in July.

President Boudreaux commended Mr. Ling's appearance before the Supreme Court and advised the Board that they should be proud of their counsel.

10. Discussion and Determination:

A. Drug Destruction

Larry Pinson noted that Board's inspector's are spending an inordinate amount of time on drug destruction. Nevada law does not mandate that a Board inspector do this. Nevada law allows licensed personnel and a witness to destroy drugs and Board staff recommends encouraging self drug destruction or having their drugs destroyed by a drug destruction service.

B. Biennial Inspections of Businesses

To reduce the demand on the Board's inspectors, Board staff is exploring a biennial inspection process whereby pharmacies with excellent inspection records could be allowed a biennial inspection and a self-inspection on the off years. The Board directed staff to explore the logistics of this concept.

C. Pharmacy Technician Advisory Committee

There seems to be an increase in pharmaceutical technician related diversion and the technician's role in pharmacy errors. Mr. Pinson suggested that a pharmacy technician advisory committee be formed to operate similarly to the MDEG committee. Perhaps the committee could meet twice a year and serve as a conduit to the Board on pharmaceutical technician issues. The Board directed staff to form a committee.

11. Personnel Review:

- A. Personnel Evaluation and Salary Review
- B. Executive Secretary Evaluation

Mr. Pinson gave the Board his recommendation for salary increases. He commended Board staff for the jobs they do and their support. The Board commended Mr. Pinson on the job he does to represent them.

Board Action:

Motion: Keith Macdonald moved to adopt the salary recommendation made by Board staff.

Second: Ray Seidlinger

Action: Passed Unanimously

12. Executive Secretary Report:

- A. Financial Report
- B. Investment Report

Larry Pinson gave the financial and investment reports to the Board's satisfaction noting that he will have the budget for the July meeting.

- C. Temporary Licenses

Two temporary licenses were issued since the last Board meeting.

- D. Staff Activities
 - 1. Meetings
 - a. Compounding Committee (4/24)
 - b. NABP Annual Meeting (May)
 - c. Workplace Assessment Committee (6/3)

Mr. Pinson gave a brief review of each meeting.

- E. Report to Board
 - 1. ACP Medical Supply Corporation

Mr. Pinson identified to the Board's satisfaction the medical products handled by ACP Medical Supply.

- 2. Patient Counseling Requirements

As directed, Mr. Pinson shared with the Board the counseling requirements in each state.

3. DEA Related Issues

DEA is now saying that no controlled substances can be e-prescribed. Mr. Pinson will attend the DEA annual conference in June to clarify this and other issues and will report back to the Board.

4. Versa

We are currently in phase two testing and the representative from Versa will be coming to spend two weeks with Board staff for the testing process. Our go live date is July 27, 2008.

5. Annual Returned Drug Report

Mr. Pinson provided a copy of the report sent to the LCB as mandated in 2003 legislation.

- F. Board Related News
 - 1. Internet Drug Outlet Identification Program

NABP has announced this identification program that will identify websites selling prescription drugs and distinguish those who do and do not comply with state and federal laws.

- G. Activities Report

WORKSHOP

13. Proposed Regulation Amendment Workshop

- 1. **Amendment of Nevada Administrative Code 639.220 Schedules of fees; penalty for late renewal; exemption of certain fees.** Changes to ASC and MDEG Fees

Mr. Ling noted that this regulation and Workshop item number four go hand-in-hand. At the moment we do not license ASC facilities and the only registrants are the physicians that work in them. In light of the endoscopy problems in Las Vegas it was determined that the Board of Pharmacy should license and inspect them. The Legislative Counsel Bureau opines that ASC's are really already categorized as Institutional B facilities and the fees for registration should be \$500.00. This reg also increases the MDEG provider fees from \$300.00 to \$500.00. Since we are doing background checks on these applications it is costing staff a considerable amount more than the current fee. There

will also be a pre-opening inspection fee for MDEG providers that move from one facility to another.

President Boudreaux opened the Workshop to the public.

There was no comment.

President Boudreaux closed the Workshop and asked for direction.

Board Action:

Motion: Ray Seidlinger moved to move forward to Public Hearing after striking ASC's from the language since they are already categorized as IB.

Second: Keith Macdonald

Action: Passed Unanimously

2. **Amendment of Nevada Administrative Code 639.240 Requirements for registration of pharmaceutical technicians.** Adding ICPT to Pharmaceutical Technician Training

This language just adds another certification avenue for pharmaceutical technicians.

President Boudreaux opened the Workshop for public comment.

Liz Macmenamin thanked the Board for this regulation.

President Boudreaux closed the Workshop and asked for direction.

Board Action:

Motion: Ray Seidlinger moved to move forward to Public Hearing.

Second: Leo Basch

Action: Passed Unanimously

3. **Amendment of Nevada Administrative Code 639.2971 Authorization; contents of and deviation from written protocol.** Changes Regarding Pharmacist Immunizations.

This language generalizes the concept for a pharmacist to give immunizations. It also lowers the age to allow pharmacists to immunize children from 14 to 10 years of age.

President Boudreaux opened the Workshop for public comment.

Kari Rovig of the Immunization Coalition Registry is thrilled that the Board wants to partner with them to help in any way to get the children of Nevada immunized. Ms. Rovig indicated that there are new drugs on the market recommended for children 10 years old and these reg changes will be helpful.

Tammy Chartran of the Department of Health suggested that the Board of Pharmacy regulations parallel the Department of Health language so both agencies are in coordination with each other. Ms. Chartran indicated that their regs (R041-08) are going to public hearing. Louis Ling will coordinate with Ms. Chartran on this issue.

Don Vasenden owner of Don's Pharmacy asked if a pharmacist could administer an immunization to anyone if it came on an order of a physician.

Katie Craven suggested that the age go down to baby age. New Mexico and Texas both allow immunizations down to 0 to protect babies and making it easier to get babies immunized. Leo Basch indicated he did not think 0-2 was a good idea because babies should be seeing a pediatrician, but below 2 would be OK if they get a prescription for a pharmacist to immunize.

President Boudreaux closed the Workshop and asked for direction.

Board Action:

Motion: Leo Basch moved to move forward to Public Hearing amending the language to reduce the age to 0 on the recommendation of a physician.

Second: Ray Seidlinger

Action: Passed Unanimously

4. **Amendment of Nevada Administrative Code 639.4992 Dispensing of controlled substances: Registration and licensing required.**
Changes regarding Consultant Pharmacists to Ambulatory Surgical Centers

Since LCB opines that ASC's are in the same category as IB's they will follow the institutional regulations. This will bring consultant pharmacists into the scheme of things and the ASC's will need to have policies and procedures established to define their practices. If pharmacists discover discrepancies or failure to make records or falsifying records or not using drugs appropriately they will need to report to the Board of Pharmacy for handling. Audits will also be required.

President Boudreaux opened the Workshop for public comment.

Katie Craven noted that there would still be things that would go unnoticed, but if a doctor was using a vial of medication on more than one patient that would be obvious and feels it would be good to have an extra set of eyes. Don Fey indicated that many medications come in various sizes even though they are marked for single use. A pharmacist would be ordering appropriately so there would not be a lot of waste.

President Boudreaux closed the Workshop and asked for direction.

Board Action:

Motion: Keith Macdonald moved to move forward to Public Hearing with changes discussed.

Second: Ray Seidlinger

Action: Passed Unanimously

PUBLIC HEARING

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

1. **Amendment of Nevada Administrative Code 639.480 Correctional Facility** This language will add the parameters for drug room inspections in correctional facilities.

This language changes inspections for correctional facility drug rooms from monthly to quarterly.

President Boudreaux opened the Public Hearing.

There was no public comment.

President Boudreaux closed the Public Hearing and asked for a motion.

Board Action:

Motion: Ray Seidlinger moved to adopt without change.

Second: Don Fey

Action: Passed Unanimously

2. **Amendment of Nevada Administrative Code 639.515 Stock of drugs in facility for skilled nursing or intermediate care.** This amendment removed an invalid CFR reference.

President Boudreaux opened the Public Hearing.

There was no public comment.

President Boudreaux closed the Public Hearing and asked for a motion.

Even though this regulation amendment was at the request of LCB, the Board reviewed all of the language. Mr. Fey would like to see the list of drugs removed because they change all the time and suggested the language should reflect maintaining a stock of emergency drugs. Mr. Ling indicated he would check with the Health Division to see what they allow. It was suggested to add “dosage” units in another section.

Board staff was directed to make the changes and bring it back for Public Hearing again.

3. **Amendment of Nevada Administrative Code 639.NEW Language Practicing outside a pharmacy.** This language will allow a pharmacist to practice outside of a pharmacy and sets the parameters in which he may practice.

President Boudreaux opened the Public Hearing.

Mary Ryan, Medco, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Ryan asked a couple of questions about the language and advised the Board that this concept works very well at Medco in other states that allow it and supports the effort. Ms. Ryan asked about the payment component. She thought that was going to be removed. Mr. Ling will strike – it should not be there. Ms. Ryan thought that it would be cumbersome to have all those pharmacists applying and wondered if Board staff could possibly approve. Mr. Ling indicated that we want the pharmacy to come before the Board and tell them their business plan. We do not care who the pharmacists are. Ms. Ryan hopes that these regulations will be adopted today.

Liz Macmenamin was reminded that she was still under oath. She asked about a health screening bus and whether these regulations would apply to them. Ms. Macmenamin was unsure about the specifics that went on in the bus but thought that immunizations were given. The Board told her that the pharmacist giving the immunizations would have to be licensed in Nevada to perform this service. If the bus goes to senior citizen facilities and gives immunizations as a volunteer service that was alright. She asked if the pharmacist could be paid if he was doing volunteer work and was advised that he could be paid by his employer but he could not charge the patient.

President Boudreaux closed the Public Hearing and asked for a motion.

Board Action:

Motion: Ray Seidlinger moved to adopt with the minor change that Mary Ryan brought to our attention.

Second: Leo Basch

Action: Passed Unanimously

4. **Amendment of Nevada Administrative Code 639.NEW Language MDEG changes.** This language adopts certain standards of professional conduct and other requirements for MDEG providers.

Mr. Ling explained that this is the culmination of two temporary regulation amendments that have been combined by LCB. The Board was directed to review the letter from Sue Schuerman, president of the Nevada chapter of the American Physical Therapy Association.

President Boudreaux opened the Public Hearing.

Harley Anderson, Chair of the American Physical Therapy Association, appeared and was sworn by President Boudreaux prior to answering questions or offering testimony.

Mr. Anderson commended the Board for their approach to the changes being made in this regulatory amendment. He agrees with Ms. Schuerman's letter and is assured that this reg only impacts orthotic and prosthetic services to ensure they are practicing appropriately. This will have no impact on practices outside the Board of Pharmacy's jurisdiction who are licensed with their own Boards.

President Boudreaux closed the Public Hearing and asked for a motion.

Board Action:

Motion: Keith Macdonald moved to approve the regulation amendment as presented.

Second: Ray Seidlinger

Action: Passed Unanimously

5. **Amendment of Nevada Administrative Code New Language Compounding Regulations** The Board's existing regulations regarding compounding practices were out of date and inadequate to address the changed practice and standards actually in use in Nevada's compounding pharmacies.

President Boudreaux opened the Public Hearing.

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

Ms. Craven provided the Board with another eight pages of changes she would like to request be made to the present language.

Keith Macdonald stated that he would like to see something passed today. If the language does not work, then request an amendment, but get something passed now. He indicated that there were changes brought to every meeting and it was time to adopt.

President Boudreaux stated he was hopeful that the language will pass today as was Mr. Ling. He noted that Mr. Fey and Ms. Craven had a few concerns and would get them on the record.

The Board went page by page with each of the changes Ms. Craven suggested and Mr. Ling made notes of the changes that the Board agreed needed to be made.

Liz Macmenamin and Cookie Quandt appeared and were sworn by President Boudreaux prior to answering questions or offering testimony.

Ms. Macmenamin again indicated that her retail members are concerned that they would be considered to be compounding and come under these regulations if they were mixing two ingredients. Ms. Quandt indicated that she did not want to do policies and procedures for compounding products in a retail pharmacy and have to abide by the testing requirements and all of the other requirements in this regulation. They do not compound complex products often and they can be as simple as mixing two products together. Mr. Ling indicated that the non-sterile compounding regulations as they are written do not require more than working on a clean space and documenting the recipe and the expiration dates of the components used.

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

Mr. Vasenden indicated he did not think these regulations are requiring any new procedures. They have always had to keep records and work in a clean area.

Mr. Fey would like them to record lot numbers in case of a recall for tracking. Ms. Macmenamin stated that her members would stop compounding if they had to do all of these extra steps. President Boudreaux asked that they would stop compounding because they had to put lot numbers on the back of the prescription? She indicated it was burdensome.

There was further discussion.

President Boudreaux closed the Public Hearing.

The Board reviewed the changes one more time to ensure everyone was clear on the language that will be returned to LCB for adoption.

The Board agreed to remove lot numbers and expiration date requirements for non-sterile compounding but determined to leave the temperature language as is.

Board Action:

Motion: Leo Basch moved to adopt R035-06 with the changes discussed.

Second: Don Fey

Action: Passed Unanimously

15. Next Board Meeting:

July 16 & 17, 2008 – Las Vegas

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

There was no public comment.